



## Part 25. Special Topics

### Chapter 2. Information and Whistleblower Awards

#### Section 2. Whistleblower Awards

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##### Manual Transmittal

August 07, 2015

##### Purpose

(1) This transmits revised IRM 25.2.2, *Information and Whistleblower Awards, Whistleblower Awards*

##### Background

This chapter provides procedures and guidance for all Service personnel to follow when dealing with whistleblowers' claims for award.

##### Material Changes

- (1) The IRM was revised to reflect the Regulations finalized August 12, 2014
- (2) 25.2.2.1 Added additional overview of IRC 7623(a) and 7623(b)
- (3) 25.2.2.5 Added guidance for examining a whistleblower claim
- (4) 25.2.2.6 Added clarification of Form 11369 Requirements
- (5) 25.2.2.10 Added guidance on the Whistleblower Withholding Program

##### Effect on Other Documents

IRM 25.2.2, dated June 18, 2010 is superseded.

##### Audience

All Divisions and Functions

##### Effective Date

(08-07-2015)

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##### 25.2.2.1 (08-07-2015)

##### 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 IRC 7623 concerning the payment of awards to whistleblowers. The amendment made significant changes to the IRS award 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. The 2006 amendments re-designated the prior IRC 7623 as IRC 7623(a), added new provisions as IRC 7623(b), and included program administration requirements that were not incorporated into the Internal Revenue Code.
3. Prior to the 2006 amendments, the IRS referred to persons who submit information under IRC 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. 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 a published document. However, no legal significance should be inferred based solely on the use of these terms in this IRM. Effective January 1, 2012, the Informant Claims Examination (ICE) Unit has been reassigned to the Whistleblower Office and will be referred to as the Initial Claim Evaluation (ICE) Team.
4. Throughout this IRM section, claims submitted prior to December 20, 2006, will be referred to as pre-enactment claim files.
5. The requirement that claims be paid from collected proceeds 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.

6. The authority to approve and determine awards under IRC 7623 for individuals who provide information to the IRS related to the detection of underpayments of tax, or to the detection and bringing to trial and punishment of persons guilty of violating the internal revenue laws or conniving at the same is delegated to the Director of the Whistleblower Office under Delegation Order 25-7 (Rev 2). This authority has been redelegated to:
  - A Whistleblower Office Manager in cases where the amount in dispute is less than \$50,000
  - A Whistleblower Office Senior Manager in cases where the amount in dispute is less than \$1,000,000
7. The law requires the Whistleblower Office to analyze 7623 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 IRC 6103 (See IRM 11.3.21). 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)
8. It may be in the best interest of the Government to have a formal agreement with the whistleblower when it is necessary to share IRC 6103 protected information obtained by the IRS from the taxpayer or a third party with the whistleblower. In these situations, 26 CFR 301.6103(n)-2 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. The IRS cannot enter into a 6103(n) agreement for the purpose of sharing return information with a third party, the purpose must be obtaining services for tax administration. 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. These contracts will be tracked by the Deputy Commissioner's Office and the Whistleblower Office will be notified of completed contracts.

#### **25.2.2.1.1 (08-07-2015) IRC Section 7623(b) Overview**

1. The application of IRC 7623(b) is limited by certain dollar thresholds. IRC 7623(b) applies with respect to any action in which the amount in dispute (see IRM 25.2.2.1.3(5)) exceeds \$2,000,000. If the taxpayer is an individual, the individual's gross income must also exceed \$200,000 for any taxable year at issue.
2. IRC 7623(b) applies to new information provided to the IRS on or after December 20, 2006. Supplemental or resubmitted information will not be considered for purposes of IRC 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).
3. IRC 7623(b) awards will be paid in proportion to the value of information furnished with respect to collected proceeds (see IRM 25.2.2.1.3(4)).
4. Awards paid under IRC 7623(b)(1) will be at least 15 percent, but no more than 30 percent, 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.
5. Under IRC 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 may not exceed 10 percent of the collected proceeds resulting from the action. IRC 7623(b)(2) may not apply if the whistleblower was the original source of the information that led to the specific allegations.
6. Under IRC 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.
7. 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 Whistleblower Office in determining whether an award will be paid, and, if so, the amount of the award.
8. Individuals are eligible for awards under IRC 7623(b) based on collected proceeds resulting from an action (including any related actions) or from any settlement in response to such action.
  1. 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.
  2. 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.
  3. 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.

#### **25.2.2.1.2 (08-07-2015) IRC Section 7623(a) Overview**

1. IRC 7623(a) applies to all information prior to December 20, 2006 and claims filed on or after December 20, 2006 that do not meet the IRC 7623(b) requirements.
2. The recommended award percentage for IRC 7623(a) claims will depend upon the date the claim was submitted. See IRM 25.2.2.7 and Exhibit 25.2.2-2.
3. If the thresholds in IRC 7623(b)(5) are not met, IRC 7623(a) authorizes, but does not require, the Service to pay for information that results in the IRS's recovery of collected proceeds. Since the amount in dispute cannot be determined until after a final determination of tax, a decision with respect to an award under 7623(a) cannot be made until after a final determination of tax.

### 25.2.2.1.3 (08-07-2015)

#### Definitions

1. The following are definitions used for purposes of determining awards under IRC 7623; however, these definitions may not apply to 7623(a) claims received prior to July 1, 2010
2. Action - the term action means administrative or judicial action
  1. Administrative Action - the term administrative action means all or a portion of a IRS civil or criminal proceeding against any person that may result in collected proceeds, as defined in paragraph (4) of this section, including, for example, an examination, a collection proceeding, a status determination proceeding, or a criminal investigation.
  2. Judicial Action – the term judicial action means all or a portion of a proceeding against any person in any court that may result in collected proceeds, as defined in paragraph (4) of this section.
3. Proceeds based on - the IRS proceeds based on information provided by a whistleblower when the information provided substantially contributes to an action against a person identified by the whistleblower. For example, the IRS proceeds based on the information provided when the IRS initiates a new action, expands the scope of an ongoing action, or continues to pursue an ongoing action, that the IRS would not have initiated, expanded the scope of, or continued to pursue, but for the information provided. The IRS does not proceed based on information when the IRS analyzes the information provided or investigates a matter raised by the information provided

**Example 1** - Information provided to the IRS by a whistleblower, under IRC 7623 and 26 CFR 301.7623-1, identifies a taxpayer, describes and documents specific facts relating to the taxpayer's foreign sales in Country A, and, based on those facts, alleges that the taxpayer was not entitled to a foreign tax credit relating to its foreign sales in Country A. The IRS receives the information after having already initiated an examination of the taxpayer. The IRS's audit plan includes foreign tax credit issues but focuses on taxpayer's foreign sales in Country B and does not specifically address the taxpayer's foreign sales in Country A. Based on the information provided, the IRS expands the examination of the foreign tax credit issue to include consideration of the amount of foreign tax credit relating to the taxpayer's foreign sales in Country A. For purposes of IRC 7623 and 26 CFR 301.7623-1 through 301.7623-4, the portion of the IRS's examination of the taxpayer relating to the foreign tax credit issue with respect to Country A is an administrative action with which the IRS proceeds based on the information provided by the whistleblower because the information provided substantially contributed to the action by causing the expansion of the IRS's examination.

**Example 2** - Information provided to the IRS by a whistleblower, under IRC 7623 and 26 CFR 301.7623-1, identifies a taxpayer, describes and documents specific facts relating to the taxpayer's activities, and, based on those facts, alleges that the taxpayer owed additional taxes in Year 1. The IRS proceeds with an examination of the taxpayer for Year 1 based on the information provided by the whistleblower. The IRS discovers that the taxpayer engaged in the same activities in Year 2 and expands the examination to Year 2. In the course of the examination, the IRS obtains, through the issuance of Information Document Requests (IDRs) and summonses, additional facts that are unrelated to the activities described in the information provided by the whistleblower. Based on these additional facts, the IRS expands the scope of the examination of the taxpayer for both Year 1 and Year 2. For purposes of IRC 7623 and 26 CFR 301.7623-1 through 301.7623-4, the portion of the IRS's examination relating to the activities described and documented in the information provided is an administrative action with which the IRS proceeds based on information provided by the whistleblower because the information provided substantially contributed to the action by causing the expansion of the IRS's examination of Year 1 and Year 2. The portions of the IRS's examination of the taxpayer in both Year 1 and Year 2 relating to the additional facts obtained through the issuance of IDRs and summonses are not actions in which the IRS proceeds based on the information provided by the whistleblower because the information provided did not substantially contribute to the action.

**Example 3** - Information provided to the IRS by a whistleblower, under IRC 7623 and 26 CFR 301.7623-1, identifies a taxpayer, describes and documents specific facts relating to the taxpayer's activities, and, based on those facts, alleges that the taxpayer owed additional taxes in Year 1. The IRS receives the information after having already initiated an examination of the taxpayer for Year 1. During the examination, the information is provided to the Exam team and the Exam team uses the information provided to confirm the correctness of adjustments made based on other information. Although the whistleblower's information confirms the correctness of the IRS's adjustments, the IRS does not rely on the whistleblower's information when it makes the adjustments, nor does the information cause the IRS to expand the scope of its examination. The whistleblower's information merely supports information independently obtained by the IRS. For purposes of IRC 7623 and 26 CFR 301.7623-1 through 301.7623-4, the IRS's examination is not an administrative action with which the IRS proceeds based on information provided by the whistleblower because the information provided did not substantially contribute to the action.

**Example 4** - Same facts as Example 3. During the examination, however, the Exam team identifies inconsistencies between the information provided by the whistleblower and other information already in the Exam team's possession. The Exam team uses the information provided by the whistleblower to make additional adjustments that it would not have made based solely on the other information. For purposes of IRC 7623 and 26 CFR 301.7623-1 through 301.7623-4, the portion of the IRS's examination relating to the additional adjustments is an administrative action with which the IRS proceeds based on information provided by the whistleblower because the information provided substantially contributed to the action.

4. Related Action - the term related action means an action against a person other than the person(s) identified in the information provided and subject to the original action(s), when-
  1. The facts relating to the underpayment of tax or violations of the internal revenue laws by the other person are substantially the same as the facts described and documented in the information provided (with respect to the person(s) subject to the original action);
  2. The IRS proceeds with the action against the other person based on the specific facts described and documented in the information provided, such that the information provided substantially contributes to the action; and
  3. The other, unidentified person is related to the person identified in the information provided. For purposes of this paragraph, an unidentified person is related to the person identified in the information provided if the IRS can identify the unidentified person using the information provided (without first having to use the information provided to identify any other person or having to independently obtain additional information).

**Example 1** - Information provided to the IRS by a whistleblower, under IRC 7623 and 26 CFR 301.7623-1, identifies a taxpayer (Taxpayer 1), describes and documents specific facts relating to Taxpayer 1's activities, and, based on those facts, alleges tax underpayments by Taxpayer 1. The information provided also identifies an accountant (CPA 1) and describes and documents specific facts relating to CPA 1's contribution to the activities of Taxpayer 1 that the whistleblower alleges resulted in tax underpayments. The IRS proceeds with an examination of Taxpayer 1 based on the information provided by the whistleblower. Using the information provided, the IRS obtains CPA 1's client list and identifies two taxpayer/clients of CPA 1 (Taxpayer 2 and Taxpayer 3) that appear to have engaged in activities similar to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 2 and finds that Taxpayer 2 engaged in the same activities as those described in the information provided with respect to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 3 and finds that Taxpayer 3 engaged in different activities from those described in the information provided with respect to Taxpayer 1. For purposes of IRC 7623 and 26 CFR 301.7623-1 through 301.7623-4, the examination of Taxpayer 2 is a related action because it satisfies the conditions of IRM 25.2.2.7.4.2. The examination of Taxpayer 3 is not a related action because the relevant facts are not substantially the same as the facts relevant to the examination of Taxpayer 1.

