



Whistleblower Office

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, DC 20224

June 7, 2012

Control Number: WO -25-0612-01

Expires Date: June 7, 2013

Impacted IRM: 25.2.2

MEMORANDUM FOR DISTRIBUTION FOR WHISTLEBLOWER OFFICE EMPLOYEES

FROM: STEPHEN WHITLOCK *Stephen Whitlock*
Director, Whistleblower Office

SUBJECT: Updates to Internal Revenue Manual (IRM) 25.2.2 Information and Whistleblower Awards, Whistleblower Awards

This guidance will be effective August 1, 2012. We have delayed the effective date to August 1, 2012 to allow for public comment. This interim guidance memorandum is being issued to communicate changes to procedures for collected proceeds, corresponding with the whistleblower and the representative, confirming that the representation has been terminated, timing of award determination, processing of Form 211 Claim for Award, Award Computation, and Funding Awards. The impacted IRM sections will be updated to reflect these corrections.

The following sections of IRM 25.2.2 will be re-written as outlined in the attachment to this Interim Guidance Memorandum:

IRM 25.2.2.1

IRM 25.2.2.3

IRM 25.2.2.6 – (20) **New, Renumbered** (20)-(25)

IRM 25.2.2.7 – (19) & (22) **New, Renumbered** (19)-(21)

IRM 25.2.2.9 – **Renamed** Whistleblower Withholding Program (in separate Interim Guidance)

Renumbered:

IRM 25.2.2.9. – 25.2.2.14 – All referenced sections are renumbered due to new procedures added.

If you have any questions, please contact C. Stuart, Senior Management & Program Analyst at 631-447-4862. Comments can be forwarded to WO@irs.gov; please put control number above in the subject line.

Attachment:

Distribution:
www.irs.gov

25.2.2.1 (08-01-2012)

Overview: Authority and Policy

(3) The IRS has generally referred to persons who submit information under section 7623 as “informants” and referred to the program as the “Informant Claims Program.” The IRS has also referred to such persons as “claimants” in published guidance, and the law now refers to the “Whistleblower Office” and “whistleblower program.” Accordingly, the terms “claimant” and “whistleblower” will be used in this IRM except where the term “informant” appears in an office title or published document. However, no legal significance should be inferred based solely on the use of these terms in this IRM.

Will be changed to read:

(3) The IRS has generally referred to persons who submit information under section 7623 as “informants” and referred to the program as the “Informant Claims Program.” The IRS has also referred to such persons as “claimants” in published guidance, and the law now refers to the “Whistleblower Office” and “whistleblower program.” Accordingly, the terms “claimant” and “whistleblower” will be used in this IRM except where the term “informant” appears in a published document. However, no legal significance should be inferred based solely on the use of these terms in this IRM. Effective January 1, 2012, the Informant Claims Examination (ICE) Unit, has been reassigned to the Whistleblower Office and will be referred to as Whistleblower Office-Ogden (WO-Ogden).

(7) Collected proceeds are the monies the Service obtains directly from a taxpayer(s) which are based upon the information the whistleblower has provided. Award claims may not be paid under 7623(a) or (b) which are based on information which leads to the denial of a claim for refund which otherwise would have been paid. Criminal fines, which must be deposited into the Victims of Crime Fund, cannot be used for payment of whistleblower awards. Awards may not be paid on the taxpayer(s) liabilities satisfied by the reduction of a credit balance as monies are not obtained based on the information the whistleblower provided.

Will be changed to read:

(7) Collected proceeds include: tax, penalties, interest, additions to tax, and additional amounts collected by reason of the information provided; 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 a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided.

The terms proceeds of amounts collected by reason of the information provided and collected proceeds resulting from the action (including any related actions) or from any settlement in response to such action (collectively collected proceeds) include: tax, penalties, interest, additions to tax, and additional amounts collected because of the information provided; 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 a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided.

Refund netting. If any portion of a claim for refund that is substantively unrelated to the information provided is (1) allowed and (2) 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.

Example. The provisions of the preceding paragraph may be illustrated by the following example:

Information provided to the IRS by an individual identifies a corporate taxpayer (Corporation), describes and documents specific facts relating to Corporation's activities, and, based on those facts, alleges that Corporation owed additional taxes. Based on the information provided by the individual, the IRS proceeds with an examination of Corporation and determines adjustments that would result in an unpaid tax liability of \$500,000. During the examination, Corporation informally claims a refund of \$400,000 based on adjustments to items of income and expense that are wholly unrelated to the information provided by the individual. The IRS agrees to the unrelated adjustments. The IRS nets the adjustments and determines a tax deficiency of \$100,000. Thereafter, Corporation makes full payment of the \$100,000 deficiency. Collected proceeds include the \$400,000 informally claimed as a refund and netted against the adjustments attributable to the information provided, as well as the \$100,000 paid by Corporation.

25.2.2.3 (08-01-2012)

Submission of Information for Award under Sections 7623(a) or (b)

(6) A whistleblower may be represented by an authorized representative during any proceeding by filing a properly executed Form 2848, *Power of Attorney*. Service personnel should not forward the Form 2848 to the Centralized Authorization File (CAF) if the Power of Attorney is for the whistleblower claim.

Will be changed to read:

(6) A whistleblower may be represented by an authorized representative during any proceeding by filing a properly executed Form 2848, *Power of Attorney*. Service personnel should not forward the Form 2848 to the Centralized Authorization File (CAF) if the Power of Attorney is for the whistleblower claim.

- a. A whistleblower may revoke an authorization, and a representative may withdraw from representation, provided that the revocation or withdrawal is in writing, clearly identifies the claim or claims affected by the revocation or withdrawal, and is signed and dated.
- b. The Whistleblower Office will send correspondence to the whistleblower and the representative confirming that the representation has been terminated.

25.2.2.6(14) (08-01-2012)

Processing of the Form 211 7623(a) Claim for Award and 25.2.2.7(16) Processing of the Form 211 7623(b) Claim for Award

m. Any information that reflects any negative actions by the whistleblower taken during the examination.

Will be changed to read:

m. Any information that reflects actions by the whistleblower that may have had a negative impact on the Service's ability to examine the taxpayer(s).

25.2.2.6 (08-01-2012)

Processing of the Form 211 7623(a) Claim for Award

(20) Timing of award determination (New)

General rule: Whistleblower Office evaluation of information regarding an award or the amount of an award may begin when a Form 11369 is submitted to the Whistleblower Office. Tentative conclusions should be documented and reviewed by a Whistleblower Office manager, even though they are subject to revision as additional information becomes available. A final Whistleblower Office determination regarding an award or the amount of an award is not made until proceeds resulting from the action(s) have been collected and either the statutory period for filing a claim for refund has expired or there is an agreement between the taxpayer and the IRS that there has been a final determination of tax for the specific period and the taxpayer has waived the right to file a claim for refund.

For example, the documentation submitted by a revenue agent with a Form 11369 should be reviewed when provided to the Whistleblower Office, and any additional supporting documentation should be obtained, even if the file indicates that the taxpayer has not agreed at the examination level.

When a whistleblower submission relates to multiple actions, a final Whistleblower Office determination regarding an award or the amount of an award may be made with respect to a portion of the submission before all actions are resolved with finality, provided:

1. The statutory period for filing a claim for refund has expired or there is an agreement between the taxpayer and the IRS that there has been a final determination of tax for the specific period and the right to file a claim for refund has been waived with respect to some of the actions that are within the scope of the submission ("completed actions");
2. The resolution of other actions cannot affect the liability and proceeds related to the "completed actions";
3. An award determination on the "completed actions" does not put at risk the whistleblower's potential appeal rights (e.g., amount in dispute on "completed actions" is less than \$2 million, but there is a reasonable possibility that additional IRS actions could raise the aggregate collected proceeds to more than \$2 million);

4. The resolution of other actions is not expected to occur within 12 months; and
5. The expected award payment related to the “completed actions” exceeds \$50,000.

The Whistleblower Office may consider other factors related to efficient administration in determining the timing of payments. For example, when a submission involves hundreds or thousands of taxpayers, it may be appropriate to make payments on “completed actions” on an annual or other basis.

Renumbered (20) to (21)

Renumbered (21) to (22)

Renumbered (22) to (23)

(23) After the taxpayer has paid the amount due and any refund statute is expired, the ICE Unit will calculate the award payment and return the complete claim file and award calculation to the Whistleblower Office. The award is calculated on tax and penalties for Forms 211 received before December 20, 2006 following the policy in effect at that time (except for refund protection claims and criminal fines). Calculations for awards received after December 20, 2006 and before July 1, 2010 are computed on tax, penalties and interest following the policy in effect during that period. Award for Forms 211 for 7623(a) claims received after July 1, 2010 will be calculated based on the procedures in IRM 25.2.2.9.2 below.

Will be changed to read: **Renumbered** (23) to (24)

(24) After the taxpayer has paid the amount due and any refund statute is expired, the ICE Unit will calculate the award payment and return the complete claim file and award calculation to the Whistleblower Office. The award is calculated on tax and penalties for Forms 211 received before December 20, 2006 following the policy in effect at that time (except for criminal fines). Calculations for awards received after December 20, 2006 and before July 1, 2010 are computed on tax, penalties and interest following the policy in effect during that period. Award for Forms 211 for 7623(a) claims received after July 1, 2010 will be calculated based on the procedures in IRM 25.2.2.9.2 below.

