

[4830-01-p]

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

26 CFR Part 300

[TD 9957]

**User Fee for Estate Tax Closing Letter**

RIN 1545-BP75

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation.

**SUMMARY:** This document contains final regulations that establish a new user fee of \$67 for persons requesting the issuance of IRS Letter 627, also referred to as an estate tax closing letter. The final regulations affect persons who may request an estate tax closing letter.

**DATES:** Effective Date: These regulations are effective **October 28, 2021**.

Applicability Date: For date of applicability, see §300.13(d).

**FOR FURTHER INFORMATION CONTACT:** Juli Ro Kim at (202) 317-6859 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document amends the User Fee Regulations (26 CFR part 300) to establish a user fee applicable to requests for estate tax closing letters issued by the IRS (currently, IRS Letter 627).

A. Authority to Charge User Fees

The Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to promulgate regulations establishing the charge for services provided by the agency (user fees). The IOAA provides that these user fee regulations are subject to policies prescribed by the President. The policies currently are set forth in the Office of Management and Budget (OMB) Circular A-25, 58 FR 38142 (July 15, 1993; OMB Circular). The OMB Circular requires agencies providing services that confer special benefits on identifiable recipients beyond those accruing to the general public to identify those services, to determine whether user fees should be assessed for those services, and if so, to establish user fees that recover the full cost of providing those services, unless the agency requests, and the OMB grants, an exception to the full cost requirement.

B. Notice of Proposed Rulemaking

On December 31, 2020, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (85 FR 86871) a notice of proposed rulemaking (REG-114615-16) proposing amendments to the User Fee Regulations in part 300 of title 26 of the Code of Federal Regulations (proposed regulations). Specifically, the proposed regulations proposed the addition of new §300.13 to the User Fee Regulations to establish a \$67 user fee for issuing an estate tax closing letter for an estate.

The preamble to the proposed regulations identifies the issuance of an estate tax closing letter as the provision of a service that confers special benefits, beyond those accruing to the general public, to an estate or other person properly authorized under section 6103 of the Internal Revenue Code (Code) to receive an estate tax closing

letter. Accordingly, the preamble to the proposed regulations concludes that the IRS is authorized, pursuant to the IOAA and the OMB Circular, to charge a user fee for the issuance of an estate tax closing letter that reflects the full cost of providing this service. Additionally, the preamble to the proposed regulations explains the special benefits conferred by the issuance of estate tax closing letters and analyzes how the IRS has computed that the full cost of issuing an estate tax closing letter is \$67. Finally, the preamble to the proposed regulations states that the Treasury Department and the IRS expect to implement a web-based procedure that will improve convenience and reduce burden for persons requesting estate tax closing letters as compared to the current procedure in place for making such requests.<sup>1</sup>

## **Summary of Comments**

### **A. Overview**

The IRS received a total of five written public comments in response to the proposed regulations, some addressing multiple aspects of the proposed regulations. These comments are available at <https://www.regulations.gov> or upon request. No public hearing on the proposed regulations was requested and accordingly no public hearing was held. After careful consideration of the comments received, the Treasury Department and the IRS adopt the proposed regulations without significant change. Accordingly, new §300.13 establishes a \$67 user fee for issuing an estate tax closing letter.

### **B. Comments Regarding the Imposition of a User Fee**

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<sup>1</sup> For an overview of the procedure applicable to a request for an estate tax closing letter on or before **October 28, 2021**, see **part D of the Background and Explanation of Provisions** of the proposed regulations.

## 1. Establishment and Amount of User Fee

One commenter opposed the establishment of a user fee to request an estate tax closing letter and suggested that the IRS return to issuing estate tax closing letters for every estate tax return filed, without the need for making a request or paying a user fee, as was the practice prior to June 2015.<sup>2</sup> Another commenter suggested that the user fee be reduced so that all estates desiring an estate tax closing letter can afford to pay the user fee and request the estate tax closing letter. A third commenter stated that the proposed \$67 user fee is both reasonable and appropriate given the impact of returns filed solely to elect portability under section 2010 of the Code and the fact that estate tax returns are most often filed in the context of decedents with substantial gross estates.

