2015 Whistleblower Report Touts Big Year

By

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Citing the growing number of awards it gave out in 2015, the IRS Whistleblower Office in its annual report released February 10 called 2015 "a big year," but practitioners cautioned that the office still has work to do on improving its claims process.

According to the report, 99 awards, including 19 payments under section 7623(b), were made in 2015 to whistleblowers, totaling more than $103 million before sequestration. The amount is only slightly less than what had been paid out the previous two years combined. With $501 million in amounts collected under section 7623, 20.6 percent of awards were paid out as a percentage of amounts collected. That is substantially greater than the 15.7 percent and 16.9 percent for 2013 and 2014, respectively.

"The new whistleblower report reads like 'the end of the beginning,'" Dean Zerbe of Zerbe, Fingeret, Frank & Jadav PC said, citing the initial efforts by the IRS to establish the office and put in place guidance. "The focus with the new director is shifting toward improving the timeliness of processing whistleblower submissions and also working through award claims at a better pace -- all very good news for whistleblowers if it will result in hard improvements."

In 2006 the whistleblower provisions of section 7623 were revised to include a "shall pay" provision under section 7623(b), dictating payouts between 15 and 30 percent of collected proceeds. In August 2014 the IRS published final regs related to whistleblowers, which provided guidance on claim submission, administrative proceedings, and award determination and payment. (Prior coverage.)

Zerbe said that it was encouraging to see the uptick in section 7623(b) awards as well as the half a billion in revenue, which is significantly more than what Treasury originally estimated for a 10-year period when the legislation was enacted in 2006.

Scott A. Knott of the Ferraro Law Firm said that the data suggested that the backlog of section 7623(b) award determinations had been broken, which would be responsible for the "sudden spurt" in awards paid.

The report, which has changed its content and presentation of data, is out significantly earlier than the previous year's report, which was not released until July. Gone is the information on how long claims spent in each step of the whistleblower review process. For the first time, the report presents information for each of the preceding three fiscal years, as opposed to the sometimes inconsistent reporting periods used in the past. (Prior coverage.)

Erica Brady of Ferraro said that she was pleased with the inclusion of a data table outlining the status of open section 7623(a) and (b) claims.
"It is now easier to decipher where claims generally are than in previous annual reports of the Whistleblower Office, but we wish there was a breakdown of how long each of these processes took on average and what the outliers were," Brady said.

Claims Process Still Needs Work

While claims for the year were down 17 percent from the previous year, closed claims increased 27 percent, up to 10,615. Seventy-nine percent of closures were for claims received in the last two fiscal years. By far the most common reason for closure was a claim rejection. The total number of closed claims pales in comparison, however, to the 35,670 claims that remained open at the end of the fiscal year, which is 5,000 more than were open in 2014. Only 3 percent of claims were closed as a result of no change upon examination.

"The report shows that only a tiny fraction of whistleblower issues that are actually examined result in 'no change,'" Greg Lynam of Ferraro said. "The revenue agents in the field need to know that working on whistleblower issues will not be a waste of their time."

Knot said he found the growth in open claims concerning. Just two years ago, there were only 22,330 claims open. Although claims were being closed at a higher rate in 2015 than the previous two years, the office is still failing to keep pace with claims received, which amounted to 12,078 in the last fiscal year.

The report highlights efforts to "reduce the lifecycle of whistleblower claims through process improvements." This includes a program review of the office to identify opportunities to maximize efficiency and effectiveness of the claims process.

The report also states that the program is continuing to pursue improvements in communication with whistleblowers, including through expanding external educational materials on claim submission. The program has come under fire in recent years, including from the Government Accountability Office, for the delays in processing claims, which can take years, as well as problems in communications with stakeholders who may feel left in the dark about a claim's potential and progress. (Prior coverage [1].)

"The Whistleblower Office has had a focus of 'clearing of the decks' in terms of old caseloads. This cleaning of the stables was certainly needed, and my hope is that this is a retreat-to-better-attack by the Whistleblower Office -- allowing the staff to now better concentrate on the good submissions and to make award payments a priority," Zerbe said.

Knott noted that the final paragraph in Whistleblower Office Director Lee Martin's opening message echoed some of the same changes to legislation put forward in the Taxpayer Advocate Service's annual report, specifically the need for anti-retaliation provisions and the imposition of sanctions on whistleblowers for improper disclosure of taxpayer information. (Prior coverage [2].)

Even in the face of budget limitations, the office was able to increase its staff from 42 to 61 over the course of fiscal 2015, according to the report.

Despite the growth in staff and efforts to maximize efficiency, the data from the report highlights
how the average number of years to process awards is growing. For claims paid in 2015, it took just over six years to process the section 7623(b) claims and nearly nine years for claims under section 7623(a).

Zerbe said he was troubled over the lack of discussion about the IRS entering into contracts with whistleblowers as a way to benefit fully from whistleblower information.

Section 6103(n) provides the authority by which the IRS may disclose return information through a tax administration contract. Last year, the GAO recommended that the IRS should develop guidance for examiners in operating divisions to use in determining whether a section contract with a whistleblower would be beneficial and outline the steps for requesting such a contract.

"It is head-scratching that IRS Criminal Investigation works extremely well with whistleblowers -- with whistleblowers sometimes playing critical roles in major cases for CI -- while the civil side of IRS all too often seems to have a view that they need to don a radioactive suit before talking to a whistleblower," Zerbe said. "IRS senior management still has many challenges in changing the cultural outlook at the IRS about working with whistleblowers."