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March 24, 2011

VIA ELECTRONIC MAIL

CC:PA:LPD:PR (REG-131151-10)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044.

Re: Comments to Proposed Treas. Reg. § 301.7623-1 and Request for Public Hearing

Dear Sir or Madam:

The Treasury Department and the IRS have requested public comments as to how the proposed regulations (Treas. Reg. § 301.7623-1) can be made easier to understand. Such comments are due on or about April 18, 2011.

The following comments are being provided for the purpose of providing needed guidance to the general public as well as officers and employees of the IRS who review claims under section 7623. These comments are made with the view that Whistleblower and the IRS are on the same team with the same goals (enforcement of the Internal Revenue Code resulting in the assessment and collection of tax penalties, interest and additions to tax). Therefore, the enclosed comments are intended to provide clarification to I.R.C. § 7623 in order to reduce future litigation between the Whistleblower and the IRS. Setting out clear rules will result in Effective Tax Administration and ultimately promote the Tax Whistleblower Program so as to ensure its continued success in the future. To the extent the enclosed comments, as suggested, are not adopted in finalizing the regulations, it is suggested that the regulations should reflect this fact so that the rules and regulations set out the position of the IRS to all parties with respect to the Tax Whistleblower Program.

These suggested comments are made with the thought that the IRS and Congress fully support the Tax Whistleblower Program and wish to continue to send this message (IRS and Congressional support of the program) to potential Whistleblowers as well as Taxpayers.

The comments attached are to clarify and expand terms included within I.R.C. § 7623 as follows:

1. Expand the term, "collected proceeds," to include the fair market value of tax benefits from another year applied to the years at issue.
2. Clarify the term, "collected proceeds," to include monies received from ancillary issues, ancillary taxpayers, and ancillary tax years which are then "aggregated"

- for purposes of determining if the \$2,000,000 threshold of I.R.C. § 7623(b) is met.
3. In limited cases expand the term, “collected proceeds,” to include monies received from assessment and collection of tax as to future years, and not solely to past years.
 4. To require mandatory partial payments of awards at a pre-determined, regularly occurring interval (i.e. annually, quarterly, etc.) in all cases based upon a portion of the collected proceeds received by the IRS.
 5. To require the payment of interest (i.e. the time value of money) measured from the time period beginning upon payment by the taxpayer until the time the award is paid by the IRS to the Whistleblower.
 6. Tax, penalties, interest and additions to tax should be defined in the Regulations to include all tax, penalties, interest and additions to tax pursuant to United States Code Title 18 (Crimes and Criminal Procedures) and Title 26 (Internal Revenue Code) unless specifically excluded by the Regulations.
 7. To clarify the requirement that information/documentation must be submitted under penalties of perjury for purposes of determining an award.
 8. To clarify when an “administrative action” begins pursuant to I.R.C. § 7623.
 9. To allow for the “irrevocable assignment” of a Whistleblower Claim or a portion thereof.
 10. Communication with the Whistleblower will be to the address provided on Form 211, or as updated.

In addition to the proposed comments as stated above, I have provided other potential procedural changes that will provide clarification to the program and potentially shorten the time that an award can be determined and paid under the Program. These suggested changes may be addressed in additional Regulations, amendments to the Internal Revenue Code or changes to the Internal Revenue Manual.

The Addendum to Comments of Proposed Regulations concerns, *inter alia*, shortening the time in which to determine an Award as well other considerations in making a Determination of an Award includes the following:

- A. Election to Opt out of IRS procedures to Protect Whistleblower’s Identity.
- B. The IRS shall use the Whistleblower as a Factual/Legal Expert with respect to its examination in order to increase effective tax administration by shortening the examination time and/or potentially increasing the assessment of tax, penalties, interest and additions to tax.
- C. The IRS Should Obtain A Waiver From The Taxpayer Of Its Right To Claim a Refund In All Cases For Which It Reaches A Settlement With The Taxpayer.
- D. Expansion of Other Factors to consider in determining an Award.

I would like to request a public hearing to discuss the enclosed comments to the proposed regulations. In addition, I am available to discuss these comments on an informal basis. Also, I would like to volunteer for any discussion panel or groups involving IRS personnel and attorneys specializing in tax whistleblower matters that may be created in the future.

Should you have any questions or wish to discuss the matter further, please feel free to contact me. I may be contacted at 1-877-404-1040 or on my cell phone 314-795-7800.

Thank you.

Sincerely,

/s/ Thomas C. Pliske

Thomas C. Pliske

Enclosures: As stated above.

COMMENT #1

“Collected proceeds” must be further defined beyond the proposed regulations to include tax benefits used to pay the tax liability.

Issue

Does “collected proceeds” only include “monies” received from the assessment of tax, interest, penalties and additions to tax, as well as “monies” not paid with respect to an improper claim for refund, or should “collected proceeds” for purposes of determining an award be expanded, or clarified, to include a reduction of the taxpayer’s tax liability from the use of a valuable “tax benefit” from another year?

Discussion

A reading of the proposed regulations does not take into consideration the complexity of the Internal Revenue Code. For instance, should “collected proceeds” include in its definition the value of a net operating loss (“NOL”) carried back to the violating Taxpayer’s tax year (as reported by the Whistleblower) to reduce the Taxpayer’s assessed tax. In such a situation, the NOL could be carried forward or carried back to the Taxpayer’s tax year (as reported by the Whistleblower) and used to reduce the assessed tax (as proposed by the present definition of collected proceeds). The use of a NOL carryback (tax benefits) to the Taxpayer’s tax years at issue (and as reported by the Whistleblower) would result in a reduced tax assessment or no assessment at all.

The use of a tax benefit (i.e. an NOL) to offset an increase of taxable income which would generate “collected proceeds” (as currently defined) certainly has a monetary value. However, if the tax benefit reduces the assessed tax liability, including additions, (not simply the collection of tax) in the Taxpayer’s tax year for which the Whistleblower provided information, then it appears that the Whistleblower is denied an award or a portion of the award for which the Taxpayer would have otherwise been required to pay a tax liability, or addition to tax, but for the use of the tax benefit.

