



Part 25. Special Topics

Chapter 2. Information and Whistleblower Awards

Section 2. Whistleblower Awards

25.2.2 Whistleblower Awards

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25.2.2.1 (06-18-2010)

Overview: Authority and Policy

1. This section outlines the cross-functional procedures for working case files with a Form 211, *Application for Award for Original Information*.
2. On December 20, 2006, the Tax Relief and Health Care Act of 2006 was enacted. Section 406 of the Act amends section 7623 of the Internal Revenue Code concerning the payment of awards to whistleblowers. The amendment made significant changes to the whistleblower program and also required the establishment of a Whistleblower Office within the Internal Revenue Service that has responsibility for the administration of the award program.
3. The IRS has generally referred to persons who submit information under section 7623 as "informants" and referred to the program as the "Informant Claims Program." The IRS has also referred to such persons as "claimants" in published guidance, and the law now refers to the "Whistleblower Office" and "whistleblower program." Accordingly, the terms "claimant" and "whistleblower" will be used in this IRM except where the term "informant" appears in an office title or published document. However, no legal significance should be inferred based solely on the use of these terms in this IRM.
4. The application of new section 7623 (b) is limited by certain dollar thresholds. To be eligible for an award under section 7623(b), the tax, penalties, interest, additions to tax and additional amounts in dispute must exceed in the aggregate \$2,000,000. If the taxpayer is an individual, the individual's gross income must exceed \$200,000 for any taxable year at issue.

Note:

If the thresholds in 7623(b)(5) are not met, section 7623(a) authorizes, but does not require the Service to pay for information that result in the government's recovery of taxes, penalties, interest, additions to tax, and additional amounts. Since the amount in dispute cannot be determined until an audit or investigation is completed, processing of claims as potential 7623(b) claims must be based on the best information available to the IRS as the claim is reviewed. New information can change the evaluation of the amount in dispute and may result in a change in the claim designation from 7623(b) to 7623(a) or vice versa.

5. The 2006 amendments re-designated the prior section 7623 as section 7623(a), which now includes interest in the collected proceeds, added new provisions as section 7623(b), and included program administration requirements that were not incorporated into the Internal Revenue Code.
6. The requirement that claims be paid from collected proceeds generally means that payment will not be made until there is a final determination of tax liability (including taxes, penalties, interest, additions to tax and additional amounts) owed to the Service and such amounts have been collected by the Service. A final determination of tax does not occur until the statutory period for filing a claim for refund expires or there is an agreement between the taxpayer and the Service that there has been a final determination of tax for a specific period and a waiver of the right to file a claim for refund is effective.
7. "Collected proceeds" are the monies the Service obtains directly from a taxpayer(s) which are based upon the information the whistleblower has provided. Award claims may not be paid under 7623(a) or (b) which are based on information which leads to the denial of a claim for refund which otherwise would have been paid. Criminal fines, which must be deposited into the Victims of Crime Fund, cannot be used for payment of whistleblower awards. Awards may not be paid on the taxpayer(s) liabilities satisfied by the reduction of a credit balance as monies are not obtained based on the information the Whistleblower provided.
8. The 2006 amendments require that information be submitted under penalty of perjury. A Form 211, *Application for Award for Original Information*, must be signed under penalty of perjury and received by the Whistleblower Office prior to proceeding with any administrative or judicial action which may form the basis of an award. In rare circumstances, the Form 211 may be received at or about the time the information was submitted and action commenced.

9. The decision on the payment of an award and the percentage of the award, including those under section 7623(a), is made by the Director, Whistleblower Office.
10. Throughout this Section, policy covering claims submitted prior to December 20, 2006, will be referred to as pre-enactment claim files.

25.2.2.2 (06-18-2010)

General

1. Section 7623(b) applies to new information not in the possession of the IRS on or before December 20, 2006. Supplemental or resubmitted information will not be considered for purposes of section 7623(b) unless its receipt prompts the IRS to take an administrative or judicial action that would not otherwise have been taken on the basis of the earlier-supplied information. Resubmission of information already in the possession of the Service prior to the date of enactment does not qualify under 7623(b).
2. Under section 7623(b)(1), awards will be paid in proportion to the value of information furnished voluntarily with respect to proceeds collected, including penalties, interest, additions to tax and additional amounts. The amount of any award will be at least 15%, but no more than 30%, of the collected proceeds in cases in which the Service determines that the information submitted by the whistleblower substantially contributed to the Service's detection and recovery of tax. An award under this section may not be paid unless the IRS takes an administrative or judicial action based on the information provided by the individual.
3. Under section 7623(b) (2), if an action is based principally on specific allegations resulting from judicial or administrative hearings, government reports, hearings, audits, investigations or from the news media, an award of a lesser amount, subject to the discretion of the Whistleblower Office, may be provided; such an award, however, may not exceed 10% of the collected proceeds, including penalties, interest, additions to tax, and additional amounts resulting from the action. Section 7623(b) does not apply if the whistleblower was the original source for the information that led to the specific allegations.
4. Under section 7623(b) (3), if the whistleblower "planned and initiated" the actions that led to the underpayment of tax, or to the violation of the internal revenue laws, the Whistleblower Office may reduce the award. If the whistleblower is convicted of criminal conduct arising from his or her role in planning and initiating the action, the Whistleblower Office shall deny any award.
5. Section 7623(b) applies with respect to any action in which the amount in dispute (taxes, penalties, interest, additions to tax, and additional amounts) exceeds \$2 million. If the taxpayer is an individual, the individual's gross income must exceed \$200,000 for any taxable year at issue in the action. An action is based on the information provided by the whistleblower if the IRS would not have acted but for the receipt of the information from the whistleblower. Action by the IRS may include the initiation of an examination or investigation that would not otherwise have been undertaken, or the modification of a pending or planned examination or investigation as a result of information provided by the whistleblower.
6. All relevant factors, including the value of the information furnished in relation to the facts developed by the investigation of the violation, will be taken into account by the Director in determining whether an award will be paid, and, if so, the amount of the award.
7. Individuals are eligible for awards under 7623(b) based on collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action.
8. Generally, a related action is (i) any action involving the taxpayer from the original action and that is based on, either directly or indirectly, the same information on which the original action is based, and (ii) in cases in which the information provided identifies a promoter, preparer, or other similar person and describes underpayments of tax or violations of the tax laws by one or more taxpayers that directly relate to the promoter's activities, any action (involving any taxpayer) that is directly based on the information provided.
 - A. If a whistleblower identifies a single issue with respect to a taxpayer and the Service subsequently identifies three different issues with respect to the same taxpayer, then the collected proceeds from the action only include proceeds from the single issue identified by the whistleblower. If, however, a whistleblower identifies a single instance in which a taxpayer engaged in a particular improper activity and the Service identifies other instances in which the taxpayer engaged in the improper activity (or a substantially similar improper activity), then the collected proceeds may include proceeds from all identified instances of the improper activity.
 - B. If a whistleblower identifies specific facts relating to an issue with respect to a taxpayer as well as a specific Code section or specific legal theory associated with those facts but the Service ultimately collects proceeds based upon a different Code section or different legal theory, the whistleblower will nevertheless be entitled to an award based on the entirety of those collected proceeds.
 - C. If a whistleblower identifies a promoter and an improper activity, then the collected proceeds may include proceeds from other clients of the promoter that engaged in the improper activity (or a substantially similar improper activity). Proceeds collected from clients that engaged in different activities and proceeds collected from clients of other promoters, regardless of whether those clients engaged in the improper activity identified by the whistleblower, are not included in collected proceeds for purposes of calculating the whistleblower's award.
9. The Whistleblower Office will inform the claimant in writing regarding any award decision or determination.

25.2.2.3 (06-18-2010)

Submission of Information for Award under Sections 7623(a) or (b)

1. Individuals submitting information under section 7623(a) or (b) must complete IRS Form 211, *Application for Award for Original Information*, (available on www.irs.gov/compliance/index.html) and send the completed Form 211 to:

Internal Revenue Service
Whistleblower Office SE: WO
1111 Constitution Ave., NW
Washington, D.C. 20224

2. Information submitted under section 7623 must be accompanied by an original signed declaration under penalty of perjury, as follows:

I declare, under penalty of perjury, that I have examined this application and my accompanying statement and supporting documentation and aver that such application is true, correct and complete, to the best of my knowledge.

3. The requirement to submit information under penalty of perjury precludes submissions by:

1. a person serving as a representative of the claimant, or
2. an entity other than a natural person.

Note

The requirement to submit information under penalty of perjury also precludes submissions made anonymously or under an alias. Until further guidance is issued, claims for awards may not be submitted electronically or by fax.

4. Claims submitted by more than one whistleblower (joint claims) must be signed by each claimant and each claimant must sign the claim under penalty of perjury.
5. Some whistleblower submissions present legal and policy issues that can preclude the use of some or all of the information offered by the whistleblower. Whistleblowers may also mistakenly submit claims for award directly to Service field personnel, despite instructions to send all Forms 211 to the Whistleblower Office. In such cases, to protect the integrity of any taxpayer investigation or examination, Service personnel should not act on the underlying tax noncompliance issue presented by the whistleblower prior to forwarding the claim to the Whistleblower Office. Any and all information should be forwarded to the Whistleblower Office.
6. A whistleblower may be represented by an authorized representative during any proceeding by filing a properly executed Form 2848, *Power of Attorney*. Service personnel should not forward the Form 2848 to the Centralized Authorization File (CAF) if the Power of Attorney is for the whistleblower claim.
7. If available information is not provided by the claimant, the claimant bears the risk that such information may not be considered by the Whistleblower Office in making any award decision or determination. If documents or supporting evidence are known to the claimant but are not in his or her possession or control, the claimant should describe these documents and identify their location to the best of his or her ability.
8. The Form 211 must be completed in its entirety and should include the following information:
 - A. The date the claimant submits the claim;
 - B. Claimant's name;
 - C. Name of claimant's spouse (if applicable);
 - D. Claimant's contact information, including address with zip code and telephone number;
 - E. Claimant's date of birth;
 - F. Claimant's Taxpayer Identification Number (e.g., Social Security Number or Individual Taxpayer Identification Number) and Taxpayer Identification Number of claimant's spouse, if applicable.
 - G. Explanation of how the information that forms the basis of the claim came to the attention of the claimant, including the date(s) on which this information was acquired, and a complete description of the claimant's present or former relationship (if any) to the person that is the subject of the claim (e.g., family member, acquaintance, client, employee, accountant, lawyer, bookkeeper, customer). If the claimant identifies multiple person(s) as the subject of a claim, describe his or her relationship to each person.
 - H. Explanation of how the information that forms the basis of the claim came to the attention of the claimant, including the date(s) on which this information was acquired, and a complete description of the claimant's present or former relationship (if any) to the person that is the subject of the claim (e.g., family member, acquaintance, client, employee, accountant, lawyer, bookkeeper, customer). If the claimant identifies multiple person(s) as the subject of a claim, describe his or her relationship to each person.
9. The Form 211 and any attachments must include specific and credible information concerning the person(s) that the claimant believes will lead to the collection of unpaid taxes. To the extent known by the whistleblower, the information should include the following:
 - The legal name of the person(s) (e.g., individual or entity), and any related person(s), that failed to pay taxes;
 - The person's aliases, if any;
 - The person's address;
 - The person's Taxpayer Identification Number(s);
 - A description of the amount(s) and tax year(s) of Federal tax claimed to be owed, and facts supporting the basis for the amount(s) claimed to be owed;
 - Documentation to substantiate the claim (e.g., financial data; the location of bank accounts, assets, books, and records; transaction documents or analyses relevant to the claim); and
 - Any and all other facts and information pertaining to the claim.
10. The 2006 amendments require that information be submitted under penalty of perjury. A Form 211, *Application for Award for Original Information*, must be signed under penalty of perjury and received by the Whistleblower Office prior to proceeding with any administrative or judicial action which may form the basis of an award. In rare circumstances, the Form 211 may be received at or about the time the information was submitted and action commenced.

