



LARGE AND MID-SIZE
BUSINESS DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ALL LMSB INDUSTRY DIRECTORS
DIRECTOR, FIELD SPECIALISTS
ALL LMSB HEADQUARTERS DIRECTORS

FROM: Robert L. Trujillo /s/ *Robert L. Trujillo*
Director, Planning, Quality, Analysis, and Support

SUBJECT: Whistleblower/Informant Claims for Award

IRC section 7623 was amended in December 2006, to encourage whistleblowers to provide the IRS with information regarding significant alleged tax noncompliance. The new law increased the amount of the award a whistleblower can receive and allows the whistleblower to appeal award determinations in Tax Court. As a result of this new legislation, there has been a large increase in the number and quality of whistleblower claims for award on LMSB cases. These claims need to be carefully reviewed.

A whistleblower claim must satisfy several requirements to be considered for a mandatory award under section 7623(b). Under section 7623(b), the whistleblower claim must:

- relate to a tax noncompliance matter in which the tax, penalties, interest, additions to tax and additional amounts in dispute exceed \$2,000,000;
- relate to a taxpayer, and in the case of an individual taxpayer, one whose gross income exceeds \$200,000 for at least one of the tax years in question; and
- substantially contribute to a decision to take administrative or judicial action that results in the collection of tax, penalties, interest, additions to tax and additional amounts.

If these requirements are not met, the matter may still be considered for an award under the pre-Act discretionary authority (what is now section 7623(a)).

How a Whistleblower Files a Claim

To file a claim for an award, a whistleblower must file a [Form 211](#), Application for Award for Original Information. The instructions regarding filing a claim can be found in [Notice 2008-4](#). The Form 211 must be filed with the IRS Whistleblower Office. LMSB personnel should not accept information directly from a whistleblower, a whistleblower's representative, or Criminal Investigation. If any of these parties attempt to supply information to LMSB personnel, they should be advised of Notice 2008-4 and the requirement to file a Form 211 with the Whistleblower Office. Accepting such information directly from a whistleblower could jeopardize the audit/potential audit and any related adjustments.

Form 211 should not be confused with Form 3949A, Information Referral. Individuals use Form 3949A to report suspected tax fraud if they are not seeking an award. If a manager or examiner receives a Form 3949A without a Form 211, it is not a claim for award under section 7623 and the special procedures discussed in this memo do not apply. However, if the Form 3949A in any way indicates that the individual is interested in receiving an award, LMSB personnel should contact the LMSB Informant Claim Coordinator immediately. The information supplied should not be reviewed further and should not be utilized during the examination. The Informant Claims Coordinator will secure the information and forward it to the Whistleblower Office to contact the individual about whether he/she intends to file a Form 211 and seek an award. If the Whistleblower Office's request for a Form 211 is not responded to within 45 days, the information will be returned to the examiner. If a Form 211 is filed, then it will be processed as described below.

Whistleblower Information Assigned to the Field

If the claim meets the section 7623(b) criteria noted above, the Whistleblower Office sends the information to the appropriate Industry office, Field Specialists, or Deputy Commissioner (International). A designated Industry Analyst (Subject Matter Expert or SME) and Division Counsel will review the information for audit potential. They will also consider any legal issues or limitations associated with using the information (e.g. privileges) and communicating with the whistleblower. After this review and a possible interview with the whistleblower, they will make a determination whether or not to accept the claim for further consideration. If the claim is not accepted for further consideration, a Form 11369, Confidential Evaluation Report on Claim for Award, will be completed and all of the information will be sent back to the Whistleblower Office analyst assigned to the claim. If the claim is accepted for further consideration, the Form 211 and any other information, as appropriate, will be sent to the field for use in the examination.

The SME serves to insulate the audit team from direct contact with the whistleblower and protects the team from seeing certain whistleblower information that could compromise the tax case. The integrity of the examination is preserved by the SME withholding certain information from the audit team and by ensuring anyone who sees such information is not advising, supervising, or involved in the examination.