Congress could not have intended for this result in the case in which a Whistleblower assists the IRS to assess and collect tax, but due to the use of a tax benefit from another year not at issue, there is reduced or no assessment of tax, and therefore no collection of tax, with respect to the Taxpayer’s years for which the Whistleblower provided the specific and credible information. Alternatively, if an NOL wasn’t carried back to the Taxpayer’s tax year at issue, it could be carried forward and reduce future tax liability and the payment of future taxes. In such a situation, the Whistleblower’s information may not have had a direct impact on the assessment and/or collection of taxes as to the years for which the Whistleblower provided information, but only an indirect impact by affecting future years’ assessment. As a result, the IRS/United States benefitted from the Whistleblower’s information even though no money was collected and no (or reduced) assessment was made as to the years for which the Whistleblower provided information.

All individuals familiar with the tax laws are aware that all tax benefits have some monetary value. The award computed under I.R.C. § 7623 should take into account the use of certain

tax benefits in defining the term “collected proceeds” and in calculating the amount of the “collected proceeds” a portion of which should be paid to the Whistleblower as an award.

Conclusion

The definition of “collected proceeds” should be expanded to include direct and indirect tax benefits to the administration of the tax system if it results in the use of a valuable tax benefit in the computation of tax and should not be limited solely to monies collected.

Suggested Proposed Regulation

§301.7623-1 Rewards and awards for information relating to violations of internal revenue laws.

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(3) Proceeds of amounts collected and collected proceeds. for purposes of section 7623 and this section is further defined as including the fair market value of certain tax benefits that may be applied to reduce the assessment of tax, and hence monies received, with respect to the years for which information was provided by the Whistleblower that would have otherwise been assessed except for the use of such tax benefits. Accordingly, the term “collected proceeds” shall include the value of certain tax benefits only if such tax benefits are from another tax year and are being applied to the years for which the Whistleblower provided information and/or could otherwise be used to reduce the assessment of tax in years before or after the years for which the Whistleblower provided such information. Examples of tax benefits for which this section applies, includes, but is not limited to, net operating losses, investment income expense, tax credits.

COMMENT #2

The proposed regulations' definition of "Collected proceeds" must be expanded to include monies received with respect to "ancillary" (i) issues, (ii) years and (iii) taxpayers based upon information provided by the Whistleblower that leads to the determination, assessment and collection of tax, interest, penalties and additions to tax.

Issue

Should the definition of "collected proceeds" include monies collected with respect to the assessment of tax, penalty, interest, and additions as to "ancillary years" (years beyond the Taxpayer's tax year for which the Whistleblower is providing information, up to the current year), "ancillary issues" and "ancillary taxpayers" for which tax, interest, penalties and additions to tax have been assessed/collected due to information that has been provided by the Whistleblower?

Additionally, should the definition of "collected proceeds" be expanded to include an aggregate of issues, tax years or taxpayers in determining whether the case meets the \$2,000,000 threshold for acceptance as a Whistleblower claim?

Discussion

A Whistleblower often provides information with respect to a particular taxpayer or group of taxpayers identifying the years and issues for which there is an underpayment of tax. The information often leads to the determination and assessment of tax with respect to other years. For instance, the information provided may be an ongoing issue for which the information is simply provided years immediately preceding the submission of the claim. However it may be several years before the IRS completes the examination pursuant to the information provided by the Whistleblower. The IRS may, based upon information either provided in the initial submission by the Whistleblower or discovered during the audit, open the subsequent years for examination based upon the same issues that the Whistleblower originally provided information. Collected proceeds should be defined as monies collected with respect to the **ancillary years** for which the Whistleblower provided information or for which the IRS determined in its examination with respect to the same issue and taxpayer for which the Whistleblower originally provided information.

Collected proceeds should include the monies collected for tax, penalty interest and additions to tax with respect to the assessment of **ancillary taxpayers** with respect to the Whistleblower's original claim or determined due to the IRS examination. Often Whistleblowers will provide information with respect to a group of taxpayers such as an LLC that underreported the taxable income for which it files a partnership tax return. The IRS should aggregate the collected proceeds from such **ancillary and related taxpayers** for purposes of determining whether the case meets the \$2,000,000 threshold of I.R.C. § 7623(b).

In addition, if the taxpayers are unrelated, as in the situation for which the Whistleblower provides information that leads to the identification of multiple taxpayers, such as, but not limited to an industry wide issue involving multiple taxpayers or a tax shelter promoter for

which the IRS identified multiple taxpayers based upon the information provided, then collected proceeds includes the tax, interest, penalties and additions to tax that is collected based upon an examination by the IRS leading to the assessment of tax, penalties, interest and additions to tax of ancillary (i.e. multiple) unrelated taxpayers. In such a situation, the definition of “collected proceeds” should include an aggregate of the ancillary and unrelated taxpayers’ tax liability in determining whether the Whistleblower claim meets the \$2,000,000 threshold of I.R.C. § 7623(b).

Currently the IRS is assigning a Claim Number to each particular taxpayer for which a Claim is submitted by the Whistleblower. Although it is unknown at this time, the amount collected per taxpayer, when a claim is divided into multiple taxpayers (i.e. a partnership) may allow the IRS to classify the Whistleblower Claim under I.R.C. § 7623(a) rather than I.R.C. § 7623(b) thereby minimizing the award to the Whistleblower to an amount solely within the IRS discretion. The amount collected for the ancillary tax years, ancillary tax issues and ancillary taxpayers **must** be aggregated for purposes of making a determination of the award in order to promote the whistleblower program and to increase effective tax administration.

Collected proceeds should include the monies collected for tax, penalty, interest and additions to tax with respect to the assessment of **ancillary issues** with respect to the Whistleblower’s original claim and as might be determined due to the IRS examination of such taxpayer and tax years. Often a Whistleblower may provide information with respect to a tax issue of a particular taxpayer(s) and tax years, but due to the Whistleblower’s information and examination by the IRS, other issues result in the assessment of tax that are directly or indirectly related to the issue provided by the Whistleblower in his original claim.

Conclusion

The definition of “collected proceeds” should be expanded to included monies collected with respect to the assessment of tax, penalties, interest and additions to tax for ancillary years, ancillary taxpayers and ancillary tax issues. In all such cases, the collected proceeds should be aggregated to determine if the Whistleblower’s claim meets the \$2,000,000 threshold of I.R.C. § 7623(b).

Suggested Proposed Regulation

§301.7623-1 Rewards and awards for information relating to violations of internal revenue laws.