25.2.2.4 (06-18-2010)

Initial Review of the Form 211 by the Whistleblower Office

1. Upon receipt of the Form 211, the Whistleblower Office will conduct the following review:
 - A. Is the claim complete? Does the Form 211 contain all the required information? If not, the Whistleblower Office may correspond with the whistleblower for the missing information. The correspondence will inform the whistleblower that if a reply to the request is not received within 45 days from the date of the correspondence, the Whistleblower Office will assume the whistleblower is no longer interested in an award for information.
 - B. Is the claim a potential 7623(b)? If not, the whistleblower and/or representative will be notified that the claim has been forwarded to the Informant's Claims Unit in Ogden Compliance Center for processing. (See *IRM 25.2.2.6* below.) If the claim is a potential 7623(b) the whistleblower and/or representative will be notified of the claim number and the name of the analyst in the Whistleblower Office assigned the claim file. (*Exhibit 25.2.2-3*) The analyst will monitor the claim file until final resolution of the tax matter and a determination on the whistleblower's award.

25.2.2.5 (06-18-2010)

Grounds for Not Processing Claims for Award

1. In general, claims for awards will not be processed for the following reasons:
 - A. Claims submitted by an individual who is an employee of the Department of Treasury or was an employee of the Department of Treasury when the individual obtained the information.
 - B. Claims submitted by an individual who obtained the information as part of his/her official duties as an employee of any other Federal, State or local Government or who is acting within the scope of his/her duties as an employee of any Federal, State, or local Government.
 - C. Claims submitted by an individual who is required by Federal law or regulation to disclose the information or by an individual who is precluded by Federal law or regulation from making the disclosure.
 - D. Claims submitted by an individual who obtained or was furnished the information while acting in an official capacity as a member of a State body or commission having access to such materials as Federal returns, copies or abstracts.
 - E. Claims submitted by an individual who had access to taxpayer information arising out of a contract with the Federal government that forms the basis of the claim.
 - F. Claims that upon initial review have no merit or that lack sufficient specific and credible information.
 - G. Claims submitted anonymously or under an alias.
 - H. Claims filed by a person other than a natural person (such as a corporation or a partnership).
 - I. For claims filed under section 7623(b), the alleged noncompliant person is an individual whose gross income is below \$200,000 for all taxable years at issue in a claim.
2. In general claims for awards will be denied if
 - A. The information provided did not identify a federal tax issue upon which the IRS took action.
 - B. The information did not result in the detection of underpayment of taxes.
 - C. The information did not result in the collection of proceeds.
3. If the Director of the Whistleblower Office determines that an individual has made a claim for award based on information obtained from a disqualified person, the Director may treat the claim as if it had been made by the disqualified person and may reject the claim.

25.2.2.6 (06-18-2010)**Processing of the Form 211 7623(a) Claim for Award**

1. If it is determined that a whistleblower's claim is below the \$2 million threshold of section 7623(b), it will be forwarded by the Whistleblower Office to:

Internal Revenue Compliance Center
Informant Claims Unit (ICE)
1973 N. Rulon White Blvd.
MS 4110 – ICE
Ogden, UT 84404
2. Upon receipt of the information, the Informant Claims Unit will input the claim information onto the database and notify the whistleblower and/or representative of the receipt of the information and claim number. The whistleblower will be notified (1891 Letter – *Exhibit 25.2.2-1*) that if an investigation is initiated, it could take several years until final resolution of all tax matters and a decision is made concerning the payment of an award.
3. In claims where a whistleblower submits more than one unique Form 211, each Form 211 will receive a claim number. The whistleblower will be notified of the claim number associated with each form. If multiple entities are listed on a single Form 211, each entity will receive a claim number. The whistleblower will be notified of the claim number associated with each of the listed entities.
4. The claim file will be forwarded to the appropriate Operating Division for classification. When claims are submitted on multiple taxpayers (whether on one Form 211 or multiple forms), all claims will be forwarded to classification at the same time. The Operating division classifier and/or subject matter expert (SME) will review the information to determine the following:
 - A. Will the information provided materially contribute to identification, development or resolution of taxpayer liability or collection?
 - B. Is the taxpayer currently under audit?
 - C. Does the whistleblower offer information that may be relevant to exam issues (past, current or prospective)?
 - D. Does the whistleblower offer information that may be relevant to collection issues (past, current or prospective)?
5. Whistleblowers whose claims do not meet the criteria for an award are sent a letter advising that the information furnished did not qualify for an award. (1010 Letter – *Exhibit 25.2.2-2*)
6. If the classifier determines the whistleblower's information warrants referral for examination, the Informant Claims Unit will forward to the appropriate group or subject matter expert in accordance with the Operating Divisions' instructions :
 - A. A copy of the Form 211, *Application for Award for Original Information*;
 - B. Supporting allegations;

- C. Returns requested by the classifier; and,
- D. An evaluation package, Form 11369, *Confidential Evaluation Report on Claim for Award*.

Note:

Whistleblowers' communications are confidential. All whistleblower claims, reports and information shall be transmitted in a double sealed confidential envelope marked "To Be Opened By Addressee Only" with Document 6441 as the cover sheet. All electronic transmission must be through secure e-mail.

7. The AIMS ICE indicator "1" will be used to identify examination cases for which there is a whistleblower claim. For returns already established on AIMS, the Informant Claims Examiner will input the ICE indicator "1." The examination case cannot be closed on AIMS unless the ICE indicator is removed. This will be completed after the Form 11369 and case file is provided by the agent/officer and reviewed by the ICE Unit, or instructions are received from the whistleblower Office to remove the indicator.
 - A. For SB/SE cases that are selected for examination, the Informant Claims Unit will be notified to establish the AIMS control using IDAP and suspend for 2 weeks for AIMS to be established. The Tracking Code 7882 will be input on all SB/SE AIMS controls.
 - B. For LMSB cases that are selected for examination, the PSP in Ogden will establish the AIMS control and the Informant Claims Examiner will input the ICE Indicator "1."
 - C. The Informant Claims Unit will monitor AMDISA for the Exam closing every 120 days.
8. The law provides that awards will be paid from collected proceeds resulting from the action (including any related actions). If the initial IRS action on the whistleblower's information is expanded to include additional taxpayers or modules, AIMS controls are required for those additional taxpayers or modules. The Informant Claims Unit should be contacted to have the "1" indicator added to any additional taxpayers or modules. Contact the Whistleblower Office for guidance. Additional taxpayers or modules may also raise the aggregate amount in dispute over \$2 million requiring contact with the Whistleblower Office. If at any time during the examination, the amount in dispute (taxes, penalties, interest, additions to tax, and additional amounts) rises to \$2 million or more, the Whistleblower Office must be notified immediately at WO@irs.gov or (202) 622-0351.
9. Some whistleblowers may offer information that the Service cannot use, such as information that may be subject to a valid claim of privilege. This information is referred to as "tainted." If potentially tainted information is identified, at any time during the review of the informant's information, consult with the Operating Division Counsel to identify any potential legal issues in developing the issues presented by the Whistleblower. If it is determined that the information will not be used, it should immediately be returned to the Informant Claims Unit in Ogden in a double sealed envelope along with any analysis received from Counsel regarding the use of the information.
10. Unless the examiner/team determines that a debriefing is unlikely to result in information that would be material to the evaluation of the submission, the examiner/team will debrief the whistleblower. A debriefing may yield additional information that the whistleblower did not recognize as relevant to the taxpayer's matters, information about the credibility of the whistleblower, information relevant to legal issues that can affect the use of documents, and leads to other sources of information. A debriefing may also clarify the whistleblower's submission.
11. At the outset of any debriefing of a whistleblower, the examiner and or SME must ensure that the whistleblower understands the ground rules applicable to the meeting. A Debriefing Checklist at *Exhibit 25.2.2-4* must be completed before any discussion of the substantive issues. It should also be completed when subsequent meetings with the whistleblower are necessary to clarify the whistleblower's submission, if there is a meaningful lapse of time between meetings or if the whistleblower's actions indicate that the ground rules may not have been understood or may not have been followed. The whistleblower's signature is not necessary so long as the IRS Representative signs the checklist.
12. Contacts with informants who are current employees, and taxpayer representatives who seek to become informants, raise additional concerns. These are addressed in detail in a memorandum from the Deputy Commissioner, Services and Enforcement (*Exhibit 25.2.2-6*). Under no circumstances can a taxpayer representative who seeks to become a whistleblower continue to represent the taxpayer. If there is any question regarding the applicability of the procedures described in the memorandum, the examiner and/or SME should contact the Whistleblower Office for guidance.
13. At the conclusion of the examination on a section 7623 (a) case, the examiner will prepare two files:
 - A. A complete case file for regular processing through the appropriate Case Processing function, and
 - B. A claim file to be sent to the Ogden ICE Unit for processing of the claim for award. This file, along with Form 11369, *Confidential Evaluation Report on Claim for Reward*, should be sent to the following address:

Internal Revenue Service
Whistleblower Office
c/o Campus Compliance Operations, Ogden
1973 N. Rulon White Blvd. MS/4110
Ogden, UT 84404
 - C. A COMPLETED Form 11369 is required prior to the transfer of a criminal case to civil compliance or routing to Appeals. The tax administrative file forwarded to Appeals should NOT contain any Whistleblower information.
14. The Form 11369 documents the whistleblower's contribution to the identification of tax non-compliance and collection of taxes, penalties and interest. The form and attachments will assist the Director, Whistleblower Office, in making an award determination. The claim file should contain the following documentation:
 - A. Form 11369 for each taxpayer (for jointly filed returns one joint form should be completed. The Form 11369 must be approved by the manager and digital electronic signatures are acceptable.
 - B. Narratives to fully explain the contributions of the whistleblower in the case and fully document the actions taken in regard to the issues.
 - C. Form 211 filed by the whistleblower and any and all information supplied by the whistleblower either as part of the original submission or obtained during any further contacts with the whistleblower.
 - D. Copies of any debriefing notes, recorded interviews, etc. held with the whistleblower and/or their representative.
 - E. Copies of any memorandums prepared by Counsel in regards to information submitted by the informant. All tainted material should be immediately returned to the analyst or Ogden Informant Claims Unit as soon as a decision is made that the material will not be used. Do not wait until the case is resolved to send the material.

- F. Full Revenue Agents Report/ Special Agent's Report including explanation of all adjusted items.
 - G. Signed copy of the Agreement Form (i.e. Form 4549, 870, 870-ad or 906.)
 - H. Any opinions from Counsel/subject matter experts on issues attributable to the whistleblower information.
 - I. Copies of first four pages of each tax return and any schedules impacted by the whistleblower's information.
 - J. Full copy of the initial examination plan and mid-cycle revisions.
 - K. Copy of activity record for examination/collection case.
 - L. Copies of any 6103 (n) contracts entered into with the whistleblower and/or explanation of extraordinary cooperation by whistleblower.
 - M. Any information that reflects any negative actions by the whistleblower taken during the examination.
 - N. Any other information that may assist the Whistleblower Office in making an award determination.
15. All claims that have been surveyed must have a completed Form 11369 with all required signatures and documentation supporting the survey. All surveyed claim packages must contain the following:
- Narrative explaining why the case was surveyed; and
 - Manager's approval;
16. One Form 11369, with an attachment listing each claim and narratives, will suffice for claims that have been surveyed and have multiple claim numbers for subsidiaries, related entities or employees of the primary entity.
17. All claims that result in a "No Change" must have a completed Form 11369 with all required signatures and documentation supporting the "No Change." All "No Change" claim packages must contain the following:
- Narratives explaining the "No Change"
 - Manager's approval
18. All of the above items will be included in a confidential envelope marked "ICE COPY" and forwarded directly to the Ogden ICE Unit prior to the closing of the case.
19. If the Form 11369 package is incomplete, the ICE Unit will:
- A. Contact the Agent/Manager to obtain missing signatures via fax. If a response is not received within 5 days, the case will be returned to the originator.
 - B. The ICE Unit will return the file to the agent at their appropriate Area Office for all other missing documentation with an explanation on the transmittal regarding what is missing.
 - C. For imminent statute claims that need to be closed, the ICE Unit will contact the examiner and request the missing documentation by telephone. A fax package is acceptable in these cases.
 - D. Out-dated Form 11369 will be returned to the Agent. The Out-dated form does not provide the information needed by the Director, Whistleblower Office for an award determination.
20. The Whistleblower Office will receive the entire claim package from the Informant Claims Unit. The Whistleblower Office will:
- A. Review the documentation;
 - B. Make a recommendation as to the award percentage to the Director, Whistleblower Office;
 - C. Obtain the Director's concurrence on the award percentage;
 - D. Return the package to the ICE Unit with instructions for payment monitoring.
21. During the review by the Whistleblower Office, it may be necessary to contact the RA/SA/RO team to obtain additional information or to visit the team to review related files. Communication protocol developed between the Operating Divisions and the Whistleblower Office will be followed regarding how the team will be contacted.
22. The Whistleblower Office will return the award decision and the complete claim file to the ICE Unit to monitor for payment of the assessment (s) and to confirm collection of funds from the taxpayer. The award payment cannot be processed until the statutory period for filing a claim for refund expires or there is an agreement between the taxpayer and the IRS that there has been a final determination of tax for a specific period and the right to file a refund claim has been waived.
23. After the taxpayer has paid the amount due and any refund statute is expired, the ICE Unit will calculate the award payment and return the complete claim file and award calculation to the Whistleblower Office. The award is calculated on tax and penalties for Forms 211 received before December 20, 2006 following the policy in effect at that time (except for refund protection claims and criminal fines). Calculations for awards received after December 20, 2006 through June 1, 2010 are computed on tax, penalties and interest following the policy in effect during that period. Award for Forms 211 for 7623(a) claims received after June 1, 2010 will be calculated based on the procedures in *IRM* 25.2.2.9.2 below.
24. The Whistleblower Office will review the package, prepare the award letter for the Director's signature and return the letter and complete package to the ICE Unit for payment of the award. The award will be paid within 60 days of the date of the letter.
25. Prior to authorizing release of the award check, the ICE Unit will:
- A. Research the whistleblower's account to be sure the whistleblower is filing his/her returns. The previous 3 years will be checked to

determine if there is a filing requirement and if the returns and taxes are satisfied.

- B. If returns have not been filed and taxes are due, the whistleblower will be contacted to determine why he/she has not filed. An Award payment may be used to offset any unpaid balance owed by the whistleblower.

25.2.2.7 (06-18-2010)

Processing of the Form 211 7623(b) Claim for Award

1. If it is determined that the claim is a potential section 7623(b) claim, the Whistleblower Office analyst assigned the claim will perform the duties as shown below.
2. Review the submission for fraud potential and possible review by Criminal Investigation (CI). If a case is referred to CI for review, and CI decides not to pursue, the analyst will be notified.
3. If CI does not pursue a case, or the case is not referred to CI for review, the analyst will complete a threshold analysis to determine if the tax non-compliance will reach the dollar threshold for a 7623 (b) claim. If the threshold is not met, the claim will be forwarded to the ICE Unit for processing as a 7623(a) claim. The analyst will:
 - A. Prepare comment sheet for transfer to the ICE Unit and,
 - B. Notify the Whistleblower & POA advising that the claim is being transferred to the Informant Claims Unit for processing.
4. If the claim will not be processed (see *IRM 25.2.2.5*) the analyst will forward a rejection recommendation through the Chief, Case Development and Oversight to the Director of the Whistleblower Office for concurrence. Upon approval, the whistleblower will be notified that the information provided did not identify a federal tax issue upon which the IRS will take action. (Rejection Letter – *Exhibit 25.2.2-5*)
5. If the claim meets the 7623(b) threshold, the Operating Division's Subject Matter Expert (OD's SME) will be contacted and the claim file forwarded. The SME will evaluate the information to determine whether it may materially contribute to the identification, development or resolution of taxpayer liability or collection issues. The review by the SME is intended to insulate any resulting examination or investigation from improperly obtained information or other potential "taints" that could compromise the tax case. If during the SME's review, information is identified that cannot be used in the examination or investigation, the information deemed to be tainted should be returned to the Whistleblower analyst assigned the claim along with any analysis received from Counsel regarding the use of the information. The integrity of the tax case is preserved by withholding that information from the auditor or investigator, and ensuring that the SME is not involved in the examination or investigation.
6. The SME may consult with Operating Division Counsel to identify any potential legal issues in developing the issues presented by the whistleblower, and may decide to obtain additional subject matter expertise for a team analysis of the matter. The initial legal advice should address possible limitations on interactions with the whistleblower and other issues including the potential application of privileges.
7. Unless the SME determines that a debriefing is unlikely to result in information that would be material to the evaluation of the submission, the SME will debrief the whistleblower. A debriefing may yield additional information that the whistleblower did not recognize as relevant to the taxpayer's matters, information about the credibility of the whistleblower, information relevant to legal issues that can affect the use of documents, and leads to other sources of information. A debriefing may also clarify the whistleblower's submission.
 - A. At the outset of any debriefing of a whistleblower, the SME must ensure that the whistleblower understands the ground rules applicable to the meeting. A Debriefing Checksheet at Exhibit IV must be completed before any discussion of the substantive issues. It should also be completed when subsequent meetings with the whistleblower are necessary to clarify the whistleblower's submission, if there is a meaningful lapse of time between meetings or if the whistleblower's actions indicate that the ground rules may not have been understood or may not have been followed. The whistleblower's signature is not necessary so long as the IRS Representative signs the checklist. A summary of the information provided by the whistleblower during the debriefing must be provided to the examination team and whistleblower analyst assigned to the claim.
 - B. Contacts with informants who are current employees, and taxpayer representatives who seek to become informants, raise additional concerns. These are addressed in detail in a memorandum from the Deputy Commissioner, Services and Enforcement (*Exhibit 25.2.2-6*). Under no circumstances can a taxpayer representative who seeks to become a whistleblower continue to represent the taxpayer. If there is any question regarding the applicability of the procedures described in the memorandum, the SME should contact the Whistleblower Office for guidance.
8. The SME recommends whether to pursue the lead offered by the whistleblower.
 - A. If the lead does not appear productive, the Operating Division SME completes a Form 11369 and returns the file to the Whistleblower Office analyst assigned the case.
 - B. If the lead appears to be productive and the Operating Division Counsel has not identified potential legal limitations on the use of the information, the case is forwarded for examination, and the Whistleblower Office analyst monitors case status until the examination is resolved.
 - C. If the submission contains information that could enhance an existing collection case, the Whistleblower analyst assigned the case will contact the SME for the Operating Division's Collections. The SME will make a recommendation on the usefulness of the information and what actions should be taken to share the information with Collections.
 - D. A COMPLETED Form 11369 is required prior to the transfer of criminal case to civil compliance or routing to Appeals. The tax administrative file forwarded to Appeals should NOT CONTAIN any whistleblower information, evaluations etc.
9. If the Operating Division Counsel identifies potential legal limitations on the use of the information, he/she drafts a risk analysis. The Operating Division Counsel's risk analysis may be reviewed by Headquarters' Chief Counsel. If Counsel advises the IRS not to use the information, the Operating Division Commissioner or delegate will decide whether and how to proceed. The Whistleblower Office analyst assigned the claim will receive a copy of the risk analysis and any advice provided by Counsel.
10. The law requires the Whistleblower Office to analyze 7623(b) claims, and authorizes the Whistleblower Office to request assistance from the whistleblower or their counsel. In most cases, the IRS should be able to receive information from a whistleblower, conduct a debriefing to ensure the information provided is fully understood and that the IRS has all relevant information the whistleblower can offer, and then proceed with an investigation or examination without further assistance from the whistleblower. In some cases, there may be a need to pose additional questions to the whistleblower. Such inquiries are governed by the appropriate disclosure provisions contained in I.R.C. section 6103. (See *IRM 11.3*) When such an inquiry is made of a whistleblower, an exception to the requirement for reporting this type of third-party contact applies. (Refer to *IRM 4.11.57.6.5*)
11. In rare circumstances, it may be required and in the best interest of the Government to have a formal agreement with the whistleblower when it is necessary to share information obtained by the IRS from the taxpayer or a third party with the whistleblower. In these situations,

temporary regulations at 26 CFR 301.6103(n)-2T authorize a contract for services with the whistleblower. Such an agreement will include safeguards to protect the privacy of any taxpayer information revealed to the whistleblower. An agreement under 6103(n) must be initiated by the Executive responsible for the function seeking the contract, and approved by the Business Operating Division not lower than the Deputy Commissioner level. The 6103(n) Contracts will be tracked by the Deputy Commissioner's Office and the Whistleblower Office will be notified of completed contracts.

12. If the information appears to be productive, but a decision is made to withhold documents from field examination and/or the collection function, the SME will return the documents withheld to the Whistleblower Office analyst with an explanation of the reasons for withholding the documents. If documents are withheld, no one who has reviewed the withheld documents may be involved in the field examination and/or collection function.
13. For returns already established on AIMS, the Whistleblower Office will request that the Informant Claims Examiner input an ICE indicator "1." This prevents anyone from closing the case. **Only the Informant Claims Unit can remove the "1" indicator and will only do this after instructions from the Whistleblower Office analyst.**
14. If the decision is made not to pursue the case, a Form 11369 is completed and the case file is routed to the Whistleblower Office analyst assigned the case. The rejection recommendation will be forwarded through the Chief, Case Development and Oversight to the Director of the Whistleblower Office for concurrence. Upon approval, the whistleblower will be notified that the information provided did not identify a federal tax issue upon which the IRS will take action. (Rejection Letter – *Exhibit 25.2.2-5*)
15. At the conclusion of the examination, the examiner will prepare two files:
 - A. A complete case file for regular processing through the appropriate Case Processing function, and
 - B. A claim file routed to the Whistleblower Office analyst assigned the case.
16. The claim file should contain the following documentation:
 - A. Form 11369 for each taxpayer (for jointly filed returns one joint form should be completed). The form must be approved by the manager and digital electronic signatures are acceptable.
 - B. Narratives to fully explain the contributions of the informant in the case and should fully document the actions taken in regards to the issues; i. e.: "claim surveyed" is not sufficient but rather "claim surveyed due to lack of resources/statute of limitations, below tolerance," etc.
 - C. Form 211 filed by the whistleblower(s) informant(s) and any and all information supplied by the whistleblower either with the original submission or obtained during any further contacts with the informant.
 - D. Copies of any debriefing notes, recorded interviews, etc. held with the whistleblower and/or their representative.
 - E. Copies of any analysis memorandums prepared by Counsel in regards to information submitted by the informant. All tainted material should be immediately returned to the analyst or Ogden Informant Claims Unit as soon as a decision is made that the material will not be used. Do not wait until the case is resolved to send this material.
 - F. Full Revenue Agents Report/ Special Agent's Report including explanation of all adjusted items.
 - G. Signed copy of Agreement Form (i.e. Forms 4549, 870, 870-ad or 906.).
 - H. Any opinions from Counsel/subject matter experts on issues attributable to the informant information.
 - I. Copies of first four pages of each tax return and any schedules impacted by the whistleblower's information.
 - J. Full copy of the initial examination plan and mid-cycle revisions.
 - K. Copy of activity record for examination/collection case.
 - L. Copies of any 6103(n) contracts entered into with the informant and/or explanation of extraordinary cooperation by informant.
 - M. Any information that reflects any negative actions by the informant taken during the examination.
 - N. Any other information that may assist the Whistleblower Office in making an award determination.
17. The above list should not be interpreted to be all inclusive and additional information may be sought by the Whistleblower Office depending on the facts and circumstances in order to support ant award denials or payments.
18. All of the above items will be included in a confidential envelope and forwarded to the Whistleblower Analyst assigned the case for review and allocation of assessments of taxes, penalties, interest and other amounts attributable to the Whistleblower. The analyst may need to contact the Operating Division or the RA/SA/RO team to obtain additional information or to review related files. Communication protocol developed between the Operating Divisions and the Whistleblower Office will be followed regarding how the team will be contacted. The ICE Indicator will not be removed until the entire claim file is reviewed and accepted by the analyst assigned the case.
19. The Whistleblower Analyst will monitor the case for collection of the taxes, penalties, interest and other amounts attributable to the informant's information. The award payment cannot be completed until the statutory period for filing a claim for refund expires or there is an agreement between the taxpayer and the IRS that there has been a final determination of tax for the specific period and the right to file a claim for a refund has been waived.
20. Awards paid under IRC 7623 must be paid from collected proceeds after there has been a final determination of tax. Upon completion of this process, the Whistleblower Analyst will contact the Operating Division's designee and work jointly to compute the amount of the collected proceeds attributable to the informant's information.

25.2.2.8 (06-18-2010)

Whistleblower Award Administrative Proceeding

1. The whistleblower award review and determination process is an administrative proceeding that begins on the date the claim for award is received by the Whistleblower Office. The purpose of preliminary recommendation package is to solicit input from the whistleblower regarding the preliminary award recommendation before a final determination is made by the Director.

