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Part 25. Special Topics

Chapter 2. Information and Whistleblower Awards

Section 2. Whistleblower Awards

25.2.2 Whistleblower Awards

Manual Transmittal

Purpose

(1) This transmits revised IRM 25.2.2, *Information and Whistleblower Awards*,
Whistleblower

Background

This chapter provides procedures and guidance for all IRS personnel to follow when dealing with whistleblowers' claims for award.

Material Changes

(1) Added 25.2.2.2 Local Desk Procedure Guides.

(2) Added 25.2.2.7.5 Taxpayer First Act Letters.

(3) Added 25.2.2.9.1 E-mails containing PII.

(4) Added 25.2.2.9.2 Disclosing Expanded Claim Numbers.

(5) Additional revisions, deletions, and grammatical changes are made throughout the section that did not result in substantive changes but contributed to procedural clarity of the subject matter.

Effect on Other Documents

IRM 25.2.2, dated January 12, 2018 is superseded.

Audience

All Divisions and Functions

Effective Date

IRC Section
§7623(a) or (b)

(05-28-2020)

Lee D. Martin
Director, Whistleblower Office

• 25.2.2.3.1
Timing of a
Claim

25.2.2.1 (01-12-2018)

Program Scope and Objectives

• 25.2.2.4
Eligibility for
an Award
under IRC §
7623

- (1) *Purpose:* This IRM outlines the policy and procedures for receiving, evaluating, and making a determination on a whistleblower's claim for award and must be strictly adhered to. Any deviation from this IRM must be approved by the Whistleblower Office.
- (2) *Audience:* IRS Personnel considering, working, receiving, or otherwise assigned a whistleblower claim.
- (3) *Policy Owner:* Director, Whistleblower Office is the policy owner of this program.
- (4) *Program Owner:* Director, Whistleblower Office is the program office responsible for oversight over this program.

• 25.2.2.5 Post
Field Review

• 25.2.2.5.1
Reviewing
for non-
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• 25.2.2.5.2
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• 25.2.2.6 Award
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• 25.2.2.6.3
Award
Computation
- IRC §
7623(a)
Claims
filed
before
December
20, 2006

- (1) On December 20, 2006, the Tax Relief and Health Care Act of 2006 was enacted. Section 406 of the Act amends IRC § 7623 concerning awards to whistleblowers. The amendment made significant changes to the IRS award program and also required the establishment of a Whistleblower Office within the IRS, which has responsibility for the administration of the award program. The 2006 amendments re-designated the prior IRC § 7623 as IRC § 7623(a), added new provisions as IRC § 7623(b), and included program administration requirements that were not incorporated into the Internal Revenue Code.
- (2) The Bipartisan Budget Act of 2018 added a new subsection (c) to IRC § 7623. This defined the term proceeds to include penalties, interest, additions to tax, and additional amounts provided under the internal revenue laws, and any proceeds arising from laws for which the Internal Revenue Service is authorized to administer, enforce, or investigate. This includes criminal fines and civil forfeitures, and violations of reporting requirements.

25.2.2.1.1.1 (01-12-2018)

IRC § 7623(b) Overview

- (1) The application of IRC § 7623(b) is limited by certain dollar thresholds. IRC § 7623(b) applies with respect to any action in which the proceeds in dispute *IRM 25.2.2.1.4 (10), Terms*, exceeds \$2,000,000. If the taxpayer is an individual, the individual's gross income must

filed on or after December 20, 2006, and IRC § 7623(b) claims

- 25.2.2.6.4.1 Factors Used

to Determine Award Percentage

- 25.2.2.6.4.2 Amount of Award Percentage

- Substantial Contribution

- 25.2.2.6.4.3 Amount of Award Percentage

- Less Substantial Contribution

- 25.2.2.6.4.4 Reduction in Award and Denial of Award

25.2.2.1.1.2 (05-28-2020)

- 25.2.2.6.4.5 Multiple whistleblowers

- 25.2.2.6.4.6 Calculating Sequestration When Award

- also exceed \$200,000 for any taxable year subject to such administrative action or judicial action.
- (2) IRC § 7623(b) applies to new information provided to the IRS on or after December 20, 2006. Supplemental information will not be considered for purposes of IRC § 7623(b) unless its receipt prompts the IRS to take an administrative or judicial action that would not otherwise have been taken on the basis of the earlier-supplied information. Resubmitting information previously provided by the whistleblower prior to the date of enactment does not qualify under IRC § 7623(b).
- (3) Awards paid under IRC § 7623(b)(1) will be at least 15 percent, but no more than 30 percent, of the proceeds collected in cases in which the IRS determines that the information submitted by the whistleblower substantially contributed to an administrative or judicial action.
- (4) Under IRC § 7623(b)(2), if an action is based principally on specific allegations resulting from judicial or administrative hearings, from governmental reports, hearings, audits, investigations, or from the news media, an award of a lesser amount, subject to the discretion of the Whistleblower Office, may be provided. Such an award may not exceed 10 percent of the proceeds collected as a result of any action. IRC § 7623(b)(2) does not apply if the whistleblower was the original source of the information that led to the specific allegations.
- (5) Under IRC § 7623(b)(3), if the whistleblower "planned and initiated" the actions that led to the underpayment of tax, or to the violation of the internal revenue laws, the Whistleblower Office may reduce the award. If the whistleblower is convicted of criminal conduct arising from his or her role in planning and initiating the action, the Whistleblower Office will deny any award.
- (6) All relevant factors, including the value of the information furnished in relation to the facts developed by the examination of the violation, will be considered by the Whistleblower Office in determining whether an award will be paid, and, if so, the amount of the award.
- (7) When the requirements of subsection (b) are met, individuals are entitled to awards under IRC § 7623(b) based on proceeds collected as a result of the action (including any related actions) or from any settlement in response to such action.

IRC § 7623(a) Overview

- (1) IRC § 7623(a) applies to all information submitted prior to December 20, 2006, and claims filed on or after December 20, 2006, that do not meet the IRC § 7623(b) requirements.
- (2) The recommended award percentage for IRC § 7623(a) claims will depend upon the date the claim was submitted. See *IRM 25.2.2.6, Award Computation* and *Exhibit 25.2.2-1, Award Calculation Computation Guidelines*.

<p>Limitations Apply</p> <ul style="list-style-type: none"> 25.2.2.7 Withholding on Whistleblower Awards 	<p>(3) If the thresholds in IRC § 7623(b)(5) are not met, IRC § 7623(a) authorizes, but does not require the IRS to pay for information that results in the IRS's recovery of proceeds collected. A final decision with respect to an award under IRC § 7623(a) cannot be made until after a final determination of tax.</p>
	<p>25.2.2.1.1.3 (01-12-2018)</p>
<p>Whistleblower Claim Processing Targets</p> <ul style="list-style-type: none"> 25.2.2.7.1 Background on Reduced Withholding Program 25.2.2.7.2 Eligibility for Reduced Withholding Program 25.2.2.7.3 Application Process for Reduced Withholding Program 25.2.2.7.4 Application Review Process 25.2.2.8 Corresponding with Whistleblowers <ul style="list-style-type: none"> 25.2.2.8.1 Rejections and Denials 25.2.2.8.2 Whistleblower Award Determination Administrative Proceeding 	<p>(1) In all cases, timely action by IRS personnel considering whistleblower information is essential.</p> <p>(2) The IRS has worked diligently to improve the process by which whistleblower information is considered for action.</p> <p>(3) The following guidelines reflect the continued expectations for timely action on whistleblower claims. These are targets, and may be exceeded when necessary to address unique facts and circumstances and to ensure that the decision on whether to proceed with compliance action considers all relevant information:</p> <ul style="list-style-type: none"> a. Acknowledgement letters should be sent to whistleblowers within 30 days of receipt of the Form 211. b. Initial evaluation and classification should be completed within 90 days. This is a cumulative period encompassing case building and review by all necessary operating division classification functions. c. SME or their designee(s), as applicable to case type, should complete review within 90 days of receipt. d. The Division Counsel offices should provide a determination on any material identified by an operating division as potentially tainted within 45 days of receipt. e. ICE Indicators should be updated within 30 days of receipt of a complete Form 11369 and required attachments. f. Review of the Form 11369 should be completed within 30 days of receipt of a complete Form 11369 package. g. The Whistleblower Office should notify whistleblowers of an award decision within 90 days of the Whistleblower Office's determination that proceeds collected from an action have been fully collected.
	<p>25.2.2.1.2 (05-28-2020)</p>
	<p>Authority</p>
<ul style="list-style-type: none"> 25.2.2.8.2.1 IRC § 7623(a) Claims 	<p>(1) On December 20, 2006, the Tax Relief and Health Care Act of 2006 was enacted. Section 406 of the Act amends IRC § 7623 concerning awards to whistleblowers. The amendment made significant changes to the IRS award program and also required the establishment of a Whistleblower Office within the IRS, which has responsibility for the administration of the award program. The 2006 amendments re-</p>

- 25.2.2.8.2.2
IRC § 7623(b)
Claims
- 25.2.2.8.3
Deceased Whistleblowers (2)
 - 25.2.2.8.3.1
Identifying the Point of Contact for a Deceased Whistleblower's(3) estate
- 25.2.2.8.4
Address/Compliance Verification Letters
- 25.2.2.8.5 (4)
Taxpayer First Act Letters
- 25.2.2.9
Appeal Rights under IRC § 7623(b)
- 25.2.2.10
Protecting Information/Disclosure
 - 25.2.2.10.1
E-mails Containing PII (1)
 - 25.2.2.1.3 (01-12-2018)
Responsibilities
 - See IRM 1.1.26, *Whistleblower Office*.
 - 25.2.2.10.2
Disclosing Expanded Claim Numbers (1)
 - 25.2.2.1.4 (05-28-2020)
Terms
 - (1) **Claim** - A claim is a whistleblower's application for an award. A whistleblower makes a claim for award by filing Form 211, Application for Award for Original Information, with the Whistleblower Office. The claim for award includes an information submission that is the basis for the claim. When a whistleblower files more than one Form 211 with the Whistleblower Office, the Whistleblower Office will analyze the Form 211 to determine whether it is a new submission or a supplemental submission that relates to an existing claim.
- 25.2.2.11
Award Payment Procedures
 - 25.2.2.11.1
Roles and

- Responsibilities (2)
 - 25.2.2.11.2
 - Procedures (3)
 - 25.2.2.12
 - Annual Report to Congress (4)
 - 25.2.2.13
 - Whistleblower Administrative File Retention (5)
 - Exhibit 25.2.2-1 Award Calculation Computation Guidelines (6)
 - Exhibit 25.2.2-2 Reduced Withholding Program Frequently Asked Questions (7)
- Pre-enactment Claims** - Claims submitted prior to December 20, 2006.
- Submission** - Submission is an internal term used by the Whistleblower Office to refer to a claim (or group of claim numbers aggregated by the Whistleblower Office for administrative purposes).
- Action** - the term action means administrative or judicial action.
- Administrative Action** - the term administrative action means all or a portion of a IRS civil or criminal proceeding against any person that may result in proceeds including, for example, an examination, a collection proceeding, a status determination proceeding, or a criminal investigation.
- Judicial Action** - the term judicial action means all or a portion of a proceeding against any person in any court that may result in proceeds.
- Related Action** - the term related action means an action against a person other than the person(s) identified in the information provided and subject to the original action(s), when-
- a. 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);
 - b. The IRS proceeds with the action against the other person based on the specific facts described and documented in the information provided, such that the information provided substantially contributes to the action; and
 - c. The other, unidentified person is related to the person identified in the information provided. For purposes of this paragraph, an unidentified person is related to the person identified in the information provided if the IRS can identify the unidentified person using the information provided (without first having to use the information provided to identify any other person or having to independently obtain additional information).
- (8) **Proceeds based on** - the IRS "proceeds based on" information provided by a whistleblower when the information provided substantially contributes to an action against a person identified by the whistleblower. For example, the IRS proceeds based on the information provided when the IRS initiates a new action, expands the scope of an ongoing action, or continues to pursue an ongoing action, that the IRS would not have initiated, expanded the scope of, or continued to pursue, but for the information provided. The IRS does not proceed based on information when the IRS analyzes the information provided or investigates a matter raised by the information provided.
- (9) **Proceeds** - The term **proceeds** includes penalties, interest, additions to tax, and additional amounts provided under the internal revenue

laws and any proceeds arising from laws for which the Internal Revenue Service is authorized to administer, enforce, or investigate. This includes criminal fines, civil forfeitures, and violations of reporting requirements.

