

Further, the imposition of the fee on other taxpayers will not change the net amount paid by the taxpayer to reach a compromise; the fee will be taken into account when considering whether the amount offered is acceptable. Although taxpayers who must pay the fee will not receive a refund if the offer is withdrawn, rejected, or returned after being accepted for processing, the IRS will work closely with taxpayers to perfect incomplete or inadequate offers before returning or rejecting them.

A number of commentators were concerned that the DHHS poverty guidelines used for purposes of the low income exception are too low and recommended that the exception for low income taxpayers should be extended to 250% of the DHHS guidelines. The 250% level corresponds to one of the criteria used for funding low income taxpayer clinics: In order to receive funding pursuant to section 7526 of the Code, 90% of a clinic's clients must fall below 250% of the DHHS poverty level. The commentators pointed to the relationship between section 7526 and offers to compromise. Section 7526 was enacted contemporaneously with section 7122(c)(3), which prohibits the IRS from rejecting an offer from a low income taxpayer based on the amount of the offer. Commentators argued that imposing a user fee on taxpayers whose incomes are within 250% of the poverty level thwarts the objective of section 7526 to assist such taxpayers.

The DHHS poverty guidelines are retained as the measure of the exception for the low income taxpayer. The 250% criteria in section 7526 only applies for purposes of that section; it does not extend to offers to compromise under section 7122. Had Congress intended to extend the 250% criteria to offers in compromise under section 7122, it could have done so. The DHHS poverty guidelines are a reasonable standard for offers to compromise in light of the fact that the amount of the fee will be reflected in the amount of the offer. Although some taxpayers may not be able to pay the fee because the fee exceeds their collectible assets and income, the DHHS standard will generally cover such taxpayers. Further, the IRS retains the authority under the final regulations to adjust the definition of low income taxpayer. The IRS could, therefore, change the low income standard if, in practice, there are a significant number of taxpayers with incomes above the DHHS standard who are experiencing hardship as a result of the fee.

A number of commentators urged that the fee should not be imposed until inefficiencies and errors in the

processing of offers to compromise are eliminated. In the past year, however, the IRS made substantial improvements to its offer in compromise program and is now able to process offers to compromise much more accurately, effectively and efficiently. The IRS acknowledges that further improvements are needed and is taking steps to achieve greater accuracy and efficiency, but the user fee is an integral part of that effort. The user fee should help reduce the number of frivolous offers and the number of offers that are either withdrawn, returned, or rejected because the offeror would not provide adequate information for the IRS to process the offer or would not offer an amount that reflects the taxpayer's ability to pay. Limiting the number of offers that will be withdrawn, returned, or rejected will enable the IRS to direct its resources towards the timely and efficient processing of acceptable offers. In addition, the final regulation was amended to make clear that no additional fee will be charged if a taxpayer resubmits an offer the IRS determines to have been rejected or returned in error after acceptance for processing.

#### Authority

The IOAA authorizes agencies to prescribe regulations that establish charges for services provided by the agency (user fees). 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 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 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, the amount of a user fee should 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 calculated its cost of providing services under the offer in compromise program. The IRS determined that the full cost of investigating doubt as to collectibility and effective tax administration offers averages \$471 when streamlined procedures are used to investigate the

financial condition of the taxpayer, and \$3,983 when more detailed investigations are used. The IRS estimates that 70% of offers are processed under streamlined procedures. OMB granted an exception to the "full cost" requirement of the OMB Circular.

The Treasury, Postal Service, and General Government Appropriations Act of 1995, Public Law 103-329 (108 Stat. 2382) (the 1995 Appropriations Act) provides that the Secretary may establish new fees for services provided by the IRS where such fees are authorized by another law, such as the IOAA.

The user fees are implemented under the authority of the IOAA, the OMB Circular, and the 1995 Appropriations Act.

#### Special Analysis

It has been determined that this Treasury decision 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 will result from the entity 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. Pursuant to section 7805(f) of the Code, the preceding 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.

#### Drafting Information

The principal author of these regulations is G. William Beard, Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy and Summonses Division.

#### 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: