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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG-144990-12]

RIN 1545-BL37

User Fees for Processing Installment Agreements and Offers in Compromise

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations that provide user fees for installment agreements and offers in compromise. The proposed amendments affect taxpayers who wish to pay their liabilities through installment agreements and offers in compromise. This document also provides a notice of public hearing on these proposed amendments to the regulations.

DATES: Written or electronic comments must be received by **[INSERT DATE 30 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL**

REGISTER]. Outlines of topics to be discussed at the public hearing scheduled for October 1, 2013, at 10 a.m. must be received by **[INSERT DATE 30 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: Internal Revenue Service, CC:PA:LPD:PR (REG-144990-12), Room 5203, Post Office Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-144990-

12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20044, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-144990-12). The public hearing will be held in the IRS Auditorium beginning at 10 a.m. at the Internal Revenue Service Building, 1111 Constitution Avenue, N.W., Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning submissions and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, at (202) 622-7180; concerning cost methodology, Eva Williams, at (202) 435-5514; concerning the proposed regulations, Girish Prasad, at (202) 622-3620 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The Independent Offices Appropriations Act (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish charges for services provided by the agencies (user fees). The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President. Those policies are currently set forth in the Office of Management and Budget (OMB) Circular A-25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages agencies to charge user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate its full cost of providing those services. In general, the amount of a user fee should recover the cost of providing the service, unless OMB grants an exception.

Installment Agreements

Section 6159 of the Internal Revenue Code (Code) authorizes the IRS to enter into an agreement with any taxpayer for the payment of tax in installments. 26 CFR 301.6159-1. Before entering into an installment agreement, the IRS may examine the taxpayer's financial position to determine whether such an agreement is appropriate. Once the agreement is in effect, the IRS must process the payments and monitor compliance. Section 6331(k)(2) of the Code generally prohibits the IRS from levying to collect taxes while a request to enter into an installment agreement is pending, and if rejected for 30 days thereafter, and, if a timely appeal of rejection is filed, for the duration of the appeal. Section 6331(k)(2) of the Code also generally prohibits the IRS from levying to collect taxes while an installment agreement is in effect. A taxpayer that enters into an installment agreement therefore receives a special benefit of being allowed to pay an outstanding tax obligation over time.

Under sections 300.1 and 300.2 of the Treasury Regulations, the IRS currently charges \$105 for entering into an installment agreement, except that

the fee is \$52 for a direct debit installment agreement, which is an agreement whereby the taxpayer authorizes the IRS to request the monthly electronic transfer of funds from the taxpayer's bank account to the IRS, and the fee is \$43 if the taxpayer is a low-income taxpayer (notwithstanding the method of payment). Also, the IRS currently charges \$45 for restructuring or reinstating an installment agreement that is in default. The amount of the fees has not changed since 2007. As required by the OMB Circular, the IRS recently completed a routine review of the installment agreement program and determined that the full cost of an installment agreement is \$282, except that the cost is only \$122 for a direct debit installment agreement. The IRS also determined that the full cost of restructuring or reinstating an installment agreement is \$85.

In accordance with the OMB Circular, these proposed amendments to the regulations increase the installment agreement fees to recover more of the costs associated with such agreements. The proposed regulations propose to charge less than full cost. While agencies are generally required to charge full cost, the OMB Circular permits exceptions to this requirement when the cost of collecting the fees would represent an unduly large part of the fee for the activity or any other condition exists that, in the opinion of the agency head or his designee, justifies an exception. OMB has granted an exception to the full cost requirement of the OMB Circular. After discussions with OMB, the proposed fee for entering into an installment agreement is \$120, and the proposed fee for restructuring or reinstating an installment agreement is \$50. The fee for a direct debit installment agreement remains \$52, and low income taxpayers, as defined in 26 CFR

300.1(b)(2), would continue to pay \$43 for any new installment agreement, including a direct debit installment agreement. The proposed regulations do not increase the fee for direct debit installment agreements because these agreements have a significantly higher completion rate. The proposed fees balance the need to recover costs with the goals of encouraging the use of installment agreements in general and direct debit installment agreements in particular.

