



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

July 16, 2012

The Honorable Charles E. Grassley
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This letter responds to your letter dated June 21, 2012, regarding the Whistleblower Program. You inquired about several issues related to this program and the response I provided on June 15.

You inquired regarding information on when IRS Senior Executives or I have conveyed the importance of the Whistleblower Program. Similar to other agency priorities, the importance of the program is evident by the attention received from all IRS senior management. The Director of the Whistleblower Office is a member of the IRS' Senior Executive Team (SET). This group is comprised of the agency's most senior executives and the leaders of all major programs. The SET meets monthly to discuss major issues faced by the agency and by each function. The SET also meets periodically for longer sessions to discuss strategic priorities and challenges. Whistleblower priorities and issues are discussed at these meetings. Similar to the heads of each operating division, the Whistleblower Office Director is an integral part of this team. In addition to discussions with the Senior Executive Team, whistleblower issues are also discussed in weekly Services and Enforcement Senior Executive meetings.

With respect to training, as illustrated in the attachment to my prior response, IRS employees who may encounter whistleblower information are appropriately trained on whistleblower issues. Given the size of the agency, it is not practical, nor appropriate to train all employees on all substantive issues, but all employees who encounter whistleblower cases and IRS Senior executives are educated on whistleblower office issues and priorities.

You also inquired about the roles of the Executive Board and the Operations Committee. The Whistleblower Executive Board is chaired by the Director of the Whistleblower Office and its members include: the Assistant Deputy Commissioner for Services and Enforcement, the Deputy Commissioners of the Large Business and International (LB&I) Division and the Small Business/Self-Employed (SB/SE) Division, the Deputy Chief of Criminal Investigation, and Division Counsels for LB&I and SB/SE. The Whistleblower Operations Committee is chaired by the Program Manager, Case

Development of the Whistleblower Office and its members include senior managers from LB&I, SB/SE, the Whistleblower Office and CI.

Both the Executive Board and the Operations Committee serve as forums for coordination and consultation among the Operating Divisions, CI, and the Whistleblower Office to set priorities for program guidance; vet policy proposals; and share information about program developments. The Executive Board is a coordination and consulting group and does not vote. The Executive Board will also receive briefings on major or precedent setting award determinations to provide input to the Director of the Whistleblower Office. The Operations Committee receives briefings on significant case issues and litigation, may identify issues that warrant executive level attention, and may make recommendations to the Executive Board. The Operations Committee also receives briefings on proposed and final award determinations under 26 U.S.C. section 7623(b) before they are communicated to a whistleblower and may offer advice or comments to the Director of the Whistleblower Office. It should be noted that the Whistleblower Office prepares award recommendations and in the case of award determination briefings, both the Executive Board and the Operations Committee provide advice and input, but their concurrence is not required.

The Executive Board meets subject to the call of the Chair. The Operations Committee meets monthly unless there is nothing for the Committee to address. It should be noted that award briefings to either the Executive Board and/or the Operations Committee will be completed within the 90 day time period allocated to the Whistleblower Office for making award determinations as set forth in the IRS Whistleblower Office Field Directive dated June 20, 2012.

You inquired about the number of claims presented to the Executive Board. A total of three section 7623(b) awards have been presented to the Executive Board and/or Operations Committee.

You also inquired about the Operations Committee meeting scheduled for June 19, 2012. That meeting was rescheduled (due to the illness of a key participant) and held on June 26, 2012. There were no award cases on the Operations Committee agenda for the June meeting.

The presentations of cases to the Operations Committee and/or the Executive Board have not delayed the payment of awards to date. With respect to future awards, the 90 day review of claims by the Whistleblower Office included in the recent directive includes notification to these bodies.