As described in the preamble to the proposed regulations, the issuance of an estate tax closing letter, and the return information and procedural and substantive explanations such letters provide, constitutes the provision of a service that confers special benefits on identifiable recipients beyond those accruing to the general public. Because of these special benefits, the IOAA and the OMB Circular require the imposition of a user fee for the issuance of an estate tax closing letter to reflect the full cost of providing the service unless the IRS requests, and the OMB grants, an exception to the full cost requirement. The IRS has not requested an exception to the full cost requirement, for the following reasons. First, the IRS views the \$67 user fee as not onerous or excessive, but reasonable in relation to the service provided. Second,

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<sup>2</sup> See **part B of the Background and Explanation of Provisions** of the preamble of the proposed regulations for a full discussion of the June 2015 change to the prior IRS practice of issuing estate tax closing letters for every estate tax return filed.

as also discussed in the preamble to the proposed regulations, an account transcript is a free alternative to the estate tax closing letter that provides certain return information comparable to that found in an estate tax closing letter. Account transcripts can be used to confirm that the examination of an estate tax return has been completed and the IRS file has been closed, which most often is identified as the primary purpose for requesting an estate tax closing letter. See Notice 2017-12, I.R.B. 2017-5 742 (describing the utility of the account transcript in lieu of the estate tax closing letter and its availability at no charge). Thus, if affording the user fee for the issuance of an estate tax closing letter presents a challenge, an estate instead can request an account transcript free of charge. The suggestions of the commenters to reduce or eliminate the user fee, therefore, are not adopted.

## 2. Comments Regarding a Single User Fee When Multiple Letters Are Issued

The Treasury Department and the IRS note that the preamble to the proposed regulations incorrectly states that the estate tax closing letter is issued to each executor. Instead, regardless of who requests an estate tax closing letter, the letter generally is issued to only one of multiple executors. Generally, the executor to whom the estate tax closing letter is issued is the executor identified on line 6a of Part 1 of the Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*; the address of such executor that is entered on line 6b becomes the estate's address of record (unless subsequently updated using Form 8822, *Change of Address (For Individual, Gift, Estate, or Generation-Skipping Transfer Tax Returns)*). Currently, estate tax closing letters also are sent to the recognized representative identified in Part 4 of the Form 706 and up to two representatives listed on Form 2848, *Power of Attorney and Declaration*

*of Representative*. Therefore, in almost all cases, each request and corresponding \$67 user fee will generate the issuance of an estate tax closing letter to three or four persons.

One commenter referred to the costing analysis in the preamble of the proposed regulations and sought an explanation of the decision to charge the same user fee per request, regardless of the number of estate tax closing letters to be issued in response to that single request. The commenter noted the incremental cost impact that occurs with the need to issue multiple letters in response to a single request, and contended that requests requiring the issuance of only one letter will subsidize the user fee cost of such requests requiring the issuance of multiple letters.

The costing analysis described in **part H of the Background and Explanation of Provisions** of the proposed regulations is based in large part on the number of requests for estate tax closing letters, rather than the total number of letters issued. The fact that one request generates, on average, three issued letters has only a marginal impact on the calculated user fee. The number of letters factors into the costing analysis in two places: request processing and quality assurance review.

For request processing costs, the costing analysis in the proposed regulations provides for 0.65 staff hours to review the return, create the estate tax closing letters, and prepare the letters for mailing. Although a detailed description of what each of these tasks entails and a breakdown of the time required for each task is not provided in the proposed regulations, the bulk of the time in processing the request is attributable to the research and analysis of IRS records by qualified personnel and not to the issuance of additional letters to additional persons. Thus, the incremental request processing

cost of issuing the same estate tax closing letter at the same time to multiple persons is minimal.

For quality assurance review costs, the costing analysis in the proposed regulations provides that five out of every 100 estate tax closing letters are reviewed for quality assurance. While the issuance of multiple letters per request increases the number of letters reviewed for quality assurance and, therefore, increases the cost estimate for quality assurance review, the impact on the full costing is relatively small, only \$3 per letter.

Notwithstanding the marginal impact of issuing multiple letters per request on the calculation of the user fee, a variable user fee structure raises significant administrability concerns. Incorrect payments of the user fee are likely to occur in the event of a variable fee because persons that request the issuance of an estate tax closing letter may not have sufficient information regarding the estate's account to accurately identify the number of persons currently authorized under IRS procedures to receive an estate tax closing letter; the determination of the number of letters to be issued sometimes depends on more information than is shown on the estate tax return. Thus, varying the user fee based on the number of letters to be issued would require the IRS to modify the request processing procedures to add procedures for overpayments and underpayments of the user fee and likely would cause administrative delays as the personnel processing the requests take necessary steps and wait for correction of the payment before issuing letters. The changes to the request processing procedures necessary to accommodate a variable fee in place of a fixed fee would increase the request processing costs that factor into the overall cost estimate for the user fee; it is

possible that the increase caused by the changes to the request processing procedures could exceed the marginal increase of issuing multiple letters per request under a fixed fee.

