

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-141066-09]

RIN 1545-BL08

Awards for Information Relating to Detecting Underpayments of Tax or Violations of the Internal Revenue Laws

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These regulations provide comprehensive guidance for the award program authorized under Internal Revenue Code (Code) section 7623, as amended. The regulations provide guidance on submitting information regarding underpayments of tax or violations of the internal revenue laws and filing claims for award, as well as on the administrative proceedings applicable to claims for award under section 7623. The regulations also provide guidance on the determination and payment of awards, and provide definitions of key terms used in section 7623. Finally, the regulations confirm that the Director, officers, and employees of the Whistleblower Office are authorized to disclose return information to the extent necessary to conduct whistleblower administrative proceedings. The regulations provide needed guidance to the general public as well as officers and employees of the IRS who review claims under section 7623. This document also provides notice of a request for a public hearing on the proposed regulations.

DATES: Electronic or written comments and requests for a public hearing must be received by February 19, 2013.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-141066-09), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-141066-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-141066-09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Meghan M. Howard, at (202) 622-7950; concerning submissions of comments and requests for a public hearing, Oluwafunmilavaio Taylor, at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### **Background**

Section 406 of the Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2922), enacted on December 20, 2006, amended section 7623 of the Code on the payment of awards to certain persons who provide information to the Internal Revenue Service relating to the detection of underpayments of tax and violations of the internal revenue laws. Section 406 redesignated the existing statutory authority to pay awards at the discretion of the Secretary of the Treasury as section 7623(a), and it added a new provision regarding awards to certain individuals as section 7623(b). Generally, section 7623(b) provides that qualifying individuals will receive an award of at least 15 percent, but not more than 30 percent, of the collected proceeds resulting from

the action with which the Secretary proceeded based on the information provided to the IRS by the individual. Section 406 also addressed several award program administrative issues and established a Whistleblower Office within the IRS, which operates at the direction of the Commissioner, analyzes information received under section 7623, as amended, and either investigates the information itself or assigns the investigation to the appropriate IRS office.

In Notice 2008-4, 2008-1 CB 253 (January 14, 2008) (see §601.601(d)(2)(ii)(b) of this chapter), the IRS provided guidance on filing claims for award under section 7623, as amended. In the notice, the IRS recognized that the award program authorized by section 7623(a) had been previously implemented through regulations appearing at §301.7623-1 of the Procedure and Administration Regulations. The Internal Revenue Manual (IRM) provided additional guidance to IRS officers and employees on the award program authorized by section 7623(a). The notice provided that the IRS would generally continue to follow section 301.7623-1 and the IRM provisions for claims for award within the scope of section 7623(a), subject to certain exceptions listed in the notice. The notice also provided, however, that the regulations would not apply to the new award program authorized under section 7623(b). Instead, the notice provided interim guidance applicable to claims for award submitted under section 7623(b).

On March 25, 2008, the Treasury Department (Treasury) and the IRS published Temp. Treas. Reg. §301.6103(n)-2T, and corresponding proposed regulations, describing the circumstances and process in and by which officers and employees of the Treasury may disclose return information to whistleblowers (and their legal representatives, if any) in connection with written contracts for services relating to the

detection of violations of the internal revenue laws or related statutes. Under these regulations, whistleblowers and legal representatives who receive return information are subject to the civil and criminal penalty provisions of sections 7431, 7213, and 7213A for the unauthorized inspection or disclosure of return information. The Treasury and the IRS finalized the proposed regulations on March 15, 2011 (TD 9516).

In December 2008, the IRS revised IRM Part 25.2.2, updating policies and procedures concerning the handling of information, processing of claims for awards, and payment of awards under section 7623, as amended. The IRS also re delegated the authority to approve awards to the Director of the Whistleblower Office. In July 2010, the IRS further revised IRM Part 25.2.2 to provide detailed instructions to IRS officials and employees on the computation and payment of awards under section 7623 and to describe the administrative procedures applicable to claims for award under section 7623(b). The revised IRM introduced many guidance elements that are developed in these proposed regulations, including definitions of key terms, the whistleblower administrative proceedings, the fixed percentage award framework and criteria for making award determinations, and rules on handling multiple and joint claimants.

On January 18, 2011, Treasury and the IRS published proposed regulations (REG-131151-10) clarifying the definitions of the terms proceeds of amounts collected and collected proceeds for purposes of section 7623 and providing that the provisions of existing §301.7623-1(a), concerning refund prevention claims, apply to claims under both section 7623(a) and section 7623(b). The proposed regulations further provided that the reduction of an overpayment credit balance constitutes proceeds of amounts

collected and collected proceeds for purposes of section 7623. The Treasury and the IRS finalized the proposed regulations on February 22, 2012 (TD 9580).

### **Explanation of Provisions**

The purpose of these regulations is to provide comprehensive guidance for the award program authorized under section 7623, as amended. Accordingly, these regulations provide guidance on issues relating to the award program from the filing of a claim to the payment of an award, focusing on three major elements of the program: (i) the submission of information and filing of claims for award; (ii) the whistleblower administrative proceedings applicable to claims for award under section 7623; and (iii) the computational determination and payment of awards. These proposed regulations also provide definitions of key terms under section 7623 and provide that the Director, officers, and employees of the Whistleblower Office are authorized to disclose return information to the extent necessary to conduct whistleblower administrative proceedings.

These proposed rules apply generally to claims for award under both section 7623(a) and section 7623(b), unless otherwise stated. Nonetheless, while the Whistleblower Office will, for example, conduct whistleblower administrative proceedings pursuant to the proposed rules of §301.7623-3 for claims for award under both section 7623(a) and section 7623(b), the process applicable to claims under section 7623(a) differs from that applicable to claims under section 7623(b). The differences reflect the clear distinction the statute draws between awards under section 7623(a) and section 7623(b) and will avoid placing a heavy administrative burden on the IRS.

### Submitting Information and Filing Claims for Award

Section 301.7623-1 of these proposed rules provides guidance on submitting information to the IRS and filing claims for award with the Whistleblower Office. These rules are intended to clarify the process individuals should follow to be eligible to receive awards under section 7623. The proposed rules, in large part, track the rules that Treasury and the IRS have previously provided, as set forth in the existing regulations, Notice 2008-4, and the IRM. This includes, for example, the general information that individuals should submit to claim awards and the descriptions of the type of specific and credible information regarding taxpayers that should be submitted. Most notably, an individual submitting a claim should identify a person and describe and document the facts supporting the claimant's belief that the person owes taxes or violated the tax laws. The proposed rules clarify that the IRS will consider an individual who identifies a pass-through entity as having identified the taxpayers with direct or indirect interests in the entity. Furthermore, the proposed rules provide that if an individual identifies a member of a firm who promoted another identified person's participation in an identified transaction, then the IRS will consider the individual as having identified both the firm and all the other members of the firm. These clarifying provisions complement the proposed rules' definition of the term related action.

The proposed rules also include eligibility requirements for filing claims for award and a list of ineligible claimants. The list of ineligible claimants restates the list published in Notice 2008-4 in its entirety. For example, the proposed rules provide that individuals who are or were required by Federal law or regulation to disclose information are not eligible to file claims for award based on the information.

To enable the IRS to administer the award program, these proposed regulations require individuals to file formal claims for award. The proposed rules provide a process for perfecting incomplete claims for award and permit claimants to perfect and resubmit deficient claims after they are rejected by the Whistleblower Office. Finally, the IRS is considering issues relating to the electronic filing of claims for award, which may be addressed in other published guidance.

The proposed rules also reaffirm the practice of Treasury and the IRS to safeguard the identity of individuals who submit information under section 7623 and these proposed regulations whenever possible. The informant privilege allows the Government to withhold the identity of a person that provides information about violations of law to those charged with enforcing the law. The informant privilege is held by the Government, not the informant, and is not an absolute privilege. There may be instances when, after careful deliberation and high-level IRS approval, the disclosure of the identity of an informant may be determined to be in the best interests of the Government. For example, an informant's identity will have to be revealed when a claimant is needed as a witness in a case in litigation. The IRS will, however, make every effort to notify an informant before disclosing the informant's identity.

Comments are specifically requested on:

(1) The list of ineligible claimants provided in paragraph (b)(2) of §301.7623-1 of these proposed regulations and whether other identifiable groups of individuals should be treated as ineligible to file claims for award.

(2) Whether electronic claim filing would be appropriate and beneficial to claimants, and, if so, what features should be included in an electronic claim filing system.

#### Definitions of Key Terms

Section 301.7623-2 of these proposed regulations defines several key terms for purposes of determining awards under section 7623 and the proposed regulations. Two other key terms, planned and initiated and final determination of tax, are described and defined, respectively, in §301.7623-4 of these proposed regulations. The definitions are intended to facilitate the IRS's administration of the award program in a manner that is consistent with the statutory language. As described below, several of the definitions, including the definition of the terms proceeds based on, related action, and collected proceeds, build on definitions contained in Notice 2008-4, TD 9580, and the IRM, while other definitions are new.

Generally, section 7623(b) provides that if the Secretary proceeds with an administrative or judicial action (including any related actions) based on the information provided by the individual, then the individual will receive an award from the collected proceeds resulting from the actions. The definition of the term proceeds based on contained in these proposed regulations reflects the ways in which information provided to the IRS may ultimately result in an award under that standard. Further, the definition reflects the requirement, under Section 406 of the 2006 Act, that the IRS must analyze and investigate information received under section 7623(b) by providing that the IRS cannot, for purposes of paying an award under section 7623, proceed based on information without taking some action beyond simply analyzing or investigating the



information. The definition provides that the IRS proceeds based on the information provided only when the IRS initiates a new action that it would not have initiated, expands the scope of an ongoing action that it would not have expanded, or continues to pursue an ongoing action that it would not have continued but for the information provided.