The Whistleblower Office will send claims that do not meet the section 7623(b) criteria to the Ogden Informant Claims Examiner Unit (ICE) for classification. Any section 7623(a) claim that is accepted by the LMSB classifier in Ogden will be sent to the Industry SME for further evaluation. If the claim is accepted by the SME, it will be sent to the field. If the claim is not accepted, the SME will complete Form 11369 and close the award claim file to ICE. The Whistleblower Office and the SME should be contacted immediately if at anytime it is determined that a section 7623(a) claim meets the requirements of section 7623(b).

When an examiner receives whistleblower information from the SME, the examiner should seek Counsel assistance. Generally, the work to conduct an examination is no different from the work performed in other cases, including the development of civil or criminal fraud when applicable. The examiner should not contact the whistleblower without consulting with Counsel and the SME. Contact with a whistleblower does not constitute a Third Party Contact under Section 7602(c)

If a whistleblower or their representative contacts anyone about the status of their claim, no information about the claim or the underlying tax matter should be discussed. To avoid any section 6103 violation or other disclosure concerns, any request regarding the status of a claim should be forwarded to the Whistleblower Office.

Potential Considerations with Using Whistleblower Information

There are potential legal issues with using information received from certain whistleblowers. [Chief Counsel Notice 2008-11](#) discusses limitations on contacts with a whistleblower (1) who is a current employee of a taxpayer and who is providing the Service with information regarding the whistleblower's employer that has been obtained in the course of the whistleblower's employment, or (2) who is acting as the taxpayer's representative in an examination or other proceeding pending before the Service. This Notice also addresses the use of privileged information received from whistleblowers.

The SME and Division Counsel will consider these limitations prior to assigning a claim. If the examiner would like to contact the whistleblower, the concurrence of the SME and Counsel must be obtained prior to any contact with the whistleblower. The examiner should have Counsel participate in the whistleblower interview and Counsel should review any additional information secured from the whistleblower. There may be situations where the SME and Counsel will need to make the contact instead of the examiner.

Protection of Whistleblower's Information

The identity of persons who furnish information regarding possible tax violations must be protected. All employees must handle such information in strict confidence. Such information must be given special handling to avoid disclosure to anyone other than those employees who have an absolute "need to know". All memoranda of oral interviews with whistleblowers, or any other communications which might, in any way

identify whistleblowers, including information provided by the whistleblower, must be sealed and handled in the strictest confidence.

In order to ensure the confidentiality of the whistleblower, it is important that no mention is made of the whistleblower to the taxpayer, in the Revenue Agent Report or in the workpapers. All information related to the whistleblower should be maintained in a whistleblower award claim file which is kept separate from the tax file and other audit workpapers.

It is a longstanding practice of the Service that the identity of a confidential source of information, including a whistleblower, will not be disclosed, except to those officials with a "need to know" in the performance of their official duties. This practice applies whether the request is made under the Freedom of Information Act or in the context of an administrative or judicial proceeding. If anyone outside the Service asks if a whistleblower has provided information impacting the examination, examiners should neither confirm nor deny that a whistleblower is involved in any matter. This response must be provided in all cases because the knowledge that a whistleblower provided information may, in fact, identify the whistleblower.

In developing issues impacted by information from whistleblowers, examiners should develop the issues by seeking independent corroboration of the information provided by the whistleblower. This independently developed information should form the basis for any proposed assessment of liability.

AIMS ICE Indicator

All tax years for which there is a claim for award should be controlled on AIMS with an ICE indicator. If this indicator is present, page one of an AMDISA will contain "ICE-IND>1". Only the Ogden ICE Unit can establish or remove this indicator. The indicator should be on any claim that is sent to the field. For section 7623(a) claims, the ICE Unit will remove the indicator when they receive the award claim file, Form 11369, and confirm the file is complete. For section 7623(b) claims, the ICE Unit will remove the indicator when instructed by the Whistleblower Office. This will typically be when the Whistleblower Office analyst assigned to the claim confirms the award claim file and Form 11369 is complete. **The return can not be closed to status 80 or above until the indicator is removed.**

If the whistleblower information causes an expansion of the audit to other years or taxpayers, examiners should advise the Ogden ICE unit to establish the indicator for these additional returns. This can be accomplished by contacting Kathleen Kariya at 801-620-2169 or Jerri Ryan at 801-620-2170.

