



TAX NEWS

Circuit Court Rules IRS May Charge PTIN Fees; Overturns Lower Court's Decision—The U.S. Court of Appeals for the DC Circuit concluded in *Montrois* that the IRS acted within its authority in charging tax-return preparers a fee to obtain and renew a Preparer Tax Identification Number (PTIN). The court found that the IRS's decision to charge a fee was not arbitrary and capricious. The DC Circuit's decision overturns a 2017 decision by a federal district court that enjoined the IRS from charging PTIN fees. The case is now remanded to the lower court for further proceedings, including an assessment of the appropriate PTIN fee amount. [Page 2](#)

Individuals Who Obtain or Renew Passports (and Who Have Tax Debts) Should Contact the IRS ASAP—A recent news release again cautions taxpayers with “seriously delinquent” tax debts that they may not be able to obtain or renew passports or have restrictions placed on current passports and should take immediate steps to resolve the debt. Generally, a seriously delinquent tax debt is an unpaid, enforceable debt of at least \$52,000, including penalties and interest. Both the State Department and affected taxpayers have been notified of the debt. Taxpayers with valid installment agreements and other excepted individuals are not considered seriously delinquent. [Page 2](#)

QUESTION OF THE WEEK

A client from Mexico was in the U.S. a short time in 2018 and she'll be filing a nonresident alien (1040-NR) return, using the MFS filing status. She has two dependent children who live in her home in Mexico. The children have ITINs. May she claim the new \$500 credit for other dependents on her return? (Note, this is a follow-up to last week's QOTW.) [Page 3](#)

ORIGINAL INSIGHTS

Here come the private tax debt collectors ... again— Seven things taxpayers and their advisors need to know about the upcoming IRS program. [Full insight](#). View all insights at www.thetaxinstitute.com/insights/.

CIRCUIT COURT RULES IRS MAY CHARGE PTIN FEES; OVERTURNS LOWER COURT'S DECISION

Court case: [Monrois, No. 17-5204 \(D.C. Cir., March 1, 2019\)](#).

The U.S. Court of Appeals for the District of Columbia Circuit concluded that the IRS acted within its authority in charging tax-return preparers a fee to obtain and renew a Preparer Tax Identification Number (PTIN). This decision overturns a 2017 ruling by a federal district court.

Background

In [Steele v. U.S.](#), a federal district court for the District of Columbia ruled in a class action suit that:

1. The IRS *can* require tax preparers to have and use a PTIN, *but*
2. The IRS *cannot* charge a fee for the PTIN.

The 2017 court decision enjoined the IRS from charging fees to issue or renew PTINs and required the IRS to refund PTIN fees. On September 6, 2017, the Department of Justice filed a notice of IRS's intent to appeal the decision. The IRS did not charge PTIN fees for the 2018 or 2019 filing seasons, but to date has not refunded fees collected in earlier years pending the appeal.

Appeals court decision

The plaintiffs in the suit argued that following the *Loving* decision (the case in which the IRS was enjoined from regulating tax preparers) there was no need for PTINs. Both the district court and the circuit court agreed with the IRS's position that PTINs benefit preparers by protecting their confidential information and improve tax compliance and administration.

The DC Circuit also found that the IRS does incur costs for generating PTINs and maintaining the PTIN database. Direct costs "include staffing and contract-related costs for activities, processes, and procedures related to electronic and paper registration and renewal submissions." The court agreed that these costs are appropriately recouped from the preparers obtaining the PTINs and not from the general public.

Conclusion and next steps

The DC Circuit concluded that the IRS's decision to charge a PTIN fee was not arbitrary and capricious as the plaintiffs contended. Accordingly, the circuit court vacated the district's court's judgment and remanded the case for further proceedings, including an assessment of the appropriate amount to change for obtaining and renewing a PTIN.

When the PTIN system opens for the 2020 filing season later this year it's likely the IRS will resume charging fees. It isn't known at this time whether the IRS intends to charge a fee for obtaining a 2019 PTIN (for those who haven't already done so) or whether the plaintiffs intend to appeal the DC Circuit's decision to the Supreme Court.

INDIVIDUALS WHO OBTAIN OR RENEW PASSPORTS (AND WHO HAVE TAX DEBTS) SHOULD CONTACT THE IRS ASAP

In news release [IR-2019-23](#) the IRS again cautioned taxpayers with unresolved tax debts that they may not be able to obtain or renew a passport.

The IRS is required under §7345 to notify the State Department when certification has been made that an individual has a seriously delinquent tax debt. A seriously delinquent tax debt is an unpaid, legally enforceable debt that is greater than \$50,000 and for which either a federal tax lien has been filed or a levy has been issued. The \$50,000 is inflation-adjusted each year; it is currently \$52,000 and includes all penalties and interest.

(Continued on page 3)

(Continued from page 2)

Debts that are being timely paid under an approved installment agreement or other settlement agreement, or that are pending further action (such as an innocent spouse determination) are not considered seriously delinquent debts. There are other exceptions, such as combat zone service, bankruptcy, and identity theft.

When the IRS certifies to the State Department that a taxpayer has a seriously delinquent debt, the IRS must also send [Notice CP508C](#) to the taxpayer. This Notice explains what the taxpayer must do to resolve the debt, such as setting up a payment plan or paying the debt in full. The State Department will generally allow 90 days for the individual to resolve the tax delinquency before denying a renewal or a new passport.

Once the tax debt is resolved, the IRS will reverse the taxpayer's certification and the State Department will remove it from the taxpayer's record. The IRS can expedite the procedure under certain circumstances. Those with imminent travel plans should take steps to contact the IRS as soon as possible as some resolutions may take longer than others. See the news release, TAX in the News January 18, 2018, and [Notice 2018-01](#) for more information.

QUESTION OF THE WEEK

Note: This is a follow-up to last week's QOTW.

Q. My client understands that she will have to file using the married filing separately status on her Form 1040-NR. She does not meet the qualifications to use the single filing status because she did not live apart from her spouse during the last 6 months of the year and, even if she had, this was only a temporary absence for business purposes. She would now like to know if she can claim the credit for other dependents for her two children. They live with her in her home in Mexico and they have ITINs.

A. Your client cannot claim the credit for other dependents (ODC).

Prior to the TCJA, a taxpayer could claim a dependent exemption for a qualifying child or qualifying relative who was a U.S. citizen, a U.S. national, a U.S. resident alien, *or a resident of Canada or Mexico*. While the definition of a dependent has not changed under the TCJA, and your client's children apparently are her dependents, the dependent exemption amount is \$0 for tax years 2018 through 2025.

Unlike the child tax credit, the new ODC does not have an SSN requirement. The ODC may be claimed for a dependent with an SSN or an ITIN.

However, both the child tax credit and new ODC have a more stringent residency requirement than the dependent exemption has: the dependent must be a U.S. citizen, U.S. national, or U.S. resident alien. Thus, residents of Canada or Mexico who are not also U.S. citizens do not qualify for either of these two credits.

See "Qualifying Person for the ODC" on page 4 of IRS [Pub. 972](#), *Child Tax Credit*.