The definition of the term related action contained in these proposed regulations clarifies which actions may be included for purposes of computing collected proceeds by requiring a clear link between the original action and the other, related action(s). To enable the IRS to administer the award program and to strike an appropriate balance between the individual's substantial contribution and the IRS's independent administration of the tax laws, this clear link requires: (i) a direct relationship between the person identified in the information provided and subject to the original action and the person(s) subject to the other action(s); and (ii) a substantial similarity between the specific facts contained in the information provided and the relevant facts of the other action(s). Consistent with the statutory language, this conjunctive test excludes from the definition of related action actions that are merely factually similar to the original action, for example, actions against unidentified taxpayers that merely engaged in substantially similar transactions to the transaction identified in the information provided. The direct relationship test of the definition's first prong amounts to a one-step rule: the taxpayer subject to the related action can be no more than one step removed – in terms of identification by the IRS – from a taxpayer identified in the information provided. For example, under the proposed rules, if the information provided identifies a party to a transaction and the facts relevant to the transaction, then an action against an

unidentified individual or firm that promoted the identified person's participation in the transaction may be a related action. An action against another client of the unidentified promoter, however, is not a related action, regardless of whether the other client engaged in a substantially similar transaction or whether the information provided could be said to have initiated events that led to all the actions. Similarly, if the information provided identifies a party to a particular transaction and the facts relevant to the transaction, then an action against a second, unidentified party to the same transaction may be a related action. An action against another unidentified person that promoted only the second, unidentified party's participation in the transaction, however, is not a related action.

The definition of collected proceeds contained in these proposed regulations builds on the definition contained in the final regulations published on February 22, 2012 (TD 9580). The definition restates the rule from those final regulations that 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 provided if the information 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.

Based on the IRS's experience in administering the award program since the issuance of the final regulations and on stakeholder input on those regulations, the proposed regulations' definition of collected proceeds also addresses refund netting and the treatment of tax attributes generally, which include net operating losses (NOLs). The proposed regulations provide that 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. As to the treatment of tax attributes such as NOLs, the proposed regulations provide a computational rule that reflects the discussion contained in the preamble to T.D. 9580. There, Treasury and the IRS noted that tax attributes such as NOLs do not represent amounts credited to the taxpayer's account that are directly available to satisfy current or future tax liabilities or that can be refunded. Rather, tax attributes such as NOLs are component elements of a taxpayer's liability. The disallowance of an NOL claimed by a taxpayer may affect the taxpayer's liability and, in the context of a whistleblower claim, may result in collected proceeds.

To enable the IRS to administer the award program, the proposed regulations' computational rule provides that, after there has been a final determination of tax, the IRS will compute the amount of collected proceeds taking into account all information known with respect to the taxpayer's account (including all tax attributes such as NOLs). For example: a taxpayer reports an NOL of \$10 million for 2009 and a whistleblower's information results in a reduction of the NOL to \$5 million. If the NOL is unused as of the date the IRS computes the amount of collected proceeds, then there are no collected proceeds. If, however, the 2009 NOL was partially carried back to 2008, initially generating a \$3 million refund, and the whistleblower's information reduced the carryback amount, resulting in a \$1.5 million reduction in the refund for 2008, then the amount of the erroneous refund recovered and collected would be collected proceeds. The proposed regulations' definition of collected proceeds, therefore, does not refer

explicitly to NOLs, tax credits, or any other tax attributes that may factor into the computation of a taxpayer's liability. Furthermore, the proposed regulations' computational rule does not attempt to assign a present value to these attributes, given that whether, when, or to what extent they may affect a taxpayer's liability or the amount of collected proceeds cannot be determined in advance of their actual use. Nor does the computational rule require the IRS to continue tracking these taxpayers, who may not be under examination, and attributes into future years, given the significant costs and heavy administrative burden that would be required.

Consistent with provisions in the IRM, these proposed regulations provide that amounts recovered under the provisions of non-Title 26 laws do not constitute collected proceeds, because the plain language of section 7623 authorizes awards for detecting "underpayments of tax" and violations of the internal revenue laws. The internal revenue laws are contained in Title 26, Internal Revenue Code and guidance issued under that title. Although the IRS may collect penalties for violations of Title 31, Money and Finance, and seize property under Title 18, Crimes and Criminal Procedure, those penalties and seizures do not relate to "underpayments of tax," may be imposed independently of whether a tax underpayment occurs, and are not related to violations of the internal revenue laws under Title 26. For example, the IRS may collect penalties for failure to file Form 90-22.1, "Report of Foreign Bank and Financial Accounts" (FBAR), which is an information reporting requirement under Title 31 the violation of which does not necessarily result in an underpayment of tax. As a result, FBAR penalties do not constitute collected proceeds. Moreover, sections 5323(a) and 9703(a)

of Title 31 provide independent authority, separate and apart from section 7623, for the payment of rewards for information relating to certain violations of Title 31 or Title 18.

These proposed regulations also provide that criminal fines that must be deposited into the Victims of Crime Fund do not constitute collected proceeds. Under the Victims of Crimes Act of 1984, criminal fines that are imposed on a defendant by a district court are deposited into the Victims of Crime Fund. See 42 U.S.C. §10601(b)(1). Criminal fines imposed for Title 26 offenses are not exempt from this requirement. The fines imposed in criminal tax cases that are deposited into the Victims of Crime Fund are not available to the Secretary to pay awards under section 7623. These exclusions were previously explained in the preamble to TD 9580 and are further clarified in the text of these proposed regulations. Restitution ordered by a court to the IRS, however, is collected by the IRS as a tax and, therefore, is encompassed in the definition of collected proceeds.

Finally, these proposed regulations provide a rule for determining collected proceeds in cases in which the IRS does not collect the full amount of the assessed liabilities. Pursuant to this rule, collected proceeds, for purposes of paying an award under section 7623, are determined on a pro rata basis based on the ratio that adjustments attributable to the information provided bear against the total adjustments.

Section 301.7623-2 of these proposed regulations also defines the terms action, administrative action, judicial action, amount in dispute, and gross income.

Comments are specifically requested on:

- (1) Each of the key terms defined in this section.

(2) Whether and how the IRS could determine any amount of collected proceeds that arise as a result of a taxpayer's use of tax attributes such as NOLs after the final determination of tax and the computation of collected proceeds, as provided in the proposed regulations.

#### Whistleblower Administrative Proceedings

Section 301.7623-3 of these proposed regulations describes the administrative proceedings applicable to claims for award under both section 7623(a) and section 7623(b). For purposes of applying these procedures, the IRS may rely on the claimant's description of the amount owed by the taxpayer(s). The IRS may, however, rely on other information as necessary (for example, when the alleged amount in dispute is below the \$2 million threshold of section 7623(b)(5)(B), but the actual amount in dispute is above the threshold).

##### Administrative proceedings for awards paid under section 7623(a)

In cases under section 7623(a), these proposed regulations provide that the Whistleblower Office will send a preliminary award recommendation letter to the claimant. Sending this letter marks the beginning of the whistleblower administrative proceeding. The claimant will then have 30 days within which to provide comments to the Whistleblower Office. This approach is intended to provide claimants under section 7623(a) with an opportunity to participate in the award process, both to add transparency to the proceeding and to assist the Whistleblower Office in considering all potentially-relevant information in paying awards under section 7623(a), even though those awards are not subject to Tax Court review.

##### Administrative proceedings for awards paid under section 7623(b)

In cases in which the Whistleblower Office will determine an award under section 7623(b), the whistleblower administrative proceeding more closely resembles the whistleblower award determination administrative proceeding contained in the IRM, which only applies to awards determined under section 7623(b). In an effort to both streamline the process and provide information to whistleblowers as early as allowable under section 6103, however, the proposed regulations move the beginning of the proceeding forward. Under the proposed regulations, the whistleblower administrative proceeding begins when the Whistleblower Office sends out the preliminary award recommendation letter. Accordingly, whistleblowers may receive opportunities to participate in the award determination process at the administrative level even before there is a final determination of tax in the underlying taxpayer action. These opportunities will be provided in connection with all awards paid under section 7623(b), and they are in addition to opportunities a whistleblower may be afforded to assist the IRS in connection with the underlying taxpayer action, for example pursuant to §§301.6103(n)-2 and 301.7623-1(d) of the proposed regulations.

The Treasury and the IRS emphasize, however, that the proposed regulations do not and cannot move forward a whistleblower's opportunity to appeal an award determination to Tax Court. Under the proposed regulations, the Whistleblower Office will issue an appealable determination or make payment, if a whistleblower has waived the determination, as soon as possible after there has been a final determination of tax (that is, the statutory period for the taxpayer to claim a refund has expired or the underlying taxpayer action is otherwise final).

The whistleblower administrative proceeding generally consists of four steps: (i) a preliminary award recommendation; (ii) a detailed award report; (iii) an opportunity to review documents supporting the preliminary award recommendation; and (iv) an award determination. Under the proposed regulations, the first three steps may occur before the final determination of tax in the underlying taxpayer matter. Given that the amount of collected proceeds is not finally determined until after the final determination of tax, however, the preliminary award recommendation and the detailed award report, as well as the documents made available for inspection, will reflect a tentative or preliminary computation of the amount of collected proceeds.

The whistleblower administrative proceeding is intended to foster a transparent administrative process, to ensure that claimants have a meaningful opportunity to participate in the determination process at the administrative level, to enable the Whistleblower Office to make award determinations based on complete information, and to ensure a fully-documented record on appeal to the Tax Court. The proposed regulations permit claimants to participate in the whistleblower administrative proceeding through a structured process involving correspondence and other communications with the Whistleblower Office. Claimants are afforded opportunities to review the Whistleblower Office's preliminary award recommendation, to provide additional information regarding their claims that is relevant to an award determination, and to submit comments challenging all aspects of the preliminary findings at the administrative level. The Treasury and the IRS recognize that, in some cases, claimants may be able to provide information during the whistleblower administrative proceeding that could be critical to the award determination but that is not already



contained in the administrative claim file. For example, a claimant may be able to demonstrate that a determination is based on a misapplication of the lower award percentages of section 7623(b)(2) by providing information that demonstrates that the claimant was the original source of public source information.

The Treasury and the IRS recognize that, while detailed administrative claim files assist the Whistleblower Office in making fair and accurate award determinations, steps should be taken to prevent potential redisclosure or misuse of the taxpayer's confidential return information contained in those files. Section 6103(h)(4) and §301.6103(h)(4)-1 of the proposed regulations authorize the disclosures made by the Whistleblower Office in the course of the whistleblower administrative proceeding, but they provide neither redisclosure prohibitions nor penalties. Accordingly, the proposed regulations require claimants to execute confidentiality agreements before they may receive a detailed description of the factors that contributed to the preliminary award recommendation or view documents that support the recommendation. A claimant is not required to execute a confidentiality agreement before appealing an award determination to the Tax Court, and executing an agreement does not prevent a claimant from seeking Tax Court review. Moreover, a claimant's execution of a confidentiality agreement would not preclude the claimant from providing to Congress certain information about the preliminary award recommendation, but it would preclude the claimant from providing to Congress information disclosed to the claimant after the execution of the agreement and during the whistleblower administrative proceeding. Section 6103(f), however, provides a general framework for Congress to access

taxpayer return information, and this general framework may also be used in connection with whistleblower award claims.

