

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9523]

RIN 1545-BJ65

User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the regulations relating to the imposition of user fees for enrolled agents and enrolled retirement plan agents. The final regulations lower the initial enrollment and renewal of enrollment user fees for enrolled agents and enrolled retirement plan agents and separate the enrolled retirement plan agent user fees from the enrolled agent user fees. The final regulations affect individuals who are, or apply to become, enrolled agents or enrolled retirement plan agents.

DATES: Effective Date: These regulations are effective on April 19, 2011.

Applicability Date: For dates of applicability see §§300.5(d), 300.6(d), 300.9(d), 300.10(d), and 300.11(d).

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations, Emily M. Lesniak at (202) 622-4570, or concerning cost methodology, Eva J. Williams at (202) 435-5514 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations relating to the initial enrollment and renewal of enrollment for enrolled agents and enrolled retirement plan agents. The Independent Offices Appropriations Act of 1952, which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations establishing user fees for services provided by the agency. Regulations prescribing user fees are subject to the policies of the President, which are currently set forth in the Office of Management and Budget Circular A-25 (the OMB Circular), 58 FR 38142 (July 15, 1993). The OMB Circular requires agencies seeking to impose user fees for providing special benefits to identifiable recipients to calculate the full cost of providing those benefits.

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. Pursuant to section 330 of title 31, the Secretary has published regulations governing practice before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). Section 10.4 of Circular 230 authorizes the Commissioner of Internal Revenue to grant status as an enrolled agent or enrolled retirement plan agent to applicants who demonstrate special competence in tax matters.

To become an enrolled agent or enrolled retirement plan agent, an applicant generally must pass a special enrollment examination and file an application for enrollment with the IRS. An individual granted status as an enrolled agent or enrolled retirement plan agent as provided in §10.6(d) of Circular 230 must renew enrollment every three years to maintain active enrollment and be able to practice before the IRS.

On December 10, 2010, the Treasury Department and the IRS published in the **Federal Register** (75 FR 76940) a notice of proposed rulemaking proposing amendments to part 300 of title 26 of the Code of Federal Regulations. The regulations proposed to reduce the initial enrollment and renewal of enrollment user fees for enrolled agents and enrolled retirement plan agents to \$30 from \$125. The reduction in user fees is necessary to account for the reallocation of portions of the enrolled agent and enrolled retirement plan agent renewal processes to the preparer tax identification number (PTIN) application and renewal process. The costs to the government for the reallocated portions of the enrolled agent and enrolled retirement plan agents initial enrollment and renewal of enrollment processes are now recovered by the user fee to apply for or renew a PTIN (TD 9503, 75 FR 60316). Additionally, these regulations proposed to separate the enrolled retirement plan agent user fees from the enrolled agent user fees.

A public hearing was scheduled for January 14, 2011. The IRS did not receive any requests to testify at the public hearing, and the hearing was cancelled.

The IRS received written comments in response to the proposed regulations. After careful consideration of the public comments, the Treasury Department and the IRS decided to adopt without substantive modification the proposed regulations reducing the enrolled agent and enrolled retirement plan agent initial enrollment and renewal of enrollment user fees to \$30 and separating the enrolled retirement plan agent user fees from the enrolled agent user fees.

Summary of Comments

The IRS received five comments in response to the notice of proposed rulemaking. The comments were considered and are available for public inspection at www.regulations.gov or upon request. The comments related to the reduced enrolled agent user fees; Announcement 2010-81 (2010-45 IRB 638), which delayed the renewal period for enrolled agents whose social security or tax identification number ends in 4, 5, or 6; the recently published final regulations under section 6109 (TD 9501, 75 FR 60309), which require tax return preparers who prepare all or substantially all of a tax return or claim for refund for compensation to have a PTIN; the final regulations implementing a \$50 user fee to the IRS to apply for or renew a PTIN; and the proposed amendments to Circular 230 (75 FR 51713). The IRS did not receive any comments regarding the separation of the enrolled retirement plan agent user fees from the enrolled agent user fees.

The comments relating to the proposed regulations reducing the enrolled agent and enrolled retirement plan agent user fees are summarized in this preamble. To the extent that the comments raised issues regarding other Treasury Department guidance, the Treasury Department and the IRS have considered or will consider the comments in connection with the relevant guidance.

The IRS received two comments regarding the amount of the user fees in the proposed regulations. One comment supported reducing the initial enrollment and renewal of enrollment user fees for enrolled agents to \$30. Another comment requested that the reduction in the user fee to renew enrollment as an enrolled agent be made retroactive.

The Treasury Department and the IRS took steps to prevent duplication of costs for enrolled agents whose enrollment renewal period was scheduled to begin after the effective date of the user fee to apply for or renew of PTIN, but before the enrolled agent user fees are reduced. As previously discussed, the enrolled agent and enrolled retirement plan agent user fees are being reduced to account for the reallocation of part of the enrollment processes to the PTIN application and renewal process. On October 14, 2010, the Treasury Department and the IRS issued Announcement 2010-81, which delayed the renewal period for enrolled agents who were scheduled to renew their enrollment between November 1, 2010, and January 31, 2011. Thus, the Announcement delayed the renewal period for those enrolled agents required to both renew their enrollment and obtain a PTIN between September 28, 2010 and January 31, 2011 until guidance reducing the renewal of enrollment user fees could be finalized.

Further, the OMB Circular provides that Federal agencies should recover the full cost of providing a special benefit to an identifiable recipient. Designation as an enrolled agent is a special benefit that is conferred upon a specific individual, and under the OMB Circular, the IRS should recover the full cost of providing this benefit. Prior to the implementation of the user fee to apply for or renew a PTIN, the cost to the government to process an initial enrollment or renewal of enrollment application for an enrolled agent or enrolled retirement plan agent was \$125. Thus, the reduced \$30 user fee would not recover the entire cost to the government to process applications submitted before the effective date of the regulations implementing the user fee to apply for or renew a PTIN.

