



This document is scheduled to be published in the Federal Register on 10/30/2015 and available online at <http://federalregister.gov/a/2015-27791>, and on FDsys.gov

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG-121496-15]

RIN 1545-BN02

Preparer Tax Identification Number (PTIN) User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that will amend regulations (TD 9503) relating to the imposition of certain user fees on tax return preparers. The temporary regulations reduce the amount of the user fee to apply for or renew a preparer tax identification number (PTIN). The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT**

IN THE FEDERAL REGISTER].

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-121496-15), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C.

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-121496-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224 or sent

electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-121496-15). The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Hollie M. Marx at (202) 317-6844; concerning cost methodology, Eva J. Williams at (202) 803-9728; concerning submission of comments and/or requests for a public hearing, Oluwafunmilayo Taylor, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend regulations under 26 CFR part 300 setting a user fee for individuals who apply for or renew a PTIN. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

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.

It has been determined that an initial regulatory flexibility analysis is required for this notice of proposed rulemaking under 5 U.S.C. 603. This analysis is set forth under the heading "Initial Regulatory Flexibility Analysis."

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency “to prepare and make available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” See 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. See 5 U.S.C. 601(3) through (6). The IRS and the Treasury Department conclude that the proposed rule, if promulgated, may have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is required.

Description of the reasons why action by the agency is being considered

The IRS and the Treasury Department implemented regulatory changes in 2010 that required any individual who prepares or who assists in preparing all or substantially all of a tax return or claim for refund for compensation to obtain a PTIN. Pursuant to the PTIN regulations, only those individuals who apply for and maintain a current PTIN may prepare tax returns and claims for refund for compensation. Because the ability to prepare tax returns and claims for refund for compensation is limited to individuals who have a PTIN, the provision of a PTIN confers a special benefit. The IRS incurs costs

associated with processing a PTIN application and providing the special benefit associated with the PTIN. The IRS and Treasury Department initially determined that the full cost of providing the special benefit conferred by a PTIN was \$50 for each original application and each annual renewal. In accordance with OMB Circular A-25, the IRS and Treasury conducted a biennial review of the PTIN user fee amount in 2015 and determined that the full cost of providing the special benefit conferred by a PTIN had been reduced to \$33 for each original application and each annual renewal.

A succinct statement of the objectives of, and legal basis for, the proposed rule

The objective of the proposed regulations is to recover the costs to the government associated with providing the special benefit that an individual receives upon applying for or renewing a PTIN. These costs include activities, processes, and procedures related to the electronic and paper registration and renewal submissions; tax compliance and background checks; professional designation checks; foreign preparer processing; compliance and complaint activities; information technology and contract-related expenses; and communications. The PTIN user fee also takes into account various indirect program costs, including management and support costs. OMB Circular A-25 encourages user fees when special benefits are conferred on identifiable recipients. Individuals who obtain a PTIN receive the ability to prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. The ability to prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation is a special benefit.

The legal basis for the PTIN user fee is contained in section 9701 of title 31.

A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply

The proposed regulations affect all individuals who prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. Only individuals, not businesses, can apply for or renew a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who is required to apply for or renew a PTIN owning a small business or a small business otherwise employing an individual tax return preparer who is required to apply for or renew a PTIN.

The appropriate NAICS codes for PTINs are those that relate to tax preparation services (NAICS code 541213), offices of certified public accountants (NAICS code 541211), other accounting services (NAICS code 541219), and offices of lawyers (NAICS code 541110). Entities identified as tax preparation services, offices of certified public accountants, and other accounting services are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than \$20.5 million. Entities identified as offices of lawyers are considered small under the Small Business Administration size standards if their annual revenue is less than \$11 million. The IRS estimates that approximately 70 to 80 percent of the individuals subject to these proposed regulations are tax return preparers operating as or employed by small entities.

A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record

No reporting or recordkeeping requirements are projected to be associated with this proposed regulation.

An identification, to the extent practicable, of all relevant Federal rules which may

duplicate, overlap, or conflict with the proposed rule

The IRS is not aware of any Federal rules that duplicate, overlap, or conflict with the proposed rule.

A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities

The IOAA authorizes the charging of user fees for agency services, subject to policies designated by the President. OMB Circular A-25 implements presidential policies regarding user fees and encourages user fees when a government agency provides a special benefit to a member of the public. In the IOAA, Congress has stated a preference that special benefits be self-sustaining.

A PTIN is required for an individual to prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. PTINs are used by the IRS to collect and track data on tax return preparers. This data allows the IRS to track the number of persons who prepare or assist in preparing returns and claims for refund, the qualifications of those persons who prepare or assist in preparing returns and claims for refund, the number of returns each person prepares, and, when instances of misconduct or potential misconduct are detected, locate and review returns and claims for refund prepared by a specific tax return preparer. PTINs must be renewed annually to ensure that the identifying information associated with a PTIN is current.

Due to the costs to the government to process the application for a PTIN, the requirement to include a PTIN on tax returns and claims for refund, and the expressed

preference in the IOAA that special benefits be self-sustaining, there is no viable alternative to imposing a user fee.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on all aspects of these proposed regulations. All comments that are submitted by the public will be made available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Hollie M. Marx, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

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

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

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.13 is amended by revising paragraphs (b) and (d) to read as follows:

§300.13 Fee for obtaining a preparer tax identification number.

* * * * *

(b) [The text of proposed §300.13(b) is the same as the text of §300.13T(b) published elsewhere in this issue of the **Federal Register**].

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(d) [The text of proposed §300.13(d) is the same as the text of §300.13T(d) published elsewhere in this issue of the **Federal Register**].

Karen M. Schiller,

Acting Deputy Commissioner for Services and Enforcement.