The proposed regulations provide that the Whistleblower Office, in determining the award percentage, may treat a claimant's violation of the terms of the confidentiality agreement as a negative factor and, thus, as a basis for reducing the amount of an award. Further, while the proposed regulations provide claimants with an opportunity to view information in the administrative claim file that is not protected from disclosure by one or more common law or statutory privileges, the proposed regulations provide rules intended to safeguard the disclosure of information to a claimant (for example, supervised document review and no photocopying of documents).

Administrative proceedings for denials of awards under section 7623(b)

Finally, the proposed regulations provide that in cases in which the Whistleblower Office will reject a claim under section 7623(b), pursuant to §301.7623-1(b) or (c), or will deny a claim under section 7623(b), either because the IRS did not proceed with an action based on the information provided or because the IRS did not collect proceeds, the Whistleblower Office will send a preliminary denial letter to the claimant. Sending this letter marks the beginning of the whistleblower administrative proceeding. This notice will be provided as promptly as possible under the particular circumstances of a given case. The claimant will then have 30 days within which to provide comments to the Whistleblower Office. Again, this approach is intended to foster a transparent and accurate review process. Given the large administrative burden involved, however, the proposed regulations do not provide preliminary notice and comment procedures applicable to denials of claims for award under section 7623(a).

Comments are specifically requested on:

(1) Whether claimants should be afforded additional opportunities to participate in whistleblower administrative proceedings, and if so, what additional opportunities would be beneficial to the Whistleblower Office and to claimants and why.

(2) Whether additional safeguards should be adopted to further protect taxpayer return information disclosed in the course of whistleblower administrative proceedings and, if so, what safeguards would be effective and appropriate.

(3) Whether starting a whistleblower administrative proceeding before a final determination of tax in the underlying taxpayer action provides a meaningful benefit for whistleblowers.

#### Determining the Amount of Awards and Paying Awards

Section 301.7623-4 of these proposed regulations provides the framework and criteria that the Whistleblower Office will use in exercising the discretion granted under section 7623 to make awards. The proposed regulations are consistent with, and build on, the award determination provisions provided in the IRM. The rules of this section are proposed to apply to claims for awards under both section 7623(a) and section 7623(b).

Generally, the proposed regulations adopt a fixed percentage approach pursuant to which the Whistleblower Office will assign claims for award to one of a number of fixed percentages within the applicable award percentage range. The fixed percentage approach provides a structure that will promote consistency in the award determination process by enabling the Whistleblower Office to determine awards across the breadth of the applicable percentage range based on meaningful distinctions among cases. In

general, the Whistleblower Office will determine awards at the uppermost end of the applicable percentage range, for example, 30 percent of collected proceeds under section 7623(b)(1), only in extraordinary cases. The fixed percentage approach avoids having to draw fine distinctions that might seem unfair and arbitrary, given the differences among claims for award with respect to both the facts and law of the underlying actions and the nature and extent of the substantial contribution of the claimants.

Under these proposed regulations, the Whistleblower Office generally will assign the fixed percentages to claims for award by evaluating the substantial contribution of the claimant to the underlying action(s) based on the Whistleblower Office's review of the entire administrative claim file and the application of the positive factors and negative factors, listed in §301.7623-4(b), to the facts. After the application of the positive and negative factors has been completed, the Whistleblower Office will review the planning and initiating factors, if applicable. The purpose of this criteria-based approach is to also promote consistency in the award determination process. In addition, this approach is intended to provide transparency in the process, and the publication of the criteria should provide helpful guidance to claimants when submitting their claims and in understanding the basis for award determinations. For claims involving multiple actions (regardless of the number of taxpayers involved), the proposed regulations enable the Whistleblower Office to determine and apply separate award percentages on an action-by-action basis in appropriate cases. The Treasury and the IRS recognize that a multiple-action determination may result in a lengthier award process, but it may be necessary in some cases.

Section 7623(b)(3) provides for an appropriate reduction of awards to claimants who planned and initiated the actions that led to the underpayment of tax or actions described in section 7623(a)(2) (the underlying acts). Section 7623(b)(3), unlike section 7623(b)(1) and section 7623(b)(2), provides no direction to the Whistleblower Office on what to consider in exercising this grant of discretion. Accordingly, the proposed regulations provide slightly more flexibility to determine the amount of an appropriate reduction under this section than they provide under the respective frameworks for determining awards for substantial and less substantial contributions.

Under the proposed regulations, the Whistleblower Office will make a threshold determination of whether a claimant planned and initiated the underlying acts, but this determination will not result in an automatic or fixed reduction of the award percentage or award amount. A claimant will only satisfy the threshold determination if the claimant (i) designed, structured, drafted, arranged, formed the plan leading to, or otherwise planned an underlying act, (ii) took steps to start, introduce, originate, set into motion, promote or otherwise initiated an underlying act, and (iii) knew or had reason to know that there were tax implications to planning and initiating the underlying act.

If the Whistleblower Office determines that a claimant meets the threshold for planning and initiating, the Whistleblower Office will then categorize and evaluate the extent of the claimant's planning and initiating of the underlying acts, based on the application of factors listed in §301.7623-4(c)(3)(iv) to the facts contained in the administrative claim file, to determine the amount of the appropriate reduction, if any. The proposed regulations' use of the categories primary, significant, and moderate, like the use of the fixed percentage and criteria approach for determining awards in

substantial contribution and less substantial contribution cases, is intended to promote consistency, fairness, and transparency in an award determination process that is inherently subjective.

The proposed regulations do not adopt a “principal architect” approach to the application of section 7623(b)(3), based in part on the plain language of the statutory provision, which does not require a single planner. More than one individual may plan and initiate the actions that lead to a tax underpayment or violation. The Treasury and the IRS recognize the value that all whistleblowers may provide, and the proposed regulations balance the goal of incentivizing whistleblowers with the plain language of the statute by providing for a sliding scale of reductions to an award for planning and initiating.

The proposed regulations provide rules for determining awards when two or more independent claims, based on different information, relate to the same collected proceeds. In these situations, the proposed regulations allow the Whistleblower Office to determine multiple awards, limited in aggregate amount to the maximum amount that could have been awarded to a single claimant, rather than restricting the determination to a single award payable to the first individual that files a claim for award or payable on some other basis.

The proposed regulations also provide rules for determining whether affiliated claimants are eligible for awards and, if so, for determining the amount of the awards. The rule covering eligible affiliated claimants is intended to apply when the Whistleblower Office determines that an eligible individual is attempting to avoid a reduced award, for example, based on the application of the rules of section 7623(b)(3)

or the application of negative factors, by having another individual to whom those rules would otherwise not apply submit the claim on behalf of the eligible individual. This rule allows the Whistleblower Office to put the actual claimant in the shoes of the purported claimant for purposes of determining the amount of the award.

Comments are specifically requested on:

(1) The efficacy of the fixed percentage approach provided under these proposed regulations.

(2) Whether there are additional positive factors, negative factors, or planning and initiating factors that would be useful for the Whistleblower Office to consider in determining the amount of awards under these regulations.

(3) The threshold determination of whether a whistleblower planned and initiated an underlying act.

(4) Whether the IRS should determine and pay multiple awards in cases in which two or more independent claims relate to the same collected proceeds, as provided under the proposed regulations, or whether only the first individual to provide information or submit a claim relating to particular collected proceeds should receive an award.

(5) The application of the eligible affiliated claimant rule.

#### Information Disclosures in Whistleblower Administrative Proceedings

Section 6103(h)(4) authorizes the disclosure of returns and return information in administrative or judicial proceedings pertaining to tax administration in certain circumstances. This rule provides the authority to disclose return information for purposes of a whistleblower administrative proceeding under section 7623. Section

301.6103(h)(4)-1 of these proposed regulations specifically authorizes the Director, officers, and employees of the Whistleblower Office to disclose return information to the extent necessary to conduct whistleblower administrative proceedings. To minimize the potentially adverse consequences of the disclosure, and possible redisclosure, of return information, these proposed regulations provide that the Whistleblower Office will use confidentiality agreements in section 7623(b) whistleblower award determination administrative proceedings, as well as other safeguards, to minimize possible redisclosures of return information while still providing meaningful opportunities for claimants to participate in whistleblower administrative proceedings.

Comments are specifically requested on whether the proposed regulations strike an appropriate balance between minimizing possible redisclosures of confidential return information and providing meaningful opportunities for claimants to participate in the administrative processing of their claims.

#### Proposed Effective Dates

When finalized, §§301.7623-1, 301.7623-2, 301.7623-3, and 301.6103(h)(4)-1 are proposed to apply to information submitted on or after the date these rules are adopted as final regulations in the Federal Register, and to claims for award under sections 7623(a) and 7623(b) that are open as of that date. Likewise, §301.7623-4 is proposed to apply to information submitted on or after that date, and to claims for award under section 7623(b) that are open as of that date. Section 301.7623-4 is not proposed to apply to claims for award under section 7623(a) that are open as of that date. This exception is intended to allow the IRS to continue to apply consistent rules to open claims for award under the discretionary award program of section 7623(a).



Comments are specifically requested on whether the proposed effective dates are appropriate.

### **Special Analyses**

It has been determined that these proposed rules are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

### **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury and the IRS request comments on all aspects of the proposed regulations. All comments that are submitted by the public will be available for public inspection and copying at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal authors of these regulations are Meghan M. Howard and Robert T. Wearing of the Office of the Associate Chief Counsel (Procedure and Administration).

### **List of Subjects in 26 CFR part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### **Proposed Amendment to the Regulations**

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

### **PART 301--PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Sections 301.7623-1 through 301.7623-4 also issued under 26 U.S.C. 7623. \* \* \*  
Section 301.6103(h)(4)-1 also issued under 26 U.S.C. 6103(h)(4) and 26 U.S.C. 6103(q). \* \* \*

Par. 2. Section 301.6103(h)(4)-1 is added to read as follows:

#### **§ 301.6103(h)(4)-1 Disclosure of returns and return information in whistleblower administrative proceedings.**

(a) In general. A whistleblower administrative proceeding (as described in §301.7623-3) is an administrative proceeding pertaining to tax administration within the meaning of section 6103(h)(4).