Based on all of these considerations, and recognizing that most requests for estate tax closing letters will require the issuance of multiple letters, the Treasury Department and the IRS have determined that the most economical and least complex approach is to have a fixed user fee based on the average number of letters issued per request. Thus, no change to the costing analysis is required and the proposed user fee of \$67 is adopted without change.

C. Comments Regarding Procedural Aspects of Requesting Estate Tax Closing Letters and Paying the User Fee

1. Making the Request and Paying the User Fee with the Estate Tax Return

Two commenters suggested amending the estate tax return or using a separate form to allow an estate to request the estate tax closing letter and pay the user fee with the filing of the estate tax return. The commenters sought to further reduce or eliminate the administrative burden on both the estate and the IRS by removing the need for a separate web-based process. Under this suggestion, an estate would not be required to make a separate request subsequent to filing the estate tax return. The commenters stated that this suggestion would allow for efficient administration of the estate and provide the IRS with immediate notice of the request.

The Treasury Department and the IRS concur that the ability to pay the user fee and make the request for an estate tax closing letter at the time of filing the estate tax return would reduce or eliminate the burden on estates intending to make such requests. However, estate tax closing letters are not issued by the same IRS personnel

who are involved in the examination of, and the decision to close the IRS file on, the estate tax return. Personnel issuing estate tax closing letters are alerted to begin that process only after the examination of the estate tax return has been completed and the IRS file has been closed. Thus, implementing such a change to current IRS procedures and return processing systems would substantially increase the burden on the IRS and would require increases in budget, staffing, and resources not currently available. In addition, as discussed elsewhere in this preamble, the procedure to be put in place for paying the user fee and requesting the estate tax closing letter is a convenient and not unduly burdensome alternative that balances the administrability concerns of both the IRS and the estates making requests for estate tax closing letters. For these reasons, this suggestion is not adopted.

2. Additional User Fee for Requests Related to Supplemental Estate Tax Returns

One commenter requested further clarification of whether an additional user fee is required for estate tax closing letters after the filing of a supplemental estate tax return. Specifically, the commenter references Rev. Proc. 81-27, 1981-2 C.B. 547, and identifies supplemental estate tax returns filed in relation to elections made under section 6166 of the Code as creating an undue burden on such estates if an additional user fee is required for a new estate tax closing letter after each subsequent filing of a supplemental estate tax return. The commenter suggests that only one user fee should be imposed per estate, regardless of how many estate tax returns are filed.

As directed by the OMB Circular, the cost analysis described in the proposed regulations is based on the number of estate tax closing letters requested over a

specified period of time, whether related to an initial estate tax return or to a supplemental estate tax return, and the labor and benefits costs of campus employees required to process the requests. Each request requires the same amount of IRS resources to issue the estate tax closing letter, whether the request is related to the initial estate tax return or a supplemental estate tax return. In particular, each such request necessitates research and analysis of IRS records, which makes up a significant part of the cost of the user fee. Therefore, accommodating the commenter's suggestion likely would increase the cost of a single request, and such increase would be borne equally by all estates requesting estate tax closing letters, including simpler estates filing only an initial estate tax return. Further, an estate filing a supplemental estate tax return is not required to request an estate tax closing letter in relation to both the initial estate tax return and the supplemental estate tax return, and presumably will request multiple estate tax closing letters only if the estate determines that the benefits of receiving a second estate tax closing letter merit the payment of the additional user fee. Accordingly, the suggestion is not adopted and each request for an estate tax closing letter will require a separate user fee.

### 3. Procedures for the Request and Issuance of Estate Tax Closing Letters

Several commenters requested clarification on some of the procedural aspects of requesting estate tax closing letters. For example, commenters sought information on who is permitted to make the request, when the request can be made, how many letters will be issued in response to a single request, and who will be the recipients of the estate tax closing letters.

