

**YA' AIN'T JUST WHISTLING DIXIE: REPRESENTING
TAX WHISTLEBLOWER'S AND DEFENDING AGAINST THEM¹**

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I. BACKGROUND OF THE TAX WHISTLEBLOWER LAW

A. A general tax whistleblower law was first enacted in 1863.

1. It did not work well.

a. It was purely discretionary and there was no judicial review.

(1) Individual IRS employees did not have authority to enter into binding agreements with whistleblowers to pay agreed upon awards so courts regularly invalidated agreements that whistleblowers thought they had with the IRS.

b. Awards were typically 1%, 10% or 15%.

c. It was decentralized, so nobody knew how many awards were paid in any given year to whom.

d. There was no champion for tax whistleblowers.

II. CONGRESS AMENDED SECTION 7623 IN 2006.

A. Creates a new IRS Whistleblower Office to centralize, track and manage whistleblower claims.

B. For certain larger claims

1. Makes awards mandatory

2. Set percentages for awards between 15% and 30% of the amount collected;

3. Provides judicial review of award decisions.

C. New 7623(a)

1. Provides rules for smaller matters that are similar to prior rules under old law.

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2. If the IRS collects proceeds by reason of information provided by a whistleblower, Treasury is authorized to pay a discretionary award of up to 15% to the whistleblower who provided the information.

D. New 7623(b)

1. In larger matters where

a. the information relates to amounts in dispute that exceed \$2,000,000; and

b. the information relates to an individual, that individual has a gross income in excess of \$200,000 in the taxable year at issue.

2. If the IRS proceeds with any administrative or judicial action based on information provided by a whistleblower, then

3. The Treasury is authorized to pay 15% and 30% of the collected proceeds.

4. However, awards may be less than 15%, and in certain cases entirely disallowed when:

a. the information was based upon public sources; or

b. the whistleblower “planned or initiated” the activity that led to the underpayment; or

c. the whistleblower is convicted of a crime arising out of such conduct.

5. The whistleblower has the right to appeal “any determination regarding an award” to the Tax Court.

a. In *Cooper v. Comm’r*, 135 T.C. No. 4 (2010), the Tax Court held that the Service’s letter to the whistleblower denying his claim constituted a “determination” within the meaning of I.R.C. § 7623 (b)(2)(4), that conferred jurisdiction on the Tax Court to review the denial of the claim.

b. The whistleblower had submitted to Forms 211 informing the IRS that certain parties had failed to pay millions of dollars in estate and generation-skipping transfer tax. The Service sent him a letter denying the claims, and stating that it could not make an award determination because the whistleblower had not identified the tax issues upon which the Service could take action, and that the whistleblower’s information did not “result in the detection of the underpayment of taxes.” The Tax Court held that the letter was a “determination,” and that it had jurisdiction to review the denial of the claims. The Tax Court explained that the letter was issued in accordance with the procedures described in the IRM and Notice 2008-4, and that the language for denying the claims was taken straight from the IRM list of possible reasons for denial.

6. In *Cooper v. Comm’r*, 136 T.C. No. 30 (2011), a second decision in the same case, the Tax Court held that, while it did have jurisdiction over the whistleblower’s claim under I.R.C. § 7623 (b)(2)(4), it was granting the government’s motion for summary judgment against the whistleblower because the claim did not meet the threshold requirements for an award under the statute.

a. The court noted two statutory conditions for an award: 1) the initiation of an administrative or judicial action based on the whistleblower's information, and 2) the collection of proceeds. Because the IRS had done neither, the whistleblower had no claim.

III. STATUS OF THE IRS WHISTLEBLOWER PROGRAM

A. 2014 Annual Report of the Whistleblower Office

1. IRS Whistleblower Office has 43 employees, including 17 senior analysts with deep substantive tax backgrounds and one Special Counsel.

2. Through the end of 2014, the Whistleblower Office has received 67,558 claims, including claims submitted under the old law.

a. 30,152 of those claims are still open.

3. IRS paid 101 awards in 2014, but most of those awards were under the old law.

4. Through the end of 2014, only eleven claims have been paid under the new law.

5. Most claims are worked through the SB/SE division of the IRS, but many are also worked by LB&I and CI and the other operating divisions to a lesser extent.