**Example 2** - Same facts as Example 1. Using the information provided by the whistleblower, the IRS identifies a co-promoter of CPA 1 (CPA 2) that appears to have engaged in activities similar to CPA 1. CPA 2 is not a member of CPA 1's firm. The IRS subsequently obtains the client list of CPA 2 and identifies a taxpayer/client of CPA 2 (Taxpayer 4) that appears to have engaged in activities similar to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 4 and finds that Taxpayer 4 engaged in the same activities as those described in the information provided with respect to Taxpayer 1, and that CPA 2 contributed to the activities in the same way as described in the information provided with respect to CPA 1. The IRS proceeds with an examination of CPA 2's liability for promoter penalties under IRC 6700 in connection with the activities described in the information provided with respect to Taxpayer 1 and CPA 1. For purposes of IRC 7623 and 26 CFR 301.7623-1 through 301.7623-4, the examination of CPA 2 is a related action because it satisfies the conditions of IRM 25.2.2.7.4.2. The examination of Taxpayer 4 is not a related action because Taxpayer 4 was not related to a person identified in the information provided. CPA 2 was not identified in the information provided and the IRS first had to identify CPA 2 before identifying Taxpayer 4 and proceeding with the examination of Taxpayer 4.

**Example 3** - Same facts as Example 1. An accountant (CPA 3) is a member of CPA 1's firm. Using the information provided by the whistleblower, the IRS obtains the client list of CPA 3 and identifies a taxpayer/client of CPA 3 (Taxpayer 5) that appears to have engaged in activities similar to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 5 and finds that Taxpayer 5 engaged in the same activities as those described in the information provided with respect to Taxpayer 1, and that CPA 3 contributed to the activities in the same way as described in the information provided with respect to CPA 1. For purposes of IRC 7623 and 26 CFR 301.7623-1 through 301.7623-4, the examination of Taxpayer 5 is a related action because Taxpayer 5 is related to CPA 3, a person considered to be identified in the information provided under 26 CFR 301.7623-1(c)(1), and the facts relating to Taxpayer 5 are substantially the same as the facts described and documented in the information provided. An IRS examination of CPA 3's liability for promoter penalties under IRC 6700, based on the facts described and documented in the information provided with respect to Taxpayer 1 and CPA 1, is an administrative action based on the information provided.

**Example 4** - Information provided to the IRS by a whistleblower, under IRC 7623 and 26 CFR 301.7623-1, identifies a taxpayer (Taxpayer 1), describes and documents specific facts relating to Taxpayer 1's activities, and, in particular, Taxpayer 1's participation in a transaction. Based on those facts, the whistleblower alleges that Taxpayer 1 owed additional taxes. The IRS proceeds with an examination of Taxpayer 1 based on the information provided by the whistleblower. The IRS identifies the other parties to the transaction described in the information provided (Taxpayer 2 and Taxpayer 3). The IRS proceeds with examinations of Taxpayer 2 and Taxpayer 3 relating to their participation in the transaction described in the information provided. For purposes of IRC 7623 and 26 CFR 301.7623-1 through 301.7623-4, the IRS's examinations of Taxpayer 2 and Taxpayer 3 relating to the activities described and documented in the information provided are related actions because they satisfy the conditions of IRM 25.2.2.7.4.2.

5. Collected Proceeds - the terms "proceeds of amounts collected" or "collected proceeds" include: tax, penalties, interest, additions to tax, and additional amounts collected because of the information provided; amounts collected prior to receipt of the information if the information provided results in the denial of a claim for refund that otherwise would have been paid; and a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided. Collected proceeds are limited to amounts collected under the provisions of Title 26, United States Code.
  1. Refund Netting - In general, if a portion of a claim for refund that is substantially unrelated to the information provided is allowed and used to satisfy a tax liability attributable to the information provided instead of refunded to the taxpayer, then the allowed but non-refunded amount constitutes collected proceeds.

Example. Information provided to the IRS by a whistleblower, under IRC 7623 and 26 CFR 301.7623-1, identifies a corporate taxpayer (Corporation), describes and documents specific facts relating to Corporation's activities, and, based on those facts, alleges that Corporation owed additional taxes. Based on the information provided by the whistleblower, the IRS proceeds with an examination of Corporation and determines adjustments that would result in an unpaid tax liability of \$500,000. During the examination, Corporation informally claims a refund of \$400,000 based on adjustments to items of income and expense that are wholly unrelated to the information provided by the whistleblower. The IRS agrees to the unrelated adjustments. The IRS nets the adjustments and determines a tax deficiency of \$100,000. Thereafter, Corporation makes full payment of the \$100,000 deficiency. For purposes of IRC 7623 and 26 CFR 301.7623-1 through 301.7623-4, the collected proceeds include the \$400,000 informally claimed as a refund and netted against the adjustments attributable to the information provided, as well as the \$100,000 paid by Corporation.
  2. Amended returns - Amounts collected based on amended returns constitute collected proceeds if: The IRS proceeds based on the information provided; As a result, the person subject to the action(s) with which the IRS proceeds files amended returns; and the amounts collected based on the amended returns related to the activities or facts described in the information provided
  3. Criminal Fines - Criminal fines deposited into the Crime Victims Fund are not collected proceeds and cannot be used for payment of awards.
6. Amount in Dispute - In general, the amount in dispute means the greater of the maximum total of tax, penalties, interest, additions to tax, and additional amounts that resulted from the action(s) with which the IRS proceeded based on the information provided, or the maximum total of such amounts that were stated in formal positions taken by the IRS in the action(s). The IRS will compute the amount in dispute, for purposes of final award determinations, when there has been a final determination of tax.

**Example 1**. Information provided to the IRS by a whistleblower, under IRC 7623 and 26 CFR 301.7623-1, identifies a corporate taxpayer, describes and documents specific facts relating to the taxpayer's activities, and, based on those facts, alleges that the taxpayer owed additional taxes. The IRS proceeds with an examination of the taxpayer based on the information provided by the whistleblower; makes adjustments to items of income and expense and allows certain credits; and, ultimately, determines a deficiency against the taxpayer of \$1,900,000 and issues the taxpayer a statutory notice of deficiency. The taxpayer petitions the notice to the United States Tax Court. The Tax Court sustains the IRS's position resulting in a deficiency of \$1,900,000. Following the final determination of tax, the IRS computes that the total of tax, penalties, interest, additions to tax, and additional amounts that resulted from the action was \$2,500,000. For purposes of IRC 7623 and 26 CFR 301.7623-1 through 301.7623-4, the amount in dispute is \$2,500,000.

**Example 2.** Same facts as Example 1, except the IRS determines a deficiency of \$1,500,000; the Tax Court sustains the deficiency of \$1,500,000; and, following the final determination of tax, the IRS computes that the total of tax, penalties, interest, additions to tax, and additional amounts that resulted from the action was \$1,750,000. For purposes of IRC 7623 and 26 CFR 301.7623-1 through 301.7623-4, the amount in dispute is \$1,750,000.

**Example 3.** Same facts as Example 1, except the IRS determines a deficiency of \$2,100,000; the Tax Court redetermines a deficiency of \$1,500,000; and, following the final determination of tax, the IRS computes that the total of tax, penalties, interest, additions to tax, and additional amounts that resulted from the action was \$1,750,000. For purposes of IRC 7623 and 26 CFR 301.7623-1 through 301.7623-4, the amount in dispute is \$2,100,000.

7. Final Determination of Tax - In general, a final determination of tax means that the proceeds resulting from the action(s) subject to the award determination have been collected and either the statutory period for filing a claim for refund has expired or the taxpayer(s) subject to the action(s) and the IRS have agreed with finality to the tax or other liabilities for the period(s) at issue and the taxpayer(s) have waived the right to file a claim for refund. A final determination of tax does not preclude a subsequent final determination of tax if the IRS proceeds based on the information provided following the payment, denial, or rejection of an award.

#### 25.2.2.2 (08-07-2015)

##### Filing a Claim for an Award under Sections 7623(a) or (b)

1. To claim an award under IRC 7623, a whistleblower must timely file a formal claim for an award by completing and sending Form 211, *Application for Award for Original Information*, (available on [www.irs.gov/compliance/index.html](http://www.irs.gov/compliance/index.html)) to:

Internal Revenue Service  
Whistleblower Office - ICE  
M/S 4110  
1973 N Rulon White Blvd  
Ogden, UT 84404

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

"Declaration under Penalty of Perjury I declare that I have examined this application, all accompanying statement and supporting documentation, and, to the best of my knowledge and belief, they are true, correct and complete."

The required penalty of perjury statement must be provided before an action is taken. **Action** in this context means an administrative or judicial action as defined in IRM 25.2.2.1.3(1), such as an examination, a collection proceeding, a status determination proceeding, or a criminal investigation. Analysis of the information provided to determine whether an action will be taken, or whether an on-going action will be expanded to include the matter identified by the individual, is not an **action**.

3. Timing of Submissions (Reserved)
4. The requirement to submit information under penalty of perjury precludes submissions by:
1. a person serving as a representative of the claimant,
  2. a person otherwise acting on behalf of the claimant, or
  3. an entity other than a natural person.
5. Claims submitted by more than one whistleblower (joint claims) must include a declaration signed under penalty of perjury by each claimant.
6. 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 IRS 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 and control information for a possible award under section 7623, IRS personnel should not act on any information presented by the whistleblower. Instead any and all information must first be forwarded to the Whistleblower Office.
7. The Form 211 must be completed in its entirety and should include the following information:
1. The date of the claim;
  2. The whistleblower's name;
  3. The whistleblower's contact information, including address with zip code and telephone number;
  4. The whistleblower's date of birth;
  5. The whistleblower's Taxpayer Identification Number (e.g., Social Security Number or Individual Taxpayer Identification Number), if known;
  6. Explanation of how the information that forms the basis of the claim came to the attention and into the possession of the whistleblower, including the date(s) on which this information was acquired, and a complete description of the whistleblower'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 persons as the subjects of a claim, should also describe his or her relationship to each person and the facts as it applies to each person
8. 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.
9. A whistleblower may be represented by an authorized representative by filing a properly executed Form 2848, **Power of Attorney**. The **Power of Attorney** must be specific to whistleblower matters and not just a general power of attorney for tax matters. Service personnel **should not** forward the Form 2848 to the Centralized Authorization File (CAF) if the Power of Attorney is for the whistleblower claim.
1. A whistleblower may revoke an authorization, and a representative may withdraw from representation, provided that the revocation or withdrawal is in writing, clearly identifies the claim or claims affected by the revocation or withdrawal, and is signed and dated.

2. The Whistleblower Office will send correspondence to the whistleblower and the representative confirming that the representation has been terminated.

**Note:**

The Whistleblower Office should not discuss any details on a claim with a purported representative until a Form 2848 is secured.