* * * * *

(4) Proceeds of amounts collected and collected proceeds for purposes of section 7623 and this section is further defined as incorporating this section with respect to the assessment of tax, penalties, interest and additions to tax with respect ancillary years, ancillary taxpayers and ancillary tax issues based upon the information that is provided by the Whistleblower. In all such cases, the collected proceeds are to be aggregated to determine if the Whistleblower's claim meets the \$2,000,000 threshold of I.R.C. § 7623(b).

COMMENT #3

In certain situations definition of “collected proceeds” as stated in the proposed regulations should be expanded to include monies received from the assessment of tax, penalties, interest and additions to tax in future years as opposed to simply past years.

Issue

Should the definition of “collected proceeds” be clarified to include monies received from the assessment of tax, penalties, interest and additions to tax in future years in certain situations for which the IRS has determined to forego the assessment of tax with respect to the past non-compliant tax years for which the Whistleblower’s Claim identified, but choose to obtain future compliance rather than past compliance under the Internal Revenue Code?

Discussion

The IRS Tax Whistleblower Program was initiated for purposes of rewarding those individuals that provide information that would assist the IRS in enforcing compliance with the Internal Revenue Code and result in additional tax being assessed and collected as a result of the information provided by the Whistleblower. The statute¹ was written to reward a Whistleblower for the information received based upon the “collected proceeds” from an **administrative** or judicial action taken by the IRS based upon such information. To date it has been presumed that “collected proceeds” only applies to past years. However, the statute is clear in that simply administrative action must be taken by the IRS that leads to the assessment and collection of tax.

The statute (I.R.C. § 7623) uses the term “administrative action” and does not limit the assessment of tax to years which are “examined” by the IRS and for which an assessment is made due to such an examination. I.R.C. § 7623 simply provides “administrative” action be taken. Administrative action is much broader than simply an examination. It might include entering into a closing agreement with the taxpayer or the issuance of a Notice or Regulations which would affect the assessment (likely a voluntary assessment as the taxpayer will comply with the law in the future) of tax and collection of the tax in the future. Clearly an Award that leads to the assessment and collection of tax in the future, in limited circumstances, should be made. In this complex area of tax law, there are some Whistleblower Claims in which administrative action is taken (see below) which results in “collected proceeds” for future tax years rather than the past tax years.

In special circumstances, the IRS may choose/elect to enforce future tax compliance as a result of the information provided by Whistleblowers rather than past compliance. In these rare cases, the IRS should make a determination a final determination of award based upon

¹ I.R.C. § 7623 (b) **Awards to Whistleblowers.**

(1) **In general.** If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary’s attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action.

the tax assessed and collected (i.e. collected proceeds) in future years based upon the information provided by the Whistleblower and for which the IRS took administrative or judicial action. In these situations the Regulations should provide an award to future period limited to perhaps the same number of years for which the IRS opted out of enforcement of past years (i.e. normal three years statute of limitations to make an assessment would suggest the award be based on three years of future compliance).

Administrative or judicial action may be taken by the IRS that results in forgiveness of past non-compliance in exchange for the assessment and compliance of tax laws in future years as reflected in the following scenarios:

Scenario #1 - IRS enters into a closing agreement with the taxpayer to comply with the law in the future and forgives (determines not to enforce) the taxpayer's past non-compliance of the law.

Example

A Whistleblower submits a claim with specific and credible information for which a taxpayer, a trucking company, treats its employees as independent contractors. Sufficient information is provided in the claim and a preliminary review of the facts by the IRS reflects that sufficient factors exist to support the Whistleblower's claim that the individuals were in fact employees and not independent contractors. In this situation the taxpayer failed to withhold and remit federal payroll taxes. The IRS may choose for purposes of effective tax administration (i.e. perhaps after a cost-benefit analysis (dedicating resources to a time consuming examination and litigation)) to enter into a closing agreement with the taxpayer in which the taxpayer agrees to convert these individuals from independent contractors to employees as of the date of the closing agreement. The IRS obtains future compliance and the taxpayer is not punished for having claimed such individuals as independent contractors in past tax years. This situation would result in "collected proceeds" as to future years due to the administrative action taken by the IRS resulting in a win-win situation for all parties.

Scenario #2 - The Whistleblower identified an industry wide issue of non-compliance and the IRS engages in an administrative action but chooses not to enforce past non-compliance with the taxpayer but instead chooses to issues new Regulations/Notices to clarify the law and/or procedures so as to obtain future compliance.

Example

A Whistleblower submits specific and credible information that a taxpayer, a financial institution, failed to comply with I.R.C. § 1441 by failing to withhold and remit taxes from foreign persons with US source income (i.e. interest). As a result of such failure the taxpayer is personally liable due to its failure to withhold (including backup withholdings) and remit the taxes. Upon examination, the IRS determines that the industry in general is failing to comply with the law and issues new Regulations/Notices clarifying a taxpayer's responsibility in these situations and determines not to hold the taxpayer liable for the past non-compliance. In this case, the IRS may choose for purposes of effective tax administration (i.e., enforcing the law uniformly among all taxpayers) to forgive the Taxpayer's past non-compliance in exchange for obtaining future compliance by collecting assessed taxes subsequent to issuing clarifying Regulations/Notices.

Conclusion

The definition of “collected proceeds” should be expanded to include monies collected from assessment of tax for a period of time (i.e. three years) of future compliance with the Internal Revenue Code based upon information provided by the Whistleblower only in those situations in which the IRS chooses not to enforce past non-compliance and opts to obtain future compliance by the taxpayer which results in collected proceeds in the future.

Suggested Proposed Regulation

§301.7623-1 Rewards and awards for information relating to violations of internal revenue laws.

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(5) Proceeds of amounts collected and collected proceeds for purposes of section 7623 and this section is further defined to include monies collected from the assessment of tax for a period of time (i.e. three years) of future compliance by the violating Taxpayer with the Internal Revenue Code based upon information provided by the Whistleblower only in those situations in which the IRS chooses not to enforce past non-compliance and opts to obtain future compliance by the violating Taxpayer through administrative and or judicial action leading to the assessment and collection of monies for tax, penalties, interest and additions to tax in the future. Collected proceeds shall not go beyond a three year period from the date of agreement by the IRS and or the issuance of new regulations/notices for future compliance.