- (10) **Proceeds Collected** - the terms **proceeds of amounts collected** or **proceeds collected** include: proceeds collected because of the information provided; proceeds 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.
- a. **Refund Netting** - In general, if a portion of a claim for refund that is substantially unrelated to the information provided is allowed and 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 proceeds collected. Example. Information provided to the IRS by a whistleblower, under IRC § 7623 and 26 CFR 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 whistleblower, 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 whistleblower. 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 IRC § 7623 and 26 CFR 301.7623-1 through 301.7623-4, the proceeds collected 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.
- b. **Amended Returns** - Amounts collected based on amended returns constitute proceeds collected if: The IRS proceeds based on the information provided; as a result, the person subject to the action(s) with which the IRS proceeds files amended returns; and the amounts collected based on the amended returns related to the activities or facts described in the information provided.
- (11) **Proceeds in Dispute** - In general, the term "proceeds in dispute" means the greater of the maximum total of tax, penalties, interest, additions to tax, and additional amounts that resulted from the action(s) with which the IRS proceeded based on the information provided, or the maximum total of such amounts that were stated in

formal positions taken by the IRS in the action(s). The IRS will compute the proceeds in dispute, for purposes of final award determinations, when there has been a final determination of tax.

- (12) **Final Determination of Tax** - In general, 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. A final determination of tax does not preclude a subsequent final determination of tax if the IRS proceeds based on the information provided following the payment, denial, or rejection of an award.


25.2.2.1.5 (05-28-2020)

Acronyms

- (1) ARC - Award Recommendation and Coordination
- (2) CDO - Case Development and Oversight
- (3) CSSED - Collection Statute Expiration Date
- (4) OD - Operating Division
- (5) FBAR - Report of Foreign Bank and Financial Accounts
- (6) ICE - Initial Claim Evaluation
- (7) PII - Personally Identifiable Information
- (8) POA - Power of Attorney
- (9) POC - Point of Contact
- (10) SME - Subject Matter Expert
- (11) SPPA - Strategic Planning and Program Administration
- (12) WO - Whistleblower Office

25.2.2.1.6 (05-28-2020)

Related Resources

- (1) The following resources provide additional information on the Whistleblower Office:
 - Whistleblower Office website - <https://irssource.web.irs.gov/WhistleblowerOffice/Pages/Home.aspx>
 - IRS.gov public website - <https://www.irs.gov/compliance/whistleblower-informant-award>
 - IRM 1.1.26, *Organization and Staffing, Whistleblower Office*
 - IRM 25.2.2, *Whistleblower Awards*
 - Pub 5251, [The Whistleblower Claim Process](#) 

25.2.2.2 (05-28-2020)

Local Desk Procedure Guide

- (1) The WO has developed local use desk procedural guides to be used in conjunction with all applicable IRM resources.
- (2) Local desk procedural guides are only to be used to supplement existing IRM procedures and/or aid in local procedures, including e-Trak system use and input.
- (3) Revisions must reflect the revision date to assist SB/SE ICE Team employees in identifying the current procedures to reference.
- (4) Any request for an exception or deviation to the local desk procedural guides must be elevated through appropriate channels for SPPA Program Manager approval. This will ensure other functional areas are not adversely affected by the change, and it does not result in any disparate treatment or expose the program to risk.

25.2.2.3 (05-28-2020)

Filing a Claim for an Award under IRC Section §7623(a) or (b)

- (1) To claim an award under IRC § 7623, a whistleblower must timely file a formal claim for an award by completing and sending Form 211, *Application for Award for Original Information*, (available on <https://www.irs.gov/pub/irs-pdf/f211.pdf>) to:

Internal Revenue Service
Whistleblower Office - ICE
M/S 4110
1973 N Rulon White Blvd
Ogden, UT 84404

- (2) Information submitted under IRC § 7623 must be accompanied by an original signed declaration under penalty of perjury, as follows:

"Declaration under Penalty of Perjury I declare that I have examined this application, all accompanying statement and supporting documentation, and, to the best of my knowledge and belief, they are true, correct and complete."

- (3) The requirement to submit information under penalty of perjury precludes submissions by:
 - A person serving as a representative of the claimant,
 - A person otherwise acting on behalf of the claimant, or
 - An entity other than a natural person.
- (4) Claims submitted by more than one whistleblower (joint claims) must include a declaration signed under penalty of perjury by each claimant.
- (5) Some whistleblower submissions present legal and policy issues that can preclude the use of some or all of the information offered by the

whistleblower. Whistleblowers may also mistakenly submit claims for award directly to IRS field personnel, despite instructions to send all Form 211 to the Whistleblower Office. In such cases, to protect the integrity of any taxpayer examination and control information for a possible award under IRC § 7623, IRS personnel should not act on any information presented by the whistleblower. Instead any and all information must first be forwarded to the Whistleblower Office.

- (6) The Form 211 must be completed in its entirety and should include the following information:
 - a. The date the information was reported;
 - b. The whistleblower's name;
 - c. The whistleblower's contact information, including address with zip code and telephone number;
 - d. The whistleblower's date of birth;
 - e. The last four digits of the whistleblower's Taxpayer Identification Number (e.g., Social Security Number or Individual Taxpayer Identification Number), if applicable;
 - f. Explanation of how the information that forms the basis of the claim came to the attention and into the possession of the whistleblower, including the date(s) on which this information was acquired, and a complete description of the whistleblower's present or former relationship (if any) to the person that is the subject of the claim (e.g., family member, acquaintance, client, employee, accountant, lawyer, bookkeeper, customer). If the claimant identifies multiple persons as the subjects of a claim, should also describe his or her relationship to each person and the facts as it applies to each person
- (7) If available information is not provided by the claimant, the claimant bears the risk that such information may not be considered by the Whistleblower Office in making any award decision or determination. If documents or supporting evidence are known to the claimant but are not in his or her possession or control, the claimant should describe these documents and identify their location to the best of his or her ability.
- (8) A whistleblower may be represented by an authorized representative by filing a properly executed Form 2848, *Power of Attorney*. The **Power of Attorney** must be specific to whistleblower matters and not just a general power of attorney for tax matters. IRS personnel **should not** forward the Form 2848 to the Centralized Authorization File (CAF) if the Power of Attorney is for the whistleblower claim.
 - a. A whistleblower may revoke an authorization, and a representative may withdraw from representation, provided that the revocation or withdrawal is in writing, clearly identifies the claim or claims affected by the revocation or withdrawal, and is signed and dated.

- b. The Whistleblower Office will send correspondence to the whistleblower and the representative confirming that the representation has been terminated.

Note: The Whistleblower Office should not discuss any details on a claim (including verifying the existence of a claim) with a purported representative until a Form 2848 is secured.

- (9) The Form 211 and any attachments must include specific and credible information concerning the person(s) that the whistleblower believes will lead to the collection of proceeds. To the extent known by the whistleblower, the information should include the following:
 - a. The legal name of the person(s) (e.g., individual or entity), and any related person(s), that failed to pay taxes;
 - b. The person's aliases, if any;
 - c. The person's address;
 - d. The last four digits of the person/entity's Taxpayer Identification Number(s);
 - e. A description of the amount(s) and tax year(s) of Federal tax claimed to be owed, and facts supporting the basis for the amount(s) claimed to be owed;
 - f. Documentation to substantiate the claim (e.g., financial data; the location of bank accounts, assets, books, and records; transaction documents or analyses relevant to the claim); and
 - g. Any and all other facts and information pertaining to the claim.
- (10) If a potential whistleblower files a Form 3949-A, *Information Referral* or other correspondence with the Whistleblower Office, to the extent possible, the Whistleblower Office will correspond with the potential whistleblower and request a Form 211. If the potential whistleblower does not reply with the requested Form 211 within the allotted time the Whistleblower Office will not consider the information as part of a claim under IRC § 7623 and the Whistleblower Office will forward the information to the Form 3949-A information referral program.

25.2.2.3.1 (01-12-2018)

Timing of a Claim

- (1) A whistleblower must submit a Form 211 claiming an award before the IRS proceeds with an action based on information submitted by the whistleblower.
- (2) The Whistleblower Office will nonetheless fully investigate the merits of late-filed claims to determine whether it would otherwise be possible to determine an award.
- (3) The Whistleblower Office will coordinate with Counsel prior to making a determination on a late-filed claim.

25.2.2.4 (01-12-2018)

Eligibility for an Award under IRC § 7623

- (1) Any individual, other than an individual described in paragraph (2) or (3) of this section, is eligible to file a claim for award under IRC § 7623.
- (2) The Whistleblower Office will reject any claim for award filed by an ineligible whistleblower and will provide written notice of the rejection to the whistleblower. The following individuals are not eligible to file a claim for award or receive an award:
 - a. 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.
 - b. An individual who obtained the information through the individual's official duties as an employee of the Federal Government, or who is acting within the scope of those official duties as an employee of the Federal Government.
 - c. 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.
 - d. An individual who obtained or had access to the information based on a contract with the Federal Government.
- (3) If the Whistleblower Office determines that an individual has made a claim for award based on information obtained from an ineligible person, the Whistleblower Office will treat the claim as if it had been made by the ineligible person and will reject the claim.