10. The Form 211 and any attachments must include specific and credible information concerning the person(s) that the whistleblower 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.
11. If a potential whistleblower files a Form 3949-A **Information Referral** or other correspondence with the Whistleblower Office, to the extent possible, the Whistleblower Office will correspond with the potential whistleblower and request a Form 211. If the potential whistleblower does not reply with the requested Form 211 within the allotted time the Whistleblower Office will not consider the information as part of a claim under IRC 7623 and the Whistleblower Office will forward the information to the Form 3949-A information referral program.

### **25.2.2.3 (08-07-2015)**

#### **Eligibility for an Award under IRC Section 7623**

1. Any individual, other than an individual described in paragraph (2) or (3) of this section, is eligible to file a claim for award and to receive an award under IRC 7623.
2. The Whistleblower Office will reject any claim for award filed by an ineligible whistleblower and will provide written notice of the rejection to the whistleblower. The following individuals are not eligible to file a claim for award or receive an award:
  1. 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 on which the claim is based.
  2. An individual who obtained the information through the individual's official duties as an employee of the Federal Government, or who is acting within the scope of those official duties as an employee of the Federal Government.
  3. An individual who is or was required by Federal law or regulation to disclose the information or who is or was precluded by Federal law or regulation from disclosing the information.
  4. An individual who obtained or had access to the information based on a contract with the Federal Government.
3. If the Whistleblower Office determines that an individual has made a claim for award based on information obtained from an ineligible person, the Whistleblower Office may treat the claim as if it had been made by the ineligible person and may reject the claim.

### **25.2.2.4 (08-07-2015)**

#### **Initial Form 211 Processing**

1. Upon receipt of the Form 211, the Whistleblower Office will conduct the following review:
  1. Is the new Form 211 related to a previously filed Form 211? If not the Whistleblower Office will continue to process the claim. If the new Form 211 is related to a previously submitted Form 211 the Whistleblower Office will review the claims and determine if the new Form 211 should be processed as a new claim or associated with the prior claim.
  2. Does the Form 211 contain all the required information? If not, the Whistleblower Office may reject the claim or the Whistleblower Office may correspond with the whistleblower for the missing information. If the Whistleblower Office rejects a claim, then the Whistleblower Office will provide notice of the rejection to the whistleblower stating the basis for the rejection. If the Whistleblower Office rejects a claim for the reasons described in this paragraph, then the whistleblower may perfect and resubmit the claim.
2. Once a determination is made to build the claim as a new claim the Whistleblower Office 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 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.

**Note:**

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 taxpayers are listed on a single Form 211, each taxpayer may receive a claim number. The whistleblower will be notified of the claim number associated with each of the listed taxpayers.

3. 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:
  1. Will the information provided materially contribute to identification, development or resolution of taxpayer liability or collection?
  2. Is the taxpayer currently under audit?
  3. Does the whistleblower offer information that may be relevant to exam issues (past, current or prospective)?
  4. Does the whistleblower offer information that may be relevant to collection issues (past, current or prospective)?
  5. Do the issues alleged by the whistleblower require referral to another group for classification?
  6. Should the claim be referred to Case Development and Oversight?

4. Classification will make a recommendation for the Whistleblower Office to: reject, deny, select the claim for examination, refer to another group for consideration, or refer the claim(s) to Case Development and Oversight.
5. If the Form 211 claim lists multiple taxpayers with one or more of the taxpayers being under the jurisdiction of a different operating division than the other taxpayers:
  1. The Whistleblower Office will clearly identify in the file the applicable operating division for each taxpayer.
  2. If the claim is selected for examination and forwarded to the appropriate operating division, the Whistleblower Office will contact the other operating division to determine if any such operating division wishes to participate in a debriefing and taint review interview with the whistleblower. The Whistleblower Office will provide to the operating division to which the Form 211 claim was forwarded for examination a) the name of the employee contacted in each operating division, b) the name of the employee responding, and c) the response provided.

#### 25.2.2.4.1 (08-07-2015)

##### Rejecting or Denying a Claim for an Award under IRC 7623

1. Whistleblowers whose claims are deemed ineligible for an award are sent a letter advising them of the outcome. The type of letter will depend on the outcome (rejected or denied) and whether the claim is considered an IRC 7623(a) or IRC 7623(b) claim for purposes of the rejection or the denial.

**Note:**

When determining whether the claim is considered an IRC 7623(a) or 7623(b) claim for purposes of rejections and denials, the Internal Revenue Service may rely on the whistleblower's description of the amount owed by the taxpayer(s). The IRS may, however, rely on other information as necessary (for example, when the alleged amount in dispute is below the \$2 million threshold of IRC 7623(b)(5)(B), but the actual amount in dispute is above the threshold; or when the alleged amount in dispute is over \$2 million, but the claim did not allege a tax issue or specific and credible information to support the allegation).

2. Claims will be considered 7623(a) claims for purposes of rejection or denial if the alleged amount in dispute is under \$2 million or the claim does not identify a specific/credible tax issue or is purely speculative in nature.
  - Claims rejected as an IRC 7623(a) claim will receive a final rejection letter stating the basis of the rejection
  - Claims denied as an IRC 7623(a) claim will receive a final denial letter that does not state the basis for the denial. The regulations do not allow the Whistleblower Office to provide basis statements for 7623(a) claim denials.
3. Claims considered IRC 7623(b) claims for the purpose of the rejection or the denial.
  - Claims recommended for rejection or denial as an IRC 7623(b) claim will receive a preliminary rejection or preliminary denial letter stating the basis for the anticipated rejection or denial and provide a 30 day period for the whistleblower to comment on the proposed rejection or denial.
  - The Whistleblower Office will consider all timely responses submitted by the whistleblower(s) and/or their representatives.
  - If, after reviewing the responses, a decision is still made to reject or deny the claim the Whistleblower Office will issue a final rejection or denial letter.
4. In general, a claim will be rejected if it is deemed ineligible for an award solely because of the information on the claim or the whistleblower. Some examples for reasons for a rejection include but are not limited to:
  1. The whistleblower was ineligible to file a claim,
  2. The Form 211 did not contain a credible federal tax issue,
  3. The Form 211 lacked specific/credible information,
  4. The information on the Form 211 was purely speculative in nature,
  5. The Service was unable to identify the taxpayer based on the information provided by the whistleblower, or
  6. The claim was not signed under penalties of perjury.
5. In general, a claim for award will be denied because of some reason beyond the face of the Form 211 or the whistleblower. Some examples for reasons for a denial include but are not limited to:
  1. The Service did not proceed based on the information provided by the whistleblower,
  2. The case was surveyed by the operating division,
  3. The issue(s) alleged by the whistleblower were no change issues,
  4. The issues alleged by the whistleblower were below threshold,
  5. There was no viable statute remaining on the issues raised by the whistleblower, or
  6. There were no collected proceeds.

#### 25.2.2.4.2 (08-07-2015)

##### Selecting a Claim

1. If the classifier determines the whistleblower's information warrants referral for examination, the Whistleblower Office will forward to the appropriate group or subject matter expert in accordance with the Operating Divisions' instructions :
  1. A copy of the Form 211, *Application for Award for Original Information*;
  2. Any supporting allegations or documents; and
  3. Returns requested by the classifier, if applicable.

**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 TDF 15-05.11 **Sensitive But Unclassified (SBU) Cover Sheet** as the cover sheet. All electronic transmissions must be through secure e-mail.

2. 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 Whistleblower Office will input the ICE indicator "1." The examination case cannot be closed on AIMS unless the ICE indicator is changed from a "1" to a "2". This will be completed after the Whistleblower Office has verified the revenue agent/officer has provided all of the necessary information needed to make an award determination (See IRM 25.2.2.6).
3. For SB/SE cases that are selected for examination (except claims forwarded to the SME), the Whistleblower Office will be notified to establish the AIMS control and suspend the claim for 2 weeks while AIMS is established. The Tracking Codes 7882 and 7894 will be input on all IRC 7623(a) and 7623(b) SBSE claims, respectively.
4. Cases that are selected for examination by the Operating Division SME's will be processed as directed by IRM 25.2.2.4.4.
5. The ICE Team will monitor AMDISA for the Exam closing every 120 days using the IAT Tool

#### **25.2.2.4.3 (08-07-2015)**

##### **Referring a Claim to Case Development and Oversight**

1. Claims should be referred to Case Development and Oversight (CDO) for coordination/oversight of the claim if it is determined the claim is a potential 7623(b) claim and the claim requires special handling or cross-BOD coordination. Assignment/referral will be made through the CDO Program Manager. If the Program Manager determines the claim does not require CDO coordination/oversight the claim will be returned to the ICE team for coordination/oversight.
2. The Whistleblower Office Analyst will 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. The Whistleblower Office Analyst may recommend the claim be rejected, denied, or referred to the Operating Division's Subject Matter Expert (OD's SME) for consideration.
4. If the claim will not be processed the analyst will forward a recommendation to the appropriate approving official (see IRM 25.2.2.1(7)). Upon approval, the whistleblower will be notified under IRM 25.2.2.5.1
5. After a claim is processed or sent on for consideration, the Whistleblower Office Analyst will monitor the case for IRS action, and collected proceeds attributable to the whistleblower's information (see IRM 25.2.2.1.3(4)). An 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.
6. Awards paid under IRC 7623 must be paid from collected proceeds after there has been a final determination of tax (see IRM 25.2.2.1.3(6)). The Whistleblower Office Analyst will use the information submitted by the Operating Division with the Form 11369 and may contact the Operating Division, if needed, to compute the amount of the collected proceeds attributable to the whistleblower's information.

#### **25.2.2.4.4 (08-07-2015)**

##### **Operating Division SME Responsibilities**

1. The SME will evaluate the Form 211 and accompanying information to determine whether it may materially contribute to the identification, development or resolution of taxpayer liability or collection issues. One of the roles of the SME is 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 Office 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.
2. 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, if any, identified on interactions with the whistleblower and other issues including the potential application of privileges.
3. 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. 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 decision to not to do a debrief must be specifically explained in the claim record and must be approved by the SME's manager.
  1. 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 Checklist at Exhibit 25.2.2-1 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 Office Analyst assigned to the claim.
  2. Contacts with whistleblowers who are current employees of the taxpayer, and taxpayer representatives who seek to become whistleblowers, raise additional concerns.
 

Generally, it should be assumed that, at a minimum, a current employee whistleblower 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 whistleblower 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 whistleblower in any subsequent litigation.

To avoid potential limitations on the evidentiary use of information received from current employee whistleblowers, the IRS should act as a passive recipient of information in every case in which a whistleblower 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 whistleblower. Operating Division SMEs should, however, be ready and willing to accept any and all information from a current employee whistleblower at the initial meeting between the IRS and the whistleblower.

To ensure that any adjustments dependent on information received from current employee whistleblowers cannot be successfully challenged on evidentiary grounds, the SME must coordinate the taint review with Operating Division Counsel.

Under no circumstances can a taxpayer representative who seeks to become a whistleblower continue to represent the taxpayer before the IRS. It will be the responsibility of the whistleblower 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 a whistleblower. If there is any question the SME should contact the Whistleblower Office for guidance.
  4. The SME will make a recommendation whether to pursue the lead offered by the whistleblower.