Renumbered (24) to (25)

Renumbered (25) to (26)

25.2.2.7 (08-01-2012) New **Processing of the Form 211 7623(b) Claim for Award**

(19) Timing of award determination (New)

General rule: Whistleblower Office evaluation of information regarding an award or the amount of an award may begin when a Form 11369 is submitted to the Whistleblower Office. Tentative conclusions should be documented and reviewed by a Whistleblower Office manager, even though they are subject to revision as additional information becomes available. A final Whistleblower Office determination regarding an award or the amount of an award is not made until proceeds resulting from the action(s) have been collected and either the statutory period for filing a claim for refund has expired or there is an agreement between the taxpayer and the IRS that there has been a final determination of tax for the specific period and the taxpayer has waived the right to file a claim for refund.

For example, the documentation submitted by a revenue agent with a Form 11369 should be reviewed when provided to the Whistleblower Office, and any additional supporting documentation should be obtained, even if the file indicates that the taxpayer has not agreed at the examination level.

When a whistleblower submission relates to multiple actions, a final Whistleblower Office determination regarding an award or the amount of an award may be made with respect to a portion of the submission before all actions are resolved with finality, provided:

1. The statutory period for filing a claim for refund has expired or there is an agreement between the taxpayer and the IRS that there has been a final determination of tax for the specific period and the right to file a claim for refund has been waived with respect to some of the actions that are within the scope of the submission (“completed actions”);
2. The resolution of other actions cannot affect the liability and proceeds related to the “completed actions”;
3. An award determination on the “completed actions” does not put at risk the whistleblower’s potential appeal rights (e.g., amount in dispute on “completed actions” is less than \$2 million, but there is a reasonable possibility that additional IRS actions could raise the aggregate collected proceeds to more than \$2 million);
4. The resolution of other actions is not expected to occur within 12 months; and
5. The expected award payment related to the “completed actions” exceeds \$50,000.

The Whistleblower Office may consider other factors related to efficient administration in determining the timing of payments. For example, when a submission involves hundreds or thousands of taxpayers, it may be appropriate to make payments on “completed actions” on an annual or other basis.

Renumbered (19) to (20)

Renumbered (20) to (21)

(22) Prior to authorizing release of the award check, the Whistleblower Analyst will:

- a. Research the whistleblower's account to confirm that the whistleblower has filed required returns and satisfied all tax liabilities for the previous 3 years.
- b. If the whistleblower has not filed returns or has outstanding tax liabilities, then the whistleblower will be contacted to determine why he/she has not filed the returns or paid the tax liabilities and/or the matter will be referred to the appropriate enforcement function.
- c. Award payments will first be used to offset any unpaid tax liabilities owed by the whistleblower.

25.2.2.10 (08-01-2012)

Award Computation

(1) Effective July 1, 2008, the Director of the Whistleblower Office assumed the responsibility for all award determinations and percentages. Claims will be considered under the law and policies in place at the time the information was submitted with exceptions relating to payment of refund protection claims and criminal fines. (See 25.2.2.12 Funding Awards) Supplemental information will not be considered as a new claim unless its receipt prompts the IRS to take an administrative or judicial action that would not otherwise have been taken on the basis of the earlier-supplied information.

Will be changed to read:

(1) Effective July 1, 2008, the Director of the Whistleblower Office assumed the responsibility for all award determinations and percentages. Claims will be considered under the law and policies in place at the time the information was submitted with one exception relating to criminal fines. (See 25.2.2.12 Funding Awards) Supplemental information will not be considered as a new claim unless its receipt prompts the IRS to take an administrative or judicial action that would not otherwise have been taken on the basis of the earlier-supplied information.

25.2.2.10.1 (08-01-2012)

Award Computation – Section 7623(a) Claims filed before July 1, 2010

(1) For award claims filed prior to December 20, 2006 (Exhibit 25.2.2-13) the award will be based on the policy in effect at the time the claim was filled, with one exception relating to payment of refund protection claims and criminal fines. Notwithstanding the policy in effect under Treasury Regulation 301.7623-1, claims based on information that prevents the IRS' payment of a refund claim are not eligible for an award under the whistleblower statute. If the whistleblower participated substantially in the actions that resulted in the underpayment of tax, the Whistleblower Office may deny an award.

Will be changed to read:

(1) For award claims filed prior to December 20, 2006 (Exhibit 25.2.2-13) the award will be based on the policy in effect at the time the claim was filled, with one exception relating to payment of criminal fines. If the whistleblower participated substantially in the actions that resulted in the underpayment of tax, the Whistleblower Office may deny an award.