(b) Disclosures in whistleblower administrative proceedings. Pursuant to section 6103(h)(4) and paragraph (a) of this section, the Director, officers, and employees of the Whistleblower Office may disclose returns and return information (as defined by section 6103(b)) to an individual (or the individual's legal representative, if any) to the extent

necessary to conduct a whistleblower administrative proceeding (as described in § 301.7623-3), including but not limited to--

(1) By communicating a preliminary award recommendation or preliminary denial letter to the individual;

(2) By providing the individual with an award report package;

(3) By conducting a meeting with the individual to review documents supporting the preliminary award recommendation; and

(4) By sending an award decision letter, award determination letter, or award denial letter to the individual.

(c) Effective/applicability date. Section 301.6103(h)(4)-1 will be effective on the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. When finalized, this section is proposed to apply with respect to whistleblower administrative proceedings beginning on or after the date of publication of the Treasury Decision adopting these rules as final regulations in the **Federal Register**.

Par. 3. Section 301.7623-1 is revised to read as follows:

§301.7623-1 General rules, submitting information on underpayments of tax or violations of the internal revenue laws, and filing claims for award.

(a) In general. In cases in which awards are not otherwise provided for by law, the IRS's Whistleblower Office may pay an award under section 7623(a), in a suitable amount, for information necessary for detecting underpayments of tax or detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same. In cases that satisfy the requirements of section 7623(b)(5) and

(b)(6) and in which the Internal Revenue Service (IRS) proceeds with an administrative or judicial action based on information provided by an individual, the Whistleblower Office must determine an award under section 7623(b)(1), (2), or (3). The awards provided for by section 7623 and this paragraph must be paid from collected proceeds, as defined in § 301.7623-2(d).

(b) Eligibility to file claim for award. (1) In general. Any individual, other than an individual described in paragraph (b)(2) of this section, is eligible to file a claim for award and to receive an award under section 7623 and §§ 301.7623-1 through 301.7623-4.

(2) Ineligible claimants. The Whistleblower Office will reject any claim for award filed by an ineligible claimant and will provide written notice of the rejection to the claimant. The following individuals are not eligible to file a claim for award or receive an award under section 7623 and §§ 301.7623-1 through 301.7623-4:

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

(ii) An individual who obtained the information through the individual's official duties as an employee of a Federal, State, or local Government, or who is acting within the scope of those official duties as an employee of a Federal, State, or local Government;

(iii) An individual who is or was required by Federal law or regulation to disclose the information or who is or was precluded by Federal law or regulation from disclosing the information;

(iv) An individual who obtained or was furnished the information while acting in an official capacity as a member of a Federal or State body or commission having access to materials such as Federal returns, copies, or abstracts; or

(v) An individual who obtained or had access to the information based on a contract with the Federal government.

(3) Ineligible affiliated claimants. If the Whistleblower Office determines that an affiliated claimant, as defined in § 301.7623-2(f), filed a claim for award based on information obtained from an ineligible individual for the purpose of avoiding the rejection of the claim that would result if the claim was filed by the ineligible individual, then the Whistleblower Office may treat the claim as if it had been filed by the ineligible individual. See § 301.7623-4(c)(4) for rules regarding eligible affiliated claimants.

(c) Submission of information and claims for award. (1) Submitting information. To be eligible to receive an award under section 7623 and §§ 301.7623-1 through 301.7623-4, an individual must submit to the IRS specific and credible information that the individual believes will lead to collected proceeds from persons whom the individual believes have failed to comply with the internal revenue laws. In general, an individual's submission should identify the person(s) believed to have failed to comply with the internal revenue laws and should provide substantive information, including all available documentation, that supports the individual's allegations. Information that identifies a pass-through entity will be considered to also identify all persons with a direct or indirect interest in the entity. Information that identifies a member of a firm who promoted another identified person's participation in a transaction described and documented in the information provided will be considered to also identify the firm and all other

members of the firm. Submissions that provide speculative information or that do not provide specific and credible information regarding tax underpayments or violations of internal revenue laws do not provide a basis for an award. If documents or supporting evidence are known to the individual but are not in the individual's control, then the individual should describe the documents or supporting evidence and identify their location to the best of the individual's ability. If all available information known to the individual is not provided to the IRS by the individual, then the individual bears the risk that this information might not be considered by the Whistleblower Office for purposes of an award.

(2) Filing claim for award. To claim an award under section 7623 and §§ 301.7623-1 through 301.7623-4 for information provided to the IRS, an individual must file a formal claim for award by completing and sending Form 211, "Application for Award for Original Information," to the Internal Revenue Service, Whistleblower Office, at the address provided on the form, or by complying with other claim filing procedures as may be prescribed by the IRS in other published guidance. The Form 211 should be completed in its entirety and should include the following information:

- (i) The date of the claim;
- (ii) The claimant's name;
- (iii) The claimant's address and telephone number;
- (iv) The date of birth of the claimant;
- (v) The taxpayer identification number of the claimant; and
- (vi) An explanation of how the information on which the claim is based came to the attention and into the possession of the claimant, including, as available, the date(s)

on which the claimant acquired the information and a complete description of the claimant's present or former relationship (if any) to the person(s) identified on the Form 211.

(3) Under penalty of perjury. No award may be made under section 7623(b) unless the information on which the award is based is submitted to the IRS under penalty of perjury. All claims for award under section 7623 and §§ 301.7623-1 through 301.7623-4 must be accompanied by an original signed declaration under penalty of perjury, as follows: "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." This requirement precludes the filing of a claim for award by a person serving as a representative of, or in any way on behalf of, another individual. Claims filed by more than one individual (joint claims) must be signed by each individual claimant under penalty of perjury.

(4) Perfecting claim for award. If an individual files a claim for award that does not include information described under paragraph (c)(2) of this section, does not contain specific and credible information as described in paragraph (c)(1) of this section, or is based on information that was not submitted under penalty of perjury as required by paragraph (c)(3) of this section, the Whistleblower Office may, in its sole discretion, reject the claim or notify the individual of the deficiencies and provide the individual an opportunity to perfect the claim for award. If an individual does not perfect the claim for award within the time period specified by the Whistleblower Office, then the Whistleblower Office may reject the claim. If the Whistleblower Office rejects a claim,

then the Whistleblower Office will provide written notice of the rejection to the claimant. If the Whistleblower Office rejects a claim for the reasons described in this paragraph, then the claimant may perfect and resubmit the claim.

(d) Request for assistance. (1) In general. The Whistleblower Office, the IRS or IRS Office of Chief Counsel may request the assistance of an individual claimant or the individual claimant's legal representative. Any assistance shall be at the direction and control of the Whistleblower Office, the IRS, or the IRS Office of Chief Counsel assigned to the matter. See § 301.6103(n)-2 for rules regarding written contracts among the IRS, whistleblowers, and legal representatives of whistleblowers.

(2) No agency relationship. Submitting information, filing a claim for award, or responding to a request for assistance does not create an agency relationship between a claimant and the Federal government, nor does a claimant or the claimant's legal representative act in any way on behalf of the Federal government.

(e) Identification of whistleblowers. Under the informant's privilege, the IRS will use its best efforts to protect the identity of whistleblowers. In some circumstances, the IRS may need to reveal a whistleblower's identity, for example, when it is determined that it is in the best interests of the Government to use a whistleblower as a witness in a judicial proceeding. In those circumstances, the IRS will make every effort to notify the whistleblower before revealing the whistleblower's identity.

(f) Effective/applicability date. When finalized, § 301.7623-1 is proposed to apply to information submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and to claims for



award under sections 7623(a) and 7623(b) that are open as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 4. Section 301.7623-2 is added to read as follows:

§301.7623-2 Definitions.

(a) Action. (1) In general. For purposes of section 7623(b) and §§ 301.7623-1 through 301.7623-4, the term action means an administrative or judicial action.

(2) Administrative action. For purposes of section 7623(b) and §§ 301.7623-1 through 301.7623-4, the term administrative action means all or a portion of an IRS civil or criminal proceeding against any person that may result in collected proceeds, as defined in paragraph (d) of this section, including, for example, an examination, a collection proceeding, a status determination proceeding, or a criminal investigation.

(3) Judicial action. For purposes of section 7623(b) and §§ 301.7623-1 through 301.7623-4, the term judicial action means all or a portion of a proceeding against any person in any court that may result in collected proceeds, as defined in paragraph (d) of this section.

(b) Proceeds based on. (1) In general. For purposes of section 7623(b) and §§301.7623-1 through 301.7623-4, the Internal Revenue (IRS) proceeds based on information provided by an individual only when the IRS:

- (i) Initiates a new action;
- (ii) Expands the scope of an ongoing action; or
- (iii) Continues to pursue an ongoing action, that the IRS would not have initiated, expanded the scope of, or continued to pursue, respectively, but for the information

provided by the individual. The IRS does not proceed based on when the IRS merely analyzes the information provided by the individual and investigates the matter.

(2) Example. The provisions of paragraph (b)(1) of this section may be illustrated by the following example:

Example. Information provided to the IRS by an individual, under section 7623 and §301.7623-1, identifies a taxpayer, describes and documents specific facts relating to the taxpayer's foreign sales in Country A, and, based on those facts, alleges that the taxpayer was not entitled to a foreign tax credit relating to its foreign sales in Country A. The IRS receives the information after having already initiated an examination of the taxpayer. The IRS's audit plan does not include consideration of the amount of the foreign tax credit relating to the taxpayer's foreign sales in Country A but, based on the information provided, the IRS expands the examination to include the foreign tax credit issue. For purposes of section 7623 and §§301.7623-1 through 301.7623-4, the portion of the IRS's examination of the taxpayer relating to the foreign tax credit issue is an administrative action with which the IRS proceeds based on the information provided by the individual. If the examination of the taxpayer included the foreign tax credit issue before the individual provided the information, then no portion of the IRS's examination of the taxpayer is an administrative action with which the IRS proceeds based on the information provided, unless the IRS would not have continued to pursue the examination but for the information provided.

(c) Related action. (1) In general. For purposes of section 7623(b) and §§ 301.7623-1 through 301.7623-4, the term related action is limited to:

(i) A second or subsequent action against the person(s) identified in the information provided and subject to the original action if, in the second or subsequent action, the IRS proceeds based on the specific facts described and documented in the information provided; and

(ii) An action against a person other than the person(s) identified in the information provided and subject to the original action if:

(A) The other, unidentified person is directly related to the person identified in the information provided;

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

(C) The IRS proceeds with the action against the other person based on the specific facts described and documented in the information provided. For purposes of this paragraph, an unidentified person is directly related to the person identified in the information provided if the IRS can identify the unidentified person using only the information provided (without first having to use the information provided to identify any other person or having to independently obtain additional information).