1. If the lead appears to be productive the case, including any risk analysis issued by Chief Counsel (if applicable), is forwarded for examination, the SME will notify the Whistleblower Office, and the Whistleblower Office monitors case status until the examination is resolved.
2. If the submission contains information that could enhance an existing collection case, the Whistleblower Office employee 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.
3. A COMPLETED Form 11369 is required prior to transferring the case to another area or routing to Appeals. The tax administrative file forwarded to Appeals should NOT CONTAIN any whistleblower information, evaluations etc.
5. If the Operating Division Counsel identifies potential legal risks with the use of the information, he/she will draft a risk analysis. The Operating Division Counsel's risk analysis may be reviewed by Headquarters' Chief Counsel. In rare cases, Counsel may advise the IRS not to use the information. In such cases, the Operating Division Commissioner or delegate will decide whether and how to proceed. The SME will provide a copy of the risk analysis advice provided by Counsel to the Whistleblower Office.
6. If the Operating Division decides not to proceed with using the whistleblower information based on Counsel's advice, the SME will return all documents to the Whistleblower Office along with a copy of the Operating Division's decision.
7. For returns already established on AIMS, the Whistleblower Office will input an ICE indicator "1." This prevents anyone from closing the case. **Only the ICE Team can update the "1" indicator and will only do this after instructed to do so by a Whistleblower Office Analyst.**
8. 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 recommendation will be forwarded through the Whistleblower Office Analyst to the appropriate approving official (see IRM 25.2.2.1(7)) for concurrence. Upon approval, the whistleblower will be notified under IRM 25.2.2.4.1

#### 25.2.2.5 (08-07-2015)

#### Examining a Whistleblower Claim

1. For returns already established on AIMS, the Whistleblower Office will input an ICE indicator 1. This prevents anyone from closing the case. **Only the ICE Team can update the "1" indicator and will only do this after instructed to do so by a Whistleblower Office Analyst.**
2. The examiner cannot be same person as the SME or the individual who classified the Form 211.
3. 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 Whistleblower Office 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 rises to \$2 million or more, the Whistleblower Office must be notified immediately at WO@irs.gov or (801) 620-2172.
4. Some whistleblower information, such as information that may be subject to a valid claim of privilege, may create risks if used by the IRS. This information is referred to as "tainted." If potentially tainted information is identified, at any time during the review of the whistleblower'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 Whistleblower Office's ICE Team in Ogden in a double sealed envelope along with any analysis received from Counsel regarding the use of the information.
5. The examiner/team should not contact the whistleblower for additional information. If the examiner/team determines that debriefing the whistleblower would result in information that would be material to the evaluation of the submission, the examiner/team should contact the area/industry Whistleblower Program SME to 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. The Whistleblower Office Intranet site lists the SME for each area/industry. The SME will follow IRM 25.2.2.4.4(3) to debrief the whistleblower. The SME will provide the results of the debriefing to the examiner/team.
6. Issues alleged by whistleblowers must be corroborated using independently developed information.
7. Examination should maintain a separate whistleblower claim file for storing information related to the whistleblower claim. When documenting activity, the activity record should not have any references to the whistleblower. A separate activity record should be maintained in the whistleblower claim file. The following should be stored/maintained in the whistleblower claim file:
  - Whistleblower Activity Record
  - 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, including electronic media.
  - Copies of any debriefing notes, recorded interviews, etc. held with the whistleblower and/or their representative.
  - Copies of any memorandums prepared by Counsel in regards to information submitted by the whistleblower. All tainted material should be immediately returned to the Whistleblower Office 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.
  - Copies of email and other internal communication related to the whistleblower's claim

There should be no mention or discussion of the whistleblower in the regular examination activity log, workpapers, or case file.
8. At the conclusion of the examination the whistleblower claim file must be returned to the Whistleblower Office with the Form 11369. IRM 25.2.2.6 and the accompanying subsection list additional information required to be submitted to the Whistleblower Office with the whistleblower claim file and the Form 11369.
9. If the whistleblower claim examination leads to the expansion of the audit to additional years or taxpayers, the examiner/team needs to notify the Whistleblower Office and the Operating Division SME if the Operating Division procedures require it. The Whistleblower Office will add ICE indicators to the account. If the audit is expanded to include new taxpayers, the Whistleblower Office will establish additional claims numbers for the new taxpayers.

#### Note:

Establishing ICE indicators is for tracking purposes, and does not mean that the expansion will ultimately be determined "related." The Whistleblower Office will determine if a claim is related during the award evaluation stage.

10. No information about the claim or the underlying tax matters can be discussed with the whistleblower or the whistleblower's representative. To avoid any IRC 6103 violation or other disclosure concerns, any request regarding the status of a claim should be forwarded to the Whistleblower Office.

11. If it becomes necessary to transfer a whistleblower claim to another group or area, the transferring examiner/team must submit a Form 11369 following IRM 25.2.2.6.3.
12. A completed Form 11369 is required prior to the transfer of a criminal case to civil compliance, Technical Services for Fraud Suspense, or routing to Appeals. **The tax administrative file forwarded to Appeals should NOT contain any Whistleblower information.**

**Note:**

When a case is sent to appeals the ICE indicator will be updated to a "3."

**25.2.2.6 (08-07-2015)**

**Form 11369**

1. The Form 11369 package is a tool used to inform the Whistleblower Office of the whistleblower's contributions, if any, to the examination, investigation, or other action. The form and attachments will assist the Whistleblower Office in making an award determination.
2. The Form 11369 package should explain how the whistleblower's information was used, how it did or did not contribute to the identification and/or development of issue(s), and any other information that may assist the Whistleblower Office in making an award determination.
3. A Form 11369 and narrative is required for each relevant taxpayer affected by an IRS action (audit, investigation, collection, revocation, etc.). Taxpayers are relevant to a whistleblower submission when:
  1. The whistleblower identifies the taxpayers in the claim;
  2. The whistleblower submits multiple claims identifying one or more taxpayers; or
  3. The whistleblower information is considered in a civil, criminal, or judicial proceeding involving a taxpayer other than the taxpayer(s) identified in the claim(s).

**Note:**

For jointly filed returns, one joint form should be completed.

4. A narrative fully explaining the issues identified by the whistleblower and the whistleblower's contribution, if any, to the action is **mandatory** and should be attached to each Form 11369. The narrative should include dates that significant actions were initiated.
5. A COMPLETED Form 11369 package must be submitted to the Whistleblower Office in order to have the ICE indicator updated in AIMS. A completed Form 11369 must also be submitted to the Whistleblower Office prior to transferring a whistleblower claim to another group, area, or operating division (such as CI or Appeals).
6. If the Form 11369 package is incomplete, the Whistleblower Office will:
  1. 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.
  2. The Whistleblower Office 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.
  3. For imminent statute claims that need to be closed, the ICE Unit will contact the examiner and request the missing documentation by telephone.
  4. If the agent submits an older version of the Form 11369 (any version other than the current version found in the form repository), then the out-dated Form 11369 will be returned to the Agent. The out-dated form does not provide the information needed by the Whistleblower Office for an award determination.
7. The Whistleblower Office will review the information provided on the Form 11369 to determine whether the whistleblower's information substantially contributed to an action. The Whistleblower Office 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.
8. It may take the Whistleblower Office up to 30 days to update the ICE indicator after the Form 11369 is received from examination. The ICE Indicator will not be updated until the entire claim file is reviewed and accepted by the Whistleblower Office employee assigned to the case. If a Form 11369 package is missing information, it may take longer than 30 days to update the ICE indicator.
9. The Whistleblower Office will accept the Form 11369 package electronically. However, you must return the whistleblower claim file (See IRM 25.2.2.5(5)) and any additional documents submitted during the examination or investigation to the Whistleblower Office. Electronic Submissions should be sent to ICE by faxing 855-244-3575. Within one day of faxing the information to the Whistleblower Office the complete Form 11369 package and supporting documents must be mailed to:

Internal Revenue Service  
Whistleblower Office, ICE Team  
1973 N. Rulon White Blvd. MS/ 4111  
Ogden, UT 84404

10. If the claim was initially forwarded by an analyst in the Whistleblower Office through the OD SME then the Form 11369 package should be returned to the forwarding Whistleblower Office analyst (and through the OD SME if Operating Division procedures require it). If uncertain who the Whistleblower Office analyst is or whether this applies, contact the Whistleblower Office's ICE Team at (801)620-2172

**25.2.2.6.1 (08-07-2015)**

**Form 11369 Package Examined Claims**

1. For examined claims resulting in adjustments (including a no-change with adjustments) the Form 11369 package should contain the following documentation:
  1. Form 11369 for each taxpayer (for jointly filed returns one joint form should be completed). The Form 11369 must be signed by the agent and manager assigned to the case (digital/electronic signatures are acceptable).
  2. Narratives to fully explain any contributions of the whistleblower in the case and fully document the actions taken in regard to the issues.
  3. Form 3198 *Special Handling Notice for Examination Case Processing*
  4. Full Revenue Agents Report/ Special Agent's Report including explanation of all adjusted items.

5. Signed copy of any agreement resolving the tax matters (i.e. Form 4549, 870, 870-AD or 906.)
6. Any opinions from Counsel/subject matter experts on issues attributable to the whistleblower information.
7. Copies of first four pages of each tax return and any schedules impacted by the whistleblower's information.
8. Full copy of the initial examination plan and mid-cycle revisions.
9. Workpapers, lead sheets, Form 5701 *Notice of Proposed Adjustments* and the accompanying Form 886 on all issues
10. Copy of activity record for examination/collection case.
11. Copies of any 6103 (n) contracts entered into with the whistleblower and/or explanation of extraordinary cooperation by whistleblower.
12. Any information that reflects actions by the whistleblower that may have had a negative impact on the Service's ability to examine the taxpayer(s).
13. Any other information that may assist the Whistleblower Office in making an award determination.

The above list should not be interpreted as exclusive; additional information may be sought by the Whistleblower Office depending on the facts and circumstances in order to support any award denials or payments.

2. For examined claims resulting in a straight no-change (no-change with adjustments should follow the paragraph above) the Form 11369 package should contain the following documentation:
  1. Form 11369 for each taxpayer (for jointly filed returns one joint form should be completed. The Form 11369 must be signed by the agent and manager assigned to the case (digital/electronic signatures are acceptable).
  2. Narratives to fully explain any contributions of the whistleblower in the case and fully document the actions taken in regard to the issues.
  3. Form 3198 *Special Handling Notice for Examination Case Processing*
  4. Full Revenue Agents Report/ Special Agent's Report including explanation of all adjusted items (This step item is not required if the operating division does not require RAR's for no-changes).

#### **25.2.2.6.2 (08-07-2015) Form 11369 for Surveyed Claims**

1. 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;
  - Manager Approval (Not required if surveyed by the PSP); and
  - Agent / PSP signature (Agent signature not required if surveyed before assignment).
2. The narrative must state the reason for survey. Stating or writing claim surveyed is not a reason or basis to survey the case. Reasons to survey a claim may include items such as, but not limited to:
  - Lack of resources to perform an examination;
  - Short or Expired Statute of Limitations
  - An examination is likely to result in minimal tax implications;
3. For surveyed claims involving multiple taxpayers only one Form 11369 and narrative explaining why the claim was surveyed is required.