After considering the public comments, the Treasury Department and the IRS have decided to adopt the proposed regulations without substantive modification.

Effective/Applicability Date

The Administrative Procedure Act provides that substantive rules will not be effective until thirty days after the final regulations are published in the **Federal Register** (5 U.S.C. 553(d)). Final regulations may be effective prior to thirty days after publication if the publishing agency finds that there is good cause for an earlier effective date.

The Treasury Department and the IRS finalized regulations that require all tax return preparers who prepare all or substantially all of a tax return or claim for refund for compensation to use a PTIN as their identifying number and to pay a \$64.25 fee, which includes the amount paid to the vendor, to apply for or renew a PTIN. Tax return preparers who prepare all or substantially all of a tax return or claim for refund must obtain or renew their PTIN for the 2011 tax season.

Circular 230 requires that, to maintain active enrollment to practice before the IRS, enrolled agents must renew enrollment every third year after initial enrollment is granted. Under Circular 230, enrolled agents with social security numbers or tax identification numbers ending in 4, 5, or 6 were scheduled to renew their enrollment between November 1, 2010 and January 31, 2011. To enable these enrolled agents to renew their enrollment at the reduced fee, the IRS issued Announcement 2010-81 on October 14, 2010, which delayed the renewal period for enrolled agents with social security numbers or tax identification numbers ending in 4, 5, or 6. The renewal process cannot be reinstated until these regulations are finalized; otherwise, these

enrolled agents will pay twice for the IRS to perform compliance and suitability checks. To minimize the disruption to the enrolled agent program caused by the delay of renewal, the renewal process must be reinstated as quickly as possible. Thus, the Treasury Department and the IRS find that there is good cause for these regulations to be effective upon the publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that the 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 upon the information that follows. The regulations do not place an additional filing requirement on enrolled agents or enrolled retirement plan agents and decrease the enrollment costs already in effect. Thus, the regulations should reduce the economic impact imposed by the current enrolled agent and enrolled retirement plan agent user fees.

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy did not submit comments on the notice of proposed rulemaking.

Drafting Information

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

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

PART 300--USER FEES

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

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.0 is amended by:

1. Redesignating paragraph (b)(9) as paragraph (b)(12).
2. Adding new paragraph (b)(9).
3. Adding paragraphs (b)(10) and (b)(11).

The additions and revisions read as follows.

§300.0 User fees; in general.

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(b) * * *

(9) Taking the special enrollment examination to become an enrolled retirement plan agent.

(10) Enrolling an enrolled retirement plan agent.

(11) Renewing the enrollment of an enrolled retirement plan agent.

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Par. 3. Section 300.4 is amended by revising the heading to read as follows:

§300.4 Enrolled agent special enrollment examination fee.

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Par. 4. Section 300.5 is amended by revising paragraphs (b) and (d) to read as follows:

§300.5 Enrollment of enrolled agent fee.

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(b) Fee. The fee for initially enrolling as an enrolled agent with the IRS is \$30.

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(d) Effective/applicability date. This section is applicable beginning April 19, 2011.

Par. 5. Section 300.6 is amended by revising paragraphs (b) and (d) to read as follows:

§300.6 Renewal of enrollment of enrolled agent fee.

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(b) Fee. The fee for renewal of enrollment as an enrolled agent with the IRS is \$30.

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(d) Effective/applicability date. This section is applicable beginning April 19, 2011.

Par. 6. Redesignate §300.9 as §300.12.

§300.9 [Redesignated as §300.12]

Par. 7 Add new § 300.9 to read as follows:

§300.9 Enrolled retirement plan agent special enrollment examination fee.

(a) Applicability. This section applies to the special enrollment examination to become an enrolled retirement plan agent pursuant to 31 CFR 10.4(b).

(b) Fee. The fee for taking the enrolled retirement plan agent special enrollment examination is \$11 per part, which is the cost to the government for overseeing the examination and does not include any fees charged by the administrator of the examination.

(c) Person liable for the fee. The person liable for the enrolled retirement plan agent special enrollment examination fee is the applicant taking the examination.

(d) Effective/applicability date. This section is applicable beginning April 19, 2011.

Par. 8. Section 300.10 is added to read as follows:

§300.10 Enrollment of enrolled retirement plan agent fee.

(a) Applicability. This section applies to the initial enrollment of enrolled retirement plan agents with the IRS pursuant to 31 CFR 10.5(b).

(b) Fee. The fee for initially enrolling as an enrolled retirement plan agent with the IRS is \$30.

(c) Person liable for the fee. The person liable for the enrollment fee is the applicant filing for enrollment as an enrolled retirement plan agent with the IRS.

(d) Effective/applicability date. This section is applicable beginning April 19, 2011.

Par. 9. Section 300.11 is added to read as follows:

§300.11 Renewal of enrollment of enrolled retirement plan agent fee.

(a) Applicability. This section applies to the renewal of enrollment of enrolled retirement plan agents with the IRS pursuant to 31 CFR 10.5(b).

(b) Fee. The fee for renewal of enrollment as an enrolled retirement plan agent with the IRS is \$30.

(c) Person liable for the fee. The person liable for the renewal of enrollment fee is the person renewing enrollment as an enrolled retirement plan agent with the IRS.

(d) Effective/applicability date. This section is applicable beginning April 19, 2011.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved: April 13, 2011.

Michael Mundaca,
Assistant Secretary of the Treasury (Tax Policy).