25.2.2.5 (01-12-2018)

Post Field Review

- (1) At the end of the field exam/collection process the field will submit a Form 11369, *Confidential Evaluation Report on Claim for Reward* (See IRM 25.2.1.5.5, *Form 11369 Requirements*), explaining any investigation of the whistleblower's information.
- (2) The Whistleblower Office will verify the Form 11369 Package explains and supports whether the whistleblower's information was used and whether the information did or did not contribute to the identification of issues.
- (3) The Whistleblower Office will review the information provided on the Form 11369 to determine whether the whistleblower's information substantially contributed to an action. The Whistleblower Office may need to contact the Operating Division or the RA/SA/RO team to obtain additional information or to review related files.
- (4) Once the review indicates the Whistleblower Office has all relevant necessary information for an award determination, request an ICE indicator update from the ICE team. Request must state the appropriate update ("2" if no additional information is needed; "3" if

the claim may require an updated RAR – i.e., Stat Notice, Appeals, Tech Services, etc. See IRM 25.2.1.5.1, *AIMS ICE Indicators*.

25.2.2.5.1 (04-26-2019)

Reviewing for non-Title 26 Proceeds

- (1) When reviewing a Form 11369 or making an award determination the analyst must look over the Form 211 for allegations that may result in non-Title 26 proceeds (e.g. FBAR or Criminal Activity).
- (2) If the claim is surveyed then no additional non-Title 26 proceeds review is needed. If the claim is not a survey then review the Form 211 for potential non-title 26 issues and/or proceeds.
- (3) If there is a potential for non-Title 26 proceeds related to FBAR then contact the FBAR Penalty Coordinator to find out if there is a record of the FBAR proceeds. Document the results in e-Trak.
- (4) If there is a potential for non-Title 26 proceeds related to Criminal Activity then review the Special Agent's Report and Judgment Documents (like the Judgment and Commitment document) for any non-Title 26 proceeds. Document the results in e-Trak.
- (5) If there is a potential for other non-Title 26 proceeds then contact the Strategic Planning and Program Administration Policy Analyst to identify the appropriate point of contact for monitoring/verifying proceeds.

25.2.2.5.2 (01-12-2018)

Tech Services

- (1) Claims sent to Tech Services should have the ICE indicator updated to "3" after all required information is received from the field. The ICE indicator will remain "1" until the analyst has reviewed the claim and determined all needed information has been received from the field. ICE will update the indicator to "3" when analyst instructs ICE to do so. Analyst will provide the instruction once all required information is received from the field.

25.2.2.6 (01-12-2018)

Award Computation

- (1) The Director of the Whistleblower Office has ultimate responsibility for all award determinations and percentages.
- (2) The Whistleblower Office analyzes the information provided by the whistleblower and the field's information to determine whether the IRS proceeded based on information provided by the whistleblower (i.e., whether the whistleblower's information substantially contributed to an action).

25.2.2.6.1 (05-28-2020)

Timing of Award Determination

- (1) Whistleblower Office evaluation of information regarding an award or the amount of an award may begin when a Form 11369 is submitted to the Whistleblower Office. Tentative conclusions should be documented even though they are subject to revision as additional information becomes available. A Whistleblower Office final award determination can not be made until proceeds resulting from the action(s) have been collected and either the statutory period for filing a claim for refund has expired or there is an agreement between the taxpayer and the IRS that there has been a final determination of tax for the specific period and the taxpayer has waived the right to file a claim for refund.
- (2) Generally, when a whistleblower submission relates to multiple actions, the Whistleblower Office will wait for a final determination of tax for all actions in the submission.
- (3) Exceptions to this general policy may be made in instances where making a partial payment is in the IRS's best interest.
- (4) The Whistleblower Office has the discretion to aggregate or disaggregate claims as it deems necessary to efficiently administer the program.

25.2.2.6.2 (04-26-2019)

Computation of Proceeds Collected

- (1) All awards are paid out of the proceeds collected.
- (2) See *IRM 25.2.2.1.4, Terms*, for a definition of proceeds collected.
- (3) The Whistleblower Office will compute proceeds collected attributable to the whistleblower 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.
- (4) The Whistleblower Office will monitor the case for collection of proceeds.
- (5) A preliminary award recommendation will be prepared once the action(s) relevant to the whistleblower's claim have concluded and the Whistleblower Office determines there are sufficient potential proceeds collected to proceed..

Note: The IRS cannot make a final award determination until there has been a final determination of tax as defined in *IRM 25.2.2.1.4, Terms*.

- (6) Post-determination proceeds. If, based on all information known with respect to the taxpayer's account as of the date of the computation described in the paragraph above, there is a possibility that the IRS may collect additional proceeds, then the Whistleblower Office will continue to monitor the case. If the Whistleblower Office identifies additional proceeds collected, then the IRS will compute and pay consistent with the prior decision.

- (7) Partial collection. If the IRS does not collect the full amount of proceeds assessed against the taxpayer, then any amounts that the IRS does collect will constitute proceeds collected in the same proportion that the adjustments attributable to the information provided bear to the total adjustments.

25.2.2.6.3 (04-26-2019)

Award Computation - IRC § 7623(a) Claims filed before December 20, 2006

- (1) For award claims filed prior to December 20, 2006, the calculation of the award percentage will be based on the policy in effect at the time the claim was filed, with one exception relating to payment of criminal fines. If the whistleblower participated substantially in the actions that resulted in the underpayment of tax, the Whistleblower Office may deny an award. Proceeds collected will be based on definition stated in *IRM 25.2.2.1.4, Terms*.
- (2) *Exhibit 25.2.2-1* provides a table showing award calculations for IRC § 7623(a) claims prior to December 20, 2006.

25.2.2.6.4 (01-12-2018)

Award Computation - IRC § 7623(a) claims filed on or after December 20, 2006, and IRC § 7623(b) claims

- (1) For claims filed after December 20, 2006, where the proceeds in dispute exceeds \$2 million (and in the case of an individual taxpayer, the taxpayer had gross income exceeding \$200,000 for at least one taxable year in question), awards will be paid to the extent the information provided by the whistleblower substantially contributed to the action. In general the amount of the award will be at least 15 percent but no more than 30 percent of the proceeds collected in which the Whistleblower Office determines that the information submitted by the whistleblower substantially contributed to the IRS' detection and recovery of proceeds collected.
- (2) For claims filed on or after December 20, 2006, where the proceeds in dispute does not exceed \$2 million (or in the case of an individual taxpayer, the taxpayer did not have gross income exceeding \$200,000 for at least one taxable year subject to an action), awards will be paid under the discretionary authority of IRC § 7623(a) to the extent the information provided by the whistleblower substantially contributed to the action, using the same criteria described below for awards under IRC § 7623(b).
Note: Whistleblowers receiving an award under IRC § 7623(a) will have an opportunity to comment on the preliminary award recommendation prior to a final decision.
- (3) The Whistleblower Office will use a "fixed percentage approach" pursuant to which it will assign claims to one of a number of fixed percentages within the applicable statutory ranges.

- (4) If the Whistleblower Office determines that the action was based primarily on disclosures of specific allegations resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, investigation, or from the news media, the Whistleblower Office will reduce the award percentage, unless the whistleblower was the original source of the information.
- (5) If the whistleblower planned and initiated the actions that led to the underpayment of tax or detection and bringing to trial and punishment of persons guilty of violating the internal revenue laws or conniving at the same, the Whistleblower Office may reduce the award. If the whistleblower is convicted of criminal conduct arising from the role described in the preceding sentence, the Whistleblower Office will deny any award.

25.2.2.6.4.1 (05-28-2020)

Factors Used to Determine Award Percentage

- (1) **Positive factors.** The application of the following non-exclusive factors may support increasing an award percentage under *IRM 25.2.2.6.4.2, Amount of Award Percentage - Substantial Contribution*, and *IRM 25.2.2.6.4.3, Amount of Award Percentage - Less Substantial Contribution*.
 - The whistleblower acted promptly to inform the IRS or the taxpayer of the tax noncompliance.
 - The information provided identified an issue or transaction of a type previously unknown to the IRS.
 - 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.
 - 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.
 - The whistleblower (or the whistleblower's legal representative, if any) provided exceptional cooperation and assistance during the pendency of the action(s).
 - 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.
 - 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.
 - The information provided had an impact on the behavior of the taxpayer, for example by causing the taxpayer to promptly 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 (1) or (2) of *IRM 25.2.2.6.4.2, Amount of Award Percentage - Substantial Contribution*, and *IRM 25.2.2.6.4.3, Amount of Award Percentage - Less Substantial Contribution*.
- The whistleblower 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.
 - The whistleblower contributed to the underpayment of tax or tax noncompliance identified.
 - The whistleblower directly or indirectly profited from the underpayment of tax or tax noncompliance identified, but did not plan and initiate the actions that led to the underpayment of tax or actions described in IRC § 7623(a)(2).
 - The whistleblower (or the whistleblower'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.
 - The whistleblower (or the whistleblower's legal representative, if any) violated instructions provided by the IRS, particularly if the violation caused the IRS to expend additional resources.
 - The whistleblower (or the whistleblower's legal representative, if any) violated the terms of the confidentiality agreement described in 26 CFR 301.7623-3(c)(2)(iv).
 - The whistleblower (or the whistleblower's legal representative, if any) violated the terms of a contract entered into with the IRS pursuant to 26 CFR 301.6103(n)-2.
 - The whistleblower provided false or misleading information or otherwise violated the requirements of IRC § 7623(b)(6)(C) or 26 CFR 301.7623-1(c)(3).

25.2.2.6.4.2 (05-28-2020)

Amount of Award Percentage - Substantial Contribution

- (1) If the IRS proceeds with any administrative or judicial action based on information brought to the IRS's attention by a whistleblower, such whistleblower shall, subject to paragraphs (2) and (3) of IRC § 7623(b), receive as an award at least 15 percent but not more than 30 percent of the proceeds collected as a result of 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 whistleblower's substantial contribution to the action(s). *IRM 25.2.2.6.4.5, Multiple Whistleblowers*, for rules regarding multiple whistleblowers.
- (2) Computational framework. Starting the recommended award percentage at 15 percent, the Whistleblower Office will analyze the

- administrative claim file using the factors listed in *IRM 25.2.2.6.4.1, Factors Used to Determine Award Percentage* - (1) to determine whether the whistleblower 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 negative factors listed in paragraph (2) of *IRM 25.2.2.6.4.1, Factors Used to Determine Award Percentage*, to determine whether the whistleblower 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 (1) and (2) of *IRM 25.2.2.6.4.1, Factors Used to Determine Award Percentage*, 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 positive factors may offset the presence and significance of negative factors. The absence of negative factors does not constitute a positive factor.
- (3) Examples. The examples are intended to illustrate the operation of the computational framework. The examples provide simplified descriptions of the facts relating to the claims for award, the information provided, and the facts relating to the underlying tax cases. The application of IRC § 7623(b)(1) will depend on the specific facts of each case.