#### **25.2.2.6.3 (08-07-2015) Form 11369 for Transferred Claims**

1. The examiner/team transferring a claim to another group must complete a Form 11369 and submit it to the Whistleblower Office. All transferred claim packages must contain:
  - Narrative explaining why the case was transferred, the destination, and contact information for the new group;
  - Copies of any relevant workpapers, activity records, or other documentation showing work related to the whistleblower's issues; and
  - Manager Approval
2. Narrative should fully explain:
  - Any contributions of the whistleblower in the case;
  - Document the actions taken in regards to the issues raised by the whistleblower; and
  - Basis for the Transfer

#### **25.2.2.7 (08-07-2015) Award Computation**

1. Effective July 1, 2008, the Director of the Whistleblower Office assumed the responsibility for all award determinations and percentages. In general, awards will be computed under the law and policies in place at the time the information was submitted. 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.

#### **25.2.2.7.1 (08-07-2015) Timing of Award Determination**

1. Whistleblower Office evaluation of information regarding an award or the amount of an award may begin when a Form 11369 is submitted to the Whistleblower Office. Tentative conclusions should be documented even though they are subject to revision as additional information becomes available. A Whistleblower Office final award determination is not made until proceeds resulting from the action(s) have been

collected and either the statutory period for filing a claim for refund has expired 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 taxpayer has waived the right to file a claim for refund.

2. When a whistleblower submission relates to multiple actions, a Whistleblower Office final award determination may be made with respect to a portion of the submission before all actions are resolved with finality, provided:
  - The statutory period for filing a claim for refund has expired 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 refund has been waived with respect to some of the actions that are within the scope of the submission ("completed action(s)");
  - The resolution of other actions cannot affect the liability and proceeds related to the "completed action(s)";
  - An award determination on the "completed action(s)" does not put at risk the whistleblower's potential appeal rights (e.g., there is no identifiable possibility that additional IRS actions could raise the aggregate amount in dispute to more than \$2 million);
  - The resolution of other actions is not expected to occur within 12 months; and
  - The expected award payment related to the "completed action(s)" exceeds \$50,000.
3. The Whistleblower Office has the discretion to aggregate or disaggregate claims as it deems necessary to efficiently administer the program.

#### **25.2.2.7.2 (08-07-2015)**

##### **Computation of Collected Proceeds**

1. **For claims filed prior to December 20, 2006**, whistleblower awards are paid out of taxes and penalties, collected by reason of the information provided. The law in effect prior to December 20, 2006, explicitly excludes interest from award calculations.
2. **For claims filed after December 20, 2006**, awards are paid out of the collected proceeds.
3. See IRM 25.2.2.1.3(4) for a definition of collected proceeds.
4. The Whistleblower Office will compute collected proceeds attributable to the whistleblower based on all information known with respect to the taxpayer's account, including with respect to all tax attributes, as of the date the computation is made.
5. The Whistleblower Office will monitor the case for collection of proceeds.
6. Once collections have been made, the Whistleblower Office will prepare a preliminary award recommendation for the designated approving official (See IRM 25.2.2.1(7)). After approval is received the Whistleblower Office will follow IRM 25.2.2 for 7623(a) claims and IRM 25.2.2 for 7623(b) claims.

##### **Note:**

**The IRS cannot make a final award determination until there has been a final determination of tax as defined in IRM 25.2.2.1.3.**

7. Post-determination proceeds. If, based on all information known with respect to the taxpayer's account as of the date of the computation described in the paragraph above, there is a possibility that the IRS may collect additional proceeds, then the Whistleblower Office will continue to monitor the case. If the Whistleblower Office identifies additional collected proceeds, then the IRS will compute and pay accordingly.
8. Partial collection. If the IRS does not collect the full amount of taxes, penalties, interest, additions to tax, and additional amounts assessed against the taxpayer, then any amounts that the IRS does collect will constitute collected proceeds in the same proportion that the adjustments attributable to the information provided bear to the total adjustments.

#### **25.2.2.7.3 (08-07-2015)**

##### **Award Computation - IRC 7623(a) Claims filed before July 1, 2010**

1. For award claims filed prior to December 20, 2006, the award will be based on the policy in effect at the time the claim was filed, with one exception relating to payment of criminal fines. 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 July 1, 2010, if the amount in dispute is less than \$2 million or if the taxpayer is an individual, and the individual's gross income is below \$200,000 for any taxable year at issue, the Service may pay an award to the whistleblower(s) based on collected proceeds. The award will be calculated as follows:
  1. 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.
  2. 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.
  3. 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.
  4. In a claim file when two or more whistleblowers individually provided original information leading to the recovery of collected proceeds from the same taxpayer, each whistleblower's claim for award should be judged on its own merits. The Whistleblower Office will determine the proceeds attributable to each whistleblower, and then compute an award in accordance with the criteria, computation formulas, and limitations stated above.
  5. If the whistleblower participated substantially in the actions that resulted in the underpayment of tax, the Whistleblower Office may deny an award.
3. *Exhibit 25.2.2-2* provides a table showing award calculations for IRC 7623(a) claims prior to July 1, 2010.

#### **25.2.2.7.4 (08-07-2015)**

##### **Award Computation - IRC 7623(a) claims filed on or after July 1, 2010 and IRC 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. In general the amount of the award will be at least 15 percent but no more than 30 percent 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 collected proceeds.

2. For claims filed on or after July 1, 2010 where the amount in dispute does not exceed \$2 million (or 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 IRC 7623 (a), using the same criteria described below for awards under IRC 7623(b).

**Note:**

Whistleblowers receiving an award under IRC 7623(a) will have an opportunity to comment on the preliminary award recommendation prior to a final decision.

3. The Whistleblower Office 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.
4. 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. If the whistleblower is convicted of criminal conduct arising from the role described in the preceding sentence, the Whistleblower Office shall deny any award.

**25.2.2.7.4.1 (08-07-2015)**

**Factors Used to Determine Award Percentage**

1. Positive factors. The application of the following non-exclusive factors may support increasing an award percentage under paragraphs (1) or (2) of IRM 25.2.2.7.4.2:
  - The whistleblower acted promptly to inform the IRS or the taxpayer of the tax noncompliance.
  - The information provided identified an issue or transaction of a type previously unknown to the IRS.
  - The information provided identified taxpayer behavior that the IRS was unlikely to identify or that was particularly difficult to detect through the IRS's exercise of reasonable diligence.
  - The information provided thoroughly presented the factual details of tax noncompliance in a clear and organized manner, particularly if the manner of the presentation saved the IRS work and resources.
  - The whistleblower (or the whistleblower's legal representative, if any) provided exceptional cooperation and assistance during the pendency of the action(s).
  - The information provided identified assets of the taxpayer that could be used to pay liabilities, particularly if the assets were not otherwise known to the IRS.
  - The information provided identified connections between transactions, or parties to transactions, that enabled the IRS to understand tax implications that might not otherwise have been understood by the IRS.
  - The information provided had an impact on the behavior of the taxpayer, for example by causing the taxpayer to promptly correct a previously-reported improper position.
2. Negative factors. The application of the following non-exclusive factors may support decreasing an award percentage under paragraphs (1) or (2) of IRM 25.2.2.7.4.2:
  - The whistleblower delayed informing the IRS after learning the relevant facts, particularly if the delay adversely affected the IRS's ability to pursue an action or issue.
  - The whistleblower contributed to the underpayment of tax or tax noncompliance identified.
  - The whistleblower directly or indirectly profited from the underpayment of tax or tax noncompliance identified, but did not plan and initiate the actions that led to the underpayment of tax or actions described in IRC 7623(a)(2) .
  - The whistleblower (or the whistleblower's legal representative, if any) negatively affected the IRS's ability to pursue the action(s), for example by disclosing the existence or scope of an enforcement activity.
  - The whistleblower (or the whistleblower's legal representative, if any) violated instructions provided by the IRS, particularly if the violation caused the IRS to expend additional resources.
  - The whistleblower (or the whistleblower's legal representative, if any) violated the terms of the confidentiality agreement described in 26 CFR 301.7623-3(c)(2)(iv).
  - The whistleblower (or the whistleblower's legal representative, if any) violated the terms of a contract entered into with the IRS pursuant to 26 CFR 301.6103(n)-2.
  - The whistleblower provided false or misleading information or otherwise violated the requirements of IRC 7623(b)(6)(C) or 26 CFR 301.7623-1(c)(3).

**25.2.2.7.4.2 (08-07-2015)**

**Amount of Award Percentage - Substantial Contribution**

1. If the IRS proceeds with any administrative or judicial action based on information brought to the IRS's attention by a whistleblower, such whistleblower shall, subject to paragraphs (2) and (3) of this IRC, receive as an award at least 15 percent but not more than 30 percent of the collected proceeds resulting from the action (including any related actions) or from any settlement in response to such action. The amount of any award under this paragraph depends on the extent of the whistleblower's substantial contribution to the action(s). See IRM 25.2.2.7.4.5 for rules regarding multiple whistleblowers.
2. Computational framework. Starting the recommended award percentage at 15 percent, the Whistleblower Office will analyze the administrative claim file using the factors listed in IRM 25.2.2.7.4.1(1) to determine whether the whistleblower merits an increased award percentage of 22 percent or 30 percent. The Whistleblower Office may increase the award percentage based on the presence and significance of positive factors. The Whistleblower Office will then analyze the contents of the administrative claim file using the negative factors listed in paragraph (2) of IRM 25.2.2.7.4.1 to determine whether the whistleblower merits a decreased award percentage of 15 percent, 18 percent, 22 percent, or 26 percent. The Whistleblower Office may decrease the award percentage based on the presence and significance of negative factors. Although the factors listed in paragraphs (1) and (2) of IRM 25.2.2.7.4.1 are described as positive and negative factors, the Whistleblower Office's analysis cannot be reduced to a mathematical equation. The factors are not exclusive and are not weighted and, in a particular case, one factor may override several others. The presence and significance of positive factors may offset the presence and significance of negative factors. The absence of negative factors does not constitute a positive factor.

3. Examples. The examples are intended to illustrate the operation of the computational framework. The examples provide simplified descriptions of the facts relating to the claims for award, the information provided, and the facts relating to the underlying tax cases. The application of IRC 7623(b)(1) will depend on the specific facts of each case.

**Example 1 Facts.** Whistleblower A, an employee in Corporation's sales department, submitted to the IRS a claim for award under IRC 7623 and information indicating that Corporation improperly claimed a credit in tax year 2006. Whistleblower A's information consisted of numerous non-privileged documents relevant to Corporation's eligibility for the credit. Whistleblower A's original submission also included an analysis of the documents, as well as information about meetings in which the claim for credit was discussed. When interviewed by the IRS, Whistleblower A clarified ambiguities in the original submission, answered questions about Corporation's business and accounting practices, and identified potential sources to corroborate the information. Some of the documents provided by Whistleblower A were not included in Corporation's general record-keeping system and their existence may not have been easily uncovered through normal IRS examination procedures. Corporation initially denied the facts revealed in the information provided by Whistleblower A, which were essential to establishing the impropriety of the claim for credit. IRS examination of Corporation's return confirmed that the credit was improperly claimed by Corporation in tax year 2006, as alleged by Whistleblower A. Corporation agreed to the ensuing assessments of tax and interest and paid the liabilities in full.