The procedure for requesting the estate tax closing letter and paying the user fee utilizes <https://www.pay.gov>. In this web-based procedure, a request for the estate tax closing letter and the payment of the user fee will be accomplished by a single request, thus eliminating the potential under the current procedure for multiple requests and necessary duplicative follow-up.

As noted in the preamble to the proposed regulations, specific procedures for requesting an estate tax closing letter and paying the associated user fee for that request are not provided in these regulations. Such procedures change from time to time and therefore are best addressed and kept current in subregulatory guidance. It is clear that, while any person with sufficient information about the estate may request the issuance of a closing letter and pay the user fee, the closing letter will be provided only to certain authorized persons, a category that might not include the person making the request (for example, an employee of the attorney, certified public accountant, or enrolled agent for the estate). Information about who will receive an estate tax closing letter in response to a request, together with specific instructions for requesting the estate tax closing letter and paying the user fee, will be available on <https://www.pay.gov> (and on the IRS website at <https://www.irs.gov>) on or before **October 28, 2021**. To the extent possible, the procedures will reflect the comments and questions from these commenters, and the instructions and information are expected to address the issues these commenters raised.

In identifying the person liable for the fee for the estate tax closing letter, §300.13(c) of the proposed regulations includes persons properly authorized under section 6103 of the Code to request and receive the estate tax closing letter with

respect to the estate. Consistent with the decision to exclude the relevant procedural guidance for requesting estate tax closing letters from these regulations, §300.13 is revised in the final regulations by removing the reference to section 6103, which governs the disclosure of return information but does not necessarily govern who would be liable for payment of the user fee for requesting the estate tax closing letter.

#### 4. Recommended Changes to Account Transcripts

One commenter stated that, although the account transcript is a free alternative to the estate tax closing letter, the account transcript does not provide all of the information needed by an estate, including potentially the amount of net estate tax and the amount of generation-skipping transfer tax (information that an estate tax closing letter provides). The commenter suggested that the IRS should modify the account transcript to include additional detailed information.

As discussed in Notice 2017-12, an account transcript may be an acceptable substitute for an estate tax closing letter, even though the information provided by each is not identical. As discussed earlier in this preamble, both documents can be relied upon for confirmation that the IRS examination of the estate tax return has been closed, which most often is identified as the primary purpose for requesting an estate tax closing letter. The commenter's suggestion to change the information provided in the account transcript to include additional information also included in the estate tax closing letter is consistent with the determination that the issuance of an estate tax closing letter confers special benefits on identifiable recipients. Making changes to the account transcript as the commenter suggests would require costly programming

changes and, moreover, is beyond the scope of this rulemaking. Accordingly, the commenter's suggestion is not adopted.

### **Special Analyses**

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations, which prescribe a fee to obtain a particular service, affect decedents' estates, which generally are not "small entities" as defined under 5 U.S.C. 601(6). In addition, the dollar amount of the fee (\$67 as currently determined) is not substantial enough to have a significant economic impact on any entities (including small entities) that could be affected by establishing such a fee. Accordingly, the Secretary of the Treasury's delegate certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, the proposed regulations (85 FR 86871) preceding these regulations were submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business. No comments on the proposed regulations were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

### **Statement of Availability of IRS Documents**

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin)

and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

### **Drafting Information**

The principal author of these regulations is Juli Ro Kim of the Office of Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

### **List of Subjects in 26 CFR Part 300**

Estate taxes, Excise taxes, Gift taxes, Income taxes, 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 as follows:

**Authority:** 31 U.S.C. 9701.

Par. 2. Section 300.0 is amended by adding paragraph (b)(13) to read as follows:

#### **§300.0 User fees; in general.**

\* \* \* \* \*

(b) \* \* \*

(13) Requesting an estate tax closing letter.

Par. 3. Section 300.13 is added to read as follows:

**§300.13 Fee for estate tax closing letter.**

(a) Applicability. This section applies to the request by a person described in paragraph (c) of this section for an estate tax closing letter from the IRS.

(b) Fee. The fee for issuing an estate tax closing letter is \$67.

(c) Person liable for the fee. The person liable for the fee is the estate of the decedent or other person requesting, in accordance with applicable procedures and policies, an estate tax closing letter to be issued with respect to the estate.

(d) Applicability date. This section applies to requests for estate tax closing letters received by the IRS on or after **October 28, 2021**.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: September 22, 2021

Mark J. Mazur,

Acting Assistant Secretary of the Treasury (Tax Policy).