(2) Examples. The provisions of paragraph (c)(1) of this section may be illustrated by the following examples:

Example 1. Information provided to the IRS by an individual, under section 7623 and §301.7623-1, identifies a taxpayer, describes and documents specific facts relating to the taxpayer's activities, and, based on those facts, alleges that the taxpayer owed additional taxes in Year 1. The IRS proceeds with an examination of the taxpayer for Year 1 based on the information provided by the individual. The IRS discovers that the taxpayer engaged in the same activities in Year 2 and expands the examination to Year 2. In the course of the examination, the IRS obtains, through the issuance of IDRs and summonses, additional facts that are unrelated to the activities described in the information provided by the individual. Based on these additional facts, the IRS expands the scope of the examination of the taxpayer for both Year 1 and Year 2. For purposes of section 7623 and §§301.7623-1 through 301.7623-4, the portion of the IRS's examination of the taxpayer in Year 2 relating to the activities described and documented in the information provided (with respect to Year 1) is a related action because it satisfies the conditions of paragraph (c)(1)(i) of this section. The portions of the IRS's examination of the taxpayer in both Year 1 and Year 2 relating to the additional facts obtained through the issuance of IDRs and summonses are not related actions (nor are they administrative actions based on the information provided).

Example 2. Information provided to the IRS by an individual, under section 7623 and §301.7623-1, identifies a taxpayer (Taxpayer 1), describes and documents specific facts relating to Taxpayer 1's activities, and, based on those facts, alleges tax underpayments by Taxpayer 1. The information provided also identifies an accountant

(CPA 1) and describes and documents specific facts relating to CPA 1's contribution to the activities of Taxpayer 1 that the individual alleges resulted in tax underpayments. The IRS proceeds with an examination of Taxpayer 1 based on the information provided by the individual. Using only the information provided, the IRS obtains CPA 1's client list and identifies two taxpayer/clients of CPA 1 (Taxpayer 2 and Taxpayer 3) that appear to have engaged in activities similar to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 2 and finds that Taxpayer 2 engaged in the same activities as those described in the information provided with respect to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 3 and finds that Taxpayer 3 engaged in different activities from those described in the information provided with respect to Taxpayer 1. For purposes of section 7623 and §§301.7623-1 through 301.7623-4, the examination of Taxpayer 2 is a related action because it satisfies the conditions of paragraph (c)(1)(ii) of this section. The examination of Taxpayer 3 is not a related action because the relevant facts are not substantially the same as the facts relevant to the examination of Taxpayer 1.

Example 3. Same facts as Example 2. Using only the information provided, the IRS identifies a co-promoter of CPA 1 (CPA 2) that appears to have engaged in activities similar to CPA 1. CPA 2 is not a member of CPA 1's firm. The IRS subsequently obtains the client list of CPA 2 and identifies a taxpayer/client of CPA 2 (Taxpayer 4) that appears to have engaged in activities similar to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 4 and finds that Taxpayer 4 engaged in the same activities as those described in the information provided with respect to Taxpayer 1, and that CPA 2 contributed to the activities in the same way as described in the information provided with respect to CPA 1. The IRS proceeds with an examination of CPA 2's liability for promoter penalties under section 6700 in connection with the activities described in the information provided with respect to Taxpayer 1 and CPA 1. For purposes of section 7623 and §§301.7623-1 through 301.7623-4, the examination of CPA 2 is a related action because it satisfies the conditions of paragraph (c)(1)(ii) of this section. The examination of Taxpayer 4 is not a related action because Taxpayer 4 was not related to a person identified in the information provided. CPA 2 was not identified in the information provided and the IRS first had to identify CPA 2 before identifying Taxpayer 4 and proceeding with the examination of Taxpayer 4.

Example 4. Same facts as Example 2. An accountant (CPA 3) is a member of CPA 1's firm. Using only the information provided, the IRS obtains the client list of CPA 3 and identifies a taxpayer/client of CPA 3 (Taxpayer 5) that appears to have engaged in activities similar to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 5 and finds that Taxpayer 5 engaged in the same activities as those described in the information provided with respect to Taxpayer 1, and that CPA 3 contributed to the activities in the same way as described in the information provided with respect to CPA 1. For purposes of section 7623 and §§301.7623-1 through 301.7623-4, the examination of Taxpayer 5 is a related action because Taxpayer 5 is related to CPA 3, a person considered to be identified in the information provided under §301.7623-1(c)(1), and the facts relating to Taxpayer 5 are substantially the same as the facts described and documented in the information provided. An IRS examination of CPA 3's liability for

promoter penalties under section 6700, based on the facts described and documented in the information provided with respect to Taxpayer 1 and CPA 1, is an administrative action based on the information provided.

Example 5. Information provided to the IRS by an individual, under section 7623 and §301.7623-1, identifies a taxpayer (Taxpayer 1), describes and documents specific facts relating to Taxpayer 1's activities, and, in particular, Taxpayer 1's participation in a transaction. Based on those facts, the individual alleges that Taxpayer 1 owed additional taxes. The IRS proceeds with an examination of Taxpayer 1 based on the information provided by the individual. The IRS identifies the other parties to the transaction described in the information provided (Taxpayer 2 and Taxpayer 3). The IRS proceeds with examinations of Taxpayer 2 and Taxpayer 3 relating to their participation in the transaction described in the information provided. For purposes of section 7623 and §§ 301.7623-1 through 301.7623-4, the IRS's examinations of Taxpayer 2 and Taxpayer 3 relating to the activities described and documented in the information provided are related actions because they satisfy the conditions of paragraph (c)(1)(ii) of this section.

(d) Collected proceeds. (1) In general. For purposes of section 7623 and §§301.7623-1 through 301.7623-4, the terms proceeds of amounts collected and collected proceeds (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. Collected proceeds are limited to amounts collected under the provisions of title 26, United States Code.

(2) Refund netting. (i) In general. If any portion of a claim for refund that is substantively unrelated to the information provided is:

(A) Allowed, and

(B) 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.

(ii) Example. The provisions of paragraph (d)(2)(i) of this section may be illustrated by the following example:

Example. Information provided to the IRS by an individual, under section 7623 and § 301.7623-1, 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. For purposes of section 7623 and §§301.7623-1 through 301.7623-4, the 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.

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

(4) Computation of collected proceeds. (i) In general. The Whistleblower Office will monitor each case for collection of proceeds. Pursuant to § 301.7623-4(d)(1), the IRS cannot make an award payment until there has been a final determination of tax. For purposes of determining the amount of an award under section 7623 and §§ 301.7623-1 through 301.7623-4, after there has been a final determination of tax as defined in §301.7623-4(d)(2), the IRS will compute the amount of collected proceeds based on all information known with respect to the taxpayer's account, including with respect to all tax attributes, as of the date the computation is made.

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

(e) Amount in dispute and gross income. (1) In general. Section 7623(b) applies with respect to any action against any taxpayer in which the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed \$2,000,000 but, if the taxpayer is an individual, then only if the individual's gross income exceeds \$200,000 in at least one taxable year subject to the action.

(2) Amount in dispute. (i) In general. For purposes of section 7623(b)(5) and §§ 301.7623-1 through 301.7623-4, the term amount in dispute means the maximum total of tax, penalties, interest, additions to tax, and additional amounts that could have resulted from the action(s) with which the IRS proceeded based on the information provided, if the formal positions taken by the IRS had been sustained. The IRS will compute the amount in dispute, for purposes of award determinations described in § 301.7623-3(c)(6), when there has been a final determination of tax as defined in § 301.7623-4(d)(2).

(ii) Example. The provisions of paragraph (e)(2)(i) of this section may be illustrated by the following example:

Example. Information provided to the IRS by an individual, under section 7623 and § 301.7623-1, identifies a corporate taxpayer, describes and documents specific facts relating to the taxpayer's activities, and, based on those facts, alleges that the taxpayer owed additional taxes. The IRS proceeds with an examination of the taxpayer based on the information provided by the individual; makes adjustments to items of income and expense and allows certain credits; and, ultimately, determines a deficiency

against the taxpayer of \$2,100,000 and issues the taxpayer a statutory notice of deficiency. The taxpayer petitions the notice to the United States Tax Court. The Tax Court sustains the IRS's position, in part, resulting in a deficiency of \$1,500,000. The IRS also computes, however, that the total of tax, penalties, interest, additions to tax, and additional amounts that could have resulted from the action, if the court had sustained the IRS's position, in full, was \$2,500,000. For purposes of section 7623 and §§ 301.7623-1 through 301.7623-4, the amount in dispute is \$2,500,000.

(3) Gross income. For purposes of section 7623(b)(5) and §§ 301.7623-1 through 301.7623-4, the term gross income has the same meaning as provided under section 61(a). The IRS will compute the individual taxpayer's gross income, for purposes of award determinations described in §301.7623-3(c)(6), when there has been a final determination of tax as defined in § 301.7623-4(d)(2).

(f) Affiliated claimant. For purposes of §§ 301.7623-1 through 301.7623-4, the term affiliated claimant means an individual that files a claim for award on behalf of another individual. See § 301.7623-1(b)(3) for rules regarding ineligible affiliated claimants and § 301.7623-4(c)(4) for rules regarding eligible affiliated claimants.

(g) Effective/applicability date. When finalized, § 301.7623-2 is proposed to apply to information submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and to claims for award under sections 7623(a) and 7623(b) that are open as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 301.7623-3 is added to read as follows:

§ 301.7623-3 Whistleblower administrative proceedings and appeals of award determinations.

(a) In general. The Whistleblower Office will pay awards under section 7623(a) and determine awards to individuals under section 7623(b) in whistleblower



administrative proceedings pursuant to the rules of this section. The whistleblower administrative proceedings described in this section are administrative proceedings pertaining to tax administration for purposes of section 6103(h)(4). See § 301.6103(h)(4)-1 for additional rules regarding disclosures of return information in whistleblower administrative proceedings. The Whistleblower Office may determine awards for claims involving multiple actions in a single whistleblower administrative proceeding. For purposes of applying the rules of this section, the Internal Revenue Service (IRS) may, however, rely on other information as necessary (for example, when the alleged amount in dispute is below the \$2 million threshold of section 7623(b)(5)(B), but the actual amount in dispute is above the threshold).

