UNITED STATES TAX COURT

Joseph A. Insinga,

Petitioner

v. Docket No._____

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Petition for Whistleblower Action Under Code Section 7623(b)(4)

Petitioner hereby disputes and appeals respondent's adverse determination of his whistleblower claims. In support of this Petition, Petitioner states and alleges as follows:

PETITIONER

1. Petitioner, Joseph A. Insinga, is an individual with a principal residence at 24 Meeker Drive, Florham Park, New Jersey 07932.

JURISDICTION

2. In early November, 2011, Petitioner was advised for the first time that his submission was defective because the IRS had recently discovered "other sources" of the detailed information that he had furnished in April, 2007. On several occasions, Petitioner thereafter demanded that the IRS issue a formal determination so that he could have his day in court and contest the veracity of these claims of "other sources." The IRS has continued to refuse to issue a formal determination, stating that it now wishes to inspect some other unspecified "closed files," as if information in these closed files might indicate that these already identified "other sources" may not exist. Petitioner alleges that

this abjectly untenable, inconsistent position represents a calculated effort to frustrate Petitioner's efforts to seek this court's review, and therefore deprives him of his due process. Petitioner therefore alleges that these actions plainly constitute a *de facto* rejection of his claims and confer jurisdiction upon this court under §7623(b). A review of the correspondence attached as Collective Exhibit 1 will fully confirm Petitioner's foregoing contentions.[1]

FACTS

3. Petitioner disputes and appeals the adverse determination of the IRS Whistleblower Office to his claims and affirmatively asserts that (a) based upon the information and documentation provided in his whistleblower submission, (b) based upon additional information and documentation delivered at his initial debriefing, and thereafter (c) based upon information delivered at several other conferences and communications with multiple Internal Revenue Service ("IRS") personnel, the IRS (i) initiated several administrative actions against multiple taxpayers within the meaning of Section 7623(b)(1), which actions (ii) resulted in the collection of hundreds of millions of dollars in taxes, penalties, interest, and "other amounts" from these multiple taxpayers and from their promoter/enabler, i.e., Rabobank, within the meaning of the whistleblower statute. The following matter supports Petitioner's contentions.

4. The Petitioner, Mr. Insinga, relies on the following facts and circumstances in the chronology given:

[1] Program Manager Robert B. Gardner spent the summer of 2011 collecting data from IRS field offices to assist him in preparing his recommendations on Petitioner's claims and regularly conferred with Petitioner's counsel on his progress. On September 8, 2011, he advised counsel that he had all the information he needed. On September, 30, 2011, he advised that he had forwarded his recommendations to his Director. On February 11, 2012, he advised counsel that they now need to inspect other closed files from other examination teams.

(a) Pursuant to 26 U.S.C. §7623(b), the Petitioner initially submitted his verified Tax Disclosure with the new IRS Whistleblower Office on April 2, 2007, approximately three and a half months after the statute's effective date. The Petitioner was a managing director of the American operations of Rabobank, an obscure, privately-held Dutch Bank that, he alleged, had facilitated improper off shore and other tax shelters for seven (7) Fortune 100 companies (Kimberly Clark, Merck, Cardinal Health, International Paper, Newell Rubbermaid, General Mills), the American operations of a French bank (Société Générale) and for 94 other companies for which the Rabobank facilitated prohibited intermediary transactions known as "MIDCOs." In support of these allegations, Petitioner submitted as an exhibit to his Disclosure an Internal Audit Report conducted by the Rabobank's own internal auditors in which most of these transactions were condemned as being inappropriately tax driven in violation of the bank's own rules. The original Disclosure was amended on May 29, 2007 and delivered to agent Robert B. Gardner, now Whistleblower Office Program Manager. A copy of Petitioner's comprehensive Amended Tax Disclosure is attached hereto as Exhibit 2 and incorporated by reference; it includes Petitioner's *curriculum vitae*.

(b) On May 10, 2007, Petitioner's counsel was contacted by agent Robert B. Gardner by telephone acknowledging receipt of Petitioner's submission and indicating that senior IRS personnel in New York City "who handle banks and financial institutions" wanted to meet Petitioner and his counsel and that he would set the meeting up. On May 29, 2007, a meeting with IRS personnel at the Office of Chief Counsel at 33 Maiden Lane, 12th Floor, Manhattan was scheduled for

June 25, 2007, to be coordinated through Ms. Kyunghee Piraino, Senior Program Specialist, IRS Large and Mid-Size Business Division ("LMSB"), Financial Services Industry ("FSI").

(c) On June 24, 2007 Petitioner and his counsel traveled from their respective locations to the IRS Office of Chief Counsel in New York City for their initial debriefing. They met on the morning of June 25, 2007 for several hours with agent Stuart Mann, Executive Assistant to the Director, ID No. 22-05058, LMSB, FSI, Vivian Taverna, Esq., Office of Chief Counsel (Maiden Lane, Manhattan), and Ms. Kyunghee Piraino, also with LMSB, FSI. At that meeting, Petitioner brought with him all of the internal Rabobank Credit Applications and Reviews that detailed the true tax-driven nature of transactions that were being falsely presented to the outside world as arms-length equity investments with legitimate business purposes. These documents conclusively proved that these so-called equity investments made by Rabobank entities were in fact loans. Without these non-public documents and Petitioner's detailed explanations thereof, it is clear that the IRS would have had no inkling whatsoever of any tax impropriety. Neither tax returns nor other available public financial data would provide any clue to the IRS or to anyone else not privy to the transactions that these intricate business arrangements were inappropriate tax shelters and schemes. These Credit Applications, particularly when coupled with the Rabobank Internal Audit Report, provided the IRS with a definitive road map to the systematic tax fraud being orchestrated by the Rabobank and presented an arsenal of formidable weapons with which to attack that fraud. The subject Credit Applications and Reviews are

attached hereto as collective Exhibit 3 and incorporated herein. Their critical importance to these cases cannot be overstated.

(d) At his debriefing, Petitioner detailed and documented all of the subject transactions to the apparent satisfaction of these IRS agents and counsel for several hours. It was obvious to Petitioner and counsel at this meeting that the IRS had no prior knowledge of these transactions and that the matter was being given top priority. At the end of the debriefing, agent Stuart Mann, told Petitioner and counsel that "You've laid the cases out well and provided detailed documentation. With respect to each taxpayer, we cannot tell you what we are going to do, or not going to do, but when we get a check, you get a check." Agent Mann then advised Petitioner's counsel that he would likely be contacted by several IRS agents as investigations were initiated; agent Mann further admonished Petitioner's counsel that all future communications with anyone purporting to be an IRS agent were first to be cleared with and coordinated through Ms. Kyunghee Piraino at LMSB, FSI. All email communications with Ms. Piraino as coordinator of all IRS efforts for Petitioner are attached hereto as collective Exhibit 4 and incorporated by reference herein. Agent Robert B. Gardner was kept advised of all these particulars at all times. Emails between Petitioner's counsel and agent Gardner since the inception of this case exceed several hundred. Petitioner's counsel regularly updated agent Gardner with information pertaining to the Rabobank and other entities; agent Gardner thanked counsel for these updates and said that he would forward "to the team."

(e) In early August, 2007, approximately 6 weeks after the initial debriefing in New York City, Petitioner's counsel was contacted by Ms. Piraino (*see* exhibit 4) and he was advised that a conference call would be set up with IRS agents working on one of the transactions reported by Petitioner. Ms. Piraino would not identify the transaction that was to be the subject of the conference call. Thereafter, on August 20, 2007, Petitioner and counsel spoke with four (4) IRS agents (one was a lawyer) at length (90 minutes) concerning the Cardinal Health off shore accounts receivable scheme orchestrated through the Rabobank. Petitioner attaches hereto his counsel's memorandum to the file detailing the discussions prepared immediately after the Cardinal phone conference as Exhibit 5. At the time of this second debriefing, it was apparent to Petitioner and his counsel that these agents had absolutely no knowledge or grasp of this scheme before this conversation. Petitioner patiently walked these agents and lawyer word by word through the Credit Application, which had evidently been furnished to these agents by Ms. Piraino from her office in New York. Numerous follow-up conferences and exchanges of emails with the IRS Cardinal "Team Leader," agent Robert Piatka, occurred. All of the email traffic with agent Piatka is attached hereto as Exhibit 6, and incorporated herein by reference.