I understand your frustration with what may appear to be a relatively low number of payouts of section 7623(b) claims. Administrative issues with respect to processing payment of claims are not meaningfully delaying payout of claims that the law otherwise

allows the IRS to pay. As you are aware, even after an examination is concluded, there are a number of procedural legal hurdles that must be overcome before the law allows payout of a whistleblower claim. For example, after an examination is concluded, taxpayers are legally afforded appeals and judicial rights which can consume significant time periods. In addition, collection issues must be resolved and the statute of limitations on refunds must be exhausted. The most recent awards that the IRS paid were generated from claims that came in shortly after creation of the section 7623(b) program. With respect to the payments made to date, awards have generally been paid within three months of resolution of legal issues. As discussed above, this includes notification to the Operations Committee or Executive Board. I would also note in answer to your staff inquiry, there are no current awards for which payment is being delayed because of issues to be addressed in the proposed regulations.

As you are aware, we have taken a number of recent steps to ensure more timely processing of cases in their initial stages. The expected improvements in processing times should be reflected in payments made in the future.

With respect to your questions regarding the various categories of claims, as stated in our prior responses, the tables included by GAO cannot be created via current data systems, but require manual effort to extract and compile from an information system that was not designed to collect and report the information as presented. As previously mentioned, we are taking actions to improve our ability to collect and accurately report this information in a timely manner. After these improvements are made, we expect to be able to provide a more accurate view into the status of claims.

From conversations with your staff, we understand that you are interested in the number of near-term award payments. None of the current categories, which can include eventual denials, were intended to isolate that figure. Claims move in and out of categories as cases progress. In addition, our system constraints make it difficult to determine precisely what category is appropriate as claim status is entered manually by analysts working on a particular case. To illustrate, when an analyst is performing a review and calculating an initial award percentage, the claim may be moved into the "Award Evaluation" or "Form 11369 Review" status, and then moved to the "Cases Suspended" status while waiting for collection to be completed or for the two year refund statute to expire. In addition, because multiple claims are combined into single award payments, the number of claims presented in any category could correspond to fewer awards.

Going forward, the Whistleblower Office will separately report the number of awards that are very near to or at the expiration of the two year refund statute (or otherwise in a posture in which payout is legally permitted in the near future). Currently, the number of payouts that can be characterized in this manner is three. We are also working to provide more detail into the numerous sub-categories of cases included in the "Case

Suspended" status to more accurately report the status of claims and are making additional improvements to our data capture system.

With respect to the additional information sought by your staff, the Whistleblower Office has informed me of the following information. The Whistleblower Office is monitoring over 60 claims for which business operating division field work has concluded that may result in future section 7623(b) awards. The actual number of awards cannot be projected and will depend on a number of factors including whether the taxpayer pursues appeals and judicial rights, whether and when the taxpayer makes full payment of the tax assessed, the expiration of the two-year refund statute, and possible consolidation of related cases into a single award payment. Approximately half of the claims are currently in Appeals. In addition, there are a number of claims for which collection action is not complete, so no determination can be made regarding the date when the refund claim statute of limitations will expire. As discussed above, the Whistleblower Office is currently working on award payment determinations on three claims. There are seven claims with refund statute of limitations expiration dates in FY2013, and two with refund statute of limitations expiration dates in FY2014. The actual number of awards could differ from these figures depending on actions in Appeals, collection and the Tax Court.

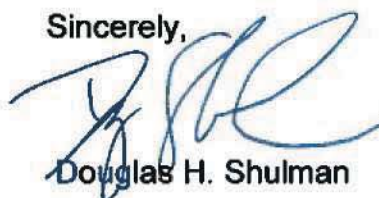
Note that these figures do not include the significant payouts that we continue to make under section 7623(a). To date this fiscal year, the Whistleblower Office has approved over 90 awards under section 7623(a).

I understand that the Department of Treasury will be responding to your questions regarding guidance. With respect to question 16, enclosed is the Office of Chief Counsel memorandum on the issue.

The IRS recognizes the value of the Whistleblower program as we continue to make a number of improvements to ensure its success.

I hope this information is helpful. If you have any questions, please contact me or have your staff contact Cathy Barre at (202) 622-3720.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Shulman', is written over the typed name.

Douglas H. Shulman

Enclosure