**Analysis.** In this case, Whistleblower A provided specific and credible information that formed the basis for action by the IRS. Whistleblower A provided information that was difficult to detect, provided useful assistance to the IRS, and helped the IRS sustain the assessment. Based on the presence and significance of these positive factors, viewed against all the specific facts relevant to Corporation's 2006 tax year, the Whistleblower Office could increase the award percentage to 22 percent of collected proceeds. If, however, Whistleblower A's claim reflected negative factors, for example Whistleblower A violated instructions provided by the IRS and the violation caused the IRS to expend additional resources, then the Whistleblower Office could, based on this negative factor, reduce the award percentage to 18 or 15 percent (but not to lower than 15 percent of collected proceeds).

**Example 2 Facts.** Whistleblower B, an employee of Financial Advisory Firm 1 (Firm 1), submitted to the IRS a claim for award under IRC 7623 and information indicating that Firm 1 helped clients engage in activities that were intended to, and did, result in substantial tax underpayments. The activities were designed to avoid detection by the IRS, and prior IRS audits of several clients of Firm 1 had failed to detect underpayments of tax. Whistleblower B learned of the activities after being reassigned to a new position with Firm 1. Whistleblower B provided the information to the IRS soon after he understood the scope, nature and impact of the activities. The information provided consisted of numerous documents containing client profiles and marketing strategies, as well as descriptions of the transactions and structures used by Firm 1 and its clients to obscure the clients' identities and to generate the substantial tax underpayments. Whistleblower B also provided an analysis of the documents, as well as information about meetings in which the transactions and structures were discussed. When interviewed by the IRS, Whistleblower B clarified ambiguities in the original submission, answered questions about Firm 1's execution of specific client transactions, and identified potential sources to corroborate the information provided. Whistleblower B also notified the IRS of steps taken by Firm 1 to limit the disclosure of information requested by the IRS, enabling the IRS to obtain full disclosure of the information through the targeted use of summonses. Ultimately, the IRS collected tax, penalties, and interest from Firm 1 and multiple clients. In addition, Treasury and the IRS issued a notice identifying the impropriety of the transactions and structures employed by Firm 1 and its clients.

**Analysis.** Whistleblower B provided specific and credible information that formed the basis for action by the IRS. The information provided identified transactions that were difficult to detect. Whistleblower B acted promptly after he understood the activities at issue and he provided useful assistance to the IRS. Whistleblower B's assistance, and the information he provided, helped the IRS overcome the efforts made to obscure the activities and the clients' identities. And the information provided by Whistleblower B contributed to the decision to issue the notice, which may have a positive effect on client behavior and save IRS resources. Based on the presence and significance of these positive factors, the Whistleblower Office could increase the award percentage to 30 percent of collected proceeds. If Whistleblower B directly or indirectly profited from Firm 1's and the clients' activities resulting in the tax underpayments, then the Whistleblower Office could, based on this negative factor, reduce the award percentage to 26, 22, 18 percent or 15 percent (but not to lower than 15 percent of collected proceeds).

#### 25.2.2.7.4.3 (08-07-2015)

##### Amount of Award Percentage - Less Substantial Contribution

1. If the Whistleblower Office determines that the action described in IRM 25.2.2.7.4.2 is based principally on disclosures of specific allegations resulting from a judicial or administrative hearing; a government report, hearing, audit, or investigation; or the news media, then the Whistleblower Office will determine an award of no more than 10 percent of the collected proceeds resulting from the action (including any related actions) or from any settlement in response to such action. If the whistleblower is the original source of the information from which the disclosures of specific allegations resulted, however, then the award percentage will be determined under IRM 25.2.2.7.4.2.
2. Computational framework. The Whistleblower Office will analyze the administrative claim file to determine-
  1. Whether the claim involves specific allegations regarding a tax underpayment or a violation of the internal revenue laws that reasonably may be inferred to have resulted from a judicial or administrative hearing; a government report, hearing, audit, or investigation; or the news media;
  2. Whether the action described in IRM 25.2.2.7.4.2 was based principally on the disclosure of the specific allegations; and
  3. Whether the whistleblower was the original source of the information that gave rise to the specific allegations.
4. If the Whistleblower Office determines that the action was based principally on disclosures of specific allegations, as stated in paragraph (b) above, and that the whistleblower was not the original source of the information, then, starting at 1 percent, the Whistleblower Office will analyze the administrative claim file using the factors listed in IRM 25.2.2.7.4.1(1) to determine whether the whistleblower merits an increased award percentage of 4 percent, 7 percent, or 10 percent. The Whistleblower Office will then determine whether the whistleblower merits a decreased award percentage of zero, 1 percent, 4 percent, or 7 percent using the factors listed in paragraph IRM 25.2.2.7.4.1(2) of this section. The Whistleblower Office may increase the award percentage based on the presence and significance of positive factors and may decrease (to zero) the award percentage based on the presence and significance of negative factors. Like the analysis described in IRM 25.2.2.7.4.2, the Whistleblower Office's analysis cannot be reduced to a mathematical equation. The factors are not exclusive and are not weighted and, in a particular case, one factor may override several others. The presence and significance of positive factors may offset the presence and significance of negative factors. But the absence of negative factors does not constitute a positive factor.
5. Example. The operation of this section of the IRM may be illustrated by the following example. The example is intended to illustrate the operation of the computational framework. The example provides a simplified description of the facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case(s). The application of section 7623(b)(2) and this section of the IRM will depend on the specific facts of each case.

**Example Facts.** Whistleblower A submitted to the IRS a claim for award under section 7623 and information indicating that Taxpayer B was the defendant in a criminal prosecution for embezzlement. Whistleblower A's information further indicated that evidence presented at Taxpayer B's trial revealed Taxpayer B's efforts to conceal the embezzled funds by depositing them in bank accounts of entities controlled by Taxpayer B. Taxpayer B's failure to pay tax on the embezzled funds was not explicitly stated during the judicial hearing, but could be reasonably inferred from the facts and circumstances, including Taxpayer B's efforts to conceal the funds.

**Analysis.** In this case, Whistleblower A's information is based principally on disclosures of specific allegations resulting from a judicial hearing. Absent information demonstrating that the investigation leading to the embezzlement charge was based on information provided by Whistleblower A, section 7623(b)(2) applies to the determination of Whistleblower A's award. In this case, there is no reason for the Whistleblower Office to increase the applicable award percentage above 1 percent, the starting point for its analysis, given the absence of positive factors. Accordingly, Whistleblower A may receive an award of 1 percent of collected proceeds.

**25.2.2.7.4.4 (08-07-2015)**  
**Reduction in award and denial of award**

1. If the Whistleblower Office determines that a claim for award is brought by a whistleblower who planned and initiated the actions, transaction, or events (underlying acts) that led to the underpayment of tax or actions described in section 7623(a)(2), then the Whistleblower Office may appropriately reduce the amount of the award percentage that would otherwise result under IRM 25.2.2.7.4.2 or 25.2.2.7.4.3, as applicable. The Whistleblower Office will deny an award if the whistleblower is convicted of criminal conduct arising from his or her role in planning and initiating the underlying acts.
2. Threshold determination. After determining the award percentage that would otherwise result from the application of IRM 25.2.2.7.4.2 or 25.2.2.7.4.3, as applicable, the Whistleblower Office will analyze the administrative claim file to make the threshold determination. A whistleblower planned and initiated the underlying acts if the whistleblower-
  1. Designed, structured, drafted, arranged, formed the plan leading to, or otherwise planned, an underlying act,
  2. Took steps to start, introduce, originate, set into motion, promote or otherwise initiate an underlying act, and
  3. Knew or had reason to know that an underpayment of tax or actions described in section 7623(a)(2) could result from planning and initiating the underlying act.

**Note:**

The whistleblower need not have been the sole person involved in planning and initiating the underlying acts. A whistleblower who merely furnishes typing, reproducing, or other mechanical assistance in implementing one or more underlying acts will not be treated as initiating any underlying act. A whistleblower who is a junior employee acting at the direction, and under the control, of a senior employee will not be treated as initiating any underlying act. If the Whistleblower Office determines that a whistleblower has satisfied this initial threshold of planning and initiating, the Whistleblower Office will then reduce the award amount based on the extent of the whistleblower's planning and initiating, pursuant to paragraph (3) of this section.

3. Computational framework. If the whistleblower is determined to have planned and initiated the underlying acts, then the Whistleblower Office will reduce the award based on the extent of the whistleblower's planning and initiating. The Whistleblower Office's analysis and the amount of the appropriate reduction determined in a particular case cannot be reduced to a mathematical equation. To determine the appropriate award reduction, the Whistleblower Office will:
  1. Categorize the whistleblower's role as a planner and initiator as primary, significant, or moderate; and
  2. Appropriately reduce the award percentage that would have otherwise resulted by 67 percent to 100 percent in the case of a primary planner and initiator, by 34 percent to 66 percent in the case of a significant planner and initiator, or by 0 percent to 33 percent in the case of a moderate planner and initiator. If the whistleblower is convicted of criminal conduct arising from his or her role in planning and initiating the underlying acts, then the Whistleblower Office will deny an award without regard to whether the whistleblower's role as a planner and initiator was primary, significant, or moderate.
4. Factors demonstrating the extent of a whistleblower's planning and initiating. The application of the following non-exclusive factors may support a determination of the extent of a whistleblower's planning and initiating of the underlying acts:
  1. The whistleblower's role as a planner and initiator. Was the whistleblower the sole decision-maker or one of several contributing planners and initiators? To what extent was the whistleblower acting under the direction and control of a supervisor?
  2. The nature of the whistleblower's planning and initiating activities. Was the whistleblower involved in legitimate tax planning activities? Did the whistleblower take steps to hide the actions at the planning stage? Did the whistleblower commit any identifiable misconduct (legal, ethical, etc.)?
  3. The extent to which the whistleblower knew or should have known that tax noncompliance could result from the course of conduct.
  4. The extent to which the whistleblower acted in furtherance of the noncompliance, including, for example, efforts to conceal or disguise the transaction.
  5. 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.

5. Examples. The operation of the provisions of paragraphs (2) and (3) of this section may be illustrated by the following examples. These examples are intended to illustrate the operation of the computational framework. The examples provide simplified descriptions of the facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case. The application of 25.2.2.7.4.4 will depend on the specific facts of each case.

**Example 1 Facts.** Whistleblower A is employed as a junior associate in a law firm and is responsible for performing research and drafting activities for, and under the direction and control of, partners of the law firm. Whistleblower A performed research on financial products for Partner B that Partner B used in advising a client (Corporation 1) on a financial strategy. After Corporation 1 executed the strategy, Whistleblower A submitted a claim for award under IRC 7623 along with information about the strategy to the IRS. The IRS initiated an examination of Corporation 1 based on Whistleblower A's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined.

**Analysis.** Whistleblower A did nothing to design or set into motion Corporation 1's activities. Whistleblower A did not know or have reason to know that an underpayment of tax or actions described in IRC 7623(a)(2) could result from the research and drafting activities. Accordingly, as a threshold matter, Whistleblower A was not a planner and initiator of Corporation 1's strategy, and the award that would otherwise be determined based on the application of 25.2.2.7.4.2 is not subject to reduction under 25.2.2.7.4.4.

