

## IRS Pays First Enhanced Whistleblower Award

by Jeremiah Coder

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**[Editor's Note:** Addendum: This article was updated on Apr. 11, 2011, to add comments from Bryan C. Skarlatos of Kostelanetz & Fink LLP that were submitted after deadline.]

An attorney claimed April 8 that his client has received the first IRS whistleblower award paid out under a new statutory framework providing greater compensation to individuals who provide the IRS with information that leads to collection of unpaid taxes.

According to Eric L. Young of Egan Young Attorneys at Law in Blue Bell, Pa., one of his clients, a CPA, was awarded more than \$4.5 million for alerting the IRS to a *Fortune* 500 financial services company's \$20 million unreported tax liability.

"Our client discovered that the financial services firm was failing to pay taxes but after speaking up was simply ignored. As such, the right thing was done in deciding to report this employer's tax misconduct to the IRS," Young said in a release. (For the release, see *Doc 2011-7595*.)

Section 7623(b), enacted as part of the Tax Relief and Health Care Act of 2006, permits larger payouts to whistleblowers if, in the case of a reported individual, that individual's gross income for the year exceeds \$200,000 and the amount of tax (plus penalties, interest, and additions to tax) in dispute exceeds \$2 million. Under section 7623(b), the IRS must issue an award amount of between 15 and 30 percent of the collected proceeds from a successful administrative or judicial action based on information submitted by a whistleblower. In January the IRS issued proposed regulations that expand the definition of collected proceeds on which a whistleblower might receive payment. (For REG-131151-10, see *Doc 2011-880* or *2011 TNT 11-11*. For prior coverage, see *Doc 2011-883* or *2011 TNT 11-3*.)

Young said his client, an in-house accountant at the financial services firm, was given 22 percent of the amount the IRS collected in unpaid taxes from the company. According to section 25.2.2.9.2 of the Internal Revenue Manual, the IRS Whistleblower Office will start a section 7623(b) award consideration at the 15 percent baseline and increase the percentage amount for positive factors, including prompt action, detailed submission, and exceptional cooperation. (For excerpts of the IRM related to whistleblower claims, see *Doc 2010-13536* or *2010 TNT 117-20*.)

Practitioners representing whistleblower claims before the IRS praised the announcement. "This is a great day for honest taxpayers and whistleblowers, with the first awards being made by the IRS Whistleblower Office," said Dean Zerbe, national managing director at Alliantgroup and a former tax counsel to Senate Finance Committee Republicans. "Hats off to Steve Whitlock and senior IRS management in following the

new law and providing a substantive award that will encourage other whistleblowers to come forward."

The first award by the IRS "will do much to encourage men and women who are putting at risk their jobs and careers to come forward for the benefit of the country," Zerbe said, adding that "tax weasels will now think twice knowing the IRS has today opened the door for whistleblowers."

Scott A. Knott, a tax partner at the Ferraro Law Firm, said there were indications that the IRS was withholding 28 percent of the reward payment, which he said raises questions for attorneys representing whistleblowers. "We have asked the Whistleblower Office about this, and the IRS has never said under what authority they are withholding from award payments to U.S. whistleblowers," he said. Because the whistleblower took the money, he has waived his right to appeal the award determination in the Tax Court, Knott added.

Gregory S. Lynam, also a tax partner at the Ferraro Law Firm, said the great lengths to which the whistleblower has gone to try to maintain anonymity will likely mean that "the public will never know who the taxpayer or the whistleblower was." Because the only information revealed about the award was released by the whistleblower, "the fact that those identities are not publicly known shows that the IRS is serious about protecting whistleblower identities and information," he said.

In a release, Senate Finance Committee member Chuck Grassley, R-Iowa, author of the 2006 law improving the IRS Whistleblower Office, said that whistleblowers have saved taxpayers billions of dollars by identifying defense and healthcare fraud under the False Claims Act and that "the potential is just as great with tax fraud in our system of voluntary compliance."

"Without a whistleblower, it might have taken the IRS years of work to uncover that situation, if ever," Grassley said. "I hope this case will encourage more big-dollar tax whistleblowers to come forward. Tax cheating is an injustice to the vast majority of taxpayers who pay what they owe." (For the release, see *Doc 2011-7629*.)

Bryan C. Skarlatos, a partner at Kostelanetz & Fink LLP, said the announced award is one of the largest ever paid by the IRS. In paying the award, "the IRS has shown that it is serious about using whistleblowers as an element of tax enforcement," he said. Whistleblowers can be an important part of the IRS's enforcement strategy because unlike other audit indicators, whistleblower tips have a high probability of generating tax deficiencies and collections, he said. "Thus, in an era of shrinking resources and possible cuts in the IRS budget, whistleblower tips help the IRS to focus its limited resources on cases that are most likely to involve noncompliance."

Skarlatos said the typical time from the date of a whistleblower claim until a reward is paid is five to seven years because of the time it takes to audit a taxpayer and go through the IRS appeals procedure. Even after the case is resolved and the tax is paid, the IRS waits until any applicable statutes of limitations expire before paying a reward, he said. "These delays explain why, until now, no awards have been paid under the

new whistleblower law that was enacted several years ago." The IRS will likely pay several awards in the coming months, he said.

"When potential whistleblowers begin to see large payouts, they will be more likely to come forward to report noncompliance," Skarlatos said. "Likewise, when taxpayers see these rewards, they will be more careful about how they report and pay their taxes."

The IRS told Tax Analysts that under federal law, it could neither confirm nor deny reports of the whistleblower reward payment.