(b) Awards under section 7623(a). (1) Preliminary award recommendation. In cases in which the Whistleblower Office recommends payment of an award under section 7623(a), the Whistleblower Office will communicate a preliminary award recommendation under section 7623(a) and §§ 301.7623-1 through 301.7623-4 to the claimant by sending a preliminary award recommendation letter that states the Whistleblower Office's preliminary computation of the amount of collected proceeds, recommended award percentage, recommended award amount (even in cases when the application of section 7623(b)(2) or section 7623(b)(3) results in a reduction of the recommended award amount to zero), and a list of the factors that contributed to the recommended award percentage. The whistleblower administrative proceeding described in paragraphs (b)(1) and (2) of this section begins on the date the Whistleblower Office sends the preliminary award recommendation letter. If the claimant believes that the Whistleblower Office erred in evaluating the information

provided, the claimant has 30 days from the date the Whistleblower Office sends the preliminary award recommendation to submit comments to the Whistleblower Office. The Whistleblower Office will review all comments submitted timely by the claimant (or the claimant's legal representative, if any) and pay an award, pursuant to paragraph (b)(2) of this section.

(2) Decision letter. At the conclusion of the process described in paragraph (b)(1) of this section, and when there is a final determination of tax, as defined in § 301.7623-4(d)(2), the Whistleblower Office will pay an award under section 7623(a) and §§ 301.7623-1 through 301.7623-4. The Whistleblower Office will communicate the amount of the award to the claimant in a decision letter.

(3) Denials. If the Whistleblower Office rejects a claim for award under section 7623(a), pursuant to § 301.7623-1(b) or (c), or if the IRS either did not proceed with an action, as defined in § 301.7623-2(b), or did not collect proceeds, as defined in § 301.7623-2(d), then the Whistleblower Office will not apply the rules of paragraphs (b)(1) or (2) of this section. The Whistleblower Office will provide written notice to the claimant of the denial of any award.

(c) Awards under section 7623(b). (1) Preliminary award recommendation. The Whistleblower Office will prepare a preliminary award recommendation based on the Whistleblower Office's review of the administrative claim file and the application of the rules of section 7623 and §§ 301.7623-1 through 301.7623-4 to the facts of the case. See paragraph (e)(2) of this section for a description of the administrative claim file.

(2) Contents of preliminary award recommendation. The Whistleblower Office will communicate the preliminary award recommendation under section 7623(b) to the individual by sending:

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

(ii) A summary report that states a preliminary computation of the amount of collected proceeds, the recommended award percentage, the recommended award amount (even in cases when the application of section 7623(b)(2) or section 7623(b)(3) results in a reduction of the recommended award amount to zero), and a list of the factors that contributed to the recommended award percentage;

(iii) An award consent form; and

(iv) A confidentiality agreement. The whistleblower administrative proceeding described in paragraphs (c)(1) through (6) of this section begins on the date the Whistleblower Office sends the preliminary award recommendation letter. The preliminary award recommendation is not a determination letter within the meaning of paragraph (c)(6) of this section and cannot be appealed to Tax Court under section 7623(b)(4) and paragraph (d) of this section. The preliminary award recommendation will notify the individual that the IRS cannot determine or pay any award until there is a final determination of tax, as defined in § 301.7623-4(d)(2).

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

(i) If the individual takes no action, then the Whistleblower Office will make a final award determination, pursuant to paragraph (c)(6) of this section;

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

(iii) If the individual signs, dates, and returns the confidentiality agreement, then the Whistleblower Office will provide the individual with an opportunity to review documents supporting the report, and a detailed award report pursuant to paragraphs (c)(3) and (4) of this section, and any comments submitted by the individual will be added to the administrative claim file; or

(iv) If the individual submits comments on the preliminary award recommendation to the Whistleblower Office, but does not sign, date, and return the confidentiality agreement, then the comments will be added to the administrative claim file and reviewed by the Whistleblower Office in making an award determination, pursuant to paragraph (c)(6) of this section.

(4) Detailed report. (i) Contents of detailed report. If the individual signs, dates, and returns the confidentiality agreement accompanying the preliminary award recommendation under section 7623(b), pursuant to paragraph (c)(3) of this section, then the Whistleblower Office will send the individual:

(A) A detailed report that states a preliminary computation of the amount of collected proceeds, the recommended award percentage, and the recommended award

amount, and provides a full explanation of the factors that contributed to the recommended award percentage;

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

(C) An award consent form. The detailed report is not a determination letter within the meaning of paragraph (c)(6) of this section and cannot be appealed to Tax Court under section 7623(b)(4) and paragraph (d) of this section. The detailed report will notify the individual that the IRS cannot determine or pay any award until there is a final determination of tax, as defined in § 301.7623-4(d)(2).

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

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

(B) If the individual requests an appointment to review information from the administrative claim file that is not protected from disclosure by one or more common law or statutory privileges, then a meeting will be arranged pursuant to paragraph (c)(5) of this section;

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

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

(5) Opportunity to review documents supporting award report recommendations. Appointments for the individual (and the individual's legal representative, if any) to review information from the administrative claim file that is not protected from disclosure by one or more common law or statutory privileges will be held at the Whistleblower Office in Washington, D.C., unless the Whistleblower Office, in its sole discretion, decides to hold the meeting at another location. At the appointment, the Whistleblower Office will provide for viewing the pertinent information from the administrative claim file. The Whistleblower Office will supervise the individual's review of the documents and the individual will not be permitted to make copies of the documents. The individual will have 30 days (this period may be extended at the sole discretion of the Whistleblower Office) from the date of the appointment to submit comments on the detailed report and the documents reviewed at the appointment to the Whistleblower Office. All comments will be added to the administrative claim file and reviewed by the Whistleblower Office in making an award determination, pursuant to paragraph (c)(6) of this section.

(6) Determination letter. After the individual's participation in the whistleblower administrative proceeding, pursuant to paragraph (c) of this section, has concluded, and there is a final determination of tax, as defined in § 301.7623-4(d)(2), a Whistleblower Office official will determine the amount of the award under section 7623(b)(1), (2), or (3), and §§ 301.7623-1 through 301.7623-4, based on the official's review of the

administrative claim file. The Whistleblower Office will communicate the award to the individual in a determination letter, stating the amount of the award. If, however, the individual has executed an award consent form agreeing to the amount of the award and waiving the individual's right to appeal the award determination, pursuant to section 7623(b)(4) and paragraph (d) of this section, then the Whistleblower Office will not send the individual a determination letter and will make payment of the award as promptly as circumstances permit.

(7) Denials. If the Whistleblower Office rejects a claim for award under section 7623(b), pursuant to § 301.7623-1(b) or (c), or if, with respect to a claim for award under section 7623(b), the IRS either did not proceed with an action, as defined in § 301.7623-2(b), or did not collect proceeds, as defined in §301.7623-2(d), then the Whistleblower Office will not apply the rules of paragraphs (c)(1) through (6) of this section. The Whistleblower Office will send to the claimant a preliminary denial letter that states the basis for the denial of the claim. The whistleblower administrative proceeding described in this paragraph begins on the date the Whistleblower Office sends the preliminary denial letter. If the claimant believes that the Whistleblower Office erred in evaluating the information provided, the claimant has 30 days from the date the Whistleblower Office sends the preliminary denial letter to submit comments to the Whistleblower Office. The Whistleblower Office will review all comments submitted timely by the claimant and, following that review, the Whistleblower Office will either provide written notice to the claimant of the denial of any award or apply the rules of paragraphs (c)(1) through (c)(6) of this section.

(d) Appeal of award determination. Any determination regarding an award under section 7623(b)(1), (2), or (3) may, within 30 days of such determination, be appealed to the Tax Court.

(e) Administrative record. (1) In general. The administrative record comprises all information contained in the administrative claim file that is not protected by one or more common law or statutory privileges that is relevant to the award determination.

(2) Administrative claim file. The administrative claim file will include the following materials relating to the action(s) with respect to which the IRS proceeded based on the information provided by the individual, as applicable, and to which the determination relates:

(i) The Form 211 filed by the individual and all information provided by the individual (whether provided with the individual's original submission or through a subsequent contact with the IRS).

(ii) Copies of all debriefing notes and recorded interviews held with the individual (and the individual's representative, if any).

(iii) Form(s) 11369, "Confidential Evaluation Report on Claim for Award," including narratives prepared by the relevant IRS office(s), explaining the individual's contributions to the actions and documenting the actions taken by the IRS in the case(s). The Form 11369 will refer to and incorporate additional documents relating to the issues raised by the claim, as appropriate, including, for example, relevant portions of revenue agent reports, copies of agreements entered into with the taxpayer(s), tax returns, and activity records.



(iv) Copies of all contracts entered into among the IRS, the individual, and the individual's legal representative (if any), and an explanation of the cooperation provided by the individual (or the individual's legal representative, if any) under the contract.

(v) Any information that reflects actions by the individual that may have had a negative impact on the IRS's ability to examine the taxpayer(s).

(vi) All correspondence and documents sent by the Whistleblower Office to the individual.

(vii) All notes, memoranda, and other documents made by officers and employees of the Whistleblower Office and considered by the official making the award determination.

(viii) All correspondence and documents received by the Whistleblower Office from the individual (and the individual's legal representative, if any) in the course of the whistleblower administrative proceeding.

(ix) All other information considered by the official making the award determination.

(f) Effective/applicability date. When finalized, § 301.7623-3 is proposed to apply to information submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and to claims for award under sections 7623(a) and 7623(b) that are open as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 301.7623-4 is added to read as follows:

§ 301.7623-4 Amount and payment of award.

(a) In general. The Whistleblower Office will pay all awards under section 7623(a) and determine all awards under section 7623(b). For all awards under section 7623 and §§ 301.7623-1 through 301.7623-4, the Whistleblower Office will--

(1) Analyze the claim by applying the rules provided in paragraph (c) of this section to the information contained in the administrative claim file to determine an award percentage; and

(2) Multiply the award percentage by the amount of collected proceeds. If the award determination arises out of a single whistleblower administrative proceeding involving multiple actions, the Whistleblower Office may determine separate award percentages on an action-by-action basis and apply the separate award percentages to the collected proceeds attributable to the corresponding actions. The Internal Revenue Service (IRS) will pay all awards in accordance with the rules provided in paragraph (d) of this section. All relevant factors will be taken into account by the Whistleblower Office in determining whether an award will be paid and, if so, the amount of the award. No person is authorized under this section to make any offer or promise or otherwise bind the Whistleblower Office with respect to the amount or payment of an award.

