

For these fees, the IRS followed the guidance provided by the OMB Circular and the relevant court cases in calculating the costs of the services provided. Under the OMB Circular, each agency is to include in its calculation of the cost of providing a benefit:

(1) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement.

(2) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment.

(3) Management and supervisory costs.

(4) The costs of enforcement, collection, research, establishment of standards, and regulation, including any environmental impact statements.

On December 28, 1994, a notice of proposed rulemaking (PS-39-94) relating to user fees under 31 U.S.C. 9701 was published in the **Federal Register** (59 FR 66828). Written comments responding to the notice were received and a public hearing was held on January 20, 1995. Commenters expressed concern that some taxpayers cannot afford to pay a fee in addition to their installment payments. The IRS is concerned about the effect of the fee on such taxpayers. Accordingly, the IRS intends to use existing administrative procedures to take into account the taxpayer's ability to pay in structuring the payment schedule, including the payment of the fee. After consideration of the comments, the proposed regulations are adopted by this Treasury decision.

Entering into Installment Agreements

Section 6159 of the Internal Revenue Code authorizes the IRS to enter into a written agreement with any taxpayer for the payment of that taxpayer's outstanding tax obligation in installments. Each taxpayer that enters into an installment agreement receives the special benefit of being allowed to pay an outstanding tax obligation over time rather than immediately.

Before entering into an installment agreement, the IRS must first determine whether such an agreement is appropriate, then set up the agreement, process payments, and monitor for conformance with the agreement.

The amount of the installment agreement fee has been determined by using activity-based costing. In a 1993 study, the IRS analyzed the work activities related to establishing new installment agreements at both the Service Center (pre-assessment) and District Office levels (post assessment).

The costs incurred in establishing new installment agreements at Service Centers and District Offices were averaged in computing a uniform fee. Projected costs for program start-up and training and software maintenance were developed. Lockbox and remittance processing costs (based on an historic average of 8.5 payments per agreement) were calculated. These figures were added to the initial activity-based costing totals. The activity-based methodology did not include some indirect cost elements (primarily executive support) which were then calculated at a 2.3% indirect cost rate. Based on this costing methodology, the installment agreement fee is \$43.

Restructuring or Reinstating Installment Agreements

When a taxpayer fails to meet any of the conditions of an installment agreement, that agreement is deemed to be in default. The IRS has the right to terminate an installment agreement in default. Each taxpayer that has an installment agreement restructured or reinstated receives not only the special benefit of being allowed to pay an outstanding tax obligation over time rather than immediately but also the special benefit of avoiding a potential enforcement action, including but not limited to the filing of liens and the making of levies.

Before restructuring or reinstating an installment agreement, the IRS must monitor for nonconformance, analyze the cause(s) of default, correspond with the taxpayer, analyze the taxpayer's responses, and, if appropriate, restructure or reinstate the agreement.

The amount of the restructuring or reinstatement fee was calculated by determining direct labor costs and overhead labor costs derived from the IRS' Work Planning and Control tracking system, standard correspondence and postage costs incurred in preparing and mailing certified notices, and an indirect cost factor representing support cost. Examining program history through fiscal year 1993, the IRS estimated the total number of installment agreements likely to be restructured or reinstated in fiscal year 1995 as approximately 150,000. Based on this costing methodology, the restructuring or reinstatement fee is \$24.

Special Analyses

Although it has been determined that this Treasury decision is a significant regulatory action as defined in EO 12866, the Office of Management and Budget has waived the preparation of a regulatory assessment. Because no

substantive changes were made to these regulations subsequent to their submission to the Office of Management and Budget, the provisions of section 6(a)(3)(E) of EO 12866 do not apply. 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 the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. However, due to the small dollar amount of each of these fees, the economic impact on any entity subject to one of the fees would not be significant. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries) and Tom Baker, Office of Assistant Chief Counsel (General Legal Services). However, other personnel from the IRS and Treasury Department participated in their development.

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 added to read as follows:

PART 300—USER FEES

Sec.

300.0 User fees; in general.

300.1 Installment agreement fee.

300.2 Restructuring or reinstatement of installment agreement fee.

Authority: 31 U.S.C. 9701.

§ 300.0 User fees; in general.

(a) *In general.* The regulations in this part 300 are designated the User Fee Regulations and provide rules relating to user fees under 31 U.S.C. 9701.

(b) *Applicability.* User fees are imposed on the following services:

(1) Entering into an installment agreement.

(2) Restructuring or reinstating an installment agreement.

(c) *Effective date.* This part 300 is effective March 16, 1995.