COMMENT #4

The proposed regulations should include a provision that it is mandatory, not discretionary, under the Tax Whistleblower Program for the IRS to make payment to the Whistleblower based upon a portion of the “collected proceeds” as of a certain stated period (i.e. quarterly, or annually) as such payments are eligible to be paid to the Whistleblower.

Issue

Should the definition of “collected proceeds” be expanded to permit the IRS to make partial payments to the Whistleblower for a certain stated period (i.e., quarterly/annually), based upon the portion of “collected proceeds” received by the IRS as of the stated period once the Whistleblower has been determined to be eligible to receive the partial payment, as opposed to full payment of all “collected proceeds”?

Discussion

The Internal Revenue Code (I.R.C.), the Internal Revenue Manual (IRM) and the Treasury Regulations are silent on the issue of making partial payment of the award to the Tax Whistleblower. Why? Upon examination and assessment of the tax by the IRS there is a ten (10) year statute of limitations on collection (I.R.C. § 6502(a)). This time period can be extended beyond ten (10) years by the IRS in a suit to reduce the tax claim to judgment. There is no official stated position by the IRS regarding making partial payments to a Whistleblower. Accordingly, for effective tax administration and in an effort to foster additional future Whistleblower submissions, the IRS should make partial payment of the award to the Whistleblower on a stated period (i.e. amounts collected within 90 days of the determination of eligibility of payment to a Whistleblower, on a quarterly basis, on annual basis, etc.) upon collection of some portion of the tax, interest, penalties and additions to tax (i.e. “collected proceeds”). Why is this issue unstated and presumably at the discretion of the IRS?

Whistleblowers should be encouraged to come forward under this program to provide information with respect to the underpayment of tax. If Congress and the IRS supports and wishes to promote the Tax Whistleblower Program the IRS should make partial payments of the award to a Whistleblower on an objective basis as opposed to a subjective (discretion of the IRS Whistleblower office) basis. Under the current program, at the discretion of the IRS, the Whistleblower may not receive payment until 100% of the tax, penalty, interest and additions to tax is collected or until the expiration of the 10 year (or longer) collection period.

Conclusion

The calculation of an award based upon collected proceeds should be made on an annual basis based upon all information known at the time of calculation and be adjusted as future information becomes available to the IRS.

Suggested Proposed Regulation

§301.7623-1 Rewards and awards for information relating to violations of internal revenue laws.

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(6) Proceeds of amounts collected and collected proceeds for purposes of section 7623 in the determination of the award may be paid by the IRS based on partial payment of the assessed tax, interest, penalties and additions to tax collected by the IRS based upon the information provided by a Whistleblower. In such situations an award is to be paid on a pre-determined periodic basis, no less than annually, as an award of such amount is eligible to be paid to the Whistleblower and the determination shall be adjusted, as might be necessary, with respect to subsequent payments.

COMMENT #5

The definition of “collected proceeds” must be expanded beyond the definition in the proposed regulations to include the time value of the money (i.e. interest) collected with respect to the tax, penalty, interest and additions to tax from the time of payment by the taxpayer through the time of payment of the award to the Whistleblower.

Issue

Should the Whistleblower be entitled to receive *interest* from the time the tax, including additions, is collected through the time of payment of the award?

Discussion

Payment of interest clearly was not considered by Senator Grassley in supporting the enactment of the Tax Whistleblower Program as it was stated within the Tax Relief and Health Care Act of 2006. However, the enacting statute failed to consider the complexities of the Internal Revenue Code. The IRS has taken the position² that it will not make a determination of the award (and subsequent to the determination, payment of the award) until the expiration of the statute of limitations (a minimum of two years after the tax is paid) for which the taxpayer may file a claim for refund or unless a closing agreement is otherwise entered by the taxpayer waiving its right to claim a refund.

The following examples are likely recurring scenarios which will cause years of delays from the time the taxpayer pays the tax, interest, penalties and additions to tax and for which the IRS has the use of the monies and for which the whistleblower is denied the benefit of the IRS’ use of the monies until the award is paid by the IRS to the tax Whistleblower:

- The IRS collects some portion (i.e. 99%) of the assessed tax, penalties, interest and additions to tax, but fails to collect the balance of assessed amount until the expiration of the ten (10) year statute of limitations (assuming the IRS does not extend the ten (10) year period by reducing the tax claim to judgment) and the IRS is not required (or solely in its discretion) to make partial payment of the award to the Whistleblower.
- In the IRM 25.2 released June 18, 2010, the IRS determined that it will not make payment for at least two years (i.e. the expiration of the statute of limitations in which a taxpayer has the right to file a claim for refund) after the collection of tax, interest, penalties and addition to tax. Since the IRS does not, as a matter of procedure, enter into a closing agreement in which the taxpayer waives its rights to claim a refund, it is unlikely it will do so only in tax Whistleblower case.

² IRM 25.2.2.12 - The requirement that claims be paid from collected proceeds generally means that payment will not be made until there is a final determination of tax liability (including taxes, penalties, interest, additions to tax and additional amounts) owed to the Service and such amounts have been collected by the Service. A final determination of tax does not occur until the statutory period for filing a claim for refund expires or there is an agreement between the taxpayer and the Service that there has been a final determination of tax for a specific period and a waiver of the right to file a claim for refund is effective. (*emphasis added*)

- If the taxpayer pays the tax, penalties, interest and additions to tax, and subsequently files a claim for refund it could take five to ten years to file suit, obtain a decision from the U.S. District Court or the U.S. Court of Federal Claims and obtain a decision from the Circuit Court of Appeals that the Taxpayer is denied its refund.
- If, pursuant to I.R.C. § 7623(b)(4), the Whistleblower appeals the Final Notice of Determination issued by the IRS to the U.S. Tax Court, the IRS has determined that payment of the award will not be made during the appeal. An appeal by the Whistleblower is discouraged³ based upon the several years it may take for the U.S. Tax Court to hear the case and render an opinion. Should the US Tax Court determine that there was in fact an abuse of discretion by the IRS in its determination of the award, although unknown, it is anticipated that the IRS Whistleblower Office will be ordered to redetermine the award thereby causing additional delay of the payment. A Whistleblower should not be financially punished (nor should the IRS be encouraged to impose barriers against the Whistleblower) for appealing a determination by the IRS simply by the IRS inability to pay interest from the date the taxpayer made payment to the date the IRS makes payment of the award.