(b) Factors used to determine award percentage. (1) Positive factors. The application of the following non-exclusive factors may support increasing an award percentage under paragraphs (c)(1) or (2) of this section:

(i) The individual acted promptly to inform the IRS or the taxpayer of the tax noncompliance.

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

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

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

(v) The individual (or the individual's legal representative, if any) provided exceptional cooperation and assistance during the pendency of the action(s), for example by providing a useful technical or legal analysis of the taxpayer's records in response to a request from the Whistleblower Office, the IRS, or the IRS Office of Chief Counsel.

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

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

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

(2) Negative factors. The application of the following non-exclusive factors may support decreasing an award percentage under paragraphs (c)(1) or (2) of this section:

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

(ii) The individual contributed to the underpayment of tax or tax noncompliance identified.

(iii) The individual directly or indirectly profited from the underpayment of tax or tax noncompliance identified.

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

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

(vi) The individual (or the individual's legal representative, if any) violated the terms of the confidentiality agreement described in § 301.7623-3(b)(2).

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

(viii) The individual provided false or misleading information or otherwise violated the requirements of section 7623(b)(6)(C) or § 301.7623-1(c)(3).

(c) Amount of award percentage. (1) Award for substantial contribution. (i) In general. If the IRS proceeds with any administrative or judicial action based on information brought to the IRS's attention by an individual, such individual shall, subject to paragraphs (c)(2) and (3) of this section, receive as an award at least 15 percent but not more than 30 percent of the collected proceeds resulting from the action (including any related actions) or from any settlement in response to such action. The amount of any award under this paragraph depends on the extent of the individual's substantial

contribution to the action(s). See paragraph (c)(5) of this section for rules regarding multiple claimants.

(ii) Computational framework. Starting the analysis at the statutory minimum of 15 percent, the Whistleblower Office will analyze the administrative claim file using the factors listed in paragraph (b)(1) of this section to determine whether the individual merits an increased award percentage of 22 percent or 30 percent. The Whistleblower Office may increase the award percentage based on the presence and significance of positive factors. The Whistleblower Office will then analyze the contents of the administrative claim file using the factors listed in paragraph (b)(2) of this section to determine whether the individual merits a decreased award percentage of 15 percent, 18 percent, 22 percent, or 26 percent. The Whistleblower Office may decrease the award percentage based on the presence and significance of negative factors.

Although the factors listed in paragraphs (b)(1) and (2) of this section are described as positive and negative factors, the Whistleblower Office's analysis cannot be reduced to a mathematical equation. The factors are not exclusive and are not weighted and, in a particular case, one factor may override several others. The presence and significance of negative factors may offset the presence and significance of positive factors and, while the presence and significance of negative factors alone cannot result in an award percentage of less than 15 percent, the absence of negative factors does not mean that an award percentage will be greater than 15 percent.

(iii) Example. The operation of the provisions of paragraph (c)(1)(ii) of this section may be illustrated by the following example. The example is intended to illustrate the operation of the computational framework. It is not intended to provide a

standard against which the substantial contribution of an individual submitting a claim for award may be compared. The example provides a simplified description of the facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case(s). The application of section 7623(b)(1) and paragraph (c)(1)(ii) of this section will depend on the specific facts of each case.

Example. Individual A, an employee in Corporation's sales department, submitted to the IRS a claim for award under section 7623 and information indicating that Corporation improperly claimed a credit in tax year 2006. Individual A's information consisted of numerous non-privileged documents relevant to Corporation's eligibility for the credit. Individual A's original submission also included an analysis of the documents, as well as information about meetings in which the claim for credit was discussed. When interviewed by the IRS, Individual A clarified ambiguities in the original submission, answered questions about Corporation's business and accounting practices, and identified potential sources to corroborate the information. Some of the documents provided by Individual A were not included in Corporation's general record-keeping system and their existence may not have been easily uncovered through normal IRS examination procedures. Corporation initially denied the facts revealed in the information provided by Individual A, which were essential to establishing the impropriety of the claim for credit. IRS examination of Corporation's return confirmed that the credit was improperly claimed by Corporation in tax year 2006, as alleged by Individual A. Corporation agreed to the ensuing assessments of tax and interest and paid the liabilities in full. In this case, Individual A provided specific and credible information that formed the basis for action by the IRS. Individual A provided information that was difficult to detect, provided useful assistance to the IRS, and helped the IRS sustain the assessment. Based on the presence and significance of these positive factors, viewed against all the specific facts relevant to Corporation's 2006 tax year, the Whistleblower Office could increase the award percentage to 22 percent of collected proceeds. If Individual A violated instructions provided by the IRS and the violation caused the IRS to expend additional resources, then the Whistleblower Office could, based on this negative factor, reduce the award percentage to 18 percent or 15 percent (but not to lower than 15 percent of collected proceeds).

(2) Award for less substantial contribution. (i) In general. If the Whistleblower Office determines that the action described in paragraph (c)(1) of this section is based principally on disclosures of specific allegations resulting from public source information including a judicial or administrative hearing; a government report, hearing, audit, or investigation; or the news media, then the Whistleblower Office may determine an

award of no more than 10 percent of the collected proceeds resulting from the action (including any related actions) or from any settlement in response to such action. The appropriate amount of any award under this paragraph depends on the significance of the individual's information and the role of the individual (and the individual's legal representative, if any) in contributing to the action(s). If the individual is the original source of the public source information, however, then the award percentage will be determined under paragraph (c)(1) of this section.

(ii) Computational framework. The Whistleblower Office will analyze the administrative claim file to determine whether any of the information provided by the individual contained public source information and, if it did, whether the action described in paragraph (c)(1) of this section was based principally on the public source information. The Whistleblower Office will make this determination based on the extent to which the public source information described a tax violation or facts and circumstances from which a tax violation reasonably may be inferred. If the Whistleblower Office determines that the action was based principally on public source information, then, starting at 1 percent, the Whistleblower Office will analyze the administrative claim file using the factors listed in paragraph (b)(1) of this section to determine whether the individual merits an increased award percentage of 4 percent, 7 percent, or 10 percent. The Whistleblower Office will then determine whether the individual merits a decreased award percentage of zero, 1 percent, 4 percent, or 7 percent using the factors listed in paragraph (b)(2). The Whistleblower Office may increase the award percentage based on the presence and significance of positive factors and may decrease the award percentage based on the presence and

significance of negative factors. Like the analysis described in paragraph (c)(1)(ii) of this section, the Whistleblower Office's analysis cannot be reduced to a mathematical equation. The factors are not exclusive and are not weighted and, in a particular case, one factor may override several others. The presence and significance of negative factors may offset the presence and significance of positive factors or result in a zero award, but the absence of negative factors does not mean that an award percentage will be greater than 1 percent.

(iii) Example. The operation of the provisions of paragraph (c)(2)(ii) of this section may be illustrated by the following example. The example is intended to illustrate the operation of the computational framework. It is not intended to provide a standard against which the substantial contribution of an individual submitting a claim for award may be compared. The example provides a simplified description of the facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case(s). The application of section 7623(b)(2) and paragraph (c)(2)(ii) of this section will depend on the specific facts of each case.

Example. Individual A submitted to the IRS a claim for award under section 7623 and information indicating that Taxpayer B was the defendant in a criminal prosecution for embezzlement. Individual A's information further indicated that evidence presented at Taxpayer B's trial revealed Taxpayer B's efforts to conceal the embezzled funds by depositing them in bank accounts of entities controlled by Taxpayer B. In this case, Individual A's information is based principally on disclosures of specific allegations resulting from a judicial hearing. Absent information demonstrating that the investigation leading to the embezzlement charge was based on information provided by Individual A, section 7623(b)(2) and paragraph (c)(2) of this section applies to the determination of Individual A's award. In this case, there is no reason for the Whistleblower Office to increase the applicable award percentage above 1 percent, the starting point for its analysis, given the absence of positive factors. Accordingly, Individual A may receive an award of 1 percent of collected proceeds.



(3) Reduction in award and denial of award. (i) In general. If the Whistleblower Office determines that a claim for award is brought by an individual who planned and initiated the actions, transaction, or events (underlying acts) that led to the underpayment of tax or actions described in section 7623(a)(2), then the Whistleblower Office may appropriately reduce the amount of the award percentage that would otherwise result under section 7623(b)(1) and paragraph (c)(1) of this section or section 7623(b)(2) and paragraph (c)(2) of this section, as applicable. The Whistleblower Office will deny an award if the individual is convicted of criminal conduct arising from his or her role in planning and initiating the underlying acts.

(ii) Threshold determination. An individual planned and initiated the underlying acts if the individual:

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

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

(C) Knew or had reason to know that there were tax implications to planning and initiating the underlying act. The individual need not have been the sole person involved in planning and initiating the underlying acts. An individual who merely furnishes typing, reproducing, or other mechanical assistance in implementing one or more underlying acts will not be treated as initiating any underlying act. If the Whistleblower Office determines that an individual has satisfied this initial threshold of planning and initiating, the Whistleblower Office will then reduce the award amount

based on the extent of the individual's planning and initiating, pursuant to paragraph (c)(3)(iii) of this section.

(iii) Computational framework. After determining the award percentage that would otherwise result from the application of section 7623(b)(1) and paragraph (c)(1) of this section or section 7623(b)(2) and paragraph (c)(2) of this section, as applicable, the Whistleblower Office will analyze the administrative claim file to make the threshold determination described in paragraph (c)(3)(ii) of this section. If the individual is determined to have planned and initiated the underlying acts, then the Whistleblower Office will reduce the award based on the extent of the individual's planning and initiating. The Whistleblower Office's analysis and the amount of the appropriate reduction determined in a particular case cannot be reduced to a mathematical equation. To determine the appropriate award reduction, the Whistleblower Office will:

(A) Categorize the individual's role as a planner and initiator as primary, significant, or moderate; and

(B) Appropriately reduce the award percentage that would otherwise result from the application of section 7623(b)(1) and paragraph (c)(1) of this section or section 7623(b)(2) and paragraph (c)(2) of this section, as applicable, by 67 percent to 100 percent in the case of a primary planner and initiator, by 34 percent to 66 percent in the case of a significant planner and initiator, or by 0 percent to 33 percent in the case of a moderate planner and initiator. If the individual is convicted of criminal conduct arising from his or her role in planning and initiating the underlying acts, then the Whistleblower Office will deny an award without regard to whether the Whistleblower Office

categorized the individual's role as a planner and initiator as primary, significant, or moderate.