Example 1 Facts. Whistleblower A, an employee in Corporation's sales department, submitted to the IRS a claim for award under IRC § 7623 and information indicating that Corporation improperly claimed a credit in tax year 2006. Whistleblower A's information consisted of numerous non-privileged documents relevant to Corporation's eligibility for the credit. Whistleblower 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, Whistleblower 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 Whistleblower 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 Whistleblower 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 Whistleblower A. Corporation agreed to the ensuing assessments of tax and interest and paid the liabilities in

full.

Analysis. In this case, Whistleblower A provided specific and credible information that formed the basis for action by the IRS. Whistleblower 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 proceeds collected. If, however, Whistleblower A's claim reflected negative factors, for example Whistleblower 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 or 15 percent (but not to lower than 15 percent of proceeds collected).

Example 2 Facts. Whistleblower B, an employee of Financial Advisory Firm 1 (Firm 1), submitted to the IRS a claim for award under IRC § 7623 and information indicating that Firm 1 helped clients engage in activities that were intended to, and did, result in substantial tax underpayments. The activities were designed to avoid detection by the IRS, and prior IRS audits of several clients of Firm 1 had failed to detect underpayments of tax. Whistleblower B learned of the activities after being reassigned to a new position with Firm 1. Whistleblower B provided the information to the IRS soon after he understood the scope, nature and impact of the activities. The information provided consisted of numerous documents containing client profiles and marketing strategies, as well as descriptions of the transactions and structures used by Firm 1 and its clients to obscure the clients' identities and to generate the substantial tax underpayments. Whistleblower B also provided an analysis of the documents, as well as information about meetings in which the transactions and structures were discussed. When interviewed by the IRS, Whistleblower B clarified ambiguities in the original submission, answered questions about Firm 1's execution of specific client transactions, and identified potential sources to corroborate the information provided. Whistleblower B also notified the IRS of steps taken by Firm 1 to limit the disclosure of information requested by the IRS, enabling the IRS to obtain full disclosure of the information through the targeted use of summonses. Ultimately, the IRS collected tax, penalties, and interest from Firm 1 and multiple clients. In addition, Treasury and the IRS issued a notice identifying the impropriety of the transactions and structures employed by Firm 1 and its clients.

Analysis. Whistleblower B provided specific and credible information that formed the basis for action by the IRS. The information provided identified transactions that were difficult to detect. Whistleblower B acted promptly after he understood the activities at issue and he provided useful assistance to the IRS. Whistleblower B's assistance,

and the information he provided, helped the IRS overcome the efforts made to obscure the activities and the clients' identities. And the information provided by Whistleblower B contributed to the decision to issue the notice, which may have a positive effect on client behavior and save IRS resources. Based on the presence and significance of these positive factors, the Whistleblower Office could increase the award percentage to 30 percent of proceeds collected. If Whistleblower B directly or indirectly profited from Firm 1's and the clients' activities resulting in the tax underpayments, then the Whistleblower Office could, based on this negative factor, reduce the award percentage to 26, 22, 18 percent or 15 percent (but not to lower than 15 percent of proceeds collected).

25.2.2.6.4.3 (05-28-2020)

Amount of Award Percentage - Less Substantial Contribution

- (1) If the Whistleblower Office determines that the action is based principally on disclosures of specific allegations resulting from a judicial or administrative hearing; from a governmental report, hearing, audit, or investigation; or from the news media, then the Whistleblower Office will determine an award of no more than 10 percent of the proceeds collected resulting from the action (including any related actions) or from any settlement in response to such action. If the whistleblower is the original source of the information from which the disclosures of specific allegations resulted, however, then the award percentage will be determined under *IRM 25.2.2.6.4.2, Amount of Award Percentage - Substantial Contribution*.

Note: The Whistleblower Office will include publicly available filings on government websites, such as financial filings with the Security and Exchange Commission, as meeting the criteria for consideration as a less substantial contribution.

- (2) Computational framework. The Whistleblower Office will analyze the administrative claim file to determine-
 - a. Whether the claim involves specific allegations regarding a tax underpayment or a violation of the internal revenue laws that reasonably may be inferred to have resulted from a judicial or administrative hearing; a governmental report, hearing, audit, or investigation; or the news media;
 - b. Whether the action was based principally on the disclosure of the specific allegations; and
 - c. Whether the whistleblower was the original source of the information that gave rise to the specific allegations.
 - d. If the Whistleblower Office determines that the action was based principally on disclosures of specific allegations, as stated in paragraph (b) above, and that the whistleblower was not the original source of the information, then, starting at 1 percent, the

Whistleblower Office will analyze the administrative claim file using the factors listed in *IRM 25.2.2.6.4, Award Computation - IRC § 7623(a) claims filed on or after December 20, 2006, and IRC § 7623(b) claims*, to determine whether the whistleblower merits an increased award percentage of 4 percent, 7 percent, or 10 percent. The Whistleblower Office will then determine whether the whistleblower merits a decreased award percentage of zero, 1 percent, 4 percent, or 7 percent using the factors listed in paragraph *IRM 25.2.2.6.4, Award Computation - IRC § 7623(a) claims filed on or after December 20, 2006, and IRC § 7623(b) claims*, of this section. The Whistleblower Office may increase the award percentage based on the presence and significance of positive factors and may decrease (to zero) the award percentage based on the presence and significance of negative factors. Like the analysis described in *IRM 25.2.2.6.4, Award Computation - IRC § 7623(a) claims filed on or after December 20, 2006, and IRC § 7623(b) claims*, 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 positive factors may offset the presence and significance of negative factors. But the absence of negative factors does not constitute a positive factor.

- e. Example. The operation of this section of the IRM may be illustrated by the following example. The example is intended to illustrate the operation of the computational framework. 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 IRC § 7623(b)(2) and this section of the IRM will depend on the specific facts of each case.

Example Facts. Whistleblower A submitted to the IRS a claim for award under IRC § 7623 and information indicating that Taxpayer B was the defendant in a criminal prosecution for embezzlement. Whistleblower 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. Taxpayer B's failure to pay tax on the embezzled funds was not explicitly stated during the judicial hearing, but could be reasonably inferred from the facts and circumstances, including Taxpayer B's efforts to conceal the funds.

Analysis. In this case, Whistleblower 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 Whistleblower A, IRC § 7623(b)(2) applies to the determination of Whistleblower 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, Whistleblower A may receive an award of 1 percent of proceeds collected.

25.2.2.6.4.4 (05-28-2020)

Reduction in Award and Denial of Award

- (1) If the Whistleblower Office determines that a claim for award is brought by a whistleblower who planned and initiated the actions, transaction, or events (underlying acts) that led to the underpayment of tax or actions described in IRC § 7623(a)(2), then the Whistleblower Office may appropriately reduce the amount of the award percentage that would otherwise result under *IRM 25.2.2.6.4.2, Amount of Award Percentage - Substantial Contribution*, or *IRM 25.2.2.6.4.3, Amount of Award Percentage - Less Substantial Contribution*, as applicable. The Whistleblower Office will deny an award if the whistleblower is convicted of criminal conduct arising from his or her role in planning and initiating the underlying acts.
- (2) Threshold determination. After determining the award percentage that would otherwise result from the application of *IRM 25.2.2.6.4.2, Amount of Award Percentage - Substantial Contribution*, or *IRM 25.2.2.6.4.3, Amount of Award Percentage - Less Substantial Contribution*, as applicable, the Whistleblower Office will analyze the administrative claim file to make the threshold determination. A whistleblower planned and initiated the underlying acts if the whistleblower-
 - 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 an underpayment of tax or actions described in IRC § 7623(a)(2) could result from planning and initiating the underlying act.

Note: The whistleblower need not have been the sole person involved in planning and initiating the underlying acts. A whistleblower 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. A whistleblower who is a junior employee acting at the direction, and under the control, of a senior employee will not be treated as initiating any underlying act. If the Whistleblower Office determines that a whistleblower has satisfied this initial threshold of planning and initiating, the Whistleblower Office will then reduce the award

- amount based on the extent of the whistleblower's planning and initiating, pursuant to paragraph (3) of this section.
- (3) Computational framework. If the whistleblower is determined to have planned and initiated the underlying acts, then the Whistleblower Office will reduce the award based on the extent of the whistleblower'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 whistleblower's role as a planner and initiator as primary, significant, or moderate; and
 - b. Appropriately reduce the award percentage that would have otherwise resulted 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 whistleblower 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's role as a planner and initiator was primary, significant, or moderate.
- (4) Factors demonstrating the extent of a whistleblower's planning and initiating. The application of the following non-exclusive factors may support a determination of the extent of a whistleblower's planning and initiating of the underlying acts:
- a. The whistleblower's role as a planner and initiator. Was the whistleblower the sole decision-maker or one of several contributing planners and initiators? To what extent was the whistleblower acting under the direction and control of a supervisor?
 - b. The nature of the whistleblower's planning and initiating activities. Was the whistleblower involved in legitimate tax planning activities? Did the whistleblower take steps to hide the actions at the planning stage? Did the whistleblower commit any identifiable misconduct (legal, ethical, etc.)?
 - c. The extent to which the whistleblower knew or should have known that tax noncompliance could result from the course of conduct.
 - d. The extent to which the whistleblower acted in furtherance of the noncompliance, including, for example, efforts to conceal or disguise the transaction.
 - e. The whistleblower'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.

- (5) Examples. The operation of the provisions of paragraphs (2) and (3) of this section may be illustrated by the following examples. These examples are intended to illustrate the operation of the computational framework. 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 *IRM 25.2.2.6.4.4, Reduction in Award and Denial of Award*, will depend on the specific facts of each case.

Example 1 Facts. Whistleblower A is employed as a junior associate in a law firm and is responsible for performing research and drafting activities for, and under the direction and control of, partners of the law firm. Whistleblower A performed research on financial products for Partner B that Partner B used in advising a client (Corporation 1) on a financial strategy. After Corporation 1 executed the strategy, Whistleblower A submitted a claim for award under IRC § 7623 along with information about the strategy to the IRS. The IRS initiated an examination of Corporation 1 based on Whistleblower A's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined.

Analysis. Whistleblower A did nothing to design or set into motion Corporation 1's activities. Whistleblower A did not know or have reason to know that an underpayment of tax or actions described in IRC § 7623(a)(2) could result from the research and drafting activities. Accordingly, as a threshold matter, Whistleblower 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 *IRM 25.2.2.6.4.2, Amount of Award Percentage - Substantial Contribution*, is not subject to reduction under *IRM 25.2.2.6.4.4, Reduction in Award and Denial of Award*.

Example 2 Facts. Whistleblower C is employed in the human resources department of a corporation (Corporation 2). Corporation 2 tasked Whistleblower C with hiring a large number of temporary employees to meet Corporation 2's seasonal business demands. Whistleblower C organized, scheduled, and conducted job fairs and job interviews to hire the seasonal employees. Whistleblower C was not responsible for, had no knowledge of, and played no part in, classifying the seasonal employees for Federal income tax purposes. Whistleblower C later discovered, however, that Corporation 2 classified the seasonal employees as independent contractors. After discovering the misclassification, Whistleblower C submitted a claim for award under IRC § 7623 along with non-privileged information describing the employee misclassification to the IRS. The IRS initiated an examination of Corporation 2 based on Whistleblower C's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined.

