



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-134122-15]

RIN 1545-BN09

Special Enrollment Examination User Fee for Enrolled Agents

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed amendments to the regulation relating to the user fee for the special enrollment examination to become an enrolled agent. 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 this proposed regulation. The proposed regulation affects individuals taking the enrolled agent special enrollment examination.

DATES: Written or electronic comments must be received by **[INSERT DATE 30 DAYS AFTER FILING IN THE FEDERAL REGISTER]**. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for February 25, 2016, must be received by **[INSERT DATE 30 DAYS AFTER FILING IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-134122-15), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-134122-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W.,

Washington, DC, or sent via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-134122-15). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning this proposed regulation, Jonathan R. Black, (202) 317-6845; concerning submissions of comments and/or requests for a hearing, Regina Johnson (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

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). Circular 230 is administered by the IRS Office of Professional Responsibility (OPR).

Section 10.4(a) of Circular 230 authorizes the IRS to grant status as enrolled agents to individuals who demonstrate special competence in tax matters by passing a written examination (Enrolled Agent Special Enrollment Examination (EA-SEE)) administered by, or under the oversight of, the IRS and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230. Starting in 2006, the IRS engaged the services of a third-party contractor to develop and administer the EA-SEE.

After becoming enrolled, an enrolled agent must, as provided in § 10.6(d), renew enrollment every three years to maintain active enrollment and to be able to practice before the IRS. To qualify for renewal, an enrolled agent must certify the completion of the continuing

education requirements set forth in § 10.6(e). There are currently approximately 55,600 enrolled agents.

The EA-SEE is comprised of three parts, which are offered in a testing period that begins each May 1 and ends the last day of the following February. The EA-SEE is not available in March and April, during which period it is updated to reflect changes in the relevant law. When it determined the current fee, the IRS estimated that individuals would take 34,000 parts of the EA-SEE each year. That number of parts has not been reached in any year. In the testing periods beginning in 2012, 2013, and 2014, the contractor administered approximately 18,900, 19,500, and 22,400 parts of the EA-SEE, respectively. During the testing period beginning May 2016, the IRS estimates that individuals taking the EA-SEE will take 20,000 parts. More information on the EA-SEE, including content, scoring, and how to register, can be found on the IRS website at www.irs.gov/Tax-Professionals/Enrolled-Agents/.

The Independent Offices Appropriations Act (IOAA) of 1952, which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish charges for services they provide. These charges include 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, which are currently set forth in the Office of Management and Budget 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 the full cost of providing those services. In general, a user fee should be set at an amount that allows the agency to recover the full cost of providing the special service, unless the Office of Management and Budget grants an exception.

As discussed above, Circular 230 § 10.4(a) provides that IRS will grant enrolled agent status to an applicant if the applicant, among other things, demonstrates special competence in tax matters by written examination. The EA-SEE is the written examination that tests special competence in tax matters for purposes of that provision, and an applicant must pass all parts of the EA-SEE to be granted enrolled agent status through written examination. The IRS confers a benefit on individuals who take the EA-SEE beyond those that accrue to the general public by providing them with an opportunity to demonstrate special competence in tax matters by passing a written examination and therefore satisfying one of the requirements for becoming an enrolled agent under Circular 230 § 10.4(a). Because the opportunity to take the EA-SEE is a special benefit, IRS charges a user fee to take the examination.

Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing examination services under the enrolled agent program. The proposed user fee will be implemented under the authority of the IOAA and the OMB Circular and will recover the full cost of overseeing the program. The current user fee is \$11 to take each part of the EA-SEE. The contractor who administers the EA-SEE also charges individuals taking the EA-SEE an additional fee for its services. For the May 2015 to February 2016 testing period, the contractor's fee is \$98 for each part of the EA-SEE.

Increased costs incurred by the IRS to implement the EA-SEE program require an increase in the EA-SEE user fee. These increased costs are primarily attributable to the

following: (1) The cost for background checks required under Publication 4812, “Contractor Security Controls,” for individuals working at the contractor’s testing centers increased by \$270,000 per year; (2) the IRS estimates that the contractor will administer 14,000 fewer parts of the EA-SEE per year than the estimated number used to calculate the \$11 fee, and the total costs are therefore being recovered from fewer individuals; and (3) the IRS’s costs of verifying the contractor’s compliance with the information technology security requirements necessary to protect the personally identifiable information of individuals taking the EA-SEE have increased, because Publication 4812 has strengthened those requirements.

In addition, IRS original estimates of the cost to oversee the contract did not cover all the work the IRS now performs. The proposed fee more accurately accounts for the time and personnel necessary to oversee the development and administration of the EA-SEE and to ensure the contractor complies with the terms of its contract. IRS costs for oversight include costs associated with: (1) Review and approval of materials used by the contractor in developing the EA-SEE; (2) review of surveys of existing enrolled agents, which help to determine the topics to be covered in the EA-SEE; (3) composition of potential EA-SEE questions in coordination with the contractor’s external tax law experts; (4) Office of Chief Counsel review and revision of the potential questions for legal accuracy; and (5) analysis of the answers and raw scores of a testing population to determine what should be a passing score.

Further, IRS personnel ensure the contractor’s compliance with its contract by reviewing the work of the contractor using an annual Work Breakdown Structure—a project management tool—and reviewing and verifying that the contractor is in compliance with its Quality Assurance Plan regarding customer satisfaction and accuracy. The IRS incurs additional costs

associated with resolution of test-related issues such as cheating incidents, appeals regarding scores, refund requests, and customer service complaints that have not been resolved at the contractor level.

Taking into account the full amount of these costs, the user fee for the EA-SEE is proposed to be increased to \$99 per part.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this proposed regulation.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities because it primarily affects individuals who take the enrolled agent examination and does not directly affect small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, 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.

Comments and Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the ADDRESSES section. The Treasury Department and the IRS request comments on all aspects of the proposed regulation. All comments submitted will be made available at

www.regulations.gov or upon request.

A public hearing has been scheduled for February 25, 2016, beginning at 10:00 AM in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. 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 an outline of the topics to be discussed and the time to be devoted to each topic by **[INSERT DATE 30 DAYS AFTER FILING IN THE FEDERAL REGISTER]**. A period of 10 minutes will be allocated 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 this regulation is Jonathan R. Black of the 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:

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 300.4 is amended by revising paragraphs (b) and (d) to read as follows:

§ 300.4 Enrolled agent special enrollment examination fee.

* * * * *

(b) Fee. The fee for taking the enrolled agent special enrollment examination is \$99 per part, which is the cost to the government for overseeing the development and administration of the examination and does not include any fees charged by the administrator of the examination.

* * * * *

(d) Effective/applicability date. This section applies on and after the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register**.

Karen M. Schiller

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016-01629 Filed: 1/25/2016 8:45 am; Publication Date: 1/26/2016]