Offers in Compromise

Section 7122 of the Internal Revenue Code gives the Secretary the authority to compromise any civil or criminal case arising under the internal revenue laws, prior to the referral of that case to the Department of Justice. An offer to compromise may be accepted if there is doubt as to liability, if there is doubt as to collectibility, or if acceptance will promote effective tax administration. 26 CFR 301.7122-1(b). Before accepting an offer to compromise, the IRS must examine the taxpayer's financial position to determine whether such a compromise is appropriate unless it is an offer under section 7122(d)(3)(B) (regarding offers relating only to issues of liability). Once the IRS accepts an offer to compromise, the IRS must process the payments and monitor compliance. When the IRS accepts an offer to compromise, the taxpayer receives the benefit of resolving its tax liabilities for a compromised amount, provided the taxpayer complies with the terms of the compromise agreement. Further, section 6331(k)(1) of the Code generally prohibits the IRS from levying to collect taxes while a request to enter into an offer to compromise is pending,

and if rejected for 30 days thereafter, and, if a timely appeal of a rejection is filed, for the duration of the appeal.

Under section 300.3 of the Treasury Regulations, the IRS currently charges \$150 for processing an offer to compromise, except that no fee is charged if an offer is based solely on doubt as to liability, or made by a low income taxpayer, as defined in 26 CFR 300.3(b)(1)(ii). Also, the fee is generally applied to the unpaid taxes if the offer is accepted to promote effective tax administration or accepted based on doubt as to collectibility (in this latter case, a determination must be made that collection of an amount greater than the amount offered would create economic hardship). The amount of the fee has not changed since 2003. As required by the OMB Circular, the IRS recently completed a routine review of the offer to compromise program and determined that the full cost of an offer to compromise is \$2,718.

In accordance with the OMB Circular, this proposed amendment to the regulations increases the offer to compromise fee to recover more of the costs associated with such offers. These proposed regulations propose to charge less than full cost. While agencies are generally required to charge full cost, the OMB Circular permits exceptions to this requirement when the cost of collecting the fees would represent an unduly large part of the fee for the activity or any other condition exists that, in the opinion of the agency head or his designee, justifies an exception. As with the installment agreement fees, OMB has granted an exception to the full cost requirement of the OMB Circular. After discussions with OMB, the proposed fee for processing an offer to compromise is \$186. Low-

income taxpayers and taxpayers making offers based solely on doubt as to liability will continue to pay no fee. Also, as now, the fee is generally applied to the unpaid taxes if the offer is accepted to promote effective tax administration or accepted based on doubt as to collectibility (in this latter case, a determination must be made that collection of an amount greater than the amount offered would create economic hardship). The proposed fee balances the need to recover costs with the goal of encouraging offers in compromise.

The new fee rate for both installment agreements and offers in compromise will be effective January 1, 2014.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. The dollar amount of the fee is not, however, substantial enough to have a significant economic impact on any entity subject to the fee. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief

Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The IRS and Treasury Department request comments on all aspects of the proposed regulations. All comments will be available at *www.regulations.gov* or upon request.

A public hearing has been scheduled for October 1, 2013, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue N.W., Washington, D.C. 20044. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by

INSERT DATE 30 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN

THE FEDERAL REGISTER. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Kimberly Barsa of the Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Gift taxes, Income taxes, Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300--USER FEES

Paragraph 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

Par. 2. In § 300.1, paragraphs (b) introductory text and (d) are revised to read as follows:

§ 300.1 Installment agreement fee.

* * * * *

(b) Fee. The fee for entering into an installment agreement before January 1, 2014, is \$105. The fee for entering into an installment agreement on

or after January 1, 2014, is \$120. A reduced fee applies in the following situations:

* * * * *

(d) Effective/applicability date. This section is applicable beginning January 1, 2014.

Par. 3. In § 300.2, paragraphs (b) and (d) are revised to read as follows:
§ 300.2 Restructuring or reinstatement of installment agreement fee.

* * * * *

(b) Fee. The fee for restructuring or reinstating an installment agreement before January 1, 2014, is \$45. The fee for restructuring or reinstating an installment agreement on or after January 1, 2014, is \$50.

* * * * *

(d) Effective/applicability date. This section is applicable beginning January 1, 2014.

Par. 4. In § 300.3, paragraphs (b)(1) introductory text and (d) are revised to read as follows:
§ 300.3 Offer to compromise fee.

* * * * *

(b) Fee. (1) The fee for processing an offer to compromise before January 1, 2014, is \$150. The fee for processing an offer to compromise on or after January 1, 2014, is \$186. No fee will be charged if an offer is--

* * * * *

(d) Effective/applicability date. This section is applicable beginning January 1, 2014.

Beth Tucker

Deputy Commissioner for Operations Support.

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