6. Most claims are closed because no real tax issues is identified, the allegations were non-specific or unclear or the amounts at issue are too small to justify IRS action.

IV. PRACTICAL TIPS FOR REPRESENTING WHISTLEBLOWERS

A. While the IRS Whistleblower Office has the authority to investigate whistleblower claims, a policy decision has been made that it will operate more like a clearing house to process and track claims and determine awards if the IRS takes action and collects taxes.

1. The Whistleblower Office will review a claim to determine whether it is processable and whether it falls under section 7623(a) or 7623(b) and then it will farm the claim out to the relevant operating division of the IRS for further action.

2. The Whistleblower Office does not audit taxpayers.

B. Large dollar claims during current years are more likely to gain traction with the IRS.

1. The IRS has received scores of claims in excess of \$100 million and a claim for a few million dollars is not particularly large.

2. In general, the IRS is not interested in trying to prove fraud to re-open closed years.

C. File a claim for award with the IRS Whistleblower Office on a properly completed Form 211 before providing any information regarding tax non-compliance to the government.

1. The IRS has taken the position that if it takes action before the proper Form 211 is filed, the whistleblower is not eligible for an award.

a. This position is being litigated in Tax Court.

D. The key is to attract the attention of anyone who reads your claim, starting with the employee from the IRS Whistleblower Office to the field agent who will be conducting any audit.

1. Avoid long and confusing submissions.

2. Start with a brief executive summary.

3. Explain the facts clearly.

4. Cite the source of the facts, whether it be firsthand knowledge or documents, to give your claim credibility and to provide leads.

E. Provide supporting documentation when possible.

1. However, it is important to ensure that the documentation is not covered by a privilege or confidentiality order or agreement.

a. Information subject to a valid claim of privilege may be tainted and the IRS will not use the information.

F. The IRS sometimes will use a “taint team” to review information to ensure that it can be used.

a. The IRS will not issue a summons or subpoena to the whistleblower to get around a confidentiality order or agreement.

G. Provide names and contact information for relevant players to allow the IRS to follow up.

H. Provide a brief summary of relevant law and analysis of how the law applies to the facts.

a. Understand that confidentiality is not assured.

2. While the IRS has a policy of protecting the confidentiality of the whistleblower, the whistleblower’s identity may be revealed if the IRS believes it is necessary.

3. There are no laws that absolutely protect the whistleblower’s identity.

4. There are no laws that protect whistleblowers against retaliation.

V. PRACTICAL TIPS FOR REPRESENTING TAXPAYERS AGAINST WHOM THE WHISTLE HAS BEEN BLOWN

A. The IRS has a policy of protecting the identity of whistleblowers and, as a result, generally will not confirm or deny the existence of a whistleblower claim.

B. However, it can be important to know if a whistleblower claim has been made because

1. Many claims contain inaccurate allegations and understanding those allegations can help the taxpayer to defend itself during the audit or investigation; and

2. The taxpayer may have to take steps to protect its right to confidentiality under IRC 6103.

a. To give the whistleblower a meaningful right of appeal to the Tax Court, as required by the statute, the IRS must provide the whistleblower with some information regarding the status of the audit and the whistleblower may reveal sensitive audit information during the Tax Court litigation, including information obtained during discovery.

VI. HISTORY OF GUIDANCE FOR MAKING TAX WHISTLEBLOWER CLAIMS

A. On January 14, 2008, Treasury issued Notice 2008-4, 2008-1 CB 253 providing general rules for filing claims for award under section 7623.

B. On March 25, 2008, Treasury published Temp. Treas. Reg. §301.6103(n)-2T, and corresponding proposed regulations describing the circumstances in the IRS may disclose return information to whistleblowers (and their legal representatives) in connection with written contracts for services relating to the detection of violations of the tax laws.

C. In December 2008, the IRS revised IRM Part 25.2.2, updating procedures for the handling of information, processing of claims for awards, and payment of awards under section 7623.

1. The IRS also delegated the authority to approve section 7623(a) awards to the Director of the Whistleblower Office to centralize the Whistleblower program and promoting consistency across all award decisions.

D. In July 2010, the IRS revised IRM Part 25.2.2 to provide rules for the computation and payment of awards under section 7623 and administrative procedures for reward claims.