2. After the statutory period for filing a claim for refund expires or there is an agreement between the taxpayer and the IRS that there has been a final determination of tax for the specific period and the right to file a claim for a refund has been waived, the Director of the Whistleblower Office will prepare a preliminary recommendation regarding an award. Prior to communicating the preliminary recommendation to the Whistleblower, the Director will share the preliminary recommendation with the Whistleblower Executive Board for concurrence. Upon concurrence from the Board, the preliminary recommendation will be communicated to the whistleblower in a package containing the following documents:
 - A. a notice of opportunity to comment letter (*Exhibit 25.2.2-7*);
 - B. a proposed summary award report (see *Exhibit 25.2.2-8*);
 - C. an award consent form (see *Exhibit 25.2.2-9*); and
 - D. a confidentiality agreement (see *Exhibit 25.2.2-10*).
3. Whistleblowers are given 30 days to respond to the preliminary recommendation package in one of four ways.
 1. If the whistleblower takes no action, then the Director will make a final award determination.
 2. If the whistleblower signs, dates, and returns the consent form agreeing to the proposed award recommendation, then the Director will make a final award determination.
 3. If the whistleblower submits comments on the proposed award recommendation but does not sign, date, and return the confidentiality agreement, the comments will be added to the administrative claim file and reviewed for purposes of making a final award determination.
 4. If the whistleblower signs, dates, and returns the confidentiality agreement, then the Director will provide the whistleblower with the additional administrative review opportunity described below.
4. If the whistleblower signs, dates, and returns the confidentiality agreement, then the Director will provide the whistleblower with a preliminary award report package. The preliminary award report package will contain a preliminary award report that states the amount of the recommended award and provides an explanation of the recommended award. The report will include the recommended amount of proceeds to be attributed to the whistleblower information, the recommended specific award percentage, the recommended specific award amount, and a summary of the factors considered in making the specific award percentage recommendation (*Exhibit 25.2.2-11*). The package will also contain instructions on scheduling an appointment for the whistleblower (and the whistleblower's representative, if there is one) to review the documents supporting the recommendation. If scheduled, this review will take place at the IRS Whistleblower Office in Washington, D.C., and whistleblowers will not be permitted to make copies of the documents.
5. Whistleblowers are given 30 days to respond to the preliminary award report package in one of three ways:
 1. If the whistleblower takes no action, then the Director will make a final award determination.
 2. If the whistleblower schedules an appointment to review the documents supporting the recommendation, then the Whistleblower Office will supervise the document review meeting and the whistleblower will be given 30 days from the date of the meeting to provide a written response to the Whistleblower Office. The written response will be reviewed by the Director for purposes of making a final award determination.
 3. If the whistleblower does not schedule an appointment but does submit written comments on the award report, then the Whistleblower Office will add the comments to the administrative claim file and include for review by the Director for purposes of making a final award determination.
6. A violation of the terms of the confidentiality agreement may be considered a negative factor in determining the specific award percentage, and may result in reduction of the award percentage to the minimum required by law.
7. All written documents sent by the Whistleblower Office to a whistleblower in a preliminary award recommendation package and preliminary award report package, as well as all written comments received by the Whistleblower Office in response to those documents will be added to the administrative claim file.
8. The Director will determine the final award amount, based on a review of the administrative claim file. Prior to communicating the final award amount to the whistleblower, the Director will share the recommendation with the Whistleblower Executive Board for concurrence. Upon concurrence from the Board, the Director's determination will be communicated to the whistleblower in a determination letter, stating the amount of the award and summarizing the basis for the determination. (Sample Determination Letter – *Exhibit 25.2.2-12*) The determination letter will advise the whistleblower of the right to seek review of the determination by the US Tax Court within 30 calendar days of the date of the determination. The Director will initiate payment actions when the period for seeking US Tax Court review has lapsed, when the whistleblower notifies the Director that the right to seek review has been waived, or when the US Tax Court has issued a decision and all further judicial appeals have been waived or exhausted.
9. The preliminary award recommendation package, preliminary award report package, and final determination letter package, as described above, will contain taxpayer return information. The Whistleblower Office is authorized to disclose this taxpayer return information, within the administrative proceeding as described above, because the administrative proceeding arises out of, or in connection with, the determination of the taxpayer's civil or criminal liability or the collection of such civil liability. (Section 6103(h) (4) authorizes disclosures in judicial and administrative proceedings.)

25.2.2.9 (06-18-2010)

Award Computation

1. Effective July 1, 2008, the Director of the Whistleblower Office assumed the responsibility for all award determinations and percentages. Claims will be considered under the law and policies in place at the time the information was submitted with exceptions relating to payment of refund protection claims and criminal fines. (See 25.2.2.12 Funding Awards) Supplemental information will not be considered as a new claim unless its receipt prompts the IRS to take an administrative or judicial action that would not otherwise have been taken on the basis of the earlier-supplied information.

25.2.2.9.1 (06-18-2010)

Award Computation - Section 7623(a) Claims filed before June 1, 2006

1. For award claims filed prior to December 20, 2006 (*Exhibit 25.2.2-13*) the award will be based on the policy in effect at the time the claim was filed, with one exception relating to payment of refund protection claims and criminal fines. Notwithstanding the policy in effect under Treasury Regulation 301-7623-1, claims based on information that prevents the IRS' payment of a refund claim are not eligible for an award

under the whistleblower statute. If the whistleblower participated substantially in the actions that resulted in the underpayment of tax, the Whistleblower Office may deny an award.

2. For award claims filed after December 20, 2006 and before MM-DD-YYYY, if the amount in dispute is less than \$2 million and if the taxpayer is an individual, the individual's gross income must be below \$200,000 for any taxable year at issue, the Service may pay awards to whistleblowers based on collected proceeds of tax, interest and penalties. The award will be calculated as follows:
 - A. For specific and responsible information that caused the investigation or, in claim files already under audit, materially assisted in the development or identification of an issue or issues and resulted in the recovery, or was a direct factor in the recovery, the award shall be 15 percent of the amounts recovered, with the total award not exceeding \$10 million.
 - B. For information that caused the investigation or, in claim files already under audit, caused an investigation of an issue or issues, and was of value in the determination of tax liabilities although not specific, the award shall be 10 percent of the amount recovered, with the total award not exceeding \$10 million.
 - C. For information that causes the investigation or investigation of an issue, but had no direct relationship to the determination of tax liabilities, the award shall be 1 percent of the amounts recovered, with the total award not exceeding \$10 million. No award will be paid if the recovery was so small as to call for payment of less than \$100.00 under the above formulas.
 - D. In a claim file when two or more whistleblowers individually provided original information leading to the recovery of additional tax, penalties, and fines from the same taxpayer, each whistleblower's claim for award should be judged on its own merits. The individual awards should be considered in accordance with the criteria, computation formulas, and limitations stated above.
 - E. If the whistleblower participated substantially in the actions that resulted in the underpayment of tax, the Whistleblower Office may deny an award.

25.2.2.9.2 (06-18-2010)

Award Computation - Section 7623(a) claims filed on or after June 1, 2010 and Section 7623(b) claims:

1. For claims filed after December 20, 2006 where the amount in dispute exceeds \$2 million (and in the case of an individual taxpayer, the taxpayer had gross income exceeding \$200,000 for at least one taxable year in question), awards will be paid in proportion to the value of information furnished voluntarily with respect to proceeds collected, including taxes, penalties, interest, additions to tax and additional amounts. The amount of the award will be at least 15% but no more than 30% of the collected proceeds in claims filed in which the Whistleblower Office determines that the information submitted by the whistleblower substantially contributed to the IRS' detection and recovery of taxes, penalties, interest, additions to tax, and additional amounts.
2. If the whistleblower planned and initiated the actions that led to the underpayment of tax or detection and bringing to trial and punishment of persons guilty of violating the internal revenue laws or conniving at the same, the Whistleblower Office may reduce the award
3. For claims filed on or after MM-DD-YYYY where the amount in dispute does not exceed \$2 million (and in the case of an individual taxpayer, the taxpayer did not have gross income exceeding \$200,000 for at least one taxable year in question), awards will be paid under the discretionary authority of Section 7623 (a), using the same criteria described below for awards under Section 7623(b). Whistleblowers will not have an opportunity to review and comment on the award recommendation as described in paragraph 25.2.2.6(i), nor will they be entitled to seek Tax Court review of the Whistleblower Office determination.
4. **Section 7623(b) (1) Determinations:** Under 7623(b)(1), an individual who provides information that leads to an administrative or judicial action resulting in the collection of taxes, penalties interest, additions to tax and additional amounts shall receive an award of at least 15% but not more than 30% of the collected proceeds resulting from such action (including any related actions), or from any settlement in response to such action, in cases in which the IRS determines that the information submitted by the whistleblower substantially contributed to the IRS' detection and recovery of tax. The amount of any award under section 7623(b) (1) depends on the extent of the whistleblower's substantial contribution to the action.
5. The starting point for the Whistleblower Office's analysis will be the statutory minimum of 15 percent of collected proceeds. The Whistleblower Office will apply the factors noted below to the facts of a case to determine whether the case merits a larger award percentage. The factors are described as positive or negative factors, but the analysis may not be reduced to a simple mathematical equation. The factors are not exclusive and are not weighted. In the particular circumstances of a case, one factor may out-weigh several others and result in a unique or exceptional award determination. Negative factors can offset positive factors, but cannot result in an award that is less than the statutory minimum. The absence of negative factors does not mean that the award percentage will be larger than 15%. The Whistleblower Office will determine awards of 15%, 18%, 22%, 26% or 30%. The Whistleblower Office will begin its analysis at the starting point of 15%. The Whistleblower Office may increase the award percentage based on its analysis of the presence and significance of positive factors and may decrease that enhanced award percentage based on its analysis of the presence and significance of negative factors.
6. **Section 7623(b) (2) Determinations:** Section 7623(b)(2) states that awards shall not exceed 10% of collected proceeds if the Whistleblower Office determines that the action taken was based principally on disclosures of specific allegations resulting from a judicial or administrative hearing, from a governmental report, hearing, audit or investigation, or from the news media. The amount of any awards under section 7623 (b) (2) (A) takes into account the significance of the whistleblower's information and the whistleblower's contribution to the action.
7. Under 7623(b) (2) (B), information is not based principally on disclosures of specific allegations if the whistleblower seeking an award originally provided the information that resulted in the disclosure of the allegations. For example, the whistleblower would be the original source if he/she was the plaintiff in a civil action in which the specific allegations were disclosed, or was the person who reported the existence of a criminal enterprise to appropriate law enforcement authorities. Before determining that 7623(b) (2) will be applied, the Whistleblower Office will afford the whistleblower an opportunity to demonstrate that he/she was the original source of the information.
8. In determining whether the information is based principally on specific allegations from a public source, the whistleblower office will look at the extent to which the specific allegations disclosed describe the elements of a tax violation or behavior from which a tax violation may reasonably be inferred. The threshold determination would take into account the extent to which the specific allegations disclosed and the potential tax noncompliance issues were discernable to the public from the information that appeared in the public domain as well as the connection between the information provided by the whistleblower and the information developed in the judicial or administrative hearing, governmental report, etc. Among other considerations, the Whistleblower Office will evaluate whether specific information about tax noncompliance appeared in the hearing or report, and whether specific information about financial crimes, fraud or transactions with tax compliance implications appeared in the hearing or report.
9. Once it has been determined that section 7623(b)(2) applies, the Whistleblower Office will determine the appropriate award, taking into account the significance of the whistleblower's information and the role of the individual in contributing to the action. For this purpose, the Whistleblower Office will evaluate the presence and significance of the positive and negative factors as described above (with respect to section 7623(b)(1) determinations) to adjust the award from a starting point of 1% to 4%, 7%, or 10%. The Whistleblower Office could also determine an award percentage of 0, and thus that no award will be paid under section 7623(b) (2), based on the presence and significance of negative factors.