(f) In late August, 2007, IRS agent Robert Piatka advised that another team of IRS agents would be calling Petitioner and counsel from Chicago. He did not identify either the agents or the transaction(s) that they would be inquiring about. On December 24, 2007, Petitioner's counsel received a call from an IRS agent Michael Rich from the Chicago area. Petitioner's counsel declined to speak

with him without first checking with agent Robert Piatka in Columbus, Ohio and Ms. Kyunghee Piraino at her office in New York City, as instructed by agent Stuart Mann. When counsel was given the green light to proceed with agent Michael Rich and his team, a phone conference with Petitioner was held on May 27, 2008 with agents Michael Rich and Michael Novak. Until the time of the call, it was unknown to Petitioner which transaction(s) was to be discussed. When the call was finally made, Petitioner spoke with these agents at considerable length and in detail about the Newell Rubbermaid accounts receivable scheme, also orchestrated through the Rabobank. It was clear that these agents, as with Cardinal, had no prior knowledge of this scheme, other than what may had been communicated to them by agent Robert Piatka in Columbus; the Cardinal scheme and the Newell scheme were very similar off shore accounts receivable tax scams orchestrated by the Rabobank through Special Purpose Vehicles ("SPVs") in Luxembourg. A copy of Petitioner's memorandum to the file made immediately after this conference call is attached hereto as Exhibit 7, and incorporated herein by reference. All email traffic between Petitioner's counsel and agent Michael Rich is attached hereto as Exhibit 8, and incorporated herein.

(g) No further phone conferences with IRS field agents were requested by the IRS. Petitioner and his counsel were satisfied that further inquiry was unnecessary since all of the facts alleged in Petitioner's disclosure as to each transaction were being confirmed without exception in each and every case; the Rabobank Internal Audit Report contained conclusive admissions of tax

impropriety with respect to many of the transactions (International Paper, Société Générale, and the 94 MIDCO transactions).

(h) At the initial debriefing at the IRS Office of Chief Counsel on June 25, 2007, Petitioner and counsel advised the IRS that they possessed certain legal opinions pertaining to one of the transactions identified in Petitioner's Disclosure; these opinions outlined the ways in which an off shore arrangement could be navigated so that certain investments could be characterized as equity investments in the United States and as debt in Luxembourg and the Netherlands. IRS counsel Viviana Taverna cautioned that this material might taint the investigations and so out of an abundance of caution, it was agreed that the legal opinions would not be turned over at that time. In June, 2008, the legal opinions were again offered to Ms. Kyunghee Piraino, and she asked that we forward the legal opinions to her attention. The legal opinions are attached as Exhibit 9 hereto. Agent Mann had stated at the initial debriefing that the IRS was particularly interested in transactions where investments were treated as debt in one jurisdiction and equity in another. These opinions furnished the roadmap to the methods used by the Rabobank and its lawyers in making such characterizations.

(i) The next significant communication between Petitioner and the IRS occurred on May 12, 2009, one day after Program Manager Robert B. Gardner had advised Petitioner's counsel by email that he would call. The phone call had not been requested and the subject(s) of the call was unknown. In that phone call, Program Manager Gardner advised Petitioner and counsel that a multi-agency investigation (IRS, Department of Justice, Securities and Exchange

Commission) of the Rabobank was well underway. Petitioner reasonably regarded these comments as indicating significant progress on his cases. Program Manager Gardner further advised that one other unspecified Whistleblower submission, filed several months after Petitioner's against the same entity on the same transaction, and which confirmed all Petitioner's allegations, had been rejected by the IRS *based upon the pendency of Petitioner's prior claims*. Thus, Petitioner's earlier submission has been used as the basis for the issuance of a rejection letter to others, and has now been rejected. A copy of counsel's contemporaneous memorandum to the file describing this conversation with agent Gardner is attached as Exhibit 10.

(j) After receiving this positive progress report from agent Gardner, the Petitioner and his counsel waited patiently for the IRS to complete its investigations. Since the IRS was prohibited by §6103 from giving specific information regarding the status of claims, Petitioner was forced to rely on company 10K and other Securities filings to determine the likely status of investigations. When, according to these filings, it appeared that the General Mills, Newell Rubbermaid, and Cardinal Heath matters were nearing completion, Petitioner's counsel wrote agent Gardner inquiring how awards would be paid as each matter was settled, accompanied by a closing letter precluding any appeals of the assessments. Agent Gardner responded that in cases involving multiple targets, an award could only be paid only after <u>all cases</u> included within the submission had been finalized, but that Senator Grassley might be able to change this rule. After receiving this troubling advice from agent Gardner, Petitioner's

counsel immediately contacted Senator Charles Grassley by letter requesting that he intervene and change this harsh rule. A copy of this letter describing the surrounding circumstances is attached as Exhibit 11. According to agent Gardner, Senator Grassley thereafter contacted the IRS about this rule against making "partial payments," and that it appeared very likely that this rule would be changed.