E. On January 18, 2011, Treasury published proposed regulations clarifying the definitions of “proceeds of amounts collected” and “collected proceeds” for purposes of section 7623.

F. On February 22, 2012, Treasury finalized the proposed regulations.

G. On December 28, 2012, Treasury published proposed regulations providing comprehensive guidance with respect to section 7623.

H. Treasury finalized the regulations and the new regulations are effective on August on August 12, 2014.

1. They apply to information submitted on or after August 12, 2014, and to claims for award under section 7623(b) that are open as of August 12, 2014.

VII. RULES AND PROCEDURES FOR FILING TAX WHISTLEBLOWER CLAIMS²

A. Eligibility to file a whistleblower claim

² Based on the final whistleblower regulations and other published guidance.

1. Any individual, other than an individual described below, is eligible to receive an award under section 7623.

2. Ineligible whistleblowers.

a. An employee of the Department of Treasury or individual who was an employee of the Department of Treasury when the individual obtained the information on which the claim is based;

b. An individual who obtained the information through the individual's official duties as an employee of the Federal Government, or who is acting within the scope of those official duties as an employee of the Federal Government;

c. An individual who is or was required by Federal law or regulation to disclose the information or who is or was precluded by Federal law or regulation from disclosing the information;

d. An individual who obtained or had access to the information based on a contract with the Federal Government; or

e. An individual who filed a claim for award based on information obtained from an ineligible whistleblower for the purpose of avoiding the rejection of the claim that would have resulted if the claim was filed by the ineligible whistleblower.

B. Submission of information and claims for award.

1. A whistleblower must submit specific and credible information that the whistleblower believes will lead to collected proceeds.

2. In general, a whistleblower's submission should identify the person

3. believed to have failed to comply with the internal revenue laws and should provide substantive information, including all available documentation, that supports the whistleblower's allegations.

4. Information that identifies a pass-through entity will be considered to also identify all persons with a direct or indirect interest in the entity.

5. Information that identifies a member of a firm who promoted another identified person's participation in a transaction described and documented in the information provided will be considered to also identify the firm and all other members of the firm.

6. Submissions that provide speculative information or that do not provide specific and credible information regarding tax underpayments or violations of internal revenue laws do not provide a basis for an award.

7. If documents or supporting evidence are known to the whistleblower but are not in the whistleblower's control, then the whistleblower should describe the documents or supporting evidence and identify their location to the best of the whistleblower's ability.

8. If the information is covered by a Confidentiality Agreement or Protective Order, the IRS typically will not issue a summons to the WB to get around the Agreement or Order.

C. Specific procedures for filing claim for award.

1. a whistleblower must file a formal claim for award by completing and sending Form 211, “Application for Award for Original Information,”

2. The Form 211 should include the following information

a. The date of the claim;

b. The whistleblower’s name;

c. The whistleblower’s address and telephone number;

d. The whistleblower’s date of birth;

e. The whistleblower’s taxpayer identification number; and

f. An explanation of how the information on which the claim is based came to the attention and into the possession of the whistleblower, including, as available, the date on which the whistleblower acquired the information and a complete description of the whistleblower’s present or former relationship (if any) to person identified on the Form 211.

3. The information must be based on personal knowledge and must be submitted under penalty of perjury.

a. This requirement precludes the filing of a claim for award by a person serving as a representative of, or in any way on behalf of, another individual.

b. Claims filed by more than one whistleblower (joint claims) must be signed by each individual whistleblower under penalty of perjury.

4. If a whistleblower files a claim for award that does not include all necessary information, the Whistleblower Office may reject the claim or notify the whistleblower of the deficiencies and provide the whistleblower an opportunity to perfect the claim for award.

D. Request for assistance from the whistleblower or the whistleblower’s attorney

1. The WB office or the IRS may request the assistance of a whistleblower or the whistleblower’s legal representative.

2. This is purely at the IRS’ discretion.

3. While the IRS may request additional information from the WB, the IRS will rarely, if ever, provide the WB with information regarding the taxpayer or the status of any audit or investigation.

4. IRC §301.6103(n)-2 provides exceptions to taxpayer confidentiality rules regarding written contracts among the IRS, whistleblowers, and legal representatives of whistleblowers.