**Example 2 Facts.** Whistleblower C is employed in the human resources department of a corporation (Corporation 2). Corporation 2 tasked Whistleblower C with hiring a large number of temporary employees to meet Corporation 2's seasonal business demands. Whistleblower C organized, scheduled, and conducted job fairs and job interviews to hire the seasonal employees. Whistleblower C was not responsible for, had no knowledge of, and played no part in, classifying the seasonal employees for Federal income tax purposes. Whistleblower C later discovered, however, that Corporation 2 classified the seasonal employees as independent contractors. After discovering the misclassification, Whistleblower C submitted a claim for award under section 7623 along with non-privileged information describing the employee misclassification to the IRS. The IRS initiated an examination of Corporation 2 based on Whistleblower C's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined.

**Analysis.** The award that would otherwise be determined based on the application of 25.2.2.7.4.2 would not be subject to a reduction under 25.2.2.7.4.4 because Whistleblower C did not satisfy the requirements of the threshold determination of a planner and initiator. Whistleblower C did not know and had no reason to know that her actions could result in an underpayment of tax or actions described in IRC 7623(a)(2) or that Corporation 2 would misclassify the employees as independent contractors.

**Example 3 Facts.** Whistleblower D is employed as a supervisor in the finance department of a corporation (Corporation 3) and is responsible for planning Corporation 3's overall financial strategy. Pursuant to the overall financial strategy, Whistleblower D and others at Corporation 3, in good faith but incorrectly, planned tax-advantaged transactions. Whistleblower D and others at Corporation 3 prepared documents needed to execute the transactions. After Corporation 3 executed the transactions, Whistleblower D reached the conclusion that the tax consequences claimed were incorrect and Whistleblower D submitted a claim for award under section 7623 along with non-privileged information about the transactions to the IRS. The IRS initiated an examination of Corporation 3 based on Whistleblower D's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined.

**Analysis.** The award that would otherwise be determined based on the application of 25.2.2.7.4.2 of this section would be subject to an appropriate reduction under 25.2.2.7.4.4 because Whistleblower D satisfies the requirements of the threshold determination of a planner and initiator. Whistleblower D planned the transactions, prepared the necessary documents, and knew that an underpayment of tax could result from the transactions. Whistleblower D was not the sole planner and initiator of Corporation 3's transactions. Whistleblower D did nothing to conceal Corporation 3's activities. Corporation 3 had a good faith basis for claiming the disallowed tax benefits. On the basis of those facts, Whistleblower D was a moderate-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Whistleblower D's award by 0 to 33 percent.

**Example 4 Facts.** Same facts as Example 3, except that Whistleblower D independently planned a high-risk tax avoidance transaction and prepared draft documents to execute the transaction. Whistleblower D presented the transaction, along with the draft documents, to Corporation 3's Chief Financial Officer. Without the further involvement of Whistleblower D, Corporation 3's Chief Financial Officer, Chief Executive Officer, and Board of Directors subsequently approved the execution of the transaction. After Corporation 3 executed the transaction, Whistleblower D submitted a claim for award under section 7623 along with non-privileged information about the transaction to the IRS. The IRS initiated an examination of Corporation 3 based on Whistleblower D's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined.

**Analysis.** The award that would otherwise be determined based on the application of 25.2.2.7.4.2 would be subject to an appropriate reduction under 25.2.2.7.4.4 because Whistleblower D satisfies the requirements of the threshold determination of a planner and initiator. Whistleblower D planned the transaction, prepared the necessary documents, and knew that an underpayment of tax or actions described in IRC 7623(a)(2) could result from the transaction. Working independently, Whistleblower D designed and took steps to effectuate the transaction while knowing that the planning and initiating of the transaction was likely to result in tax noncompliance. Whistleblower D, however, did not approve the execution of the transaction by Corporation 3 and, therefore, was not a decision-maker. On the basis of these facts, Whistleblower D was a significant-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Whistleblower D's award by 34 to 66 percent.

**Example 5 Facts.** Whistleblower E is a financial planner. Whistleblower E designed a financial product that the IRS identified as an abusive tax avoidance transaction. Whistleblower E marketed the transaction to taxpayers, facilitated their participation in the transaction, and, initially, took steps to disguise the transaction. After several taxpayers had participated in the transaction, Whistleblower E submitted a claim for award under section 7623 along with non-privileged information to the IRS about the transaction and the participating taxpayers. The IRS initiated an examination of the identified taxpayers based on Whistleblower E's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. Whistleblower E was not criminally prosecuted.

**Analysis.** The award that would otherwise be determined based on the application of IRM 25.2.2.7.4.2 would be subject to an appropriate reduction under this section because Whistleblower E satisfies the requirements of the threshold determination of a planner and initiator. Whistleblower E designed the financial product, marketed and facilitated its use by taxpayers, and knew that an underpayment of tax or actions described in IRC 7623(a)(2) could result from the transaction. Whistleblower E was the sole designer of the transaction, solicited clients to participate in the transaction, and facilitated and attempted to conceal their participation in the transaction. Whistleblower E knew that the planning and initiating of the taxpayers' participation in the transaction was likely to result in an underpayment of tax or actions described in IRC 7623(a)(2). On the basis of these facts, Whistleblower E was a primary-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Whistleblower E's award by 67 to 100 percent.

#### **25.2.2.7.4.5 (08-07-2015)**

##### **Multiple whistleblowers**

1. If two or more independent claims relate to the same collected proceeds, then the Whistleblower Office may evaluate the contribution of each whistleblower to the action(s) that resulted in collected proceeds.
  1. The Whistleblower Office will determine whether the information submitted by each whistleblower would have been obtained by the IRS as a result of the information previously submitted by any other whistleblower.
  2. If the Whistleblower Office determines that multiple whistleblowers submitted information that would not have been obtained based on a prior submission, then the Whistleblower Office will determine how much of the total proceeds are attributable to each whistleblower.
  3. The aggregate award amount in cases involving two or more independent claims that relate to the same collected proceeds will not exceed the maximum award amount that could have resulted under IRM 25.2.2.7.4.2 or 25.2.2.7.4.3, as applicable, subject to the award reduction provisions of IRM 25.2.2.7.4.4, if a single claim had been submitted.
2. 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 percent to 30 percent of collected proceeds, unless one of the reductions of award percentage provisions applies.

#### **25.2.2.8 (08-07-2015)**

##### **Whistleblower Award Determination Administrative Proceeding - 7623(a) Claims**

1. After receipt of all Forms 11369 and other necessary information from the affected IRS divisions, the Whistleblower Office may begin the award determination process.
2. An award recommendation will be prepared and communicated to the whistleblower when an assessment has been made and the earlier of the following scenarios apply:
  - Taxpayer has paid in full and RSED has expired;
  - Taxpayer has paid in full and RSED has not expired;
  - Taxpayer has made payments, but not fully paid the assessment and CSED is closed; or
  - Taxpayer has not fully paid the assessment, the recommended award amount (collected proceeds x recommended award percentage) is greater than \$50,000 and CSED is still open

##### **Note:**

The Whistleblower Office will not send the award recommendation to the whistleblower if the taxpayer has not paid in full and CSED is still open if there is a chance the award could exceed \$2 million in order to protect the whistleblower's appeal rights.

3. The award recommendation will be communicated to the whistleblower in a Preliminary Award Recommendation package containing the following documents:
  1. Preliminary Award Recommendation Letter
  2. Summary Report - The Summary Report states the amount of the recommended award and provides a brief explanation (one or two paragraphs) of the recommended award. The report will include the recommended amount of collected proceeds to be attributed to the whistleblower information, the recommended award percentage and the recommended award amount, and a brief summary of the factors the Whistleblower Office considered in reaching the award percentage recommendation. The Summary Report will discuss how the information provided affected the opening, expansion or continuation of an audit. The report may also discuss such factors as the



quality of the organization of the information provided and the quality of any factual and/or legal analysis provided. The report will discuss the presence of positive factors that warrant an increase in the award percentage and the presence of any negative factors that warrant a decrease in the award percentage. The report will contain a statement of the award percentage warranted, taking into account the extent to which the information provided substantially contributed to actions by the IRS.

3. Response to Summary Report
4. Whistleblowers are given 30 days to respond to the Preliminary Award Recommendation Letter and Summary Report. The whistleblower can respond in one of three ways with the resulting consequences:
  1. If the whistleblower takes no action. Once there is a final determination of tax for those actions that compose the award determination, the determining official of the Whistleblower Office will make a final award determination. The Whistleblower Office will send out a final determination letter package notifying the whistleblower of the determining official's determination. The award will be processed for payment as promptly as circumstances permit after: (1) the time has lapsed for the whistleblower to file a petition with the United States Tax Court or (2) the whistleblowers court case has been resolved.
  2. If the whistleblower signs, dates, and returns the Response to Summary Report agreeing to the preliminary award recommendation, accepting it as the award determination and waiving the right to appeal the award determination to the United States Tax Court, then the Whistleblower Office will begin award payment procedures under IRM 25.2.2.13 as promptly as possible.
  3. If the whistleblower submits comments to the Summary Report and does not agree with the preliminary award recommendation. The Whistleblower Office will evaluate the whistleblower's comments. Once there is a final determination of tax the determining official of the Whistleblower Office will make an award determination. The Whistleblower Office will send out a final determination letter package notifying the whistleblower of the determining official's determination. The Whistleblower Office will process the payment as promptly as circumstances permit after: (1) the time has lapsed for the whistleblower to file a petition with the United States Tax Court or (2) the whistleblower's court case has been resolved.
5. The preliminary award recommendation package and final determination letter package contains \ return information. The Whistleblower Office is authorized to disclose this return information within a whistleblower administrative proceeding.

#### **25.2.2.9 (08-07-2015)**

#### **Whistleblower Award Determination Administrative Proceeding - 7623(b) Claims**

1. After receipt of all Forms 11369 and other necessary information from the affected IRS divisions, the Whistleblower Office may begin the award determination process. The whistleblower administrative proceeding related to the award determination process begins on the date that the Whistleblower Office sends the Preliminary Award Recommendation Package.
2. The Preliminary Award Recommendation Package will be prepared and communicated to the whistleblower when an assessment has been made and the earlier of the following scenarios apply:
  - Taxpayer has paid in full and RSED has expired;
  - Taxpayer has paid in full and RSED has not expired;
  - Taxpayer has made payments, but not fully paid the assessment and CSED is closed; or
  - Taxpayer has not fully paid the assessment, the recommended award amount (collected proceeds x recommended award percentage) is greater than \$50,000 and CSED is still open

**Note:**

The Whistleblower Office will not send the award recommendation to the whistleblower if the taxpayer has not paid in full and CSED is still open if there is a chance the award could exceed \$2 million in order to protect the whistleblower's appeal rights.

3. Prior to communicating the award recommendation to the whistleblower, a committee of the Whistleblower Executive Board may be briefed regarding the award recommendation. The award recommendation will be communicated to the whistleblower in a Preliminary Award Recommendation package containing the following documents:
  1. Preliminary Award Recommendation Letter
  2. Summary Report

**Note:**

The Summary Report states the amount of the recommended award and provides a brief explanation (one or two paragraphs) of the recommended award. The report will include the recommended amount of collected proceeds to be attributed to the whistleblower information, the recommended award percentage and the recommended award amount, and a brief summary of the factors the Whistleblower Office considered in reaching the award percentage recommendation. The Summary Report will discuss how the information provided affected the opening, expansion or continuation of an audit. The report may also discuss such factors as the quality of the organization of the information provided and the quality of any factual and/or legal analysis provided. The report will discuss the presence of positive factors that warrant an increase in the award percentage and the presence of any negative factors that warrant a decrease in the award percentage. The report will contain a statement of the award percentage warranted, taking into account the extent to which the information provided substantially contributed to actions by the IRS.

