

## International Cases Contribute to Dramatic Increase in Whistle-Blowers, U.S. Reports

by David D. Stewart

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The U.S. Internal Revenue Service has witnessed a dramatic increase in whistle-blower reports following an amendment to the statutory provisions on payouts for information about tax violators, and many of the cases involve international issues.

Stephen Whitlock, director of the IRS Whistle-Blower Office, outlined some of those issues on January 29 in Miami at the 27th Annual International Tax Conference cosponsored by the Florida Bar Association and the Florida Institute of Certified Public Accountants.

He said his office is seeing individual tax cases involving undeclared foreign-source income, undeclared foreign accounts, and international estate planning with undisclosed assets. For businesses, the office has been receiving reports about problems with reorganizations, tax shelter questions, transfer pricing, and the existence of a permanent establishment.

"We are looking for someone who is a knowledgeable insider or has access to knowledgeable insiders -- somebody who has information that would not be readily apparent to the IRS during an examination that might help us determine that we should conduct an audit or include an issue on an audit that we would not have included," Whitlock said.

### Some History

Congress in December 2006 amended code section 7623, creating a mandatory reward for whistle-blowers who report tax underpayments exceeding \$2 million. The statute provides for a payout of between 15 percent and 20 percent of the recovered amount, replacing an earlier provision that had capped the payout.

After a slow start in the first year, with only 80 cases initiated, reports have increased dramatically. Whitlock said the Whistle-Blower Office is handling 500 reports involving more than 1,700 individuals and companies. Of those cases, at least 280 allege more than \$10 million in unpaid tax, and 70 allege \$100 million or more.

One area of ambiguity in the statute as it was revised in 2006 concerns limitations on awards to whistle-blowers who are involved in the evasion they are reporting. Under the statute, the IRS may reduce awards to individuals who were involved in "planning and initiating" tax underpayments, and it must deny awards to individuals convicted of involvement in planning and initiating tax avoidance.

"We have some interesting things to sort through about what actually constitutes planning and initiating," Whitlock said. "Someone could have a role in a transaction that was not planning and initiating, and hypothetically they could get convicted for it but still be eligible for an award of 15 to 30 percent, because the reduction provision only applies if they have planned it and initiated it."

"I don't anticipate too many checks that I will be sending care of a federal penitentiary, but the way the statute is written that could happen," he added.

Whitlock explained his office's role as "whistle-blower case administration," while the Large and Midsize Business Division and other IRS divisions handle the actual tax administration. The Whistle-Blower Office does not determine whether to go forward with an investigation; it simply handles the intake of whistle-blower information and determines the size of an award and whether one is payable, Whitlock said.

### **Whistle-Blower Integrity**

One audience member at the conference asked if Whitlock's office would refer submissions to the attorney general for prosecution if there is reason to believe that documentation supplied by an informant is stolen property.

Whitlock said his office checks to see if a person supplying information has valid authority for access to the information, but that the office so far has not received information from a person who did not have some authority to access the information.

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### **Tax Analysts Information**

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