

Office of Chief Counsel
Internal Revenue Service
memorandum

date: March 11, 2011

to: Stephen A. Whitlock
Director, Whistleblower Office

from: Deborah A. Butler 
Associate Chief Counsel (Procedure & Administration)

subject: Withholding and Information Reporting under Section 7623(a)

In a memorandum dated September 30, 2010, our Office opined that the Service may withhold and provide information reports on whistleblower awards paid under section 7623(b). We have now been asked whether the same analysis could be applied to support withholding under section 7623(a) and whether a de minimis exception to administrative withholding is legally supportable.

There is no legal or factual basis for differentiating between the federal tax treatment for payments made under section 7623(a) and (b). As a result, from both a legal perspective as well as a matter of sound tax administration, see, e.g., section 7803(a)(2), it is legally defensible to implement a systemic, consistent method of withholding at the time of payment of the awards rather than attempting to rely on available piecemeal, more burdensome, and less efficient means to accomplish the same end result, or foregoing withholding and information reporting altogether. The same hazards and risks apply equally to these actions taken with respect to whistleblower awards paid under 7623(a), as previously discussed, and whistleblower awards paid under section 7623(b).

Similarly, it is well recognized that the Service often establishes administrative tolerances to efficiently and effectively administer the tax laws. There are no additional legal impediments against establishing a withholding and information reporting regime that is subject to a de minimis exception, provided that the threshold level is consistently applied to all award recipients once established. In the context of withholding by government entities, one example of a de minimis threshold that could be adopted is the \$10,000 payment threshold on payments made by government entities to any person providing property or services as provided in proposed Treas. Reg. § 31.3402(t)-3(b). The preamble to the proposed regulation states that a payment threshold of \$10,000 was selected because the burden of withholding on smaller transactions is likely to be substantial [to government entities] and outweighs the benefits of increased withholding, an explanation that is equally valid to withholding on whistleblower awards.