E. Confidentiality of whistleblowers.

1. Under the informant's privilege, the IRS will use its best efforts to protect the identity of whistleblowers.

2. In some circumstances, the IRS may need to reveal a whistleblower's identity.

3. For example, when it is determined that it is in the best interests of the Government to use a whistleblower as a witness in a judicial proceeding.

4. In those circumstances, the IRS will make every effort to notify the whistleblower before revealing the whistleblower's identity.

F. Important terms in the whistleblower law

1. Administrative or Judicial Action.

a. The term administrative action means all or a portion of an Internal Revenue Service (IRS) civil or criminal proceeding against any person that may result in collected proceeds.

(1) For example, an examination, a collection proceeding, a status determination proceeding, or a criminal investigation.

b. The term judicial action means all or a portion of a proceeding against any person in any court that may result in collected proceeds.

2. "Proceeds based on"

a. The IRS proceeds based on information provided by a whistleblower when the information provided substantially contributes to an action against a person identified by the whistleblower.

(1) For example, the IRS proceeds based on the information provided when the IRS initiates a new action, expands the scope of an ongoing action, or continues to pursue an ongoing action, that the IRS would not have initiated, expanded the scope of, or continued to pursue, but for the information provided.

b. The IRS does not proceed based on information when the IRS analyzes the information provided or investigates a matter raised by the information provided.

3. Related action.

a. The term related action means an action against a person other than the person identified in the information provided and subject to the original action, when

(1) The facts relating to the underpayment of tax or violations of the internal revenue laws by the other person are substantially the same as the facts described and documented in the information provided (with respect to the person subject to the original action);

(2) The IRS proceeds with the action against the other person based on the specific facts described and documented in the information provided; and

(3) The other, unidentified person is related to the person identified in the information provided. For purposes of this paragraph, an unidentified person is related to the person identified in the information provided if the IRS can identify the unidentified person using the information provided (without first having to use the information provided to identify any other person or having to independently obtain additional information).

4. Collected proceeds.

a. The term collected proceeds include:

(1) tax, penalties, interest, additions to tax, and additional amounts collected because of the information provided;

(2) amounts collected prior to receipt of the information if the information provided results in the denial of a claim for refund that otherwise would have been paid; and

(3) a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided.

b. Collected proceeds are limited to amounts collected under the provisions of title 26, United States Code.

(1) Does not include FBAR penalties or criminal fines.

c. Refund netting.

(1) If any portion of a claim for refund that is substantively unrelated to the information provided is allowed and used to satisfy a tax liability attributable to the information provided instead of refunded to the taxpayer, then the allowed but non-refunded amount constitutes collected proceeds.

d. Amended returns.

(1) Amounts collected based on amended returns constitute collected proceeds if-

(a) The IRS proceeds based on the information provided;

(b) As a result, the person subject to the action with which the IRS proceeds files amended returns; and

(c) The amounts collected based on the amended returns relate to the activities or facts described in the information provided.

e. Criminal fines deposited into the Victims of Crime Fund are not collected proceeds and cannot be used for payment of awards.

5. Computation of collected proceeds.

a. The IRS cannot make an award payment until there has been a final determination of tax.

6. Final determination of tax.

a. A final determination of tax means that the proceeds have been collected and either the statutory period for filing a claim for refund has expired or the taxpayer and the IRS have agreed with finality to the tax or other liabilities for the period at issue and the taxpayer has waived the right to file a claim for refund.

7. Post-determination proceeds.

a. If, based on all information known with respect to the taxpayer's account as of the date of the computation there is a possibility that the IRS may collect additional proceeds, then the Whistleblower Office will continue to monitor the case. If the Whistleblower Office identifies additional collected proceeds, then the IRS will compute and pay accordingly.

8. Partial collection.

a. If the IRS does not collect the full amount of taxes, penalties, interest, additions to tax, and additional amounts assessed against the taxpayer, then any amounts that the IRS does collect will constitute collected proceeds in the same proportion that the adjustments attributable to the information provided bear to the total adjustments.

9. Amount in dispute and gross income.

a. Section 7623(b) applies with respect to any action against any taxpayer in which the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed \$2,000,000 but, if the taxpayer is an individual, then only if the taxpayer's gross income exceeds \$200,000 in at least one taxable year subject to the action.