Conclusion

The term “collected proceeds” encompasses the future value of this amount through the time of payment of the award to the Tax Whistleblower. Therefore, the Whistleblower is entitled to interest on the award from the date of collection by the IRS of the tax, penalties, interest and additions to tax from the Taxpayer until the date of payment of the award to the Whistleblower. Although interest could best be achieved by amending the Internal Revenue Code, the Regulations could also re-define “collected proceeds” to allow for the payment of interest to the Whistleblower by taking present value into account.

³ In fact the IRS should make some payment (perhaps as much as 75%) of the award subject to the appeal. It is clear that the award will not be less than the IRS original determination. The Whistleblower should not be punished for engaging in an appeal process for which it has the right to undertake. Clearly if the entire award, as originally determined by the IRS, was paid to the Whistleblower, then a Whistleblower would not suffer an additional barrier or penalty for undertaking the appellate process in challenging the determination of the award. A Whistleblower should not be encouraged to engage in frivolous appeals nor should the Whistleblower be discouraged from the appellate process..

Suggested Proposed Regulation

§301.7623-1 Rewards and awards for information relating to violations of internal revenue laws.

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(7) Proceeds of amounts collected and collected proceeds for purposes of section 7623 shall take into account the time value of money from the time the taxpayer makes payment on a pro-rata basis, if necessary, of the tax, penalties, interest and additions to tax until such time that the award is paid to the Whistleblower. Therefore, time value of money shall be computed as determined under I.R.C. 6621(Interest).

COMMENT #6

The definition of “Collected proceeds” must be further expanded beyond the proposed regulations’ definition to include all penalties and additions to tax subject to the Internal Revenue Code unless specifically excluded.

Issue

Should the determination of the award under I.R.C. § 7623(b) include all penalties, as stated in the United States Code Title 18 and Title 26 (Internal Revenue Code), or should it be limited to penalties as determined by the IRS on an ongoing basis?

Discussion

I.R.C. § 7623 is clear that an award is to be paid to a Whistleblower based upon civil or criminal cases that are pursued administratively or judicially based upon the information provided by the Whistleblower. I.R.C. § 7623 states in pertinent part:

26 USC § 7623 - Expenses of detection of underpayments and fraud, etc.

(a) In general. The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for--

(1) detecting underpayments of tax, or (2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same, in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts collected by reason of the information provided, and any amount so collected shall be available for such payments. (Emphasis added)

(b) Awards to Whistleblowers.

(1) In general. If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action.

However, the IRS, in IRM 25.2.2, has made the following statements as to procedure in determining the award to be paid to the Whistleblower.

IRM 25.2.2.1 (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. (Emphasis added)

IRM 25.2.2.6(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 through June 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 June 1, 2010 will be calculated based on the procedures in IRM 25.2.2.9.2 below. (Emphasis added)

25.2.2.9 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. (Emphasis added)

IRM 25.2.2.12 (9) Criminal Fines: Criminal fines, which must be deposited into the Victims of Crime Fund, cannot be used for payment of Whistleblower awards.

I.R.C. § 7623 has broadly defined that the determination of the award to the Whistleblower. I.R.C. § 7623 includes all tax, penalties, interest and additions to tax collected based upon the information provided by the Whistleblower. The IRS, in the Internal Revenue Manual, as stated above, has determined that an award is not based upon criminal fines which have to be deposited in the Victims of Crime Fund.

However, the regulations should clarify that the computation of the award eligible for payment to the Whistleblower will be based upon all tax penalties, interest and additions to tax unless specifically excluded by the regulations. Therefore, the fact that the IRS has taken the position that “criminal fines” imposed due to the administrative or judicial action taken by the IRS based upon the information provided by the whistleblower are not to be

included in the determination of the award should be stated within the regulations along with any other exceptions to the broad definition of payment under I.R.C. § 7623 in order to bring clarity to the determination. It is clear that the language of the statute is to be read broadly, not narrowly...

receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action.

Conclusion

The regulations should state clearly what tax, penalties, interest and additions to tax which are not subject to the award.

Suggested Proposed Regulation

§301.7623-1 Rewards and awards for information relating to violations of internal revenue laws.

* * * * *

(8) Proceeds of amounts collected and collected proceeds for purposes of section 7623 and this section shall include all tax, penalties, (including, but not limited to I.R.C. § 6651(a)(1), 6651(a)(2), 6651(a)(3), 6662(c),(d),(e) (f),and (g), 6663) interest and additions to tax that may be assessed with respect to a taxpayer under Title 18 and Title 26 for civil and criminal tax issues and tax years for which a Whistleblower provides information that leads to judicial or administrative action unless specifically excluded by these regulations or otherwise stated within these regulations for clarification purposes.

COMMENT #7

The proposed regulations should be further expanded and provide clarification regarding the statutory requirement of I.R.C. § 7623(b)(6)(C), which states that awards are only paid with respect to information that is submitted under penalties of perjury. I.R.C. § 7623(b)(6)(C) states in pertinent part:

I.R.C. § 7623(b)(6)(C) Submission of information. No award may be made under this subsection based on information submitted to the Secretary unless such information is submitted under penalty of perjury.

Issue

Should it be presumed that all written or oral information and documentation submitted by the Whistleblower and/or his attorney, subsequent to the filing of the Form 211, to have been submitted under penalties of perjury?

Discussion

The Whistleblower is often interviewed by the Internal Revenue Service for clarification of the information/documentation submitted or provides supplemental information/documentation based upon the Form 211, Application for Award for Original Information, previously submitted by the Whistleblower. The Whistleblower is not put under oath during the in person interview or the telephone conference with the IRS. In addition, the Whistleblower and or his attorney will often provide supplemental information/documentation, with respect to information contained in the original 211 Claim, that was submitted based upon new and relevant information that has been brought to the Whistleblower's attention. In these situations, the IRS is not requesting that such information be provided under penalties of perjury.

It appears that currently the IRS has taken the "unstated" position that it is not necessary to obtain subsequent written or oral information under penalties of perjury following the initial submission of the original Form 211 by the Whistleblower. Since the plain language of the statute, as stated above, states that no award may be provided based upon information that is not provided under penalties of perjury, it appears that determination of the award would not include any subsequent information that is provided, either written or oral. This creates confusion on the part of the Whistleblower as to whether or not an award can be paid based upon subsequently provided supplemental information or documentation if it is not under penalties of perjury and for which the Whistleblower has no way of providing it under penalties of perjury.

