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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

REG-145154-05

RIN 1545-BF68

User Fees Relating to Enrollment

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 relating to user fees for the special enrollment examination to become an enrolled agent, the application for enrollment of enrolled agents, and the renewal of this enrollment. The charging of user fees is authorized by the Independent Offices Appropriations Act (IOAA) of 1952. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written or electronically-generated comments must be received by September 28, 2006. Outlines of topics to be discussed at the public hearing scheduled for September 29, 2006, must be received by September 28, 2006.

ADDRESSES: Comments are encouraged to be submitted to: CC:PA:LPD:PR (REG-145154-05), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be sent electronically via the IRS Internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov (IRS-REG-145154-05).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments and/or to be placed on the building access list to attend the hearing, Richard Hurst at Richard.A.Hurst@irscounsel.treas.gov or at (202) 622-7180; concerning cost methodology, Eva Williams at (202) 622-6400; concerning the proposed regulations, Matthew Cooper at (202) 622-4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 330 of Title 31 of the United States Code authorizes the Secretary of the Treasury to regulate practice 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 them as Treasury Department Circular No. 230 (Circular 230). These regulations are administered by the IRS Office of Professional Responsibility (OPR).

Section 10.3 of Circular 230 generally authorizes attorneys, certified public accountants, enrolled agents and enrolled actuaries to practice before the IRS. An enrolled agent is defined as an individual enrolled as an agent pursuant to the provisions of Circular 230. The provisions of Circular 230 provide that an individual desiring to become an enrolled agent is eligible for enrollment through either the successful passing of a written examination or through demonstration of sufficient expertise in tax administration based on former employment with the IRS. Specifically, section 10.4(a) authorizes the Director of OPR to grant enrollment to an applicant who demonstrates special competence in tax matters by passing a written examination administered by, or administered under the oversight of, the Director of OPR and who

has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of Circular 230. Accordingly, every year OPR develops and administers a Special Enrollment Examination (SEE) that is given to all applicants desiring to become enrolled agents so that they can practice before the IRS. The IRS charged applicants a user fee of \$55 (\$45 if taking the examination in part) in order to take the 2005 SEE.

Section 10.4(b) authorizes the Director of OPR to grant enrollment for former IRS employees if the former employee meets certain requirements, including length of employment with the IRS and substantive tax expertise. Application for enrollment based on former employment with the IRS must be made within three years from the date of separation from such employment.

Once eligible for enrollment, by either passing the examination or because of former employment with the IRS, an applicant must file an application for enrollment on Form 23, "Application for Enrollment to Practice before the Internal Revenue Service," with the Director of OPR. As part of the application for enrollment process, the applicant must enclose a check or money order payable to the IRS in the amount set forth on Form 23, which constitutes a fee charged to each applicant for enrollment. The fee is nonrefundable regardless of whether the applicant is granted enrollment. The current user fee for enrollment on the Form 23 (Rev. February 2005) is \$80. The Director of OPR will act upon an application for enrollment and issue an enrollment card to each individual whose application for enrollment to practice before the IRS is approved.

Pursuant to section 10.6(d), each individual, once enrolled, is required to renew the enrollment every three years to maintain an active enrollment to practice before the IRS. In order to qualify for renewal, an applicant must certify the completion of the continuing professional education requirements set forth in section 10.6(e) of Circular 230. A nonrefundable user fee of \$80 is currently charged for each application for renewal of enrollment filed with the Director of OPR on Form 8554, "Application for Renewal of Enrollment to Practice Before the Internal Revenue Service."

Contracting Out of Special Enrollment Examination

OPR has recently contracted out certain functions pertaining to the SEE to a private contractor. The contractor will furnish the resources, facilities, and services necessary to administer the entire SEE program, which includes examination development, administration of SEE, notification to IRS of candidates who took the examination, and the results of the examination. The contractor will receive payment for its services by charging a fee to exam applicants. OPR will, nonetheless, still maintain an oversight role with respect to the SEE. The contractor will collect a user fee on behalf of the IRS based on the full costs incurred by the IRS. These proposed regulations only establish a user fee with respect to the government costs for overseeing the SEE and do not include any fee that the contractor may charge for its services. Accordingly, while the user fee imposed pursuant to these regulations is less than the user fee that applicants were charged in 2005, the total fee that applicants will be charged is greater. The IRS estimates that by using a contractor, however, the total fees incurred will be less than the total fees that would otherwise be charged by the IRS in order to recover the full cost of the IRS administering all aspects of the SEE.