Analysis. The award that would otherwise be determined based on the application of *IRM 25.2.2.6.4.2, Amount of Award Percentage - Substantial Contribution*, would not be subject to a reduction under *IRM 25.2.2.6.4.4, Reduction in Award and Denial of Award*, because Whistleblower C did not satisfy the requirements of the threshold determination of a planner and initiator. Whistleblower C did not know and had no reason to know that her actions could result in an underpayment of tax or actions described in IRC § 7623(a)(2) or that Corporation 2 would misclassify the employees as independent contractors.

Example 3 Facts. Whistleblower 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, Whistleblower D and others at Corporation 3, in good faith but incorrectly, planned tax-advantaged transactions. Whistleblower D and others at Corporation 3 prepared documents needed to execute the transactions. After Corporation 3 executed the transactions, Whistleblower D reached the conclusion that the tax consequences claimed were incorrect and Whistleblower D submitted a claim for award under IRC § 7623 along with non-privileged information about the transactions to the IRS. The IRS initiated an examination of Corporation 3 based on Whistleblower D's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined.

Analysis. The award that would otherwise be determined based on the application of *IRM 25.2.2.6.4.2, Amount of Award Percentage - Substantial Contribution*, of this section would be subject to an appropriate reduction under *IRM 25.2.2.6.4.4, Reduction in Award and Denial of Award* because Whistleblower D satisfies the requirements of the threshold determination of a planner and initiator. Whistleblower D planned the transactions, prepared the necessary documents, and knew that an underpayment of tax could result from the transactions. Whistleblower D was not the sole planner and initiator of Corporation 3's transactions. Whistleblower 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, Whistleblower D was a moderate-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Whistleblower D's award by 0 to 33 percent.

Example 4 Facts. Same facts as Example 3, except that Whistleblower D independently planned a high-risk tax avoidance transaction and prepared draft documents to execute the transaction. Whistleblower D presented the transaction, along with the draft documents, to Corporation 3's Chief Financial Officer. Without the further involvement of Whistleblower 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, Whistleblower D submitted a claim for award under IRC § 7623 along with non-privileged information about the transaction to the IRS. The IRS initiated an examination of Corporation 3 based on Whistleblower D's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined.

Analysis. The award that would otherwise be determined based on the application of *IRM 25.2.2.6.4.2, Amount of Award Percentage - Substantial Contribution*, would be subject to an appropriate reduction under *IRM 25.2.2.6.4.4, Reduction in Award and Denial of Award*, because Whistleblower D satisfies the requirements of the threshold determination of a planner and initiator. Whistleblower D planned the transaction, prepared the necessary documents, and knew that an underpayment of tax or actions described in IRC § 7623(a)(2) could result from the transaction. Working independently, Whistleblower 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. Whistleblower D, however, did not approve the execution of the transaction by Corporation 3 and, therefore, was not a decision-maker. On the basis of these facts, Whistleblower D was a significant-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Whistleblower D's award by 34 to 66 percent.

Example 5 Facts. Whistleblower E is a financial planner. Whistleblower E designed a financial product that the IRS identified as an abusive tax avoidance transaction. Whistleblower 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, Whistleblower E submitted a claim for award under IRC § 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 Whistleblower E's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. Whistleblower E was not criminally prosecuted.

Analysis. The award that would otherwise be determined based on the application of *IRM 25.2.2.6.4.2, Amount of Award Percentage - Substantial Contribution*, would be subject to an appropriate reduction under this section because Whistleblower E satisfies the requirements of the threshold determination of a planner and initiator. Whistleblower E designed the financial product, marketed and facilitated its use by taxpayers, and knew that an underpayment of tax or actions described in IRC § 7623(a)(2) could result from the transaction. Whistleblower 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. Whistleblower E knew that the planning and initiating of the taxpayers' participation in the transaction was likely to result in an underpayment of tax or actions described in IRC § 7623(a)(2). On the basis of these facts, Whistleblower E was a primary-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Whistleblower E's award by 67 to 100 percent.

25.2.2.6.4.5 (05-28-2020)

Multiple whistleblowers

- (1) If two or more independent claims relate to the same proceeds collected, then the Whistleblower Office will evaluate the contribution of each whistleblower to the action(s) that resulted in proceeds collected.
 - a. The Whistleblower Office will determine whether the information submitted by each whistleblower would have been obtained by the IRS as a result of the information previously submitted by any other whistleblower.
 - b. If the Whistleblower Office determines that multiple whistleblowers submitted information that would not have been obtained based on a prior submission, then the Whistleblower Office will determine how much of the total proceeds are attributable to each whistleblower.
 - c. The aggregate award amount in cases involving two or more independent claims that relate to the same proceeds collected will not exceed the maximum award amount that could have resulted under *IRM 25.2.2.6.4.2, Amount of Award Percentage - Substantial Contribution*, or *IRM 25.2.2.6.4.3, Amount of Award Percentage - Less Substantial Contribution*, as applicable, subject to the award reduction provisions of *IRM 25.2.2.6.4.4, Reduction in Award and Denial of Award*, if a single claim had been submitted.
- (2) When multiple individuals jointly submit a claim, the Director shall pay an award in equal shares to the joint claimants, unless the joint claimants specify a different allocation in a written agreement, signed by all joint claimants and notarized and submitted with the claim. The aggregate award payment in cases involving joint claimants shall be within the range of 15 percent to 30 percent of proceeds collected, unless one of the reductions of award percentage provisions applies.
- (3) The Whistleblower Office should issue all final award, rejection, and denial determinations to multiple whistleblowers at the same time.
- (4) The Whistleblower Office will not pay an award until any appeals of the Whistleblower Office's final determination for all multiple whistleblowers are final.
- (5) Each administrative claim file should note the existence of other whistleblowers, if applicable. The level of detail will vary depending

on the information needed to support the determination.

25.2.2.6.4.6 (01-12-2018)

Calculating Sequestration When Award Limitations Apply

- (1) Sequestration reductions apply to an award amount in the year of payment.
- (2) Claims subject to an award limitation (See *Exhibit 25.2.2-1*) must have the award amount calculated, with regard to the limitation, prior to applying the sequestration reduction.

25.2.2.7 (04-26-2019)

Withholding on Whistleblower Awards

- (1) Awards paid under IRC § 7623 are includible in the gross income of the recipients and are subject to federal tax reporting and withholding requirements.
- (2) Generally, whistleblower awards paid to U.S. citizens or resident aliens in excess of \$10,000 will be subject to a 24% federal income tax withholding.
- (3) Payments to foreign persons will be treated as U.S. sourced and fixed, determinable, annual, or periodical income and withheld at 30%, subject to any reduction under an applicable exception or tax treaty.
- (4) The Whistleblower Office has a Reduced Withholding Program where certain individuals may apply for a reduction in the amount of withholding applicable to awards paid to them under IRC § 7623(b). Awards paid under the Reduced Withholding Program will be withheld after factoring in the whistleblower's IRC § 62(a)(21) deductions, but will be withheld at the highest rate, currently 37%. Payments to foreign persons are not eligible for the Reduced Withholding Program.
- (5) In addition, prior to payment, the Whistleblower Office will apply the award amount to any outstanding Federal Tax liabilities (including interest and penalties), non-tax child support, federal agency debt, state income tax obligation, or unemployment compensation debts owed by the whistleblower.

25.2.2.7.1 (04-26-2019)

Background on Reduced Withholding Program

- (1) This provides guidance to whistleblowers on the application process and to IRS personnel on the application review process. *Exhibit 25.2.2-2* contains frequently asked questions and answers about the Reduced Withholding Program.
- (2) Generally, IRC § 62(a)(21) provides that an allowable deduction for attorney fees and court costs paid by, or on behalf of, an individual whistleblower in connection with an award under IRC § 7623(b) is

subtracted from the individual's gross income in calculating the individual's adjusted gross income. The deduction may be claimed in the year the attorney fees and costs are paid. The amount of this above-the-line deduction, however, is limited to the amount of the award includible in the individual's gross income. Further, IRC § 62(a)(21) does not allow deductions for attorney fees and court costs paid in connection with awards under IRC § 7623(a).

- (3) When the IRS pays awards – and withholds tax – it does so without knowing whether the whistleblower has entered a fee agreement with an attorney or whether the whistleblower will pay any other relevant attorney fees or court costs. The whistleblower withholding program described herein is intended to minimize the likelihood of the IRS over withholding tax from award payments to whistleblowers by providing whistleblowers with a pre-award payment opportunity to substantiate their relevant attorney fees and court costs. To be considered relevant attorney fees and court costs under this program, the attorney fees and court costs must be paid in the year of the award payment. The program is not an examination of the whistleblower and is not intended to determine the whistleblower's tax liabilities. Whether or not a whistleblower is eligible to, or does, participate in the program, a whistleblower is entitled to claim any and all allowable deductions on the whistleblower's federal income tax return and to claim a refund of any overpaid taxes.

25.2.2.7.2 (01-12-2018)

Eligibility for Reduced Withholding Program

- (1) Any individual receiving an award under IRC § 7623(b), and entitled to claim an allowable deduction in the year of the award payment for attorney fees or court costs paid in connection with the award, is eligible to apply for reduced withholding.
- (2) Individuals receiving awards under IRC § 7623(a) are not eligible to apply for reduced withholding under this program.

25.2.2.7.3 (01-12-2018)

Application Process for Reduced Withholding Program

- (1) To apply for reduced withholding, eligible individuals must submit a Form 14693 *Application for Reduced Rate of Withholding on Whistleblower Award Payment*, including attachments, and provide all of the following information:
 - a. The individual applicant's name, address, taxpayer identification number, and phone number.
 - b. If applicable, the name, address, federal tax identification number, and phone number of applicant's authorized representative.

- c. The claim number(s) assigned to the award claim(s).
 - d. A statement of the total amount of the deduction for attorney fees and court costs paid or to be paid in the year of the award payment by, or on behalf of, the applicant in connection with an award under IRC § 7623(b), that the applicant intends to claim as a deduction on the applicant's federal income tax return.
 - e. Substantiation of the total amount of the deduction described above. Attorney fees may be substantiated by attaching copies of attorney fee agreements and/or bills for legal services. Court costs may be substantiated by attaching the copies of bills or court documents reflecting the payment of costs.
 - f. A representation that any attorney fees and costs that are substantiated, but have not yet been paid, will be paid in the same tax year that the award under IRC § 7623(b) is received.
- (2) The IRS will issue an Application for Reduced Rate of Withholding on Whistleblower Award Payment to every individual with a POA on file with the Whistleblower Office, that will be receiving an award payment under IRC § 7623(b). An Application for Reduced Rate of Withholding on Whistleblower Award Payment will be forwarded at the same time that the Whistleblower Office first notifies the individual of a proposed award. The IRS will print the date on which it issues the Application for Reduced Rate of Withholding on Whistleblower Award Payment on the application. Individuals applying for reduced withholding must return the Application for Reduced Rate of Withholding on Whistleblower Award Payment to the IRS within 30 days of the date printed on the form.
- (3) Applications may be submitted by the individual award claimant or by the individual award claimant's authorized representative. The Whistleblower Office requires a fully executed Form 2848, *Power of Attorney and Declaration of Representative*, before it will process an Application for Reduced Rate of Withholding on Whistleblower Award Payment submitted by an award claimant's representative. The person submitting the Application for Reduced Rate of Withholding on Whistleblower Award Payment must sign the form under penalties of perjury.
- (4) A completed Application for Reduced Rate of Withholding on Whistleblower Award Payment must be submitted to the address provided on the letter notifying the whistleblower of the withholding program. Applications for reduced withholding may not be submitted electronically or by fax.