Award Claim File and Confidential Evaluation Report on Claim for Award

[Form 11369](#) is completed by the field to assess the value of the information supplied by the whistleblower. A Form 11369 is required for each whistleblower claim. As of

July 1, 2008, the Whistleblower Office is responsible for determining the award, if any, for all claims (section 7623(a) and (b)). Examiners will no longer make a recommendation on what the award should be. Form 11369 has been updated to reflect these changes. The examiner must thoroughly complete the form, including all necessary attachments and related explanations, so the Whistleblower Office can make the award decision, including the award percentage. Examiners should comment as to the value of the information provided and the extent to which it assisted in the outcome of relevant issue(s). As appropriate, examiners should fill-in sections of the Form 11369 as the case is developed. Filling in the appropriate sections of the Form 11369 contemporaneous with the case development will ensure that the form accurately reflects the facts needed to make an award decision. Examiners should complete the Form 11369, as soon as possible, after actions are taken based on the information provided, or after a decision not to act on the information. In certain instances, this could be before the examination is completed.

To ensure the Whistleblower Office has the necessary information to determine if an award should be paid, any and all information pertaining to the whistleblower should be maintained in a separate award claim file. This file should include all information that may assist the Whistleblower Office in making the award decision, including Form 11369, and the following:

- Copies of the first few pages of the affected tax returns, including Schedule J. This includes any additional tax returns that were examined as a result of the whistleblower information.
- Copy of the computation section of the RAR (Form 4549 and relevant computations) for all returns examined as a result of the whistleblower information.
- Copy of the RAR sections that reflect the issues impacted by the information provided by the whistleblower.
- Copy of the Special Agents Report, if applicable.
- Copy of the examination plan for issues impacted by the information provided by the whistleblower.
- A schedule of the adjustments impacted by the information provided by the whistleblower and the effect of these adjustments for each year included in the RAR for taxable income, credits, and net tax liability.
- Copy of the information provided by the Industry Subject Matter Expert and Counsel. This includes any advice, direction or guidance that was received.
- The information provided by the whistleblower or subsequently obtained from the whistleblower.
- Asset information for collection if there is a need for a jeopardy assessment.

The entire award claim file should be placed in a sealed envelope, or similar protection, and marked "For Whistleblower Office/ICE Only". If the claim is a section 7623(a) claim,

the file should be sent to the ICE Unit. If the claim is a section 7623(b) claim, the file should be sent to the Whistleblower Office analyst assigned to the claim.

To ensure the ICE indicator is removed timely and the tax case can close when received in Centralized Case Processing, **it is highly recommended that the award claim file be closed before the tax case is closed from the group.**

Whistleblower Information Not Utilized

In some situations, the information provided by the whistleblower will not be utilized. This may be because the information is already in the examiner's possession, the examiner has decided not to examine the subject area, or some other reason. In these instances, the whistleblower is not entitled to an award. The examiner should complete the Form 11369 as soon as a decision can be made which is typically before the conclusion of the examination. The examiner should thoroughly explain why the information is not being utilized. The form and award claim file, including the information noted above, should be forwarded to ICE or the Whistleblower Office analyst as soon as this decision is made.

If the Whistleblower Office has any questions about the Form 11369 or the award claim file they will direct these inquiries to the PQAS Whistleblower Program Analyst, Brad Anderson.

Resources

For additional information on the Whistleblower program, including contact information for the LMSB Whistleblower Coordinator, Industry SMEs, and Counsel, please refer to the PQAS Whistleblower website at http://lmsb.irs.gov/hq/pqa/Post-filing/Informants_Claims.asp

If you have questions, please contact Team Manager Amy Liberator at (330) 253-7341. Field personnel may contact Senior Program Analyst/LMSB Whistleblower Coordinator Brad Anderson at (309) 662-5782, extension 113.