(1) Amount in dispute.

(a) The term amount in dispute means the greater of the maximum total of tax, penalties, interest, additions to tax, and additional amounts that resulted from the action with which the IRS proceeded based on the information provided, or the maximum total of such amounts that were stated in formal positions taken by the IRS in the action.

(2) Gross income.

(a) The term gross income has the same meaning as provided under section 61(a). The IRS will compute the individual taxpayer's gross income when there has been a final determination of tax as defined in §301.7623-4(d)(2).

G. Whistleblower administrative proceedings and appeals of award determinations.

1. Awards under section 7623(a).

a. Preliminary award recommendation.

(1) In cases in which the Whistleblower Office recommends payment of an award, the Whistleblower Office will communicate a preliminary award recommendation to the whistleblower by sending a preliminary award recommendation letter that states the Whistleblower Office's preliminary computation of the amount of collected proceeds, recommended award percentage, recommended award amount and a list of the factors that contributed to the recommended award percentage.

(2) If the whistleblower believes that the Whistleblower Office erred in evaluating the information provided, the whistleblower has 30 days from the date the Whistleblower Office sends the preliminary award recommendation to submit comments to the Whistleblower Office (this period may be extended at the sole discretion of the Whistleblower Office).

b. Decision letter.

(1) At the conclusion of the preliminary award recommendation process and when there is a final determination of tax, the Whistleblower Office will pay an award.

(2) The Whistleblower Office will communicate the amount of the award to the whistleblower in a decision letter.

c. Rejections and denials.

(1) If the Whistleblower Office rejects a claim for award under section 7623(a), or if the IRS either did not proceed based on information provided by the whistleblower, or did not collect proceeds, then the Whistleblower Office will not use the preliminary award recommendation process. Instead, the Whistleblower Office will provide written notice to the whistleblower of the rejection or denial of any award and, in the case of a rejection, the written notice will state the basis for the rejection.

2. Awards under section 7623(b).

a. Preliminary award recommendation.

(1) For claims under section 7623(b) that are not rejected or denied, the Whistleblower Office will prepare a preliminary award recommendation.

(2) The preliminary award recommendation is not a determination letter and cannot be appealed to Tax Court.

b. The Whistleblower Office will communicate the preliminary award recommendation to the whistleblower by sending—

(1) A preliminary award recommendation letter that describes the whistleblower's options for responding to the preliminary award recommendation;

(2) A summary report that states a preliminary computation of the amount of collected proceeds, the recommended award percentage, the recommended award amount and a list of the factors that contributed to the recommended award percentage.

(3) An award consent form; and

(4) A confidentiality agreement.

c. The whistleblower will have 30 days (this period may be extended at the sole discretion of the Whistleblower Office) from the date the Whistleblower Office sends the preliminary award recommendation letter to respond to the preliminary award recommendation in one of the following ways-

(1) If the whistleblower takes no action, then the Whistleblower Office will make a final award determination;

(2) If the whistleblower signs, dates, and returns the award consent form agreeing to the preliminary award recommendation and waiving any and all administrative and judicial appeal rights, then the Whistleblower Office will make a final award determination;

(3) If the whistleblower signs, dates, and returns the confidentiality agreement, then the Whistleblower Office will provide the whistleblower with a detailed award report, and an opportunity to review documents supporting the report; or

(4) If the whistleblower submits comments on the preliminary award recommendation to the Whistleblower Office, but does not sign, date, and return the confidentiality agreement, then the comments will be added to the administrative claim file and reviewed by the Whistleblower Office in making a final award determination.

d. Detailed report. If the whistleblower signs, dates, and returns the confidentiality agreement accompanying the preliminary award recommendation, then the Whistleblower Office will send the whistleblower

(1) A detailed report that states a preliminary computation of the amount of collected proceeds, the recommended award percentage, and the recommended award amount, and provides a full explanation of the factors that contributed to the recommended award percentage;

(2) Instructions for scheduling an appointment for the whistleblower (and the whistleblower's legal representative, if any) to review information in the administrative claim file that is not protected by one or more common law or statutory privileges; and

(3) An award consent form.