(iv) Factors demonstrating the extent of an individual's planning and initiating.

The application of the following non-exclusive factors may support a determination of the extent of an individual's planning and initiating of the underlying acts:

(A) The individual's role as a planner and initiator. Was the individual the sole decision-maker or one of several contributing planners and initiators?

(B) The nature of the individual's planning and initiating activities. Was the individual involved in legitimate tax planning activities? Did the individual take steps to hide the actions at the planning stage? Did the individual commit any identifiable misconduct (legal, ethical, etc.)?

(C) The extent to which the individual knew or should have known that tax noncompliance could result from the course of conduct.

(D) The extent to which the individual acted in furtherance of the noncompliance, including, for example, efforts to conceal or disguise the transaction.

(E) The individual's role in identifying and soliciting others to participate in the actions reported, whether as parties to a common transaction or as parties to separate transactions.

(v) Examples. The operation of the provisions of paragraphs (c)(3)(ii) and (iii) of this section may be illustrated by the following examples. These examples are intended to illustrate the operation of the computational framework. They are not intended to provide standards against which the planning and initiating of an individual submitting a claim for award may be compared. The examples provide simplified descriptions of the

facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case. The application of section 7623(b)(3) and paragraph (c)(3) of this section will depend on the specific facts of each case.

Example 1. Individual A is employed in the finance department of a corporation (Corporation 1) and is responsible for performing research and drafting activities for, and at the direction of, Supervisor B. Individual A performed research on financial products for Supervisor B that Supervisor B used in advising Corporation 1 on a financial strategy. After Corporation 1 executed the strategy, Individual A submitted a claim for award under section 7623 along with information about the strategy to the IRS. The IRS initiated an examination of Corporation 1 based on Individual A's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. Individual A did nothing to design or set into motion Corporation 1's activities. Individual A did not know or have reason to know that there were tax implications to the research activities. Accordingly, as a threshold matter, Individual A was not a planner and initiator of Corporation 1's strategy, and the award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section is not subject to reduction under section 7623(b)(3) and paragraph (c)(3) of this section.

Example 2. Individual C is employed in the HR department of a corporation (Corporation 2). Corporation 2 tasked Individual C with hiring a large number of temporary employees to meet Corporation 2's seasonal business demands. Individual C organized, scheduled, and conducted job fairs and job interviews to hire the seasonal employees. Individual C was not responsible for, had no knowledge of, and played no part in, classifying the seasonal employees for Federal income tax purposes. Individual C later discovered, however, that Corporation 2 classified the seasonal employees as independent contractors. After discovering the misclassification, Individual C submitted a claim for award under section 7623 along with non-privileged information describing the employee misclassification to the IRS. The IRS initiated an examination of Corporation 2 based on Individual C's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would not be subject to a reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Individual C did not satisfy the requirements of the threshold determination of a planner and initiator. Individual C did not know and had no reason to know that her actions had tax implications or that Corporation 2 would misclassify the employees as independent contractors.

Example 3. Individual D is employed as a supervisor in the finance department of a corporation (Corporation 3) and is responsible for planning Corporation 3's overall financial strategy. Pursuant to the overall financial strategy, Individual D and others at Corporation 3, in good faith but incorrectly, planned tax-advantaged transactions.

Individual D and others at Corporation 3 prepared documents needed to execute the transactions. After Corporation 3 executed the transactions, Individual D submitted a claim for award under section 7623 along with non-privileged information about the transactions to the IRS. The IRS initiated an examination of Corporation 3 based on Individual D's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would be subject to an appropriate reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Individual D satisfies the requirements of the threshold determination of a planner and initiator. Individual D planned the transactions, prepared the necessary documents, and knew the tax implications of the transactions. Individual D was not the sole planner and initiator of Corporation 3's transactions. Individual D did nothing to conceal Corporation 3's activities. Corporation 3 had a good faith basis for claiming the disallowed tax benefits. On the basis of those facts, Individual D was a moderate-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Individual D's award by 0 to 33 percent.

Example 4. Same facts as Example 3, except that Individual D independently planned a high-risk tax avoidance transaction and prepared draft documents to execute the transaction. Individual D presented the transaction, along with the draft documents, to Corporation 3's Chief Financial Officer. Without the further involvement of Individual D, Corporation 3's Chief Financial Officer, Chief Executive Officer, and Board of Directors subsequently approved the execution of the transaction. After Corporation 3 executed the transaction, Individual D submitted a claim for award under section 7623 along with non-privileged information about the transaction to the IRS. The IRS initiated an examination of Corporation 3 based on Individual D's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would be subject to an appropriate reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Individual D satisfies the requirements of the threshold determination of a planner and initiator. Individual D planned the transaction, prepared the necessary documents, and knew the tax implications of the transaction. Working independently, Individual D designed and took steps to effectuate the transaction while knowing that the planning and initiating of the transaction was likely to result in tax noncompliance. Individual D, however, did not approve the execution of the transaction by Corporation 3 and, therefore, was not a decision-maker. On the basis of those facts, Individual D was a significant-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Individual D's award by 34 to 66 percent.

Example 5. Individual E is a financial planner. Individual E designed a financial product that the IRS identified as an abusive tax avoidance transaction. Individual E marketed the transaction to taxpayers, facilitated their participation in the transaction, and, initially, took steps to disguise the transaction. After several taxpayers had participated in the transaction, Individual E submitted a claim for award under section

7623 along with non-privileged information to the IRS about the transaction and the participating taxpayers. The IRS initiated an examination of the identified taxpayers based on Individual E's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. Individual E was not criminally prosecuted. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would be subject to an appropriate reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Individual E satisfies the requirements of the threshold determination of a planner and initiator. Individual E designed the financial product, marketed and facilitated its use by taxpayers, and knew the tax implications of the transaction. Individual E was the sole designer of the transaction, solicited clients to participate in the transaction, and facilitated and attempted to conceal their participation in the transaction. Individual E knew that the planning and initiating of the taxpayers' participation in the transaction was likely to result in tax noncompliance. On the basis of those facts, Individual E was a primary-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Individual E's award by 67 to 100 percent.

(4) Eligible affiliated claimants. (i) In general. If the Whistleblower Office determines that an affiliated claimant, as defined in § 301.7623-2(f), filed a claim for award based on information obtained from an otherwise eligible individual for the purpose of avoiding any reduction in the amount of any award that could result if the claim was filed by the otherwise eligible individual, then the Whistleblower Office may, for purposes of determining the amount of an award, treat the claim as if it had been filed by the otherwise eligible individual. Any award to the affiliated claimant that filed the claim for award will be paid pursuant to paragraph (d)(1) of this section. See § 301.7623-1(b)(3) for rules regarding ineligible affiliated claimants.

(ii) Example. Individual A is employed as a supervisor in the finance department of Corporation. Individual A planned and initiated the actions that led to an underpayment of tax by Corporation, within the meaning of section 7623(b)(3) and paragraph (c)(3) of this section. To avoid the application of section 7623(b)(3) and paragraph (c)(3) of this section, Individual A provided non-privileged information to Individual B that described and documented specific facts relating to Corporation's tax underpayment. Individual B did not plan and initiate the actions that led to an underpayment of tax by Corporation. Individual B submitted to the IRS the information received from Individual A, alleging that Corporation owed additional taxes and filing a claim for award under section 7623. The IRS proceeded with an examination of

Corporation based on the information provided by Individual B, determined a deficiency against Corporation and, ultimately, collected proceeds from Corporation. For purposes of determining the amount of any award payable to Individual B, as the individual that filed the claim for award, the Whistleblower Office may treat the claim as if it had been filed by Individual A.

(5) Multiple claimants. If two or more independent claims relate to the same collected proceeds, then the Whistleblower Office may evaluate the contribution of each individual to the action(s) that resulted in collected proceeds. The Whistleblower Office will determine whether the information submitted by each individual would have been obtained by the IRS as a result of the information previously submitted by any other individual. If the Whistleblower Office determines that multiple individuals submitted information that would not have been obtained based on a prior submission, then the Whistleblower Office will determine the amount of each individual's award based on the extent to which each individual contributed to the action(s). The aggregate award amount in cases involving two or more independent claims that relate to the same collected proceeds will not exceed the maximum award amount that could have resulted under section 7623(b)(1) or section 7623(b)(2), as applicable, subject to the award reduction provisions of section 7623(b)(3), if a single claim had been submitted.

(d) Payment of Award. (1) In general. The IRS will pay any award determined under section 7623 and §§ 301.7623-1 through 301.7623-4 to the individual(s) that filed the corresponding claim for award. Payment of an award will be made as promptly as the circumstances permit, but not until there has been a final determination of tax with respect to the action(s), as defined in paragraph (d)(2) of this section, the Whistleblower Office has determined the award, and all appeals of the Whistleblower Office's determination are final or the individual has executed an award consent form agreeing

to the amount of the award and waiving the individual's right to appeal the determination.

(2) Final determination of tax. For purposes of §§ 301.7623-1 through 301.7623-4, a final determination of tax means that the proceeds resulting from the action(s) subject to the award determination have been collected and either the statutory period for filing a claim for refund has expired or the taxpayer(s) subject to the action(s) and the IRS have agreed with finality to the tax or other liabilities for the period(s) at issue and the taxpayer(s) have waived the right to file a claim for refund.

(3) Joint Claimants. If multiple individuals jointly submit a claim for award, the IRS will pay any award in equal shares to the joint claimants unless the joint claimants specify a different allocation in a written agreement, signed by all the joint claimants and notarized, and submitted with the claim for award. The aggregate award payment in cases involving joint claimants will be within the award percentage range of section 7623(b)(1) or section 7623(b)(2), as applicable, and subject to the award reduction provisions of section 7623(b)(3).

(4) Deceased Claimant. If a claimant dies before or during the whistleblower administrative proceeding, the Whistleblower Office will substitute an executor, administrator, or other legal representative on behalf of the deceased claimant for purposes of conducting the whistleblower administrative proceeding.

(5) Tax treatment of award. All awards are subject to current Federal tax reporting and withholding requirements.

(e) Effective/applicability date. When finalized, § 301.7623-4 is proposed to apply to information submitted on or after the date of publication of the Treasury



decision adopting these rules as final regulations in the **Federal Register** and to claims for award under section 7623(b) that are open as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Steven T. Miller  
Deputy Commissioner for Services and Enforcement.