

# CCH Federal Tax Day

## Practitioners Urge IRS to Attract More Whistleblowers, (May 12, 2011)

The IRS needs to encourage taxpayers to report tax evasion by making whistleblower regulations as favorable as possible, practitioners told the Service on May 10. Practitioners, speaking at a hearing on the proposed regulations in Washington, D.C., also said the Service needs to expand the scope of proceeds that can be used to pay awards.

### 2006 Reforms

The Tax Relief and Health Care Act of 2006 (2006 Tax Relief Act) (P.L. 109-432) significantly overhauled the IRS whistleblower program. The reforms in Code Sec. 7623(b) apply to cases in which the amount in dispute exceeds \$2 million (\$200,000 for individuals). Award percentage ranges are statutory, with a general range between 15 percent and 30 percent, but subject to some exceptions. The IRS can also pay awards under Code Sec. 7623(a).

### Encouraging Whistleblowers

The pace of regulations has been slow since Congress overhauled the whistleblower rules, Michael A. Sullivan, partner, Finch McCranie, LLP, Atlanta, said. "We are four years out from the enactment of the 2006 Tax Act and the rules are still very much in flux." Sullivan encouraged the IRS to make the final whistleblower regulations taxpayer-friendly. "This is a program the public will support if it is done right."

Sullivan noted that the False Claims Act for many years was undervalued until Congress amended it in 1986. The amendments have made the False Claims Act dramatically successful, he said. "Congress modeled improvements to the IRS whistleblower rules after the success of the False Claims Act."

Whistleblowers need to know they will be rewarded for the risks they take, Linda Stengle, Kenney & McCafferty, PC, Blue Bell, Pa., added. The rules should "incentivize" whistleblowers to report wrongdoing, she said.

### Proceeds

Generally, whistleblower awards are paid from the proceeds collected by the information provided. Under the proposed regulations, collected proceeds include tax, penalties, interest, additions to tax and other items. Collected proceeds also include a denial of a refund claim.

Scott A. Knott, partner, The Ferraro Law Firm, Miami, encouraged the IRS to take a more expansive view of collected proceeds. Knott cautioned that the language in the proposed regulation may be too narrowly drafted to cover common situations in which refunds are denied in the course of a tax controversy. The result may be that a whistleblower would wait to contact the IRS until the IRS has paid an improper refund, Knott and Gregory S. Lynam, partner, The Ferraro Law Firm, told the IRS in written comments.

Some practitioners also called for including criminal fines in collected proceeds. However, this is problematic because of federal statutes, an IRS official noted. When fines are deposited (such as into the Crime Victims Fund), the Service cannot access the funds.

By George L. Yaksick, Jr., CCH News Staff

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