e. Opportunity to respond to detailed report. The whistleblower will have 30 days (this period may be extended at the sole discretion of the Whistleblower Office) from the date the Whistleblower Office sends the detailed report to respond in one of the following ways

(1) If the whistleblower takes no action, then the Whistleblower Office will make an award determination, pursuant to paragraph (c)(6) of this section;

(2) If the whistleblower requests an appointment to review information from the administrative claim file that is not protected from disclosure by one or more common law or statutory privileges, then a meeting will be arranged;

(3) If the whistleblower does not request an appointment but does submit comments on the detailed report to the Whistleblower Office, then the comments will be added to the administrative claim file and reviewed by the Whistleblower Office in making an award determination pursuant to paragraph (c)(6) of this section; or

(4) If the whistleblower signs, dates, and returns the award consent form agreeing to the preliminary award recommendation and waiving any and all administrative and judicial appeal rights, then the Whistleblower Office will make an award determination, pursuant to paragraph (c)(6) of this section.

f. Opportunity to review documents supporting award report recommendations.

(1) Appointments for the whistleblower (and the whistleblower's legal representative) to review information from the administrative claim file that is not protected from disclosure by one or more common law or statutory privileges will be held at the Whistleblower Office in Washington, D.C., unless the Whistleblower Office, in its sole discretion, decides to hold the meeting at another location.

(2) At the appointment, the Whistleblower Office will provide the information from the administrative claim file.

(3) The Whistleblower Office will supervise the whistleblower's review of the information and the whistleblower will not be permitted to make copies of any documents or other information.

(4) The whistleblower will have 30 days (this period may be extended at the sole discretion of the Whistleblower Office) from the date of the appointment to submit comments on the detailed report and the documents reviewed at the appointment to the Whistleblower Office.

g. Determination letter.

(1) After the whistleblower's participation in the whistleblower administrative proceeding has concluded and there is a final determination of tax, a Whistleblower Office official will determine the amount of the award.

(2) The Whistleblower Office will communicate the award to the whistleblower in a determination letter, stating the amount of the award.

3. Rejections.

a. A rejection is a determination that relates solely to the whistleblower and the information on the face of the claim that pertains to the whistleblower.

b. The Whistleblower Office will send to the whistleblower a preliminary rejection letter that states the basis for the rejection of the claim.

c. If the whistleblower believes that the Whistleblower Office erred in evaluating the information provided, the whistleblower has 30 days from the date the Whistleblower Office sends the preliminary rejection letter to submit comments to the Whistleblower Office (this period may be extended at the sole discretion of the Whistleblower Office).

d. The Whistleblower Office will review all comments submitted timely by the whistleblower (or the whistleblower's legal representative, if any) and will make a final determination.

4. Denials.

a. A denial is a determination that relates to or implicates taxpayer information.

b. If the IRS either did not proceed based on the information provided by the whistleblower or did not collect proceeds, then the Whistleblower Office will send to the whistleblower a preliminary denial letter that states the basis for the denial of the claim.

c. If the whistleblower believes that the Whistleblower Office erred in evaluating the information provided, the whistleblower has 30 days from the date the Whistleblower Office sends the preliminary denial letter to submit comments to the Whistleblower Office (this period may be extended at the sole discretion of the Whistleblower Office).

d. The Whistleblower Office will review all comments submitted timely by the whistleblower (or the whistleblower's legal representative, if any) and will make a final determination.

e. Any final determination regarding an award may, within 30 days of such determination, be appealed to the Tax Court.

5. Factors used to determine award percentage.

a. Positive factors. The application of the following non-exclusive factors may support increasing an award percentage.

(1) The whistleblower acted promptly to inform the IRS or the taxpayer of the tax noncompliance.

(2) The information provided identified an issue or transaction of a type previously unknown to the IRS.

(3) The information provided identified taxpayer behavior that the IRS was unlikely to identify or that was particularly difficult to detect through the IRS's exercise of reasonable diligence.

(4) The information provided thoroughly presented the factual details of tax noncompliance in a clear and organized manner, particularly if the manner of the presentation saved the IRS work and resources.

(5) The whistleblower (or the whistleblower's legal representative, if any) provided exceptional cooperation and assistance during the pendency of the action.

