The IRS paid out about $50 million in whistleblower awards in fiscal 2013, IRS Whistleblower Office Director Stephen Whitlock said on January 22.

"We will have our second highest year in the history of awards in the IRS," Whitlock said of 2013, adding that the official fiscal 2013 Whistleblower Office report to Congress has yet to be released. He spoke on a webcast cosponsored by the American Bar Association Criminal Justice Section and Center for Professional Development.

Claims have only started being paid out over the last few years under the statutory changes made in 2006 to the section 7623 whistleblower rules, Whitlock noted. "It takes quite a while for an award to be paid because the taxpayer has rights throughout the process. We have to conduct an audit. We have to assess tax. The taxpayer can have an administrative appeal. They can also go through judicial appeals," he said. "We tell people they should expect [to wait] five to seven years from the time they submit a significant claim under this program before they should start to think that they may be getting an award payment."

The 2006 changes to the statute added a mandatory "shall pay" provision, dictating payouts to whistleblowers of 15 to 30 percent of collected proceeds when specific thresholds are met. An appeal avenue for whistleblowers unhappy with IRS determinations was also added.

The 2013 whistleblower award total pales in comparison to the amount paid out in fiscal 2012. According to its 2012 report to Congress, the Whistleblower Office paid $125 million in awards that year. The total included a $104 million award paid to former UBS banker Bradley Birkenfeld for helping the IRS collect more than $5 billion in unpaid taxes from banks and individuals. (Prior coverage.)

In March 2013 the IRS announced that because of sequestration spending cuts, whistleblower awards would be reduced by 8.7 percent. Although the $50 million approximation is close to the total amount of awards paid out from 2008 to 2011, $38 million of that total was awarded to a corporate whistleblower in October 2012, before the implementation of the scheduled sequestration cuts. (Prior coverage and.)

Responding to a question from Scott A. Knott of The Ferraro Law Firm about the whistleblower program's shortcomings as a deterrent to large-scale noncompliance, Whitlock noted that taxpayer privacy rules limit the IRS's ability to disclose the outcomes of audits that result from whistleblower information.

"It's hard to be a deterrent, to some degree, if you can't talk about what you did. I don't see that changing because of the taxpayer privacy rules," Whitlock said. He added that if the IRS could mask the identity of the taxpayers involved, the agency might publicize data on program trends in the future.
Whitlock said the contribution of whistleblowers to offshore compliance was significant and has been acknowledged as such by the IRS internally, in press releases, and in sentencing actions.

Although the IRS whistleblower program lacks explicit statutory protections preventing retaliation against whistleblowers, Whitlock said he expects President Obama's coming fiscal 2015 budget plan to repeat a legislative proposal in the fiscal 2014 plan that would amend section 7623 to explicitly offer retaliatory protections similar to those in the False Claims Act. (Prior coverage.)

Tax Analysts Information

**Code Section:** Section 7623 -- Expenses of Detecting Frauds

**Jurisdiction:** United States

**Subject Areas:** Tax system administration issues

Compliance

Budgets

**Author:** Andrew Velarde

**Institutional Author:** Tax Analysts

**Tax Analysts Document Number:** Doc 2014-1496

**Tax Analysts Electronic Citation:** 2014 TNT 15-3