Conclusion

The Regulations should be amended to clarify current procedure by the IRS and its position by stating all information and documentation that is provided subsequent to the filing of the original

Form 211, Application for Award for Original Information,⁴ is “presumed” to be submitted under penalties of perjury.

Suggested Proposed Regulation

§301.7623-1 Rewards and awards for information relating to violations of internal revenue laws.

* * * * *

(9) Proceeds of amounts collected and collected proceeds for purposes of section 7623 and this section shall be based upon all information provided by the Whistleblower which information leads to administrative and/or judicial action resulting in the assessment and collection of tax, penalties, interest and additions to tax. All such information provided by the Whistleblower at the time of, filing an Application for Award for Original Information is submitted under penalties of perjury and all subsequently provided information and documentation is presumed to be submitted under the penalties of perjury by the Whistleblower or his representative for purposes of section 7623.

4

Declaration under Penalty of Perjury

I declare under penalty of perjury that I have examined this application, my accompanying statement, and supporting documentation and aver that such application is true, correct, and complete, to the best of my knowledge.

17. Signature of Claimant

18. Date

MAIL THE COMPLETED FORM TO THE ADDRESS SHOWN ON THE BACK

COMMENT #8

“Administrative Action” must be further defined beyond the definition in the proposed regulations to include any action taken administratively by the IRS after the submission of the information by the Whistleblower.

Issue

Does administrative action include the opening of a Whistleblower file by the IRS in situations where the taxpayer determines that it will self report its non-compliance in the determination of a Whistleblower award?

Discussion

A Whistleblower may provide specific and creditable information with respect to the tax, penalties, interest and additions to tax with respect to the taxpayer. For reasons unknown, a taxpayer may, with or without knowledge of a tax Whistleblower claim being filed, decide it will self report its past non-compliance by contacting the IRS directly and seeking some sort of amnesty or by the filing of amended tax returns.

Acceptance of an amended tax return shall be presumed to be done by considering the information that was provided by the Whistleblower. Although, arguably the Whistleblower did not substantially contribute to the determination and ultimate assessment of tax and therefore the Whistleblower is not entitled to an award, it should be presumed that the Whistleblower’s information led to a settlement by the acceptance of the amended tax return. The self reporting may simply have been a coincidence in timing by the taxpayer. The decision to self report past non-compliance may have been because the taxpayer learned of the pending IRS examination or criminal investigation through its own resources or by the actions of the Whistleblower.

Conclusion

Administrative action under I.R.C. §7623 should be defined as occurring upon the submission of a Whistleblower claim that leads to the opening of a Whistleblower file for purposes of investigating the merits of the claim that would ultimately lead to the assessment of tax, penalties, interest and additions to tax with respect to the taxpayer.

Suggested Proposed Regulation

§301.7623-1 Rewards and awards for information relating to violations of internal revenue laws.

* * * * *

(10) Administrative action for purposes of section 7623 is deemed to have occurred upon the opening of a file by the Whistleblower Office with respect to the information that was submitted.

Substantially contributing to the determination of tax may include self reporting by the violating taxpayer of additional tax, penalties, interest and additions to tax with respect to the issues and years for which the Whistleblower provided specific and credible information prior to the self reporting and subsequent to the opening of a file by the Whistleblower Office.

COMMENT #9

It has become clear that the Tax Whistleblower Program is a long process that may take as few as four (4) years but as long as twenty (20) plus years. Therefore, the regulations should be amended to allow for the irrevocable assignment of the Whistleblower's Claim in a form and manner approved by the IRS.

Issue

May a Whistleblower assign his Whistleblower Claim for purposes of death, charitable contributions, collateral, etc.?

Discussion

It is unclear if a Whistleblower Claim dies with the Whistleblower. Effective Tax Administration and the continued success of the Whistleblower Program should clarify that the Whistleblower Claim is a property right belonging to the Whistleblower that can be assigned, bequeath, transferred, etc.

It would be unusual for the IRS to recognize the assignment of a Claim. However, as this is a long process in which a Whistleblower potentially risks his life, license, career, employment and family, it would be advantageous for the Whistleblower Program to permit a Whistleblower to "irrevocably assign" his interest in the Claim, or part of his interest in the Claim.

In order to enhance effective tax administration, there are several situations in which a Whistleblower should be allowed to assign his claim, or a portion of his claim, such as the following:

1. Due to the long time delay from the submission of the Claim to the examination, assessment, and collection of tax and the ultimate payment of the award to the tax whistleblower, the tax whistleblower should be allowed to make an irrevocable assignment of the Whistleblower Claim to a revocable trust for which he is the beneficiary during his life time and for which the trust makes dispositive provisions to his heirs at his death. The manner and form should be standardized and subject to approval by the IRS. Payment of the award will be made to such trust. Again, because of the confidentiality of the Whistleblower process, this provision makes it unnecessary for the award to be subject to probate court of the particular county in which the Whistleblower resided.
2. The Whistleblower should be allowed to make an irrevocable assignment of his whistleblower claim directly to a charitable organization tax exempt under IRC § 501(c)(3). Many times whistleblowers are not interested in receiving the award and would want the opportunity to make an irrevocable assignment to a charity leaving them with no interest in that portion assigned to charity. The Whistleblower should not be required to report such assignment as this on his tax return. The award, or partial award, will be sent directly to the charitable organization as designated and notice will be given to the Whistleblower. A whistleblower that is called as a

witness at trial with respect to the taxpayer's examination, may wish to make such irrevocable assignment in order not to have a financial interest in the outcome of the trial.

3. Again, due to the long period of delay from the submission of the Claim to the examination, assessment, and collection of tax and the ultimate payment of the award to the tax whistleblower, the tax whistleblower may wish to make an irrevocable assignment, or partial assignment, to a lender. Such assignment will be irrevocable and payment of any award will be paid as directed with the Whistleblower receiving notice of such payment.

Conclusion

Effective tax administration and the continued success of the Whistleblower Program requires that a Whistleblower be allowed to may make an irrevocable assignment of the Whistleblower Claim, or a portion of such claim, for purposes of making a charitable contributions, is a property right belonging to the Whistleblower that can be assigned, bequeath, transferred, etc.