(6) The information provided identified assets of the taxpayer that could be used to pay liabilities, particularly if the assets were not otherwise known to the IRS.

(7) The information provided identified connections between transactions, or parties to transactions, that enabled the IRS to understand tax implications that might not otherwise have been understood by the IRS.

(8) The information provided had an impact on the behavior of the taxpayer, for example by causing the taxpayer to promptly correct a previously-reported improper position.

b. Negative factors. The application of the following non-exclusive factors may support decreasing an award percentage.

(1) The whistleblower delayed informing the IRS after learning the relevant facts, particularly if the delay adversely affected the IRS's ability to pursue an action or issue.

(2) The whistleblower contributed to the underpayment of tax or tax noncompliance identified.

(3) The whistleblower directly or indirectly profited from the underpayment of tax or tax noncompliance identified, but did not plan and initiate the actions that led to the underpayment of tax or actions described in section 7623(a)(2).

(4) The whistleblower (or the whistleblower's legal representative, if any) negatively affected the IRS's ability to pursue the action, for example by disclosing the existence or scope of an enforcement activity.

(5) The whistleblower (or the whistleblower's legal representative, if any) violated instructions provided by the IRS, particularly if the violation caused the IRS to expend additional resources.

(6) The whistleblower (or the whistleblower's legal representative, if any) violated the terms of the confidentiality agreement described in §301.7623-3(c)(2)(iv).

(7) The whistleblower (or the whistleblower's legal representative, if any) violated the terms of a contract entered into with the IRS pursuant to §301.6103(n)-2.

(8) The whistleblower provided false or misleading information.

c. Computational framework.

(1) Starting the analysis at 15 percent, the Whistleblower Office will analyze the administrative claim file using the positive factors listed above to determine whether the whistleblower merits an increased award percentage of 22 percent or 30 percent.

(2) The Whistleblower Office will then determine whether the whistleblower merits a decreased award percentage of 15 percent, 18 percent, 22 percent, or 26 percent based on the presence and significance of negative factors.

d. Award for less substantial contribution.

(1) If the Whistleblower Office determines that judicial or administrative action is based principally on disclosures of specific allegations resulting from a judicial or administrative hearing; a government report, hearing, audit, or investigation; or the news media, then the Whistleblower Office will determine an award of no more than 10 percent of the collected proceeds resulting from the action (including any related actions) or from any settlement in response to such action.

e. Award for Planers or Initiators

(1) If the Whistleblower Office determines that a whistleblower planned or initiated the act giving rise to the tax underpayment, the Whistleblower Office will reduce the award amount based on the extent of the whistleblower's planning and initiating.

(2) A whistleblower planned and initiated the underlying act if the whistleblower—

(a) Designed, structured, drafted, arranged, formed the plan leading to, or otherwise planned, an underlying act,

(b) Took steps to start, introduce, originate, set into motion, promote or otherwise initiate an underlying act, and

(c) Knew or had reason to know that an underpayment of tax could result from planning and initiating the underlying act.

(d) The whistleblower need not have been the sole person involved in planning and initiating the underlying acts.

(e) A whistleblower who merely furnishes typing, reproducing, or other mechanical assistance in implementing one or more underlying acts will not be treated as initiating any underlying act.

(f) A whistleblower who is a junior employee acting at the direction, and under the control, of a senior employee will not be treated as initiating any underlying act.

f. Multiple whistleblowers.

(1) If two or more independent claims relate to the same collected proceeds, then the Whistleblower Office may evaluate the contribution of each whistleblower to the action that resulted in collected proceeds.

(2) The Whistleblower Office will determine whether the information submitted by each whistleblower would have been obtained by the IRS as a result of the information previously submitted by any other whistleblower.

(3) If the Whistleblower Office determines that multiple whistleblowers submitted information that would not have been obtained based on a prior submission, then the Whistleblower Office will determine the amount of each whistleblower's award based on the extent to which each whistleblower contributed to the action.

(4) The aggregate award amount in cases involving two or more independent claims that relate to the same collected proceeds will not exceed the maximum award amount that could have resulted if a single claim had been submitted.

6. Tax treatment of award.

a. All awards are includible in gross income and subject to current Federal tax reporting and withholding requirements.