

# Federal TAX & ACCOUNTING

## Tax Compliance

### Panelists Say IRS Asserting No Appeal When Whistleblower Claim Not Pursued

**B**OCA RATON, Fla.—The Internal Revenue Service is taking the position that taxpayers cannot judicially appeal the agency's decision not to pursue a whistleblower claim, private-sector panelists said Jan. 20.

Despite a court challenge on the issue, the government is asserting that "they decide in the first instance whether to proceed," Michelle Kwon, Texas Tech University Law School, Lubbock, Texas, said at the mid-year meeting of the American Bar Association Section of Taxation.

Both Kwon and fellow panelist Erica Brady, Ferraro Law Firm, Washington, D.C., noted that the government has said the right of U.S. Tax Court appeal under the revised whistleblower statute applies to the amount of reward that is determined. IRS has challenged the notion that that appeal right extends to its decision not to follow up a claim in the first place, they said.

The two panelists discussed a range of issues under IRS's whistleblower program, with Brady noting that the agency's whistleblower office is "growing by leaps and bounds" and now has at least 17 full-time employees.

**Processing Discussed.** She said the office is now "really good at processing claims into the system," a process that now takes about two weeks. While the office generally delegates claims to IRS's operating divisions where they are handled by subject matter experts, it makes the final decision on the amount of a reward, Brady said.

She stressed that that decision is made not just on the basis of the information submitted, but on its usefulness. "You can provide great information, and if it turns out the information just isn't usable, there's no reward," she said.

However, for informants to determine whether IRS has found their information useful while the claim is still being investigated is a difficult exercise, Brady said in response to questions from the audience.

"You're basically in a dark tunnel for a long time," Brady said, noting that it is important to manage client expectations about the length of the process and the amount of feedback that is likely from IRS. Brady said as the process moves forward, however, IRS may "de-brief" informants regarding information that has already been provided.

Brady said when filing a claim for a whistleblower award, informants should provide as much information and as much detail as possible, including where and how to look for "anything you don't have and can't get."

She said even if an informant has been involved in the scheme on which he or she is providing information, a reward is still possible as long as the whistleblower was not involved in planning or initiating transactions. "Anything short of that, it's possible to get some reward, although it may be reduced," Brady noted.

BY ALISON BENNETT

## Income

### IRS Sets 2011 Maximum Vehicle Values For Rules on Valuing Employee Personal Use

**T**he Internal Revenue Service in Revenue Procedure 2011-11, scheduled for publication Jan. 24 in Internal Revenue Bulletin 2011-4, set the maximum vehicle values below which the "vehicle cents-per-mile" valuation rule and the "fleet-average" valuation rule may be employed in valuing the personal use of vehicles provided in 2011 by an employer to an employee.

The maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2011 for which the vehicle cents-per-mile valuation rule may be applicable is \$15,300 for a passenger automobile and \$16,200 for a truck or van, IRS said. The maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2011 for which the fleet-average valuation rule may be applicable is \$20,300 for a passenger automobile and \$21,200 for a truck or van.

If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income and wages pursuant to Internal Revenue Code Section 61, IRS said.

The vehicle cents-per-mile valuation rule for determining the value of personal use of an employer-provided vehicle is described in Treasury Regulations Section 1.61-21(e), the service noted. The fleet-average valuation rule, for an employer with a fleet of 20 or more automobiles, is set out in Treasury Regulations Section 1.61-21(d).

IRS said that the specified dollar limits for the use of the two valuation rules are adjusted for automobile price inflation in accordance with the same method set out in Internal Revenue Code Section 280F(d)(7) for adjusting the limitation on depreciation for luxury automobiles.

Price inflation for automobiles other than trucks and vans is calculated through the use of the "new car" component of the Consumer Price Index "automobile component." For trucks and vans, the "new trucks" component of the CPI is used, IRS said.

*Text of Rev. Proc. 2011-11 is in TaxCore.*