25.2.2.10.2 (08-01-2012)

Award Computation – Section 7623(a) Claims filed on or after July 1, 2010 and Section 7623(b)

(1) For claims filed after December 20, 2006 where the amount in dispute exceeds \$2 million (and in the case of an individual taxpayer, the taxpayer had gross income exceeding \$200,000 for at least one taxable year in question), awards will be paid in proportion to the value of information furnished voluntarily with respect to proceeds collected, including taxes, penalties, interest, additions to tax and additional amounts. The amount of the award will be at least 15% but no more than 30% of the collected proceeds in claims filed in which the Whistleblower Office determines that the information submitted by the whistleblower substantially contributed to the IRS' detection and recovery of taxes, penalties, interest, additions to tax, and additional amounts.

Will be changed to read:

(1) For claims filed after December 20, 2006 where the amount in dispute exceeds \$2 million (and in the case of an individual taxpayer, the taxpayer had gross income exceeding \$200,000 for at least one taxable year in question), awards will be paid in proportion to the value of information furnished voluntarily with respect to collected proceeds. The amount of the award will be at least 15% but no more than 30% of the collected proceeds in claims filed in which the Whistleblower Office determines that the information submitted by the whistleblower substantially contributed to the IRS' detection and recovery of collected proceeds.

25.2.2.10.2 (08-01-2012)

Award Computation – Section 7623(a) Claims filed on or after July 1, 2010 and Section 7623(b)

(5) The starting point for the Whistleblower's analysis will be the statutory minimum of 15 percent of collected proceeds. The Whistleblower Office will apply the factors noted below to the facts of a case to determine whether the case merits a larger award percentage. The factors are described as positive or negative factors, but the analysis may not be reduced to a single mathematical equation. The factors are not exclusive and not weighed. In the particular circumstances of a case, one factor may out-weigh several others and result in a unique or exceptional award determination. Negative factors can offset positive factors, but cannot result in an award that is less than the statutory minimum. The absence of negative factors does not mean that the award percentage will be larger than 15%. The

Whistleblower Office will determine awards of 15%, 18%, 22%, 26% or 30%. The Whistleblower Office will begin its analysis at the starting point of 15%. The Whistleblower Office may increase the award percentage based on its analysis of the presence and significance of positive factors and may decrease that enhanced award percentage based on its analysis of the presence and significance of negative factors.

Will be changed to read:

(5) The starting point for the Whistleblower Office's analysis will be the statutory minimum of 15 percent of collected proceeds. The Whistleblower Office will apply the factors noted below to the facts of a case to determine whether the case merits a larger award percentage. First, the Whistleblower Office may increase the award percentage to 22% or 30% based on its analysis of the presence and significance of positive factors. Then, the Whistleblower Office may decrease that enhanced award percentage based on its analysis of the presence and significance of negative factors. Using this approach, the Whistleblower Office will determine awards, as a percentage of collected proceeds, of 15%, 18%, 22%, 26% or 30%. The factors are described as positive or negative factors, but the analysis may not be reduced to a single mathematical equation. The factors are not exclusive and not weighed. In the particular circumstances of a case, one factor may out-weigh several others and result in a unique or exceptional award determination. Negative factors can offset positive factors, but cannot result in an award that is less than the statutory minimum. The absence of negative factors does not mean that the award percentage will be larger than 15%.

25.2.2.13 (08-01-2012)

Funding Awards

(1) "Collected proceeds" are the monies the IRS obtains directly from a taxpayer which are based upon the information the whistleblower has provided. Satisfaction of taxpayers' liabilities by reducing a credit balance is not within the scope of collected proceeds.

Will be changed to read:

(1) Collected proceeds include: tax, penalties, interest, additions to tax, and additional amounts collected by reason of the information provided; 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 a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided.

(2) **For claims filed prior to December 20, 2006**, whistleblower awards are paid out of taxes and penalties, collected by reason of the information provided. The law in effect prior to December 20, 2006, excluded interest from award calculations.

(3) **For claims filed after December 20, 2006**, awards are paid out of the collected proceeds.

25.2.2.13 (08-01-2012)
Funding Awards

(8) Refund Protection: Claims may not be paid under 7623(a) or (b) which are based on information which leads to the denial of a claim for refund which otherwise would have been paid.

Will be deleted in its entirety.

(9) Criminal Fines: Criminal fines, which must be deposited into the Victims of Crime Fund, cannot be used for payment of whistleblower awards.

Will be renumbered (8).

Exhibit 25.2.2-4 (08-01-2012)
Debriefing Checksheet

9. TAXABILITY OF PAYMENTS: The informant was advised that all awards are taxable and (considered to be US sourced income) and should be reported on his/her individual income tax OR in accordance with treaty regulations.

Will be changed to read:

9. TAXABILITY OF PAYMENTS: The informant was advised that all awards are taxable income. U.S. citizens and U.S. residents should be advised that taxes will be withheld, and that the entire amount of the award should be reported on his/her individual income tax return. Nonresident aliens should be advised that awards should be reported and taxes will be withheld unless exempted by a U.S. income tax treaty.

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