25.2.2.7.4 (05-28-2020)

Application Review Process

- (1) Upon receipt of an Application for Reduced Rate of Withholding on Whistleblower Award Payment, the Whistleblower Office will promptly review and evaluate the form and all attachments. The

Whistleblower Office will not consider any claimed deductions or tax attributes of the applicant other than the above-the-line deduction for attorney fees and court costs paid or to be paid in the year of the award payment by, or on behalf of, the applicant in connection with an award under IRC § 7623(b).

- (2) The Whistleblower Office may contact the applicant (or applicant's authorized representative, if applicable) if the Whistleblower Office, in its sole discretion, decides that the contact would assist its review and evaluation of the form and attachments.
- (3) The Whistleblower Office will perform a tax compliance check of the applicant for the previous three tax years, to ensure the applicant has satisfied all applicable filing requirements. If the applicant has not satisfied all applicable filing requirements, then the Whistleblower Office will reject the application and initiate payment of the award, applying the standard withholding rate.
- (4) If, in its sole discretion, the Whistleblower Office decides that the applicant has substantiated relevant attorney fees or court costs, then the Whistleblower Office will calculate the appropriate rate of tax withholding. The Whistleblower Office will calculate the appropriate withholding rate taking into account only the timing and amount of the above-the-line deduction for relevant attorney fees and costs. For purposes of the calculation, the Whistleblower Office will assume that the applicant falls into the highest bracketed tax rate. The Whistleblower Office's decision that the applicant has substantiated relevant attorney fees and costs is neither a determination of the applicant's entitlement to claim a deduction on the applicant's federal income tax return nor a determination of the applicant's tax liabilities. Any reduction in the rate of withholding from an award payment is at the Whistleblower Office's discretion and does not preclude the IRS from examining the applicant's tax liability for the year(s) at issue.
- (5) If the Whistleblower Office decides that the appropriate withholding rate is lower than the standard withholding rate applicable to award payments that exceed \$10,000, then the Whistleblower Office will apply the reduced withholding rate in initiating payment of the award. The Whistleblower Office will only apply the reduced withholding rate to award payments on the award claim(s) identified on the Application for Reduced Rate of Withholding on Whistleblower Award Payment. In cases in which the Whistleblower Office applies a reduced withholding rate but the claimant has not yet paid the substantiated attorney fees and court costs, the IRS will not pay awards after December 1 of a calendar year and, instead, will pay awards in the next calendar year.
- (6) The Whistleblower Office will notify the applicant (or the applicant's authorized representative, if applicable) of its decision regarding the withholding rate applied to the award.

- (7) Applicants will not be given an opportunity to appeal the decision of the Whistleblower Office through the IRS Appeals function. Nonetheless, regardless of the decision of the Whistleblower Office, applicants may claim any and all allowable deductions on their federal income tax return and may claim a refund of any overpaid taxes.

25.2.2.8 (01-12-2018)

Corresponding with Whistleblowers

- (1) This section describes how the Whistleblower Office communicates through correspondence.
- (2) All final award determinations must be sent certified mail (domestic addresses) or registered mail (international addresses).

25.2.2.8.1 (01-12-2018)

Rejections and Denials

- (1) Whistleblowers who are not entitled to an award are sent a letter advising them of the outcome. The type of letter will depend on the outcome (rejected or denied) and whether the claim is considered an IRC § 7623(a) or IRC § 7623(b) claim for purposes of the rejection or the denial.
Note: When determining whether the claim is considered an IRC § 7623(a) or §7623(b) claim for purposes of rejections and denials, the IRS may rely on the whistleblower'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 proceeds in dispute is below the \$2 million threshold of IRC § 7623(b)(5)(B), but the actual proceeds in dispute is above the threshold; or when the alleged proceeds in dispute is over \$2 million, but the claim did not allege a tax issue or specific and credible information to support the allegation).
- (2) Claims will be considered IRC § 7623(a) claims for purposes of rejection or denial if the alleged proceeds in dispute is under \$2 million or the claim does not identify a specific/credible tax issue or is purely speculative in nature.
 - a. Claims rejected as an IRC § 7623(a) claim will receive a final rejection letter stating the basis of the rejection
 - b. Claims denied as an IRC § 7623(a) claim will receive a final denial letter that does not state the basis for the denial. The regulations do not allow the Whistleblower Office to provide basis statements for IRC § 7623(a) claim denials.
- (3) Claims considered IRC § 7623(b) claims for the purpose of the rejection or the denial:

- a. Claims recommended for rejection or denial as an IRC § 7623(b) claim will receive a preliminary rejection or preliminary denial letter stating the basis for the anticipated rejection or denial and provide a 30 day period for the whistleblower to comment on the proposed rejection or denial.
- b. The Whistleblower Office will consider all timely responses submitted by the whistleblower(s) and/or their representatives.
- c. If, after reviewing the responses, a decision is still made to reject or deny the claim the Whistleblower Office will issue the applicable final rejection or denial letter.

25.2.2.8.2 (01-12-2018)

Whistleblower Award Determination Administrative Proceeding

- (1) After receipt of all Form 11369 and other necessary information from the affected IRS operating divisions, the Whistleblower Office may begin the award determination process.
- (2) An award recommendation will be prepared and communicated to the whistleblower when an assessment has been made and the earlier of the following scenarios apply:
 - a. Taxpayer has paid in full; or
 - b. Taxpayer has made payments, but not fully paid the assessment and CSED is closed.
- (3) Generally, the Whistleblower Office will no longer make partial award payments. Exceptions to this general policy may be made in instances where making a partial payment is in the IRS's best interest.

25.2.2.8.2.1 (05-28-2020)

IRC § 7623(a) Claims

- (1) The award recommendation will be communicated to the whistleblower in a Preliminary Award Recommendation package containing the following documents:
 - a. Preliminary Award Recommendation Letter
 - b. Summary Report - The Summary Report states the amount of the recommended award and includes the preliminary computation of potential proceeds collected, the recommended award percentage and the recommended award amount, and a brief summary of the factors the Whistleblower Office considered in reaching the award percentage recommendation. The Summary Report may discuss how the information provided affected the opening, expansion or continuation of an audit. The report may also discuss such factors as the quality of the organization of the information provided and the quality of any factual and/or legal analysis provided. The report may discuss the presence of positive

- factors that warrant an increase in the award percentage and the presence of any negative factors that warrant a decrease in the award percentage. The report may contain a statement of the award percentage warranted, taking into account the extent to which the information provided substantially contributed to actions by the IRS.
- c. Response to Summary Report.
- (2) Whistleblowers are given 30 days to respond to the Preliminary Award Recommendation Letter and Summary Report. The whistleblower can respond in one of three ways with the resulting consequences:
- a. If the whistleblower takes no action. Once there is a final determination of tax for those actions that compose the award determination, the determining official of the Whistleblower Office will make a final award determination. The Whistleblower Office will send out a final determination letter package notifying the whistleblower of the determining official's determination. The award will be processed for payment as promptly as circumstances permit, but not until there has been a final determination of tax with respect to the action(s), the Whistleblower Office has determined the award, and all appeals of the Whistleblower Office's determination are final or the whistleblower has executed an award consent form agreeing to the amount of the award and waiving the whistleblower's right to appeal the determination.
 - b. If the whistleblower signs, dates, and returns the Response to Summary Report agreeing to the preliminary award recommendation, accepting it as the award determination and waiving the right to appeal the award determination to the United States Tax Court, then the Whistleblower Office will begin award payment procedures under *IRM 25.2.2.11, Award Payment Procedures*, as promptly as circumstances permit.
 - c. If the whistleblower submits comments to the Summary Report and does not agree with the preliminary award recommendation. The Whistleblower Office will evaluate the whistleblower's comments. Once there is a final determination of tax the determining official of the Whistleblower Office will make an award determination. The Whistleblower Office will send out a final determination letter package notifying the whistleblower of the determining official's determination. The Whistleblower Office will process the payment as promptly as circumstances permit, but not until there has been a final determination of tax with respect to the action(s), the Whistleblower Office has determined the award, and all appeals of the Whistleblower Office's determination are final or the whistleblower has executed an award consent form agreeing to the amount of the award and waiving the whistleblower's right to appeal the determination.

- (3) The preliminary award recommendation package and final determination letter package contains return information. The Whistleblower Office is authorized to disclose return information to the extent necessary to conduct the whistleblower administrative proceeding.

25.2.2.8.2.2 (05-28-2020)

IRC § 7623(b) Claims

- (1) Prior to communicating the award recommendation to the whistleblower, a committee of the Whistleblower Executive Board may be briefed regarding the award recommendation. The award recommendation will be communicated to the whistleblower in a Preliminary Award Recommendation package containing the following documents:
 - a. Preliminary Award Recommendation Letter
 - b. Summary Report

Note: The Summary Report states the amount of the recommended award and provides a brief explanation (one or two paragraphs) of the recommended award. The report will include the preliminary computation of potential proceeds collected, the recommended award percentage and the recommended award amount, and a brief summary of the factors the Whistleblower Office considered in reaching the award percentage recommendation. The Summary Report will discuss how the information provided affected the opening, expansion or continuation of an audit. The report may also discuss such factors as the quality of the organization of the information provided and the quality of any factual and/or legal analysis provided. The report will discuss the presence of positive factors that warrant an increase in the award percentage and the presence of any negative factors that warrant a decrease in the award percentage. The report will contain a statement of the award percentage warranted, taking into account the extent to which the information provided substantially contributed to actions by the IRS.
 - c. Response to Summary Report
 - d. Confidentiality Agreement
- (2) Whistleblowers are given 30 days to respond to the Summary Report. The whistleblower can respond in one of four ways with the resulting consequences:
 - a. If the whistleblower takes no action, then the determining official of the Whistleblower Office will make a final award determination.
 - b. If the whistleblower signs, dates, and returns the Response to Summary Report agreeing to the preliminary award