10. **Positive Factors** (applicable to section 7623(b) (1) and section 7623(b) (2) determinations):
- A. Prompt action by the whistleblower to inform the Government or the taxpayer of the tax noncompliance may, depending on the acts, be a positive factor. For example, providing the Government with an opportunity to address the tax noncompliance early can help mitigate the impact of the noncompliance.
 - B. The whistleblower submits information that identifies an issue of a type previously unknown to the Government or a taxpayer behavior that the Government was unlikely to identify or was especially difficult to detect through the exercise of reasonable diligence.
 - C. Submissions in which the whistleblower thoroughly presents the details of the noncompliance in a clear and organized manner may, depending on the facts, be a positive factor. For example, a detailed submission may save the Service work and resources.
 - D. The whistleblower (and/or his/her representative) provided exceptional cooperation and assistance during the audit, investigation, or trial, including useful technical or legal analysis of the taxpayer's records.
 - E. The whistleblower identified assets of the taxpayers that could be used to pay the taxpayer's liability or assets not otherwise known to the Service.
 - F. The whistleblower identified connections between transactions, or parties to transactions, which enabled the Service to understand tax implications that might not otherwise have been revealed.
 - G. Impact of the report on the behavior of the taxpayer. For example, the whistleblower's report may, directly or indirectly, cause the taxpayer to correct an improper position.
11. **Negative Factors** (providing an offset against positive factors) (applicable to section 7623(b) (1) and section 7623(b) (2) determinations):
- A. The whistleblower delayed reporting after learning the relevant facts, and the delay had an adverse impact on the ability of the IRS to pursue the issues raised. Delayed reporting can allow the noncompliant activity to be repeated, increasing the magnitude of the noncompliance and, in some cases, compromising the ability of the Government to assess and collect.
 - B. The whistleblower's role in the underpayment of tax reported, such as when a whistleblower actively and knowingly participates in carrying out the tax noncompliance. If the whistleblower directly or indirectly profits from the noncompliance, this may also be considered a negative factor.
 - C. A whistleblower puts the tax case at risk. For example, a whistleblower's premature disclosure to the taxpayer of the existence or scope of IRS planned enforcement activity may be a negative factor if the whistleblower disclosed information regarding the IRS interest in a matter in such a way that permitted the affected taxpayer(s) to impede IRS access to relevant information and thus impeded the exam or audit.
 - D. Whistleblowers will normally be given specific instructions regarding permissible and impermissible activities; violation of these instructions may be a negative factor in determining the award percentage if it causes the Service to expend additional resources it would not otherwise have spent.
12. The Director will use a "fixed percentage approach" pursuant to which it will assign claims to one of a number of fixed percentages within the applicable statutory ranges.
13. **Section 7623(b) (3) Determinations:**
- A. Under section 7623(b)(3), the Whistleblower Office may appropriately reduce an award determination made under either section 7623 (b)(1) or (b)(2) if the whistleblower planned and initiated the actions that led to the tax underpayment or actions described in section 7623(b)(2). The applicable range for this category is 0-30%. The whistleblower need not have been the only person involved in planning and initiating for 7623(b) (3) to apply.
 - B. First, the Whistleblower Office will use the same framework as for the 0-10% and 15-30% ranges, whichever applies, to reach what would be the award result if the whistleblower had not triggered the application of (b)(3) by planning and initiating the actions that led to the tax underpayment.
 - C. Next, the Whistleblower Office will evaluate the whistleblower's role in planning and initiating the actions that led to the underpayment and, based on this evaluation, categorize the whistleblower's role as a planner and initiator as significant, moderate, or minimal. The Whistleblower Office's evaluation will be informed by, but not restricted to, its consideration of the factors described below.
 - D. The Whistleblower Office will reduce the awards of (1) significant planners and initiators by 66% to 100%, (2) moderate planners and initiators by 33% to 66%, and (3) minimal planners and initiators by 0 to 33%. No award will be paid if the informant is convicted of criminal conduct arising from the role played in the planning and initiating of the actions that led to the underpayment of tax.
14. **Planning and Initiating Factors** (applicable to section 7623(b) (3) determinations):
- A. Was the whistleblower the sole decision maker, one of several contributing planners and initiators, or an advisor to a decision maker?
 - B. The nature of the whistleblower's planning and initiating activities. What did the whistleblower do – was it reasonably legitimate tax planning or objectively unreasonable, were steps taken to hide the actions at the planning stage, was there any identifiable misconduct (legal, ethical, etc.) that was either not criminally prosecuted, for whatever reason, or did not result in a criminal conviction (which results in a zero award)?
 - C. The extent to which the whistleblower knew or should have known that tax noncompliance was likely to result from the course of conduct.
 - D. The extent to which the whistleblower acted in furtherance of the noncompliance, including efforts to conceal the true nature of the transaction.
 - E. The whistleblower's role in identifying and soliciting others to participate in the actions reported, whether as parties to a common transaction or as parties to separate transactions.
15. **Submission of multiple claims regarding the same tax matter, and joint claims:**
- A. When multiple and independent claims are submitted with respect to the same proceeds, the Director may evaluate the contribution of each individual to the assessment and collection of the proceeds and may make an award to each individual commensurate with

his or her contribution to the action(s) that resulted in the collection of proceeds. In such a case, the Director shall determine whether the information submitted by each individual would have been obtained by the IRS as a result of the information previously submitted by any other individual. If the Director determines that multiple individuals submitted information that would not have been obtained based on a prior submission, the Director shall determine the amount of each individual's award based on the extent to which each individual substantially contributed to the action(s). The aggregate award payment in cases involving multiple and independent claims shall be within the range of 15% to 30% of collected proceeds, unless one of the reduction of award percentage provisions applies.

- B. When multiple individuals jointly submit a claim, the Director shall pay an award in equal shares to the joint claimants, unless the joint claimants specify a different allocation in a written agreement, signed by all joint claimants and notarized and submitted with the claim. The aggregate award payment in cases involving joint claimants shall be within the range of 15% to 30% of collected proceeds, unless one of the reductions of award percentage provisions applies.

25.2.2.10 (06-18-2010) Appeal Rights under section 7623(b)

- Once the Whistleblower Office has made a final determination regarding a claim under 7623(b) (1), (2), or (3), the Whistleblower Office will communicate the determination, in writing via certified mail, to the claimant. Final Whistleblower Office determinations regarding awards under section 7623(b)(1),(2)and (3) may, within 30 calendar days of such determination, be appealed to the United States Tax Court, 400 Second Street, NW, and Washington DC 20217. The IRS does not have the authority to extend the period for filing an appeal. In accordance with section 7623(b) (4), decisions under section 7623(a) may not be appealed to the Tax Court.

25.2.2.11 (06-18-2010) Confidentiality of the Whistleblower

- The IRS will protect the identity of the whistleblower to the fullest extent permitted by the law.
- To the extent that the IRS Whistleblower Office determines that an individual is a "whistleblower" under IRC section 7623, such individual shall be deemed to be a confidential informant whose identity shall be protected in accordance with IRC section 6103(h) (4). Any contact made between the IRS and the whistleblower will not be a third-party contact under IRC section 7602(c). (See IRM 4.11.57, *Third Party Contacts*)
- Under some circumstances, such as when the whistleblower is an essential witness in a judicial proceeding, it may not be possible to pursue the investigation or examination without revealing the whistleblower's identity. These circumstances are rare, and the Service will consult with the whistleblower before deciding whether to proceed in such a case.

25.2.2.12 (06-18-2010) Funding Awards

- "**Collected proceeds**" are the monies the IRS obtains directly from a taxpayer which are based upon the information the whistleblower has provided. Satisfaction of taxpayers' liabilities by reducing a credit balance is not within the scope of collected proceeds.
- For claims filed prior to December 20, 2006**, whistleblower awards are paid out of taxes and penalties, collected by reason of the information provided.
- For claims filed after December 20, 2006**, awards are paid out of the proceeds collected, including penalties, interest, additions to tax and additional amounts.
- 7623(a) Claims:** Upon receipt of the Form 11369 approved by the Director of the Whistleblower Office for 7623(a) claims reflecting the percentage for the award, the Informants' Claims Examiner will:
 - Place the claim file in a suspense file.
 - Monitor taxpayer's account for payment.
- Once collections have been made, the ICE Unit will prepare the allowance memorandum for the approval of the Director, Whistleblower Office.
- The requirement that claims be paid from collected proceeds generally means that payment will not be made until there is a final determination of tax liability (including taxes, penalties, interest, additions to tax and additional amounts) owed to the Service and such amounts have been collected by the Service. A final determination of tax does not occur until the statutory period for filing a claim for refund expires or there is an agreement between the taxpayer and the IRS that there has been a final determination of tax for a specific period and a waiver of the right to file a claim for refund is effective.
- 7623(b) Claims:** The amount of assessment of taxes, penalties, interest and other amounts attributable to the Whistleblower will be computed by the Whistleblower Analyst based on all information known with respect to the taxpayer's account, including, for example, with respect to the use of offsets and net operating losses, as of the date the computation is made. The Whistleblower Analyst will monitor the case for collection of the proceeds. The award payment cannot be completed until the statutory period for filing a claim for refund expires or there is an agreement between the taxpayer and the IRS that there has been a final determination of tax for the specific period and the right to file a claim for a refund has been waived.
- Refund Protection:** Claims may not be paid under 7623 (a) or (b) which are based on information which leads to the denial of a claim for refund which otherwise would have been paid.
- Criminal Fines:** Criminal fines, which must be deposited into the Victims of Crime Fund, cannot be used for payment of whistleblower awards.

25.2.2.13 (06-18-2010) Award Payment Procedures

- Whistleblower awards are paid from funds available from the collection of tax assessments resulting from information provided by whistleblowers. The Office of Management and Budget (OMB) apportions the amount of whistleblower payments based on prior year actual expense. The whistleblower payments cannot legally exceed the amount apportioned by OMB. Corporate Performance Budget (CPB) requests additional apportionment where payments are expected to exceed the apportionment. To ensure compliance with Law, CPB will track and approve posting of payments to the Informant Awards account (20x5433.1).

25.2.2.13.1 (06-18-2010) Roles and Responsibilities

1. The Whistleblower Office (WO) will provide the Ogden Campus Informant Claims Examination (ICE) Unit with the amount of any awards that are able to be paid immediately.
2. Ogden ICE Unit will obtain CPB approval of the availability of funds for each award payment prior to processing the payment.
3. Revenue Financial Management (RFM) will:
 - A. Produce an SF 133 based on a TIER file report for Informant Payments using CFO Vision.
 - B. Transmit copies of the SF 133 to CPB and the Ogden Campus ICE Unit.
4. Corporate Performance Budget/Budget Execution Office (CPB) will:
 - A. Reconcile the SF 133 with the Informant Awards tracking spreadsheet.
 - B. Submit an apportionment request (SF 132) for additional amounts to OMB when actual expected award payments are expected to exceed the available funding.
 - C. Approve and track all informant awards prior to payment.

25.2.2.13.2 (06-18-2010) Procedures

1. The Ogden ICE Unit will monitor the taxpayer's account for 7623(a) claims and confirm the collection of funds from the taxpayer. For 7623(b) claims the Whistleblower Office will monitor the taxpayer's account for the collection of funds from the taxpayer.
2. The Ogden ICE Unit will email the information on the amount of awards to be paid out to the CPB mailbox with the cc to the Director of the Budget Execution Office.

Note:

This information does not require taxpayer information to be included.

3. CPB will enter the amount of the request on a tracking sheet that incorporates data from the SF 133 report for Informant Payments.
4. CPB will approve the request if funding is available.
5. If the available apportionment falls below an appropriate amount. CPB will contact the Whistleblower Office to ascertain the amount to request from OMB for an additional apportionment.
6. When the Ogden ICE Unit receives the approval email, they will send an Account Adjustment Voucher (Form 2424) and a Manual Refund Voucher (Form 3753) to the Ogden accounting unit.
7. The Ogden accounting unit will process the Account Adjustment Voucher (Form 2424) and the Manual Refund Voucher (Form 3753).
8. The Ogden IRACS team will journalize the Informant Award account (Journal 495) and the Manual Refund (Journal 515).
9. Accounting will maintain a separate file of all manual refunds issued as Whistleblower Awards to specifically issue Form 1099 MISC.
10. Form 1099 MISC will be issued to taxpayers annually (received by taxpayer January 30). Accounting will contact the ICE Unit for a list of Whistleblower Award recipients to verify proper issuance.
11. After processing Form 1099 MISC is complete, Accounting will forward a copy of the transmittal to the Informants Claim Unit and the SB/SE HQ Analyst.

25.2.2.14 (06-18-2010) Annual Report to Congress

1. The Secretary of the Treasury must conduct a study annually and report to Congress on the use of section 7623 of the Internal Revenue code code of 1986, including an analysis of the use of such section during the preceding year and the results of such use.

Exhibit 25.2.2-1 1891 Letter

<p>Dear _____:</p> <p>We received your Form 211, Application for Award for Original Information, and have assigned the above claim number. We will evaluate the information you provided to determine if an investigation is warranted and an award is appropriate. Please retain this notice for future reference.</p> <p>It is important to understand that if we initiate an investigation as a result of your information, it could take several years until final resolution of all tax matters. This is especially true if the taxpayer exercises all administrative and judicial appeal rights. Before we can pay an award, the Service must collect any additional taxes, penalties, interest or other amounts attributable to the information you provided. Collection action could also take several years.</p> <p>At the conclusion of our review and/or investigation, we will be able to tell you only whether or not the information you provided met the Service's criteria for paying an award. Federal disclosure and privacy laws prohibit the Service from informing you of specific actions we take or do not take with respect to your information. We hope you understand this restriction placed on the Internal Revenue Service, by law, and ask for your patience in this matter.</p> <p>We will notify you as soon as all actions relating to your claim have been completed. If you change your address please let us know.</p> <p>Thank you for your participation in the Informants' Claims for Award Program. Sincerely,</p> <p>Manager Informants Claims Unit</p>

**Exhibit 25.2.2-2
Rejection Letter – 1010 Letter**

Dear _____:

We have considered your Informant Award Submission provided under a declaration under penalty of perjury on a Form 211, Application for Award for Original Information, in connection with Internal Revenue Code Section 7623, as amended by the Tax Relief and Health Care Act of 2006.

The information you provided did not identify a federal tax issue upon which the IRS will take action. Therefore, your claim did not result in the detection of the underpayment of taxes and as a result, an award determination cannot be made.

Although the information you submitted did not qualify for an award, thank you for your interest in the administration of the internal revenue laws.

If you have any further questions in regards to this letter, please contact: _____

Sincerely,

Manager
Informants Claims Unit

**Exhibit 25.2.2-3
Acknowledgement Letter – Whistleblower Office**

Name of Informant
Address

Re: (Claim Number)

Dear _____

We received your Form 211, Application for Award for Original Information. It has been assigned claim number.

It is important to understand if we initiate an investigation as a result of your information, it could take several years until final resolution of all tax matters.

This is especially true if the taxpayer exercises all administrative and judicial appeal rights. Before we can pay an award, the Internal Revenue Service must collect any additional taxes, penalties, interest or other amounts assessed by reason of your information. Collection action could also take several years.

Should you have any questions, Whistleblower Office analyst _____ has been assigned to your claim and can be reached at _____.

Sincerely,

Whistleblower Office

CC:

**Exhibit 25.2.2-4
Debriefing Checksheet**

Debriefing Checksheet		
Whistleblower's Name:		
(Name of Designated Representative)		
Note:		
If you do not have information about something discussed during the debriefing, do not interpret that as a request that you obtain additional information. The debriefing is to help us understand what you know.		
Item	Initials	Date
1. PROVIDING TRUTHFUL INFORMATION: The informant was advised the importance of being truthful in the information provided to the Government, both in the application and during the interview. Deliberate false statements can affect the eligibility for an award, and the amount of any award that may be paid.		
2. VOLUNTARY INFORMATION: The informant was advised that the assistance and the information provided to the Government is entirely voluntary. That he/she is not acting on behalf of the United States Government or at the direction of the United States Government with respect to the information that he/she is voluntarily providing.		
3. NOT EMPLOYEE OF THE GOVERNMENT: The informant was advised that he/she is not any employee or agent of the United States Government and he/she cannot take any independent action on behalf of the United States Government. He/she may not represent himself as an employee or agent of the Internal Revenue Service or the United States Government.		
4. EVALUATION OF THE INFORMATION: The informant was advised that the IRS will evaluate the information submitted, and determine whether it will use that information in an investigation or audit. That evaluation will consider the information submitted, other information available to the IRS, and the potential return from an investigation or audit compared to other matters the IRS could choose to pursue and a wide range of other legal and policy issues. The IRS does not act on every case of possible tax noncompliance.		
5. POTENTIAL THAT AUDIT OR INVESTIGATION MAY TAKE YEARS TO RESOLVE: The informant was advised that if the IRS decides to use the information submitted in an audit or investigation, the matter may not be resolved quickly. It is not uncommon for an audit or investigation to continue for several years, particularly when the affected taxpayer exercises appeal rights. If the matter relates to a large taxpayer, it may be incorporated into a broader audit plan that may address several tax years and multiple tax issues.		
6. RECORDATION OF THE INTERVIEW: A record will be made of any interview, and of all written communications between the IRS and you or your representative. These records will be kept separate from the investigation or audit case file, to protect your identity from inappropriate disclosure. The informant was advised that he/she may be asked to consent to audio recording of any interview. He/she was advised that if an audio recording is not conducted, the IRS will rely on the interview notes as evidence of any information provided		

representative.)		
7. PROTECTING THE IDENTITY OF THE INFORMANT: The informant was advised that the IRS will protect against the disclosure of his/her identity, and even the fact that a whistleblower has provided information, to the maximum extent that the law allows. His/her identity will not be disclosed by the IRS unless we deem it to be absolutely necessary, and he/she will be consulted before we do so. Despite our best efforts to protect your identity, there is no way to guarantee that your role will not become known to or suspected by the taxpayer. (The Service will notify the informant and their counsel of any public disclosures.)		
8. AWARD AUTHORITY: The informant was advised that the Whistleblower Office has authority with respect to any award, payments, or other compensation. The individuals present at this interview cannot make any promises or guarantees with respect to any award for the information you providing.		
9. TAXABILITY OF PAYMENTS: The informant was advised that all awards are taxable and (considered to be US sourced income) should be reported on his/her individual income tax Or in accordance with treaty regulations.		
10. Contacts: the informant was advised not to make contact with any representatives of the Service in regards to this matter unless specifically directed to do so. All contacts as to the status of the submission should be addressed to the Whistleblower office and all supplemental information should be submitted to the Whistleblower office.		
By my signature below, I certify that the above information was discussed on the dates indicated.		
IRS Representative: Date:		
Informant's Signature: Date:		
Representative signature Date:		

Exhibit 25.2.2-5**Rejection Letter from the Whistleblower Office**

Name of Informant Address
Re: (Claim Number)
Dear _____:
We have considered your Whistleblower Award Submission provided under [a declaration under penalty of perjury, [a Form 211, <i>Application for Reward for Original Information</i> or a Form 211 <i>Application for Award for Original Information</i>] dated _____, in connection with Internal Revenue Code Section 7623, as amended by the Tax Relief and Health Care Act of 2006.
The information you provided did not identify a federal tax issue upon which the IRS will take action. Therefore, your claim did not result in the detection of the underpayment of taxes and as a result, an award determination cannot be made under section 7623(b).
Although the information you submitted did not qualify for an award, thank you for your interest in the administration of the internal revenue laws.
If you have any further questions in regards to this letter please contact [insert name of Analyst] at 202-622-0351.
Sincerely,
Chief, Case Development & Oversight
cc: [Insert name of POA if applicable]
File

Exhibit 25.2.2-6**Memorandum from Steven T. Miller, February 17, 2010**

MEMORANDUM FOR OPERATING DIVISION EXECUTIVES, MANAGERS, AND SUBJECT MATTER EXPERTS
From: Steven T. Miller, Deputy Commissioner for Operations Support
Subject: Informant Contacts: Current Employees and Taxpayer Representatives
This memorandum provides guidance to Operating Division Subject Matter Experts (SMEs) and other employees on the procedures applicable to the IRS's contacts with current employee informants and taxpayer representative informants in civil tax cases. This memorandum is intended to complement Chief Counsel Notice 2010-004, Clarification of CC Notice 2008-011 – Limitations on Informant Contacts: Current Employees and Taxpayer Representatives. This memorandum encompasses, but is not limited to, the IRS's contacts with informants who have filed claims pursuant to I.R.C. § 7623 (the Whistleblower Statute). It does not apply to criminal matters. For guidance with respect to criminal matters, refer to IRM 9.4.2, Sources of Information.
Evidentiary Issues in Informant Cases
Although the IRS is not subject to the restrictions of the formal rules of evidence in administrative matters such as audits, Operating Division SMEs must be sensitive to potential evidentiary issues that may limit the ability of the IRS to defend deficiency adjustments and assessments in any subsequent litigation. One potential evidentiary limitation involves the use of tainted information – information that cannot be used in litigation because, for example, it is a taxpayer's privileged information that has been provided to the IRS by an informant. In some cases, contacts between the IRS and an informant may taint information received from the informant. In other cases, information received from an informant may be tainted upon receipt, regardless of the contacts made between the IRS and the informant. Any adjustments that depend on tainted information, or on any information derived from tainted information, may not be legally supportable and may have to be conceded by the IRS.
In cases involving information received from informants, the IRS must determine whether the information is subject to a privilege and, if so, whether the privilege has been waived and the extent of any unwaived privilege. In cases other than those described below, the IRS may conduct its own review of the information provided by an informant without the formal assistance of Chief Counsel. The IRS must, however, coordinate with the appropriate Operating Division Counsel upon the identification of any potential privilege issue, regardless of whether it arises in a case described below.
Informants who are Current Employees of a Taxpayer
Generally, it should be assumed that, at a minimum, a current employee informant has access to information that may be subject to a privilege that has not been affirmatively waived by the taxpayer. Accordingly, Operating Division SMEs must be particularly sensitive to the privilege issues that may be present in current employee informant cases. These cases may also raise other issues, such as Constitutional issues and confidentiality issues, which could limit the IRS's ability to use information received from the informant in any subsequent litigation. To ensure that any adjustments dependent on information received from current employee informants cannot be successfully challenged on evidentiary grounds, the IRS must coordinate the taint review with Operating Division Counsel in current employee informant cases as described below.

To avoid potential limitations on the evidentiary use of information received from current employee informants, the IRS should act as a passive recipient of information in every case in which an informant is a current employee of a taxpayer and is providing information regarding the taxpayer/employer. This means that Operating Division SMEs must not encourage, or acquiesce in, any actions taken by the informant. Operating Division SMEs should, however, be ready and willing to accept any and all information from a current employee informant at the initial meeting between the IRS and the informant. Debriefing procedures applicable to civil cases are discussed at IRM 25.2.2.6.

On a case-by-case basis, the IRS may also initiate limited follow-up contacts, including debriefings, with a current employee informant to clarify information previously received from the informant. Operating Division Counsel should be present to provide support with respect to all follow-up contacts and debriefings.

A current employee informant may submit additional information to the IRS following the initial submission of information. Generally, the IRS may receive and use this "supplemental" information for the sole purpose of clarifying previously submitted information. Supplemental information includes information that reasonably relates to the previously submitted information, based on an analysis of all the facts and circumstances relating to the information and the IRS's contacts with the informant, but does not include information that relates to new issues. The IRS must coordinate the analysis with Operating Division Counsel. If Counsel advises that the IRS should not use the information, based on its analysis of the legal risks, then the appropriate IRS Executive will determine whether or how to proceed.

In certain circumstances, contacts with a current employee informant, whether initiated by the IRS or the informant, that are not clearly within the situations described above, may also be considered on a case-by-case basis. These circumstances may arise, for example, when it is unclear whether a proposed contact would be an initial contact, a debriefing, or a subsequent contact, or when an informant submits additional information that relates to a new issue. Additional information that is submitted by a whistleblower, including a current employee informant, that relates to a new issue should be treated as a new claim that is subject to the procedures described in Notice 2008-4, 2008-2 I.R.B. 253. In these circumstances, the IRS must coordinate the matter with Operating Division Counsel. If Counsel advises that the IRS should not initiate a contact or use information, based on its evaluation of the legal risks, then the appropriate IRS Executive will determine whether or how to proceed.

Informants who are Current Representatives of a Taxpayer

The IRS will not accept any information from an informant regarding a taxpayer (or related taxpayers) when the informant is also that taxpayer's representative in any administrative matter pending before the IRS, e.g., an income tax examination, or in any litigation involving issues in which the IRS has any interest (Tax Court and refund litigation, collections suits, summons enforcement actions, etc.). If a taxpayer's representative makes a direct or indirect overture about becoming an informant, e.g., either orally or by filing a Form 3949A, Information Referral, or Form 211, Application for Reward for Original Information, there should be no further interaction with that person as the taxpayer's representative and the representative must be informed of this outcome immediately. It will be the responsibility of the informant to attempt to explain the reason for being excluded from the matter as the taxpayer's representative under these circumstances. In addition, Operating Division employees should have no further interaction or contact with, or receive any further information from, the current representative as an informant.

The same rules apply and the same results are reached if an individual's status as an informant regarding a taxpayer (or related taxpayers) precludes that individual's appearance as the taxpayer's representative in any administrative matter pending before the IRS or in litigation. Operating Division Counsel must be notified immediately of any situation involving an informant or potential informant who is, or may become, the taxpayer's representative under the circumstances described above.

See also IRM 25.2 for more specific guidance regarding informant contacts, including informants who are current employees and taxpayer representatives. Questions related to this memorandum can be directed to Stephen A. Whitlock, Director, Whistleblower Office, at (202) 622-0351 or by e-mail at wo@irs.gov.

Attachments:

Chief Counsel Notice 2010-004, Clarification of CC Notice 2008-011 – Limitations on Informant Contacts: Current Employees and Taxpayer Representatives

Exhibit 25.2.2-7

Sample Notice of Opportunity to Comment Letter

Dear Whistleblower:

We have enclosed a summary award report that explains our proposed award recommendation in your case.

If you agree with the proposed award recommendation.

1. Check the appropriate box, sign and date the enclosed Opportunity to Comment form.
2. Return the signed form to us.
3. After we receive your signed consent form, the Director of the I.R.S. Whistleblower Office will make a final determination in your case.

If you do not agree with the proposed award recommendation and would like to comment without reviewing additional documents in our file:

1. Check the appropriate box, sign and date the Opportunity to Comment form.
2. Return the signed form and your comments to us within 30 days.
3. After we receive your signed consent form, the Director of the I.R.S. Whistleblower Office will make a final determination in your case. Any comments on the award report that we receive from you will be considered by the Director in making the final determination of your award.

If you do not agree with the proposed award recommendation and would like to review additional documents in our file before you comment:

1. Check the appropriate box, sign and date the Opportunity to Comment form.
2. Sign and date the enclosed confidentiality agreement
3. Return the signed form and the agreement to us within 30 days.

If you return the award report and signed confidentiality agreement to us within 30 days of the date shown above, we will provide additional information that explains the basis for the recommendation in greater detail. You will also receive an opportunity to review the written records that

review the written records. The review of the records must take place at the IRS Whistleblower Office in Washington, DC and you will not be permitted to make copies of the records. You will be given opportunities to submit comments on the proposed award recommendation after you receive the additional information and after you review the written records (if you choose to do so). The Director of the IRS Whistleblower Office will not make a final award determination in your case until at least 30 days after you have received the additional information and reviewed the written records (if you choose to do so). Any comments on the award report that we receive from you will be considered by the Director in making the final determination of your award.

All documents described above, including signed and dated consent forms, signed and dated confidentiality agreements, copies of award reports, and comments must be mailed to:

IRS Whistleblower Office, SE: WO, 1111 Constitution Avenue, NW, Washington DC 20224

If you take no action in response to this letter within 30 days, the Director will make a final determination of the award.

After the Director makes a determination, you may appeal the final determination by filing a petition with the Tax Court within 30 days of the date of the final determination. The right to seek US Tax Court review of the Director's final determination is not affected by the choice you make regarding whether to participate in the administrative proceeding.

If you have any questions about this letter, you may write to [name] at the IRS Whistleblower Office address above, or call him/her at [phone number]. If this number is outside your local calling area, long distance charges may apply. If you write, please include your telephone number and the best time to call you if we need more information.

Sincerely,

Exhibit 25.2.2-8 Sample Summary Award Report

Whistleblower Office Claim Number(s) _____

Tax, penalties, interest and other amounts collected based on information provided by whistleblower \$41,325,961.54

Recommended award percentage 22%

Recommended award amount \$9,091,711.54

This award recommendation is made under 26 USC 7623(b) (1).

The information you (your client) provided resulted in the addition of an issue to a taxpayer examination that was already planned or in progress. The examination of the issue was conducted using audit techniques generally applicable to this issue, modified to address the specific circumstances described in your (your client's) submission. Information you (your client) provided was used to refine the focus of information document requests to the taxpayer, and to test the completeness of the taxpayer's response. The information you (your client) submitted was well organized and provided factual and legal analysis supporting the allegation of underpayment of tax. The issue in this case was of a type generally known to the Service, but the taxpayer behavior identified did not follow a pattern typically identified by the Service.

The information you (your client) provided identified connections between transactions which enabled the Service to understand tax implications that might not otherwise have been revealed. The Service was able to reach a conclusion about the probability that the taxpayer had underpaid tax with limited additional research and analysis, materially reducing the Service resources required to address the issue. The presence of these positive factors warrants an increase in the award percentage above the statutory minimum award of 15%. While the positive factors reflect material contributions to the audit, those contributions were not extraordinary. There were no material negative factors. An award of 22% of collected proceeds is warranted in this case, taking into account the extent to which you (your client) substantially contributed to actions by the IRS

Exhibit 25.2.2-9 Award Recommendation-Opportunity to Comment

Whistleblower Office Claim Number(s) _____

[Name and address of whistleblower]

[Name and address of representative]

After receipt of a summary of an award recommendation under 26 USC 7623 from the IRS Whistleblower Office, dated [date],

- I agree with the award recommendation.
- I disagree with the award recommendation. I am providing comments on the summary award report. My comments are attached.
- I wish to receive a copy of the full recommendation, and may choose to review the supporting documents. I understand that I and/or my representative will be permitted to review the supporting documents at the IRS Whistleblower Office in Washington DC, and that I/we may not copy the supporting documents. I further understand that I must submit comments or indicate my intention to review the supporting documents within 30 days of my receipt of the full recommendation. I have attached the confidentiality agreement provided signed by myself and my representative.

Whistleblower signature and date

Whistleblower representative signature and date

Exhibit 25.2.2-10 Confidentiality Agreement

I, (name of whistleblower/representative), have received notice from the IRS of the award recommendation in the case initiated by my submission of a claim for award under 26 USC 7623 (state claim number). I wish to participate in the administrative proceeding leading to the determination of an award by the Director of the Whistleblower Office in this case, by reviewing additional information related to the award recommendation. I understand that information will not be disclosed to me unless the disclosure is necessary as part of the administrative proceeding, and unless I agree to

disclosed to me (my client) by the Whistleblower Office only for the purpose of preparing comments on the recommendation to the Director, or in appealing the Director's determination by petitioning the US Tax Court. I understand that use of any information disclosed to me (my client) for any other purpose may be considered a negative factor in determining the award payable under 26 USC 7623, and may result in a reduction of the award (but not less than the minimum award required by law). This agreement applies to any information disclosed as part of the administrative proceeding leading to the determination by the Director of the Whistleblower Office, including information contained in a Preliminary Award Report or any other information made available for my review by the IRS Whistleblower Office. Any disclosures made in connection with a request for review of the Director's determination by the US Tax Court, including re-disclosure of information previously disclosed as part of the administrative proceeding, will be governed by the rules of the Court.

Signed and witnessed

Exhibit 25.2.2-11 Sample Preliminary Award Report

Whistleblower Office Claim Number(s) _____

1. The Whistleblower's Submission

- A. On June 1, 2008, a submission from Whistleblower A was received by the Whistleblower Office (Tab 1 - Form 211 and attachments). Whistleblower A alleged underpayment of tax by Taxpayer X in Tax Years 2004 and 2005, as a result of an improper return position with respect to a transaction substantially similar to a "swine swap." The submission included a 14 page factual and legal analysis of the transactions in question, and 100 pages of exhibits.
- B. Initial review by the WO revealed that Taxpayer X had an open audit cycle for Tax Years 2004 and 2005, and that the audit was assigned to LMSB Natural Resources Industry Group. The submission was transferred to the LMSB-NR Subject Matter Expert, with WO research reports, on August 1, 2008 (Tab 2, WO Transmittal memorandum and attachments).
- C. The LMSB-NR SME conducted additional research, interviewed Whistleblower A, (Tab 3, SME record of whistleblower debriefing), and determined that the information provided by Whistleblower A may materially contribute to the assessment or collection of taxes from Taxpayer X. The SME found no information that was subject to a claim of privilege, and no other reason to withhold any part of the information provided from the audit team. The submission was transferred to the audit team on November 1, 2008 (Tab 4, SME Transmittal).

2. Audit team action on information provided

- A. The issue raised by Whistleblower A was not part of the audit plan for Taxpayer X prior to receipt of the submission (Tab 5, Form 11369 and attachments). The audit team was unaware that Taxpayer X had engaged in the alleged "swine swap" transaction reported by Whistleblower A, and the scope of the planned audit did not focus on this aspect of the taxpayer's operations (Tab 5, Attachment 1, page1). The audit scope was expanded to include the issue and transaction, and later expanded to include Tax Year 2006.
- B. The audit team modified an audit guide previously used for "swine swap" transactions. The modifications address characteristics of the Taxpayer X transaction that were not previously found in "swine swap" transactions, including the use of additional partnership structures and third parties whose role in the transaction obscured the nature of the transaction (Tab 5, Attachment 3 (audit guide), page 5). Information document requests were prepared to seek specific information about the alleged "swine swap" transaction, including an IDR to the third parties (Tab 5, Attachments 5, 6 and 7, Information document requests).
- C. The taxpayer response included a legal analysis of the transaction, citing elements that distinguished it from "swine swaps," including the partnership structures and third party involvement described in the whistleblower submission (Tab 5, attachment 10, taxpayer response to IDR, pages 13 to 97, legal opinion from Big Law Firm). This legal analysis concluded that the transaction was not substantially similar to a "swine swap."
- D. The audit team disallowed the deduction claimed by Taxpayer X with respect to the "swine swap" transaction for Tax Years 2004 and 2005, and extended the scope of the audit to include Tax Year 2006 in order to reach the "swine swap" deduction taken in that year (Tab 5, attachment 14, Revenue Agent Report, pages 3, 13, 19 and 25). The disallowance relied on a Field Counsel opinion that the transaction was substantially similar to a "swine swap," and that several elements described in the taxpayer's legal analysis distinguishing the transaction from a "swine swap" did not actually occur (Tab 5, attachment 17, Field Counsel Opinion dated September 3, 2009). The Field Counsel opinion mirrored the analysis provided by Whistleblower A (Tab 1, attachment 3, Whistleblower A legal and factual analysis).
- E. The audit team assessed additional tax of \$20 million in Tax Year 2004, \$25 million in Tax Year 2005, and \$10 million in Tax Year 2006, as well as accuracy related penalties for each year, all with respect to the issue raised by Whistleblower A. There were additional adjustments with respect to other issues, some increasing and others decreasing the taxpayer's liability. The net assessments were \$110 million in Tax Year 2004, \$75 million in Tax Year 2005 and \$7 million in Tax Year 2006 (Tab 5, Attachment 14, Revenue Agent Report, pages 1-2).
- F. Taxpayer X disagreed with proposed adjustments for each of the tax years, including the adjustments related to the "swine swap," and the case was submitted to Appeals. Appeals reduced the assessments related to the "swine swap" to \$15 million for Tax Year 2004, \$17.75 million for Tax Year 2005 and \$5.25 million for Tax Year 2006. Appeals did not sustain the accuracy related penalties. Net tax assessments after Appeals actions were \$80 million for Tax Year 2004, \$65 million for Tax Year 2005 and \$4 million for Tax Year 2006 (Tab 6, Appeals Decision Memorandum, pages 6-10 and 31-34).
- G. On February 3, 2010, Taxpayer X accepted the proposed assessments, as adjusted to reflect the Appeals actions, executing a Form XXX including a waiver of the right to claim a refund. Taxpayer X paid \$93 million in additional tax and interest for Tax Year 2004, \$71 million for Tax Year 2005 and \$4.5 million for Tax Year 2006 (Tab 7, Tax Transcripts).

3. Collected proceeds based on whistleblower information

Information	Tax Year 2004	Tax Year 2005	Tax Year 2006
a. Total Additional Tax Assessed and paid	\$80,000,000.00	\$65,000,000.00	\$4,000,000.00
b. Assessment Related to Whistleblower Issue	\$15,000,000.00	\$17,750,000.00	\$5,250,000.00
c. a. or b., whichever is less	\$15,000,000.00	\$17,750,000.00	\$4,000,000.00
d. Total penalties assessed and paid	0	0	0
e. Penalties related to Whistleblower Issue	0	0	0
f. d. or e., whichever is less	0	0	0
g. Total Interest Assessed and Paid	\$13,000,000.00	\$6,000,000.00	\$500,000.00
h. Interest related to Whistleblower Issue (If a is greater than b, g. multiplied by the ratio of b. to a. If a is less than b, g).	\$2,437,500	\$1,638,461.54	\$500,000
i. Total proceeds related to whistleblower issue (c. plus f. plus h.)	\$17,437,500.00	\$19,388,461.54	\$4,500,000.00
j. Total proceeds, all tax years		\$41,325,961.54	

4. Award Percentage Analysis

- A. The information Whistleblower A provided resulted in the addition of an issue to a taxpayer examination that was already planned or in progress. The examination of the issue was conducted using audit techniques generally applicable to this issue, modified to address the specific circumstances described in the submission. Information provided was used to refine the focus of information document requests to the taxpayer, and to test the completeness of the taxpayer's response.
- B. The information submitted was well organized and provided factual and legal analysis supporting the allegation of underpayment of tax. The issue in this case was of a type generally known to the Service, but the taxpayer behavior identified did not follow a pattern typically identified by the Service. The information identified connections between transactions which enabled the Service to understand tax implications that might not otherwise have been revealed. The Service was able to reach a conclusion that the taxpayer had underpaid tax with limited additional legal research and analysis, materially reducing the Service resources required to address the issue.
- C. The presence of these positive factors warrants an increase in the award percentage above the statutory minimum award of 15%. While the positive factors reflect material contributions to the audit, those contributions were not extraordinary. There were no material negative factors.
- D. Recommended award percentage 22%

5. Recommended award

a. Total Collected Proceeds Related to Submission	\$41,325,961.54
b. Recommended award percentage 22%	22%
c. Recommended award (a. multiplied by b.)	\$9,091,711.54

Exhibit 25.2.2-12
Sample Determination Letter

Date: _____

Tax Court Review Deadline Date _____

Whistleblower Office Claim Number(s) _____

Dear Whistleblower:

We have determined that you are entitled to an award of XXXX. This letter is the Final Award Determination, as required by law. The enclosed final award report explains the determination and the calculation of the award.

If you want to contest this final award determination in court, you have 30 days from the date of this letter to file a petition to the US Tax Court appealing the determination. You can get a copy of the rules for filing a petition and a petition form you can use by writing to the address below.

United States Tax Court
400 Second Street, NW,
Washington, DC 20217

You can also get this information from the Tax Court's internet site at <http://www.ustaxcourt.gov>.

If you decide to file an appeal, submit to the Tax Court at the above address the completed petition form, a copy of this letter and an copy all attachments to this letter. The Tax Court cannot consider your case if the appeal is filed late. The petition is considered timely filed if the postmark date falls within the prescribed 30 day period and the envelope containing the petition is properly addressed with the correct postage. The time you have to file a petition is set by law and cannot be extended or suspended. Thus, contacting the IRS for more information, or receiving other correspondence from the IRS, will not change the allowable period for filing a petition with the Tax Court.

You may represent yourself before the Tax Court, or you may be represented by anyone admitted to practice before the Tax Court.

If you decide not to file a petition with the Tax Court, please sign the enclosed waiver form and return it to us at the following address:

IRS Whistleblower Office, SE: WO,
1111 Constitution Avenue, NW,
Washington DC 20224

This will allow us to begin processing the award payment, and can help get the payment to you more quickly.

If you decide not to sign and return the waiver, and you do not file an appeal with the Tax Court within the time limit, we will begin processing the award payment 15 days after the time limit expires. If you file a petition with the Tax Court, appealing the final award determination, we cannot begin the payment process until the Tax Court makes a decision and any further judicial review has concluded or been waived.

If you have questions about this letter, you may write to [name] at the IRS Whistleblower Office address above, or call him/her at [phone number]. If this number is outside your local calling area, long distance charges may apply. If you write, please include your telephone number and the best time to call you if we need more information.

Sincerely,

Director, Whistleblower Office

Attachment: Final Award Report
Information Enclosures

Final Award Determination Report

Whistleblower Office Claim Number(s) _____

1. The Whistleblower's Submission

A. On June 1, 2008, a submission from Whistleblower A was received by the Whistleblower Office. Whistleblower A alleged underpayment of tax by a taxpayer in Tax Years 2004 and 2005, as a result of an improper return position with respect to a transaction substantially similar to

- B. Initial review by the WO revealed that the taxpayer had an open audit cycle for Tax Years 2004 and 2005, and that the audit was assigned to LMSB Natural Resources Industry Group. The submission was transferred to the LMSB-NR Subject Matter Expert, with WO research reports, on August 1, 2008.
- C. The LMSB-NR SME conducted additional research, interviewed Whistleblower A, and determined that the information provided by Whistleblower A may materially contribute to the assessment or collection of taxes from the taxpayer. The SME found no information that was subject to a claim of privilege, and no other reason to withhold any part of the information provided from the audit team. The submission was transferred to the audit team on November 1, 2008.

2. Audit team action on information provided

- A. The issue raised by Whistleblower A was not part of the audit plan for the taxpayer prior to receipt of the submission. The audit team was unaware that the taxpayer had engaged in the alleged "swine swap" transaction reported by Whistleblower A, and the scope of the planned audit did not focus on this aspect of the taxpayer's operations. The audit scope was expanded to include the issue and transaction, and later expanded to include Tax Year 2006.
- B. The audit team modified an audit guide previously used for "swine swap" transactions. The modifications address characteristics of the taxpayer's transaction that were not previously found in "swine swap" transactions, including the use of additional partnership structures and third parties whose role in the transaction obscured the nature of the transaction. Information document requests were prepared to seek specific information about the alleged "swine swap" transaction, including an IDR to the third parties.
- C. The audit team disallowed the deduction claimed by the taxpayer with respect to the "swine swap" transaction for Tax Years 2004 and 2005, and extended the scope of the audit to include Tax Year 2006 in order to reach the "swine swap" deduction taken in that year. The disallowance relied on a Field Counsel opinion that mirrored the analysis provided by Whistleblower A.
- D. Final assessments related to the "swine swap" to \$15 million for Tax Year 2004, \$17.75 million for Tax Year 2005 and \$5.25 million for Tax Year 2006. Net tax assessments reflecting additional adjustments with respect to other issues, some increasing and others decreasing the taxpayer's liability, were \$80 million for Tax Year 2004, \$65 million for Tax Year 2005 and \$4 million for Tax Year 2006.
- E. On February 3, 2010, the taxpayer paid \$93 million in additional tax and interest for Tax Year 2004, \$71 million for Tax Year 2005 and \$4.5 million for Tax Year 2006.

3. Collected proceeds based on whistleblower information

Information	Tax Year 2004	Tax Year 2005	Tax Year 2006
a. Total Additional Tax Assessed and paid	\$80,000,000.00	\$65,000,000.00	\$4,000,000.00
b. Assessment Related to Whistleblower Issue	\$15,000,000.00	\$17,750,000.00	\$5,250,000.00
c. a. or b., whichever is less	\$15,000,000.00	\$17,750,000.00	\$4,000,000.00
d. Total penalties assessed and paid	0	0	0
e. Penalties related to Whistleblower Issue	0	0	0
f. d. or e., whichever is less	0	0	0
g. Total Interest Assessed and Paid	\$13,000,000.00	\$6,000,000.00	\$500,000.00
h. Interest related to Whistleblower Issue (If a is greater than b, g. multiplied by the ratio of b. to a. If a is less than b, g).	\$2,437,500	\$1,638,461.54	\$500,000
i. Total proceeds related to whistleblower issue (c. plus f. plus h.)	\$17,437,500.00	\$19,388,461.54	\$4,500,000.00
j. Total proceeds, all tax years		\$41,325,961.54	

4. On [date], Whistleblower A was notified of a recommended award under 26 USC 7623, and offered an opportunity to comment on the recommendation. After executing a confidentiality agreement, Whistleblower A received a copy of the award recommendation, and reviewed documents supporting the recommendation. On [date], Whistleblower A submitted comments on the following issues:

- A. Amount of collected proceeds: Whistleblower A stated that the amount of collected proceeds was understated, because it did not include improper "swine swap" transaction activity in Tax Year 2003, because the amount assessed for Tax Years 2004, 2005 and 2006 did not reflect the full amount of the taxpayer's understatement of liability for those years, and because no penalty amounts were included in the assessments.
- B. Related actions: Whistleblower A stated that assessments based on participation in "mule swaps" should have been counted as proceeds based on the information provided. The "mule swap" issue was not included in the original examination plan, and was added after the IRS received Whistleblower A's submission.

5. Award Percentage Analysis

- A. The information Whistleblower A provided resulted in the addition of an issue to a taxpayer examination that was already planned or in progress. The examination of the issue was conducted using audit techniques generally applicable to this issue, modified to address the specific circumstances described in the submission. Information provided was used to refine the focus of information document requests to the taxpayer, and to test the completeness of the taxpayer's response.
- B. The information submitted was well organized and provided factual and legal analysis supporting the allegation of underpayment of tax. The issue in this case was of a type generally known to the Service, but the taxpayer behavior identified did not follow a pattern typically identified by the Service. The information identified connections between transactions which enabled the Service to understand tax implications that might not otherwise have been revealed. The Service was able to reach a conclusion that the taxpayer had underpaid tax with limited additional legal research and analysis, materially reducing the Service resources required to address the issue.
- C. Whistleblower A's comments on the recommended award were considered in making the award determination:
Amount of collected proceeds: While Whistleblower A argues that the IRS could have assessed additional tax liability and penalties based on the information provided, that argument is not relevant to the award determination. Decisions by the IRS on tax years and issues to include in an examination, the amounts assessed, and the scope of collection action are tax administration matters over which the Whistleblower Office has no jurisdiction, and may not be challenged by a whistleblower. Awards are paid based on collected proceeds, not on proceeds that might have been collected if the IRS had acted differently.
- D. Award percentage determination: An award of 22% of collected proceeds is warranted in this case, taking into account the extent to which Whistleblower A substantially contributed to actions by the IRS.

the information provided, that argument is not relevant to the award determination. Decisions by the IRS on tax years and issues to include in an examination, the amounts assessed, and the scope of collection action are tax administration matters over which the Whistleblower Office has no jurisdiction, and may not be challenged by a whistleblower. Awards are paid based on collected proceeds, not on proceeds that might have been collected if the IRS had acted differently. The presence of positive factors warrants an increase in the award percentage above the statutory minimum award of 15%. While the positive factors reflect material contributions to the audit, those contributions were not extraordinary. There were no material negative factors.

6. Determination of award amount award.

a. Total Collected Proceeds Related to Submission	\$41,325,961.54
b. Recommended award percentage 22%	22%
c. Recommended award (a. multiplied by b.)	\$9,091,711.54

Final Award Determination—Waiver of Appeal

Whistleblower Office Claim Number(s) _____

[name and address of whistleblower]

[name and address of representative]

After receipt of an award determination under 26 USC 7623 from the Director of the IRS Whistleblower Office, dated [date], I waive my right to appeal the determination to the US Tax Court.

Whistleblower signature and date

Whistleblower representative signature and date

**Exhibit 25.2.2-13
Award Calculation Computation Guidelines**

For Submissions on or after August 26, 1997, calculate as follows:

FOR	THEN	Dollar Limitation not to exceed
Specific and responsible information which caused the investigation in recovery of taxes, penalties and fines.	10 % first \$75,000 5 % next \$ 25,000 1 % any additional recovery	\$ 100,000
Information (not specific) which caused the examination as was of value in determining tax liabilities, and for information which was a direct factor in recovery of taxes, penalties and fines (although such information did not start the investigation).	5 % first \$75,000 2 1/2 % next \$ 25,000 1/2 % any additional recovery	\$ 100,000
Information that caused the investigation but was of no value in determining tax liability.	1 % first \$75,000 1/2 % any additional recovery	\$ 100,000

For Submission on or after August 26, 1997 but before August 13, 2004 calculate as follows:

FOR	THEN	Dollar Limitation not to exceed:
Specific and responsible information which caused the investigation in recovery of taxes, penalties and fines.	15%	\$ 2 million
Information that caused the investigation and was of value in the determination of tax liabilities although not specific.	10%	\$ 2 million
Information that caused the investigation but had no direct relationship to the determination of tax liabilities.	1%	\$ 2 million

For Submissions on or after August 13, 2004, calculate as follows:

FOR	THEN	Dollar Limitation not to exceed:
Specific and responsible information which caused the investigation in recovery of taxes, penalties and fines.	15%	\$ 10 million
Information that caused the investigation and was of value in the determination of tax liabilities although not specific.	10%	\$ 10 million
Information that caused the investigation but had no direct relationship to the determination of tax liabilities.	1%	\$ 10 million

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