(k) It is relevant to this case and potentially to others that Senator Charles Grassley, the author of the 1986 amendments to The False Claims Act, 31 U.S.C. §§3729-3733, and the new tax whistleblower statute, has continuously expressed his deep misgivings that many of the "old guard" within the IRS are extremely hostile to his new legislation and that they wanted to see the new whistleblower program fail. In a letter to Treasury Secretary Geithner dated June 21, 2010, Senator Grassley wrote:

> "I have learned from my almost three decades of experience with whistleblowers that government agencies will often seek to undermine or undercut the whistleblower. Prior to the 2006 changes, there was a culture of hostility towards and intimidation of whistleblowers at the IRS. That is why I created an independent Whistleblower Office at the IRS and delegated authority for reviewing claims and determining awards with that office."

A copy of the Tax Notes report of this letter is attached as Exhibit 12. Since the writing of that letter, Senator Grassley's concerns about the handling of whistleblower claims have not abated. A copy of his recent September 13, 2011 letter to IRS Commissioner Douglas L. Shulman evidencing his continuing concerns is attached as Exhibit 13.

(l) In late November, 2010, it became apparent to Petitioner and his counsel that three (3) of the matters referred to the IRS in April, 2007 had either been settled or were on the cusp of settlement. SEC filings and other financial reports made it abundantly clear that the General Mills case, the Newell Rubbermaid case, and the Cardinal Health case (the latter two cases were the subject of the above-referenced phone conferences with IRS agents Piatka, Rich and others) had been settled. In late December, 2010, Petitioner's counsel advised agent Gardner that Petitioner had become aware of these settlements; he received a return email from agent Garner acknowledging this advice, but refusing to concede that there was a "nexus" between Petitioner's submission and the settlements. This email from agent Gardner dated January 3, 2011 is attached hereto as Exhibit 14.

(m) As SEC filings and other financial announcements had made it clear that at least General Mills and Newell Rubbermaid would be paying in hundreds of millions of dollars to the Treasury before the end of May, 2011, Petitioner became increasingly more restive and demanded that counsel demand a meeting with IRS counsel and secure a firm commitment from agent Gardner concerning the timing and payment of an award based on substantial "partial payments." Toward that end, on June 15, 2011, at least two (2) weeks after General Mills had paid in $425 million to the Treasury based on Petitioner's submission, counsel sent the attached letter to Senator Grassley. The letter is marked Exhibit 15 hereto. Also on that date, in an effort to placate and reassure the Petitioner, agent Robert Gardner said that while there could be no meeting

with IRS counsel since the administrative files were still "open," he agreed to speak by conference call with Petitioner and counsel. *See* Exhibit 16. The phone conference lasted at least 30 minutes, and agent Gardner assured Petitioner that the IRS was working hard toward the goal of making partial payments and that a meeting toward that end was scheduled for July 12, 2011 at the IRS offices in Washington, D.C. Agent Gardner also stated in this conversation and in later emails that all of Petitioner's claims were "open" and that none were "even under consideration for rejection." Petitioner alleges that Agent Gardner's numerous references to Petitioner's "open files" are admissions and *prima facie* evidence that one or more administrative files were opened and that administrative actions were thereafter initiated against several taxpayers as the result of Petitioner's whistleblower submission.

(n) Because of the critical sequence of events beginning after May 31, 2011, when, at a minimum, General Mills had paid in $425 million to the Treasury based on Petitioner's submission, Petitioner attaches all the pertinent email traffic between his counsel and agent Gardner from May 31, 2011 to date. These are attached as collective Exhibit 17. These emails clearly indicate that until the end of October, 2011, the IRS clearly had given Petitioner the impression that an award recommendation was imminent on all of his "open" cases. Until November, 2011, there was no hint or evidence to suggest that any of Petitioner's claims were not open or ripe for an award payment; in fact, the opposite is true.