- recommendation, accepting it as the award determination and waiving the right to appeal the award determination to the United States Tax Court, then the Whistleblower Office will begin award payment procedures under *IRM 25.2.2.11, Award Payment Procedures*, as promptly as circumstances permit.
- c. If the whistleblower submits comments on the Summary Report but does not sign, date, and return the Confidentiality Agreement, the comments will be added to the administrative claim file and reviewed for purposes of making an award determination, then the determining official of the Whistleblower Office will make a final award determination.
 - d. If the whistleblower signs, dates, and returns the Confidentiality Agreement, then the Whistleblower Office will provide the whistleblower with a detailed award report and the administrative review opportunity described below.
- (3) The Detailed Report consists of the following:
- a. Detailed Report Letter;
Note: The Detailed Report Letter contains instructions on scheduling an appointment for the whistleblower (and the whistleblower's representative, if there is one) to review the documents supporting the recommendation. If scheduled, this review will take place at the Whistleblower Office in Washington, D.C., unless the Whistleblower Office, in its sole discretion, decides to hold the meeting at another location. The Whistleblower Office will supervise the review of the documents and whistleblowers will not be permitted to make copies of the documents.
 - b. Detailed Report statement; and
Note: The Detailed Report states the amount of the recommended award and provides a detailed explanation of the recommended award. The report includes the preliminary computation of potential proceeds collected, the recommended award percentage, the recommended award amount, and a detailed explanation of the factors considered in making the award percentage recommendation.
 - c. Response to Detailed Report.
- (4) Whistleblowers are given 30 days to respond to the Detailed Report. The whistleblower can respond in one of three ways with the resulting consequences:
- a. If the whistleblower takes no action, then the determining official of the Whistleblower Office will make a final award determination.
 - b. If the whistleblower schedules an appointment to review the documents supporting the recommendation, then the whistleblower will have 30 days from the date of the meeting to provide written comments to the Whistleblower Office. If written

comments are submitted to the Whistleblower Office, the written comments will be reviewed for purposes of making an award determination; then the determining official of the Whistleblower Office will make a final award determination.

Note: If no written comments are submitted to the Whistleblower Office, then the determining official of the Whistleblower Office will make an award determination.

- c. If the whistleblower does not schedule an appointment but does submit written comments on the Detailed Report, the comments will be reviewed for purposes of making an award determination; then the determining official of the Whistleblower Office will make a final award determination.
- (5) A violation of the terms of the confidentiality agreement may be considered a negative factor in determining the specific award percentage, and may result in reduction of the award percentage to the minimum required by law.
 - (6) All correspondence sent by the Whistleblower Office to a whistleblower during the whistleblower administrative proceeding as well as all correspondence, including written comments, received by the Whistleblower Office from the whistleblower in response to such correspondence will become part of the administrative claim file.
 - (7) The determining official of the Whistleblower Office will make the award determination based on a review of the administrative claim file. If the award determination amount differs substantially from the recommended amount, prior to communicating the award determination to the whistleblower, the committee of the Whistleblower Executive Board may again be briefed. The Whistleblower Office award determination will be communicated to the whistleblower in a determination letter package containing the following documents:
 - a. Final Determination Letter
 - b. Determination Report
 - c. Determination - Waiver of Appeals

The Determination Report re-states the information provided in the Summary Report and, if applicable, includes a discussion addressing any comments made by the whistleblower during the award determination administrative proceeding. The Determination Letter will advise the whistleblower of the right to seek review of the determination by the United States Tax Court (Tax Court) within 30 days of the date of the determination letter.

- (8) The Whistleblower Office will initiate payment actions as promptly as circumstances permit after the period for seeking Tax Court review has lapsed, when the whistleblower notifies the Whistleblower Office that the right to seek review has been waived, or when the Tax Court

has issued a decision and all further judicial appeals have been waived or exhausted.

- (9) The Preliminary Award Recommendation package, the Summary Report, the Detailed Report and the Determination Letter package, as described above, will contain return information. The Whistleblower Office is authorized to disclose this return information, within the whistleblower administrative proceeding.

25.2.2.8.3 (01-12-2018)

Deceased Whistleblowers

- (1) For all claims, both IRC § 7623 (a) and (b), determination letters (rejection/denial/award) may be issued to the deceased's estate when the Whistleblower Office is able to identify an individual with fiduciary responsibility for the estate ("point of contact" or "POC").
- (2) If the Whistleblower Office is unable to identify a POC for the estate, then complete the Award Recommendation Memorandum and award calculation, if applicable, and close the claim. The Whistleblower Office will not send correspondence or determination letters to the estate if a POC is not identified.
- (3) If the estate contacts the Whistleblower Office and identifies a POC within six years of the date the claim was closed, then the Whistleblower Office will correspond and issue determination letters to the POC.
- (4) If the estate contacts the Whistleblower Office and identifies a POC 6 years or more after the date the claim was closed, then the Whistleblower Office will not respond. Claims closed for 6 years or more will not be reopened.
- (5) The Power of Attorney (POA) relationship is terminated when the whistleblower passes away. A whistleblower's POA will need to get a new form representing the estate in order to continue as the POA after the date of death.
- (6) Payments will be made to the estate of the deceased, not the estate's POC.

25.2.2.8.3.1 (01-12-2018)

Identifying the Point of Contact for a Deceased Whistleblower's estate

- (1) The Whistleblower Office will identify a POC for the estate by using the following:
 - a. The individual identified on the Form 1041,
 - b. The individual identified on the Form 56 attached to the deceased's Form 1040, or
 - c. The individual identified as the executor/point of contact in IDRS.
- (2) If the POC is the taxpayer, or a related taxpayer, from the whistleblower's allegations then the Whistleblower Office will not

correspond with the estate and will follow procedures to close the claim.

25.2.2.8.4 (01-12-2018)

Address/Compliance Verification Letters

- (1) Prior to issuing payment the Whistleblower Office will verify the whistleblower's address (if the address has not been verified within a year) by corresponding with the whistleblower to receive confirmation of the address on record with the Whistleblower Office.
- (2) Prior to issuing payment the Whistleblower Office will correspond with the whistleblower to verify compliance if the IRS's records indicate the whistleblower has not filed a tax return for the most recent 3 tax years.
- (3) The Whistleblower Office will resume processing the claim once adequate responses are received to the above letters. Responses must come from the whistleblower, or whistleblower's power of attorney, and not internal sources.
- (4) For IRC § 7623(a) claims: If the Whistleblower Office does not receive a response to the address or compliance verification letters then the claims will be closed as unable to contact or unable to verify compliance.
- (5) For IRC § 7623(b) claims: If the Whistleblower Office does not receive a response to the address or compliance verification letters then the claims will be placed in suspense and monitored on an annual basis until the whistleblower fulfills the requirements of the respective letter.
- (6) If the whistleblower contacts the Whistleblower Office and fulfills the requirements of the respective letter less than 6 years after the date the claim was closed then the Whistleblower Office will reopen the claim for continued processing. Claims closed for 6 years or more will not be reopened.

25.2.2.8.5 (05-28-2020)

Taxpayer First Act Letters

- (1) On July 1, 2019, The Taxpayer First Act of 2019 was signed into law. Changes to the Whistleblower Program included the addition of IRC § 7623(d) (providing civil protection against retaliation) and IRC § 6103(k)(13) (modifying disclosure rules for whistleblowers).
- (2) The WO issues the following letters related to The Taxpayer First Act of 2019:
 - *Notification of Referral for Audit or Examination* - The purpose of this letter is to notify the whistleblower if the claim is referred for audit or examination. This does not mean an audit or

examination has been or will be opened. The letter is mailed automatically within 60 days of the date the claim is referred.

- *Notification of Payment* - The purpose of this letter is to notify the whistleblower if the subject of the whistleblower claim makes a tax payment related to the tax period for which the information provided by the whistleblower relates. It may take several years from the date of notification before a final resolution of all tax matters has occurred. The letter is mailed automatically within 60 days of the date a payment of tax is made on a finalized liability related to the information provided in the whistleblower's claim for an award.
 - *Status and Stage Letters* - The purpose of this letter is to inform the whistleblower of the status (open or closed) and stage (the current process the whistleblower claim is in) of the whistleblower claim. It is mailed when the WO receives a written requests following the Service's Guidance in Pub 5251, *The Whistleblower Claim Process and Timeline*. The WO will not respond to more than one request per claim number per calendar year
- (3) Receipt of one or more of these letters does not guarantee an award will be paid out on the claim.

25.2.2.9 (01-12-2018)

Appeal Rights under IRC § 7623(b)

- (1) Once the Whistleblower Office has made a final award determination regarding a claim under IRC § 7623(b) (1), (2), or (3), the Whistleblower Office will communicate the determination to the claimant. Final Whistleblower Office award determinations regarding awards under IRC § 7623(b)(1),(2) and (3) may, within 30 calendar days of such determination, be appealed to the United States Tax Court at 400 Second Street, NW, Washington DC 20217. The IRS does not have the authority to extend the period for filing an appeal.

25.2.2.10 (05-28-2020)

Protecting Information/Disclosure

- (1) The IRS will protect the identity of the whistleblower to the fullest extent permitted by the law.
- (2) To the extent that the IRS Whistleblower Office determines that an individual is a "whistleblower" under IRC § 7623, the Whistleblower Office shall use its best efforts to protect the identity of the whistleblower under the informant's privilege 26 CFR § 301.7623-1(e) . Any contact made between the IRS and the whistleblower will not be a third-party contact under IRC § 7602(c). See IRM 25.27.1, *Third Party Contacts*.

- (3) Under some circumstances, such as when the whistleblower is an essential witness in a judicial proceeding, it may not be possible to pursue the investigation or examination without revealing the whistleblower's identity. These circumstances are rare, and the IRS will make every effort to notify the whistleblower before deciding whether to proceed in such a case.

Note: In all instances *prior* to any disclosure of a whistleblower's identity, Counsel must be contacted. This must be done as early as possible to help ensure sufficient time to document justification and seek appropriate authorization for any such disclosure.

25.2.2.10.1 (05-28-2020)

E-mails Containing PII

- (1) In accordance with service-wide policies on protection of PII data, e-mails containing PII should attempt, where possible, to limit the amount of PII contained in the e-mail. Any e-mail containing PII data must be encrypted. See IRM 1.10.3.2 and 10.5.1.6.5.

25.2.2.10.2 (05-28-2020)

Disclosing Expanded Claim Numbers

- (1) The WO will assign additional claim numbers when the Service expands the examination/investigation of the whistleblower's original claim into additional taxpayers not directly identified by the whistleblower in the Form 211.
- (2) It is permissible to disclose the additional expanded claim numbers (or taxpayers) to the whistleblower in the:
 - Administrative proceeding for the IRC 7623(a) and (b) award letters, and
 - Administrative proceeding for the IRC 7623(b) rejection and denial letters.
- (3) It is not permissible to disclose the additional expanded claim numbers (or taxpayers) to the whistleblower in IRC 7623(a) rejection or denial letters.
- (4) Even when permissible, the Whistleblower Office will not disclose the additional claim numbers unless the analyst's manager deems the disclosure would be beneficial.

