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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9580]

RIN 1545- BJ89

Rewards and Awards for Information Relating to Violations of Internal Revenue Laws

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the payment of rewards under section 7623(a) of the Internal Revenue Code for detecting underpayments or violations of the internal revenue laws and whistleblower awards under section 7623(b). The guidance is necessary to clarify the definition of proceeds of amounts collected and collected proceeds under section 7623. This regulation provides needed guidance to the general public as well as officers and employees of the IRS who review claims under section 7623.

DATES: Effective Date: This final regulation is effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see § 301.7623-1(g).

FOR FURTHER INFORMATION CONTACT: Kirsten N. Witter, at (202) 927-0900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 7623(a) provides the Secretary with the authority to pay such sums as he deems necessary from proceeds of amounts collected based on information provided to the Secretary when the information relates to the detection of underpayments of tax or the detection and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same. Section 7623(b) provides the Secretary with the authority to pay awards to individuals if the Secretary proceeds with an administrative or judicial action described in section 7623(a) that results in collected proceeds based on information provided by the individuals. Section 301.7623-1(a) of the regulations on Procedure and Administration currently provides that proceeds of amounts (other than interest) collected by reason of the information provided include both amounts collected because of the information provided and amounts collected prior to receipt of the information if the information leads to the denial of a claim for refund that otherwise would have been paid. 63 Fed. Reg. 44777.

Section 301.7623-1(a) was promulgated prior to amendments of section 7623 as part of the Tax Relief and Health Care Act of 2006, division A, section 406, Public Law 109-432, 120 Stat. 2958. The amendments designated existing section 7623 as section 7623(a). Before the 2006 amendments, section 7623 provided that rewards shall be paid “from the proceeds of amounts (other than interest) collected by reason of the information provided” The 2006 Act struck the “other than interest” language. The Act also added section 7623(b), which provides that in certain cases individuals shall receive an award of at least 15% but not more than 30% of the collected proceeds resulting from the action with which the Secretary proceeded based on information brought to the attention of the Secretary by the individual. The Act also created the IRS

Whistleblower Office, which is responsible for administering a whistleblower program within the IRS.

On January 18, 2011, a notice of proposed rulemaking (REG-131151-10) was published in the **Federal Register** (76 FR 2852) clarifying the definitions of proceeds of amounts collected and collected proceeds for purposes of section 7623, and providing that the provisions of Treas. Reg. §301.7623-1(a) concerning refund prevention claims are applicable to claims under section 7623(a) and (b). The proposed regulations further provide that the reduction of an overpayment credit balance is also considered proceeds of amounts collected and collected proceeds under section 7623.

Seventeen written comments responding to the notice of proposed rulemaking were received. A public hearing was held on May 11, 2011. After consideration of the comments and hearing testimony, the regulation is adopted as proposed.

Other issues concerning the whistleblower statute, including terminology, additional definitions, and implementation of the statute, all of which were beyond the scope of these regulations, have been deferred and will be considered and addressed, if appropriate, in future guidance.

Summary of Comments

Several commenters recommended removal of “overpayment” as a modifier of credit balance. The commenters suggested that the term only applied to individual taxpayers, and would discourage claimants from coming forward with information about corporate taxpayers. Further, the commenters stated that “overpayment” unnecessarily limits the definition of collected proceeds as credit balances may arise in circumstances other than an overpayment.

The use of the term “overpayment credit balance” was intended to include amounts that have been credited to a taxpayer’s account and that would have been refunded to the taxpayer under section 6402 but for the information provided by the whistleblower. These amounts represent monies credited to the taxpayer’s account that are available to pay any tax liability or certain other liabilities, or to be refunded to the taxpayer. Overpayment credit balances are distinguishable from other types of balances shown on a taxpayer’s account, such as a cash deposit under section 6603. Both individual and corporate taxpayers may have overpayment credit balances. Accordingly, the final regulations retain the term “overpayment credit balance” as consistent with the payment and refund provisions of the Code.

A number of commenters recommended that the definition of collected proceeds specifically include net operating losses (NOLs). In contrast to overpayment credit balances, NOLs and similar tax attributes do not represent amounts credited to the taxpayer’s account that are directly available to satisfy current or future tax liabilities or that can be refunded. Rather, tax attributes such as NOLs are component elements of a taxpayer’s tax liability. If an NOL claimed by a taxpayer is disallowed as a result of information provided by a whistleblower, the IRS will factor that disallowance into the computation of the taxpayer’s liability, which may, in turn, result in collected proceeds. For example: a taxpayer reports an NOL of \$10 million for 2009 and a whistleblower’s information results in a reduction of the NOL to \$5 million. If the NOL is unused as of the date the IRS computes the amount of collected proceeds, there are no collected proceeds. If, however, the 2009 NOL was partially carried back to 2008, initially generating a \$3 million refund, and the whistleblower’s information reduced the

carryback amount, resulting in a \$1.5 million reduction in the refund for 2008, then the amount of the erroneous refund recovered and collected would be collected proceeds. The final regulation's definition of collected proceeds, therefore, does not refer explicitly to NOLs, tax credits, or any other tax attributes that may factor into the computation of a particular taxpayer's liability.

Several commenters suggested that collected proceeds should include criminal fines. Under the Victims of Crimes Act of 1984, criminal fines that are imposed on a defendant by a district court are deposited into the Crime Victims Fund (CVF). 42 U.S.C. § 10601(b)(1). Criminal fines imposed for Title 26 offenses are not exempt from this requirement. The fines imposed in criminal tax cases that are deposited into the CVF are not available to the Secretary to pay awards under section 7623. As criminal fines deposited in the CVF are not available to pay awards, the final regulations do not include criminal fines in the definition of collected proceeds. However, restitution ordered by a court to the IRS is collected as a tax by the IRS and, therefore, is encompassed in the definition of collected proceeds.

Several commenters suggested that whistleblowers should be rewarded for the prevention of future tax avoidance based on the whistleblower's information. Whether the IRS has the authority to make such an award under section 7623 and, if so, how the amount of the award would be determined and paid, is beyond the scope of this regulation. The final regulations do not address awards relating to the prevention of future tax avoidance.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of this regulation is Kirsten N. Witter, Office of the Associate Chief Counsel (General Legal Services).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.7623-1 also issued under 26 U.S.C. 7623. * * *

Par. 2. Section 301.7623-1 is amended by revising the section heading, and paragraphs (a) and (g) to read as follows:

§301.7623-1 Rewards and awards for information relating to violations of internal revenue laws.

(a) In general--(1) Rewards and awards. When information that has been provided to the Internal Revenue Service results in the detection of underpayments of tax or the detection and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same, the IRS may approve a reward under section 7623(a) in a suitable amount from the proceeds of amounts collected in cases when rewards are not otherwise provided by law, or shall determine an award under section 7623(b) from collected proceeds.

(2) Proceeds of amounts collected and collected proceeds. For purposes of section 7623 and this section, both proceeds of amounts collected and collected proceeds include: tax, penalties, interest, additions to tax, and additional amounts collected by reason of the information provided; amounts collected prior to receipt of the information if the information provided results in the denial of a claim for refund that otherwise would have been paid; and a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided.

* * * * *

(g) Effective/applicability date. Paragraph (a) is effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. This section is applicable with respect to rewards paid after January 29, 1997, except the rules of paragraph (a) of this section apply with respect to rewards and awards paid after

[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved: February 14, 2012.

Emily S. McMahon,
(Acting) Assistant Secretary of the Treasury (Tax Policy).

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