Suggested Proposed Regulation

§301.7623-1 Rewards and awards for information relating to violations of internal revenue laws.

* * * * *

(11) Whistleblower Claims, or portions of such claims is a property right of the Whistleblower and may be irrevocably assigned by the Whistleblower in the following situation, (i) the irrevocable assignment to the Whistleblower's trust for the benefit of the whistleblower and upon his death to his heirs in a manner and form approved by the IRS, (ii) the irrevocable assignment to a charitable organization tax exempt under IRC 501(c)(3), and (iii) the irrevocable assignment to a creditor of the Whistleblower.

COMMENT #10

For purposes of effective tax administration, in order to preserve the identity and confidentiality of the Whistleblower, the IRS shall send any and all communications, including the Award, to the Whistleblower at the address on the Form 211, Application for Award for Original Information, unless the IRS is notified in writing by the Whistleblower or his attorney that the address has changed.

Issue

In the filing of the Form 211, Application for Award for Original Information, may the Whistleblower provide an address, other than his last known address for purposes of receiving all correspondence, including the Award, from the IRS?

Discussion

The IRS should make all efforts to preserve the confidentiality and identify of the Whistleblower. The mailing of correspondence to the Whistleblower's residence or business may have the unintended effect of disclosing his identity to others. The Whistleblower should be allowed to select an address other than his last known address for purposes of receiving correspondence, including the Award.

Often, the attorney will use his address on the Form 211 in an effort to protect the Whistleblower's identity by receiving unexpected mail from the Internal Revenue Service. In the case of the Award, it too should be mailed to the designated address on the Form 211 and the Award should be made payable to the Whistleblower. Because of the long delay in processing these cases, the IRS should recognize any change in address on the Form 211 due to notification by the Whistleblower or his attorney of such change. The Whistleblower's attorney in under the same restrictions as a practitioner who prepares tax returns as stated within Circular 230 § 10.31 and is prohibited from endorsing or otherwise negotiating any check issued to the Whistleblower by the government under I.R.C. § 7623. Should an attorney violate the regulations and endorse the check the attorney is subject to immediate disciplinary action by the Director of Practice.

Conclusion

All correspondence, including the Award, is to be sent to the address on the Form 211, Application for Award for Original Information, unless the IRS is notified in writing by the Whistleblower or his attorney of a change in address.

Suggested Proposed Regulation

§301.7623-1 Rewards and awards for information relating to violations of internal revenue laws.

* * * * *

(12) All communications between the IRS and the Whistleblower will be mailed to the address on the Form 211, Application for Award for Original Information, unless the IRS is notified in writing by the Whistleblower or his attorney of a change in address. All letters, notifications, Determinations, and Awards are to be mailed to such address to protect the confidentiality of the Whistleblower. To the extent correspondence, including the Award (made payable to the Whistleblower), is sent to the Attorney on behalf of the Whistleblower, the Attorney is prohibited from endorsing or otherwise negotiating the check issued to the Whistleblower by the government under the I.R.C. § 7623. Should an attorney violate the regulations and endorse the check the attorney is subject to immediate disciplinary action by the Director of Practice.

ADDENDUM TO COMMENTS OF PROPOSED REGULATIONS

In an effort to enhance the timeliness and effectiveness of the IRS Tax Whistleblower Program for purposes of encouraging Whistleblower to come forward and provide information with respect to the underpayment of tax by a taxpayer, certain procedures should be undertaken to improve effective tax administration with respect to the Tax Whistleblower Program and to enhance the timeliness payments to Whistleblower under the program.

These procedures to improve the program may be implemented by changes in the Internal Revenue Code, issuance of Regulations/Notices, changes in the Internal Revenue Manual, or simply changes in Forms and unwritten procedures of the IRS.

Therefore the following changes are recommended:

A. Election to Opt Out of IRS Procedures to Protect Whistleblower's Identity

The Whistleblower should be allowed to elect (perhaps when completing the Form 211) to opt out of current IRS procedure to protect his identity and provide him with confidentiality.

Clearly the success of the IRS Tax Whistleblower Program is based upon the IRS ability to protect the identity of the Whistleblower. The IRS, as stated in IRM 25.2, has instituted numerous procedures to protect the identity of the Whistleblower and the information and documentation that is provided in the filing of the Form 211, Application for Award for Original Information

However, for whatever reason, the Whistleblower may voluntarily choose or not care that his identity be protected or that the documents that are provided be kept confidential. Possible scenarios would be where the Whistleblower could be in a position that his identity is already out in the open such as with the filing of a Sarbanes Oxley Complaint, an SEC Whistleblower award, a private suit against the employer/partner, etc.

If the Whistleblower feels it is not necessary to protect his identity and that he is willing to allow the documentation that he provided with his 211 Claim to be used directly in an examination conducted by the IRS, then he should be able to opt out of the IRS confidentiality procedures, thereby authorizing the IRS to use his documents directly in the examination. This will shorten the examination time by the IRS such that the IRS would not need to obtain these same documents from the taxpayer or third parties.

This procedure should be instituted and may potentially reduce the length of the examination by six months to a year. Such an "Opt-Out" election should not be a partial election but a complete election to opt out as to both identity and documentation provided.

B. The IRS shall use the Whistleblower as a factual/legal expert with respect to its examination to the extent it can, if it will shorten the examination time and /or result in a higher assessment of tax, penalties, interest and additions to tax.

On March 15, 2011, the IRS finalized regulations (Treas. Reg. §301.6103(n)-2(f)) making it optional (at the IRS discretion) to enter into contracts, which are essentially non-disclosure agreements, with the Whistleblower such that the IRS could disclose taxpayer information with the Whistleblower. The purpose of entering into such a contract is based upon the IRS determination that it could further tax administration with respect to the examination, by entering into an agreement with the Whistleblower.

It should not be optional by the IRS to enter into such a contract with the Whistleblower if doing so would further effective tax administration. Furthering effective tax administration includes not only the increase of assessment of tax but shortening the examination time. Often, a Whistleblower risks his life, license, career, employment and/or family in providing information to the IRS in the furtherance of tax administration. It should be mandatory by the IRS to enter into such a contract with the Whistleblower if effective tax administration may be achieved by doing so.