25.2.2.11 (04-26-2019)

Award Payment Procedures

- (1) Whistleblower awards are paid from proceeds collected. The Office of Management and Budget (OMB) apportions the amount of whistleblower payments based on prior year actual expenses. Corporate Performance Budget (CPB) requests additional

apportionment where payments are expected to exceed the apportionment. To ensure compliance with Law, CPB will track and approve posting of payments to the Informant Awards account (20x5433.1).

25.2.2.11.1 (01-12-2018)

Roles and Responsibilities

- (1) ICE Team will obtain CPB approval of the availability of funds for each award payment prior to processing the payment.
- (2) Revenue Financial Management (RFM) will:
 - a. Produce an SF 133 based on a TIER file report for Informant Payments using CFO Vision.
 - b. Transmit copies of the SF 133 to CPB and the Ogden Campus ICE Unit.
- (3) Corporate Performance Budget/Budget Execution Office (CPB) will:
 - a. Reconcile the SF 133 with the Informant Awards tracking spreadsheet.
 - b. Submit an apportionment request (SF 132) for additional amounts to OMB when actual expected award payments are expected to exceed the available funding.
 - c. Approve and track all whistleblower awards prior to payment.

25.2.2.11.2 (01-12-2018)

Procedures

- (1) The ICE Team will e-mail the information on the amount of awards to be paid out to the CPB mailbox with the cc to the Director of the Budget Execution Office.
Note: This information does not require taxpayer information to be included.
- (2) CPB will enter the amount of the request on a tracking sheet that incorporates data from the SF 133 report for Informant Payments.
- (3) CPB will approve the request if funding is available.
- (4) If the available apportionment falls below an appropriate amount, CPB will contact the Whistleblower Office to ascertain the amount to request from OMB for an additional apportionment.
- (5) When the ICE Team receives the approval e-mail, they will send an Form 2424, *Account Adjustment Voucher* and a Form 3753, *Manual Refund Voucher* to the Ogden accounting unit.
- (6) The Ogden accounting unit will process the Form 2424, *Account Adjustment Voucher* and the Form 3753, *Manual Refund Voucher*.
- (7) The Ogden IRACS team will journalize the Informant Award account (Journal 495) and the Manual Refund (Journal 515).

- (8) Accounting will maintain a separate file of all manual refunds issued as Whistleblower Awards to specifically issue Form 1099 MISC, *Miscellaneous Income*.
- (9) The Form 945, *Annual Return of Withheld Federal Income Tax*, will be completed and approved by the Director, Whistleblower Office and submitted back to accounting with the Form 1099 information.
- (10) Form 1099 MISC, *Miscellaneous Income*, will be issued to taxpayers annually (mailed by January 31). Accounting will contact the ICE Team for a list of Whistleblower Award recipients to verify proper issuance.
- (11) After processing Form 1099 MISC, *Miscellaneous Income* is complete, Accounting will forward a copy of the transmittal to the ICE Team and the Whistleblower Office Analyst.

25.2.2.12 (01-12-2018)

Annual Report to Congress

- (1) The Secretary of the Treasury must conduct a study annually and report to Congress on the use of IRC § 7623, including an analysis of the use of such section during the preceding year and the results of such use.

25.2.2.13 (04-26-2019)

Whistleblower Administrative File Retention

- (1) Closed claims will be stored by the ICE Team in Ogden once the claim has been closed.
- (2) The ICE Team will ship closed claims to the Federal Record Center once the claims have been closed for five years.
- (3) If a claim is needed from the Federal Record Center the Whistleblower Office will work with the ICE Team to complete the necessary forms and request the box containing the claim.

Exhibit 25.2.2-1

Award Calculation Computation Guidelines

For Submissions before August 26, 1997, calculate as follows:

FOR	THEN	Dollar Limitation not to exceed
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FOR	THEN	Dollar Limitation not to exceed
Specific and responsible information which caused the investigation in recovery of proceeds.	10 percent first \$75,000 5 percent next \$ 25,000 1 percent any additional recovery	\$ 100,000
Information (not specific) which caused the examination and was of value in determining tax liabilities, and for information which was a direct factor in recovery of proceeds.	5 percent first \$75,000 $2\frac{1}{1}$ percent next \$ 25,000 $1\frac{1}{1}$ percent any additional recovery	\$ 100,000
Information that caused the investigation but was of no value in determining proceeds.	1 percent first \$75,000 $1\frac{1}{1}$ percent any additional recovery	\$ 100,000

For Submission on or after August 26, 1997 but before August 13, 2004 calculate as follows:

FOR	THEN	Dollar Limitation not to exceed:
Specific and responsible information which caused the investigation in recovery of proceeds.	15 percent	\$ 2 million
Information that caused the investigation and was of value in the determination of proceeds although not specific.	10 percent	\$ 2 million
Information that caused the investigation but had no direct relationship to the determination of proceeds.	1 percent	\$ 2 million

For Submissions on or after August 13, 2004 but before December 20, 2006, calculate as follows:

FOR	THEN	Dollar Limitation not to exceed:
Specific and responsible information which caused the investigation in recovery of proceeds.	15 percent	\$ 10 million
Information that caused the investigation and was of value in the determination of proceeds although not specific.	10 percent	\$ 10 million
Information that caused the investigation but had no direct relationship to the determination of proceeds.	1 percent	\$ 10 million

Exhibit 25.2.2-2

Reduced Withholding Program Frequently Asked Questions

Q1	I paid attorney fees and court costs in connection with an award under IRC § 7623(b). Am I eligible to apply for reduced withholding on an award payment?
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A1	Yes. Allowable deductions for attorney fees and court costs paid by, or on behalf of, a whistleblower in connection with an award under IRC § 7623(b) may warrant reduced withholding. A deduction for attorney fees and court costs may be claimed in the year the attorney fees and costs are paid. Whistleblowers claiming such above-the-line deductions are eligible to apply for reduced withholding. Whistleblowers claiming below-the-line deductions for attorney fees and court costs paid in connection with an award under IRC § 7623(a) are not eligible to apply for reduced withholding on an award payment.
Q2	I'm entitled to claim deductions on my federal income tax return other than allowable deductions for attorney fees and costs. Am I eligible to apply for reduced withholding based on all of my deductions?
A2	No. The award withholding program provides an opportunity for the IRS and whistleblowers claiming allowable above-the-line deductions for attorney fees and court costs paid in connection with an award under IRC § 7623(b) to avoid potential over withholding on award payments. The program is not an opportunity to determine a whistleblower's tax liabilities. Any reduction in the rate of withholding from an award payment is at the Whistleblower Office's discretion and does not preclude the IRS from examining the whistleblower's tax liability for the year or years at issue.
Q3	Will I receive a notice from the IRS informing me that I am eligible to apply for reduced withholding on an award payment?
A3	Yes. If you are receiving an award under IRC § 7623(b), then we will send you an Application for Reduced Rate of Withholding on Whistleblower Award Payment, when we first notify you of a proposed award. You should use this form to apply for reduced withholding.
Q4	When can I apply for reduced withholding on an award payment?
A4	You must apply by submitting an Application for Reduced Rate of Withholding on Whistleblower Award Payment to the IRS's Whistleblower Office within 30 days of the date the IRS issued the form. This date can be found in the top right hand corner of the form.
Q5	What happens if I submit my application more than 30 days after the date on the Application for Reduced Rate of Withholding on Whistleblower Award Payment?
A5	We may not reduce the rate of withholding on your award payment. If this results in over withholding, you may be able to claim a refund on your federal income tax return.
Q6	What information do I need to provide when I apply for reduced withholding?

A6	<p>You must provide your name, address, taxpayer identification number, and phone number. If your application is submitted by your authorized representative, then you must provide your authorized representative's name, address, federal tax identification number, and phone number. You must provide the claim number(s) assigned by the IRS's Whistleblower Office to your claim(s). These numbers can be found on correspondence sent to you by the IRS's Whistleblower Office in respect of your claim(s).</p> <p>Your application must state the amount of the attorney fees and costs paid or to be paid in the year of the award payment in connection with an award under IRC § 7623(b) and that you intend to claim as a deduction on your federal income tax return.</p> <p>Your application must also substantiate the amount of attorney fees and costs that you paid or will pay in the year of the award payment. You should attach copies of fee agreements, bills, or other relevant documents. If you have substantiated the amount of attorney fees and costs that you have incurred, but you have not yet paid those costs, then your application must represent that you will pay the attorney fees and costs in the same tax year in which you receive your award.</p> <p>Finally, the application must be signed and dated under penalty of perjury by the individual submitting the application.</p>
Q7	Can my authorized representative submit the application form on my behalf?
A7	Yes. Your authorized representative must, however, have a valid power of attorney on file with the IRS
Q8	Can I submit the application electronically or by fax?
A8	No. Applications must be sent to the IRS's Whistleblower Office, at the address listed on the letter which notified you of the withholding program.
Q9	For what reasons might my application be rejected?
A9	Approval or rejection of your application for reduced withholding is entirely at the IRS's discretion. Upon receipt of your application, we will do a tax compliance check to make sure that you have filed your three most recent federal income tax returns. If you have not filed required returns, then we may reject your application. We may also reject your application if it does not contain all of the requested information, if it fails to substantiate the amounts you claim to have paid, or if we do not receive it within the 30-day period described in A4, above.
Q10	Will someone from the IRS's Whistleblower Office contact me to discuss my application?

A10	If we need additional information to approve or reject your application, or to compute a reduced rate of withholding, then we may contact you. Any such contacts will occur at our discretion.
Q11	When will I know if my application has been accepted?
A11	The Whistleblower Office will notify you of the decision to accept or reject your application.
Q12	Is there a way to appeal a rejection of my application?
A12	No. As described in A11, above, we will notify you of whether your application has been accepted or rejected. If your application is rejected and the IRS does not apply a reduced withholding rate to your payment, but you are entitled to claim allowable deductions for attorney fees and court costs paid in connection with an award under IRC § 7623(b), then you may be able to claim a refund on your federal income tax return.
Q13	Will submitting an application for reduced withholding delay the payment of my award?
A13	Since we will be forwarding the Application for Reduced Rate of Withholding on Whistleblower Award Payment to you early in the proposed award process, an application for reduced withholding should not delay the payment of an award as finally determined. However, if you submit an application for reduced withholding near the end of the 30-day period, then it is possible that our consideration of your application could delay our initiation of your award payment. Any such delay, however, will be short because we will accept or reject your application promptly. Nonetheless, we encourage you to apply for reduced withholding as soon as possible after receiving the Application for Reduced Rate of Withholding on Whistleblower Award Payment, as described in A3, above, to minimize the possibility of even a short delay in payment of your award.
Q14	Who can I contact for more information about the award withholding program?
A14	You can contact the IRS's Whistleblower Office at wo@irs.gov or the analyst assigned to your claim.
Q15	Why are checks not going to be mailed after December 1?
A15	The December 1 payment cutoff is intended to ensure that we don't compromise the ability of the whistleblower to pay the fees and costs in the year of the award payment.

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