(o) On September 30, 2011 agent Gardner stated that he had received all the information he needed from his field offices and that he had passed along

his award recommendation to Whistleblower Office Director Steven Whitlock. A week or so thereafter, agent Garner advised Petitioner that Director Whitlock had returned the recommendation requesting additional information from IRS field offices. It now clearly appeared to Petitioner and his counsel that something was fatally amiss and that the Whistleblower Office was stalling the process for reasons unknown and certainly unjustified.

(p) On November 4, 2011, Petitioner's suspicions were confirmed when agent Gardner suddenly advised counsel that Petitioner's claims "were on life support," that he had "done what he could" to effect a favorable result for Petitioner; he stated that he "was only the messenger, not the driver" of this sudden change in direction. In later exchanges of emails, agent Gardner admits that there were no other prior whistleblower submissions on any of the targets Petitioner had identified. Moreover, agent Gardner did not deny that collections of tax had been made from General Mills, Newell Rubbermaid, or Cardinal Health; however, he states for the **first time,** after 4 and ½ years of working closely with Petitioner and his counsel, that he had "just learned' that there were "other sources" of the information that Petitioner had provided on April 2, 2007. It is also noteworthy, if not incredible, that these new "other sources" of information evidently attached equally, across the board, **and at the same time**, to the most sensitive activities of each and every one of the diverse, unrelated entities that were the subjects of Petitioner's submission. Only the highest levels of management at Rabobank, from Petitioner's management position and above, could have possibly accessed this global information. Petitioner alleges that

beside himself, only four (4) other people within Rabobank's Corporate Finance Group, could possibly have had access to and the capability of divulging all of the information and documentation pertaining to all of the transactions that Petitioner had submitted to the IRS. One of these four (4) individuals served as in-house counsel to the bank and would be violating his attorney-client privilege and duty of confidentiality if he were the source of the information; the other three (3) were managing directors and/or tax specialists who together planned, initiated, and executed the improper transactions at issue.

(q) It is incomprehensible that these purported "other sources" of information on these specific, multiple claims involving potentially one and a half (1 ½) billion dollars or more, were unknown to the Program Manager until four and a half (4½) years after Petitioner had filed his claims; but the fact that "other sources" of information may or may not have existed is not the legal test for an award under the whistleblower statute. Rather, the test is (1) whether the IRS initiated an administrative action(s) based on Petitioner's submission, and (2) whether the IRS collected tax or other amounts based on the administrative action that was undertaken. The answer to both of these questions, we allege, is "yes."

(r) Petitioner furnished detailed, non-public roadmaps and smoking guns to the IRS without which the IRS would never have made the collections of the taxes, interest, penalties and other amounts that they have received. The Petitioner stands on the allegations set forth in his counsel's letter to Director Whitlock in the letter dated November 7, 2011, previously attached hereto as Exhibit 1(a).

(s) Petitioner alleges that the IRS has collected hundreds of millions of dollars from at least Cardinal Health, General Mills, and/or Newell Rubbermaid based upon Petitioner's submission. Petitioner further alleges, on information and belief, that the IRS has also collected, or will be collecting, substantial sums from Rabobank for its activities as promoter of these unlawful tax schemes, as well as for restitution, disgorgement of profits, and civil fines. Petitioner further alleges, upon information and belief, that investigations of the other transactions identified by Petitioner are either ongoing or have been favorably concluded. Petitioner alleges that he is entitled to know the true status of all of his claims, the bases for the initiation of any and all administrative or judicial actions on those claims, and the results or prospects of all these actions.

PRAYER FOR RELIEF

Wherefore, premises considered, your Petitioner prays for the following relief:

1. That the Petitioner be given the widest possible berth of discovery permitted by the rules of this court, subject to such protective orders and limitations as the court may deem just and proper;

2. That upon the Petitioner's proof at trial that (a) administrative or judicial actions were initiated by the IRS based upon Petitioner's submission, and that (b) taxes, penalties, interest or other amounts were collected by the IRS as the result of such actions, this court reverse the adverse determination of the Whistleblower Office and award Petitioner such amounts and in such percentages as the facts and equities warrant under the whistleblower statute; and

3. That the Petitioner be granted such other relief, both general and special, as the court deems just and proper, and as justice may require.

Respectfully submitted,

Joseph A. Insinga, Petitioner,

By his counsel,

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