C. The IRS Should Obtain A Waiver From The Taxpayer Of Its Right To Claim a Refund In All Cases For Which It Reaches A Settlement With The Taxpayer.

This is a suggested change of procedure for which the IRS should engage for effective tax administration in all cases as opposed to simply cases involving Whistleblowers. The IRS should always present to the violating Taxpayer the option of whether or not it desires to enter into an agreement in which it brings finality to the examination and for which both parties (taxpayer and the IRS) waive their respective rights to file a claim for refund or assess additional tax except in situations involving Fraud by the parties. However, as a matter of improving tax administration, the IRS should seek finality upon achieving an "agreed" case at the end of the tax examination.

Current Procedures

The IRS has three basic types of forms for closing an "agreed" case at the end of the tax examination. All three types have a common element: They permit the Service to assess an income tax deficiency without issuing a statutory notice of deficiency.

The first type is what is referred to as Noncommittal Agreements.

These agreements permit the IRS to assess tax, but also allow the taxpayer to file a refund claim after paying the assessed tax. In the income tax context, Form 4549, Income Tax Examination Changes (used by Examination), and Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment (used by both Examination and Appeals), are generally employed to close "agreed" cases. By signing either form in Examination, the taxpayer loses its right to go to Appeals or to petition the Tax Court.

Form 870 may be used in Appeals if the taxpayer wants to litigate its case in Federal district court or the Court of Federal Claims. Because these are refund forums, the Service must first assess the disputed tax, and the taxpayer must pay the tax and file a refund claim before bringing suit. Form 870 is used in this context simply to expedite the case; otherwise, the IRS would have to issue a deficiency notice and wait 90 days before assessing the tax.

The second type of form for closing an Agreed case is what is referred to as a Committal Agreement.

These Committal Agreements (Form 870-AD, Offer to Waive Restrictions on Assessments and Collection of Tax Deficiency and to Accept Overassessment, in the income tax context) permits the Service to assess the tax, but generally prohibits refund claims for issues agreed upon by the parties. These forms are used only by Appeals (not by Examination), and are typically used for settlements in which both the IRS and the taxpayer are conceding something in order to settle the case (i.e., mutual concession settlements).

Courts have frequently applied the doctrine of equitable estoppel to prohibit either the Service or the taxpayer from reneging on an agreement embodied in a Form 870-AD (see Whitney, 826 F2d 896 (9th Cir. 1987); General Split Corp., 500 F2d 998 (7th Cir. 1974). However, estoppel typically will not apply if a refund claim issue was not addressed in Form 870-AD, not mentioned during audit and not known by either party at the time the closing agreements were made; see McGraw-Hill, D.C., N.Y, 1990, acq., 1993-1 CB 1.) As a precautionary measure, if there are specific but unrelated refund issues, a taxpayer should insert a provision (a reserve clause) on the Form 870-AD, reserving the right to file a refund claim for these issues before signing the form.

The third type of form is a closing agreement.

Closing agreements bar the filing of refund claims under contract principles (as opposed to under equitable estoppel) and can be rescinded only on a showing of fraud, malfeasance or misrepresentation of a material fact (Sec. 7121 (b)). There are two types of closing agreements--those that finalize a taxpayer's entire liability for the tax period at issue (Form 866, Agreement as to Final Determination of Tax Liability) and those that finalize the treatment of specific issues (Form 906, Closing Agreement On Final Determination Covering Specific Matters). These two types of agreements may be used in combination for the same case.

As a practical matter, policies make it difficult (but not impossible) to obtain a closing agreement. The Service maintains strict controls over who can sign such a document (closing agreement). If finality is a taxpayer's goal and the case is in Appeals, Form 870-AD accomplishes the same objectives as a closing agreement. A closing agreement, however, is the only way to achieve "finality" in an Examination-agreed case.

A change in procedure in finalizing an "agreed" case for which the normal procedure would now bring finality to the examination would not only improve tax administration in all cases but would also allow the payment of an award to the Tax Whistleblower at least two years earlier than otherwise anticipated.

D. Other Factors to Consider in Determining an Award.

The proposed regulations should be expanded and take into account how an award is to be computed rather than simply leaving it up to the courts to decide over the years or for the IRS to subjectively decide as to the factors and the weight of such factors. Currently, as stated in the Internal Revenue Manual, the IRS has identified A through G below as the factors that it will consider in determining an Award between 15% and 30%. Comments H and I are suggested factors to be considered by the IRS in determining the Award.

IRM 25.2.2.9.2 - Award Computation - Section 7623(a) claims filed on or after June 1, 2010 and Section 7623(b) claims:

10. Positive Factors (applicable to section 7623(b) (1) and section 7623(b) (2) determinations):

- A. Prompt action by the Whistleblower to inform the Government or the taxpayer of the tax noncompliance may, depending on the acts, be a positive factor. For example, providing the Government with an opportunity to address the tax noncompliance early can help mitigate the impact of the noncompliance.
- B. The Whistleblower submits information that identifies an issue of a type previously unknown to the Government or a taxpayer behavior that the Government was unlikely to identify or was especially difficult to detect through the exercise of reasonable diligence.
- C. Submissions in which the Whistleblower thoroughly presents the details of the noncompliance in a clear and organized manner may, depending on the facts, be a positive factor. For example, a detailed submission may save the Service work and resources.
- D. The Whistleblower (and/or his/her representative) provided exceptional cooperation and assistance during the audit, investigation, or trial, including useful technical or legal analysis of the taxpayer's records.
- E. The Whistleblower identified assets of the taxpayers that could be used to pay the taxpayer's liability or assets not otherwise known to the Service.
- F. The Whistleblower identified connections between transactions, or parties to transactions, which enabled the Service to understand tax implications that might not otherwise have been revealed.
- G. Impact of the report on the behavior of the taxpayer. For example, the Whistleblower's report may, directly or indirectly, cause the taxpayer to correct an improper position.

H. The likelihood that the Internal Revenue Service would have discovered the tax issue but for the information provided by the Whistleblower based upon such factors as the complexity of the issue, pending statute of limitations status of an ongoing

examination for which the issue had not been discovered by the IRS.

- I. The continued flow of information from the Whistleblower with respect to the examination and/or negotiations between the IRS and the taxpayer.*