User Fees for Special Enrollment Examination, Enrollment, and Renewal of Enrollment

The user fee that the IRS currently charges applicants in order to take the SEE is being modified to reflect the change in IRS costs of administering the exam program as a result of the contracting out of the exam. The user fees that the IRS currently charge applicants for the enrollment and renewal of enrollment process are less than the actual cost of overseeing the enrollment process. The IRS is proposing new user fees to take the SEE to become an enrolled agent, the application for enrollment and the renewal of such enrollment.

Proposed section 300.4 establishes a \$11 per part user fee for the SEE. Proposed sections 300.5 and 300.6 establish separate \$125 user fees for the enrollment and renewal of enrollment process.

Authority

The IOAA of 1952 (31 U.S.C. 9701) authorizes agencies to prescribe regulations that establish charges for services provided by the agency. The charges must be fair and 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 of 1952 provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in OMB Circular A-25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages 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, a user fee should be set at an amount in order for the agency to recover the cost of providing the special service, unless the Office of Management and Budget grants an exception. Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing services under the enrolled agents program. The IRS has determined that the full cost to the IRS of overseeing the SEE is \$11 per part per applicant. The IRS has determined that the full cost of administering the enrollment and reenrollment process is \$125 per enrolled agent.

The proposed user fees will be implemented under the authority of the IOAA of 1952 and the OMB Circular.

Proposed Effective Date

These regulations are proposed to apply thirty days after the date of publication in the **Federal Register** of the final 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. 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 a small entity, including a sole proprietor, 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. Moreover, payment of the fee is voluntary. The

only persons subject to the fee are those who elect to take the special enrollment exam. Persons who elect to take the exam will have determined that it is in their economic interest to do so. Pursuant to section 7805(f) of the Internal Revenue 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.

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 the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 29, 2006, at 10 a.m. in the 11th floor conference room at 1901 S. Bell Street, Crystal City, VA. Due to building security procedures, 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 electronic or written comments and an outline of the comments to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 28, 2006. A period of ten (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 Matthew S. Cooper of the Office of the Associate Chief Counsel (Procedure & Administration), Administrative Provisions & Judicial Practice Division.

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:

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 as follows:

1. Paragraphs (b)(4), (5), and (6) are added.
2. Paragraph (c) is revised.

The additions and revision read as follows:

§300.0 User fees, in general.

* * * * *

(b) * * *

- (4) Taking the special enrollment examination to become an enrolled agent.
- (5) Enrolling an enrolled agent.

(6) Renewing the enrollment of an enrolled agent.

(c) Effective Date. This part 300 is applicable March 16, 1995, except that the user fee for processing offers in compromise is applicable November 1, 2003, and the user fee for the special enrollment examination, enrollment, and renewal of enrollment for enrolled agents is applicable thirty days after the date of publication in the **Federal Register** of the final regulations.

Par. 3. Section 300.4 is added to read as follows:

§300.4 Special enrollment examination fee.

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

(b) Fee. The fee for taking the special enrollment examination is \$11.00 per part.

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

Par. 4. Section 300.5 is added to read as follows:

§300.5 Enrollment of enrolled agent fee.

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

(b) Fee. The fee for initially enrolling as an enrolled agent with the IRS Office of Professional Responsibility is \$125.00.

(c) Person liable for the fee. The person liable for the enrollment fee is the applicant filing for enrollment as an enrolled agent with the IRS Office of Professional Responsibility.

Par. 5. Section 300.6 is added to read as follows:

§300.5 Renewal of enrollment of enrolled agent fee.

(a) Applicability. This section applies to the renewal of enrollment of enrolled agents with the IRS Office of Professional Responsibility pursuant to 31 CFR 10.6(d)(6).

(b) Fee. The fee for renewal of enrollment as an enrolled agent with the IRS Office of Professional Responsibility is \$125.00.

(c) Person liable for the fee. The person liable for the renewal of enrollment fee is the person renewing their enrollment as an enrolled agent with the IRS Office of Professional Responsibility.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.