

Office of Chief Counsel
Internal Revenue Service
memorandum

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UILC: 7623.04-00, 6103.08-04

date: February 1, 2010

to: Stephen A. Whitlock
Director, Whistleblower Office

from: Deborah A. Butler
Associate Chief Counsel
(Procedure & Administration)

subject: Whistleblower Office Disclosures of Tax Return Information

This memorandum responds to a request for our opinion as to whether, in administering the Service's whistleblower award program pursuant to Section 406 of the Tax Relief and Health Care Act of 2006, Pub. L. 109-432 (120 Stat. 2922), employees of the Whistleblower Office are authorized to disclose taxpayer return information (1) in making determinations pursuant to section 7623, and/or (2) by providing status updates to whistleblowers regarding pending, unprocessed, or dismissed claims under section 7623. [REDACTED]

CONCLUSION

Employees of the Whistleblower Office are authorized to disclose taxpayer return information to whistleblowers in each of the situations to which the request referred. The specific taxpayer return information that may be disclosed to a whistleblower in a particular instance, however, will depend on the facts and circumstances of the matter.

DISCUSSION

Section 406 of the 2006 Act amended section 7623, concerning the payment of awards to whistleblowers, and established a Whistleblower Office within the IRS to administer a whistleblower award program. Pursuant to sections 7623(b)(1), (b)(2), and (b)(3), the Whistleblower Office makes determinations regarding awards and, pursuant to section 7623(b)(4), appeals from those determinations may be taken to the Tax Court.

This office has worked with your office, as well as with other offices within Counsel and the Service, to first understand and subsequently to formalize the whistleblower award

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review and determination process. [REDACTED]

Neither section 7623 nor any other Code section specifically authorizes the disclosure of taxpayer return information in the course of the whistleblower award review and determination process. Nonetheless, in amending section 7623, Congress presumably did not intend to create an irreconcilable conflict between the Whistleblower Office's non-disclosure obligations and its obligation to convey appealable determinations to whistleblowers. Accordingly, we conclude that one or more of the existing exceptions to the section 6103(a) general prohibition against disclosure authorize the Whistleblower Office's required disclosures.

Section 6103(h)(4) authorizes disclosures in judicial and administrative proceedings. In our opinion, the whistleblower award review and determination process [REDACTED] is an administrative proceeding for purposes of that provision. As a result, disclosures made by your office within the scope of the whistleblower award review and determination process are authorized under section 6103(h)(4), to the extent the requirements enumerated in any one of the four subsections of section 6103(h)(4) are satisfied and, with respect to disclosures under section 6103(h)(4)(A), (h)(4)(B), or (h)(4)(C), only in the absence of a determination by the Secretary that the disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

Depending on the facts of a particular case, either section 6103(h)(4)(A), (h)(4)(B), and/or (h)(4)(C) will apply to disclosures of taxpayer return information made in administrative whistleblower proceedings. This would be the case with respect to disclosures in the context of both status updates and award determinations. [REDACTED]



Attachments:

