

IRS Whistle-Blower Office Sees Huge Jump in Claims, Official Says

by Jeremiah Coder

A large spike in submitted claims in 2008 shows that the new whistle-blower law is "working as it was intended" since it was revised nearly two years ago, said IRS Whistle-Blower Office Director Stephen Whitlock.

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A large spike in submitted claims in 2008 shows that the new whistle-blower law is "working as it was intended" since it was revised nearly two years ago, said IRS Whistle-Blower Office Director Stephen Whitlock.

Part of the law's initial success can be seen in the public's awareness of it, Whitlock told the American Bar Association Section of Taxation's Teaching Taxation session at the fall meeting in San Francisco on September 12. Since the beginning of the year, after guidance was published, more than 900 cases have been received by Whitlock's office, a dramatic increase from the 80 cases that were submitted as large-dollar claims during the first 12 months of the office's operation. "In the last year, this thing has exploded," he said. (For prior coverage, see *Doc 2008-18763* [[PDF](#)] or *2008 TNT 171-3*.)

The law, enshrined in section 7623, was amended in December 2006 to establish a new set of requirements for large-dollar award claims. Comparing claims under the two regimes is difficult, Whitlock said, because of the lack of past data on claims higher than \$2 million, the threshold for the law's new payout requirements. He noted, however, that in fiscal 2007 his office paid out 227 full-paid award claims, of which the median collection was \$30,000 and the median award was \$3,000, and only 12 cases involved collections greater than \$2 million. Now, he said, "I get that many cases, at least based on allegations, on a good day."

Likening the challenges his office faces in implementing the new law to "flying the airplane while changing the engine" -- a phrase attributed to former IRS Commissioner Charles O. Rossotti -- Whitlock said he has been receiving cases, getting them into the right hands, and setting up processes and procedures.

The sources for many of the new claims are disgruntled spouses, business partners, or key employees, Whitlock said. Gregory Lynam of the Ferraro Law Firm agreed that disgruntlement was an important trigger for informants to come forward with claims. Financial incentive is not typically the primary motivation he sees in clients, he said.

Part of the "exuberance" people express toward the new law is that it gives informants "a fair chance," Lynam said. Requiring payout for substantiated claims helps counter long-held distrust that informants often have of the IRS, he said.

Lynam said he warns clients about potential privacy issues when they are thinking about whether they want to appeal an award determination. Informants can file appeals with the Tax Court, but doing so will most likely blow the individual's cover. "Your identity is going to be very hard to protect" in the Tax Court, he said. A 2007 military supplemental bill contained provisions that would have sealed all cases arising under section 7623, Lynam said, but the legislation was vetoed by President Bush.

Whitlock said the standard of review the Tax Court will use in section 7623 appeals ought to be spelled out. "Hopefully, that means they're not doing a de novo review," he said.

Whitlock made it clear that his office does not perform audits. That function is handled by the operating divisions if they decide to pursue a claim, he said.

Panelist Dennis J. Ventry, a visiting professor of law at American University Washington College of Law, said limited disclosure of taxpayer information is necessary to keep the program alive. "As goes relaxing of section 6103, so goes the whistle-blower program," he said. If the Whistle-Blower Office can't effectively communicate with the informant, it won't be as successful, he said. He suggested that the IRS consider entering into contracts with whistle-blowers to disclose certain return information, similar to the government's process under section 6103(n) with other individuals when necessary for tax administration purposes.

One immediate effect of the whistle-blower program is the change in the considerations it brings to boardrooms, Whitlock said. The more people who are in the know about a corporate transaction to evade taxes, the greater chance that it will be brought to light, he said. "Who in this room isn't going to be motivated by 15 to 30 percent of whatever cockamamie scheme we're about to do?" he asked.

"People who have knowledge of tax noncompliance are coming forward and saying, 'Here's what's going on,'" Whitlock said.

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