

Practitioners Complain of Whistleblower Award Delays, Seek Changes to IRM

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A letter sent to the IRS on August 18 criticized the agency for "freezing out" tax whistleblower awards under section 7623(b) as it waits for the statute of limitations to expire on refund claims and urged the IRS to immediately update the Internal Revenue Manual to allow awards to be paid sooner.

According to tax partners Scott A. Knott and Gregory S. Lynam of the Ferraro Law Firm, the IRS policy of waiting an additional two years after the assessment period has closed before making a potential payment to a tax whistleblower is "causing serious economic harm to tax whistleblowers and also negatively impacting" the success of the program. The Internal Revenue Manual was updated in 2009 to include the longer-wait policy; however, more recent public guidance rendered the IRM provisions outdated, thereby "inviting controversy and litigation," the letter said. In PMTA 2010-62, the IRS broadened its definition of collected proceeds to include denied refunds and overpayment credit balance reductions, thereby setting up a direct conflict with the IRM provision, according to the letter. (For the letter, see *Doc 2011-17953*. For IRM 25.2.2.12, see *Doc 2010-13536* or *2010 TNT 117-20*. For PMTA 2010-62, see *Doc 2011-8490* or *2011 TNT 77-10*.)

The firm questioned why the IRS has doubled its receipts from tax whistleblower cases in the year since the policy change was made but has paid the same level of awards. "Whistleblowers are unnecessarily harmed when there is a delay between the time their case becomes award determination eligible and when they are actually paid," the letter said, noting that whistleblowers are often reliant on awards because they are fired for their actions.

The Ferraro firm said that an award should be paid "irrespective of the status of the period of limitations under section 6511(a)" because "it doesn't matter if the taxpayer claims a refund on some other issue, the taxpayer has already irrevocably paid an assessment on the issue raised by the whistleblower and that will ultimately lead to the government either collecting additional tax or denying claims for refund that would have otherwise been paid." If a taxpayer executes a closing agreement on tax issues covered by a whistleblower claim, the taxpayer's tax liability is "fixed, even though the taxpayer may technically claim a refund on some other issues," the letter pointed out. Because the amount of collected proceeds can be determined, payment should be allowed.

"We call upon the IRS to take action and reverse this outdated rule that is hurting the Whistleblower Program," the firm said in a blog posting on the same day.