3. Response to Summary Report
4. Confidentiality Agreement
5. Application for Reduced Rate of Withholding on Whistleblower Award Payment and information relating thereto.
4. Whistleblowers are given 30 days to respond to the Summary Report. The whistleblower can respond in one of four ways with the resulting consequences:
  1. If the whistleblower takes no action, then the determining official of the Whistleblower Office will make an award determination.
  2. If the whistleblower signs, dates, and returns the Response to Summary Report agreeing to the preliminary award recommendation, accepting it as the award determination and waiving the right to appeal the award determination to the United States Tax Court, then the Whistleblower Office will begin award payment procedures under IRM 25.2.2.13 as promptly as possible.
  3. If the whistleblower submits comments on the Summary Report 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 an award determination, then the determining official of the Whistleblower Office will make an award determination.
  4. If the whistleblower signs, dates, and returns the Confidentiality Agreement, then the Whistleblower Office will provide the whistleblower with a detailed award report and the administrative review opportunity described below.

5. If the whistleblower signs, dates, and returns the Confidentiality Agreement, then the Whistleblower Office will provide the whistleblower with a detailed award report, which includes the following:

1. Detailed Report Letter;

**Note:**

The Detailed Report Letter contains 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 Whistleblower Office in Washington, D.C., unless the Whistleblower Office, in its sole discretion, decides to hold the meeting at another location. The Whistleblower Office will supervise the review of the documents and whistleblowers will not be permitted to make copies of the documents.

2. Detailed Report statement; and

**Note:**

The Detailed Report states the amount of the recommended award and provides a detailed explanation of the recommended award. The report includes the recommended amount of proceeds to be attributed to the whistleblower information, the recommended award percentage, the recommended award amount, and a detailed explanation of the factors considered in making the award percentage recommendation. The report discusses the whistleblower's submission, how the provided information was used by the Service and why it was helpful, the collected proceeds based on the information provided, an award percentage analysis and a determination of award amount.

3. Response Form to Detailed Report.

6. Whistleblowers are given 30 days to respond to the Detailed Report. The whistleblower can respond in one of three ways with the resulting consequences:

1. If the whistleblower takes no action, then the determining official of the Whistleblower Office will make an award determination.
2. If the whistleblower schedules an appointment to review the documents supporting the recommendation, then the whistleblower will have 30 days from the date of the meeting to provide written comments to the Whistleblower Office. If written comments are submitted to the Whistleblower Office, the written comments will be reviewed for purposes of making an award determination; then the determining official of the Whistleblower Office will make an award determination.

**Note:**

If no written comments are submitted to the Whistleblower Office, then the determining official of the Whistleblower Office will make an award determination.

3. If the whistleblower does not schedule an appointment but does submit written comments on the Detailed Report, the comments will be reviewed for purposes of making an award determination; then the determining official of the Whistleblower Office will make an award determination.

7. 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.

8. All correspondence sent by the Whistleblower Office to a whistleblower during the whistleblower administrative proceeding as well as all correspondence, including written comments, received by the Whistleblower Office from the whistleblower in response to such correspondence will become part of the administrative claim file.

9. The determining official of the Whistleblower Office will make the award determination based on a review of the administrative claim file. If the award determination amount differs substantially from the recommended amount, prior to communicating the award determination to the whistleblower, the committee of the Whistleblower Executive Board may again be briefed. The Whistleblower Office award determination will be communicated to the whistleblower in a determination letter package containing the following documents:

1. Final Determination Letter
2. Determination Report
3. Determination - Waiver of Appeals

The Determination Report re-states the information provided in the Summary Report and, if applicable, includes a discussion addressing any comments made by the whistleblower during the award determination administrative proceeding.

The Determination Letter will advise the whistleblower of the right to seek review of the determination by the United States Tax Court (Tax Court) within 30 days of the date of the determination letter.

10. The Whistleblower Office will initiate payment actions as promptly as circumstances permit after the period for seeking Tax Court review has lapsed, when the whistleblower notifies the Whistleblower Office that the right to seek review has been waived, or when the Tax Court has issued a decision and all further judicial appeals have been waived or exhausted.

11. The Preliminary Award Recommendation package, the Summary Report, the Detailed Report and the Determination Letter package, as described above, will contain return information. The Whistleblower Office is authorized to disclose this return information, within the whistleblower administrative proceeding.

### **25.2.2.10 (08-07-2015)**

#### **Whistleblower Withholding Program**

1. Under the whistleblower withholding program, certain individuals may apply for a reduction in the rate of tax withholding applicable to awards paid to them under IRC 7623(b). This provides guidance to whistleblowers on the application process and to Internal Revenue Service personnel on the application review process. Exhibit 25.2.2-3 contains frequently asked questions and answers about the whistleblower withholding program.

#### **25.2.2.10.1 (08-07-2015)**

##### **Background**

1. Awards paid under IRC 7623 are includible in the gross income of the recipients and are subject to federal tax reporting and withholding requirements. Accordingly, the IRS withholds tax from award payments that exceed \$10,000. Generally, IRC 62(a)(21) provides that an allowable deduction for attorney fees and court costs paid by, or on behalf of, an individual whistleblower in connection with an award under IRC 7623(b) is subtracted from the individual's gross income in calculating the individual's adjusted gross income. The deduction may be claimed in the year the attorney fees and costs are paid. The amount of this above-the-line deduction, however, is limited to the amount of the award includible in the individual's gross income. Further, IRC 62(a)(21) does not allow deductions for attorney fees and court costs paid in connection with awards under IRC 7623(a).

- When the IRS pays awards – and withholds tax – it does so without knowing whether the whistleblower has entered a fee agreement with an attorney or whether the whistleblower will pay any other relevant attorney fees or court costs. The whistleblower withholding program described herein is intended to minimize the likelihood of the IRS over withholding tax from award payments to whistleblowers by providing whistleblowers with a pre-award payment opportunity to substantiate their relevant attorney fees and court costs. To be considered relevant attorney fees and court costs under this program, the attorney fees and court costs must be paid in the year of the award payment. The program is not an examination of the whistleblower and is not intended to determine the whistleblower's tax liabilities. Whether or not a whistleblower is eligible to, or does, participate in the program, a whistleblower is entitled to claim any and all allowable deductions on the whistleblower's federal income tax return and to claim a refund of any overpaid taxes.

#### **25.2.2.10.2 (08-07-2015)**

##### **Eligibility**

- Any individual receiving an award under IRC 7623(b), and entitled to claim an allowable deduction in the year of the award payment for attorney fees or court costs paid in connection with the award, is eligible to apply for reduced withholding. Individuals receiving awards under IRC 7623(a) are not eligible to apply for reduced withholding under this program.

#### **25.2.2.10.3 (08-07-2015)**

##### **Application Process**

- To apply for reduced withholding, eligible individuals must submit a Form 14693 *Application for Reduced Rate of Withholding on Whistleblower Award Payment*, including attachments, and provide all of the following information:
  - The individual applicant's name, address, taxpayer identification number, and phone number.
  - If applicable, the name, address, federal tax identification number, and phone number of applicant's authorized representative.
  - The claim number(s) assigned to the award claim(s).
  - A statement of the total amount of the deduction for attorney fees and court costs paid or to be paid in the year of the award payment by, or on behalf of, the applicant in connection with an award under IRC 7623(b), that the applicant intends to claim as a deduction on the applicant's federal income tax return.
  - Substantiation of the total amount of the deduction described above. Attorney fees may be substantiated by attaching copies of attorney fee agreements and/or bills for legal services. Court costs may be substantiated by attaching the copies of bills or court documents reflecting the payment of costs.
  - A representation that any attorney fees and costs that are substantiated, but have not yet been paid, will be paid in the same tax year that the award under IRC 7623(b) is received.
- The IRS will issue an *Application for Reduced Rate of Withholding on Whistleblower Award Payment* to every individual with a POA on file with the Whistleblower Office, that will be receiving an award payment under IRC 7623(b). An *Application for Reduced Rate of Withholding on Whistleblower Award Payment* will be forwarded at the same time that the Whistleblower Office first notifies the individual of a proposed award. The IRS will print the date on which it issues the *Application for Reduced Rate of Withholding on Whistleblower Award Payment* on the application. Individuals applying for reduced withholding must return the *Application for Reduced Rate of Withholding on Whistleblower Award Payment* to the IRS within 30 days of the date printed on the form.
- Applications may be submitted by the individual award claimant or by the individual award claimant's authorized representative. The Whistleblower Office requires a fully executed Form 2848, Power of Attorney and Declaration of Representative, before it will process an *Application for Reduced Rate of Withholding on Whistleblower Award Payment* submitted by an award claimant's representative. The person submitting the *Application for Reduced Rate of Withholding on Whistleblower Award Payment* must sign the form under penalties of perjury.
- A completed *Application for Reduced Rate of Withholding on Whistleblower Award Payment* must be submitted to the address provided on the letter notifying the whistleblower of the withholding program. Applications for reduced withholding may not be submitted electronically or by fax.

#### **25.2.2.10.4 (08-07-2015)**

##### **Application Review Process**

- Upon receipt of an *Application for Reduced Rate of Withholding on Whistleblower Award Payment*, the Whistleblower Office will promptly review and evaluate the form and all attachments. The Whistleblower Office will not consider any claimed deductions or tax attributes of the applicant other than the above-the-line deduction for attorney fees and court costs paid or to be paid in the year of the award payment by, or on behalf of, the applicant in connection with an award under IRC 7623(b).
- The Whistleblower Office may contact the applicant (or applicant's authorized representative, if applicable) if the Whistleblower Office, in its sole discretion, decides that the contact would assist its review and evaluation of the form and attachments.
- The Whistleblower Office will perform a tax compliance check of the applicant for the previous three tax years, to ensure the applicant has satisfied all applicable filing requirements. If the applicant has not satisfied all applicable filing requirements, then the Whistleblower Office will reject the application and initiate payment of the award, applying the standard withholding rate.
- If, in its sole discretion, the Whistleblower Office decides that the applicant has substantiated relevant attorney fees or court costs, then the Whistleblower Office will calculate the appropriate rate of tax withholding. The Whistleblower Office will calculate the appropriate withholding rate taking into account only the timing and amount of the above-the-line deduction for relevant attorney fees and costs. For purposes of the calculation, the Whistleblower Office will assume that the applicant falls into the highest bracketed tax rate. The Whistleblower Office's decision that the applicant has substantiated relevant attorney fees and costs is neither a determination of the applicant's entitlement to claim a deduction on the applicant's federal income tax return nor a determination of the applicant's tax liabilities. Any reduction in the rate of withholding from an award payment is at the Whistleblower Office's discretion and does not preclude the IRS from examining the applicant's tax liability for the year(s) at issue.
- If the Whistleblower Office decides that the appropriate withholding rate is lower than the standard withholding rate applicable to award payments that exceed \$10,000, then the Whistleblower Office will apply the reduced withholding rate in initiating payment of the award. The Whistleblower Office will only apply the reduced withholding rate to award payments on the award claim(s) identified on the *Application for Reduced Rate of Withholding on Whistleblower Award Payment*. In cases in which the Whistleblower Office applies a reduced withholding rate but the claimant has not yet paid the substantiated attorney fees and court costs, the IRS will not pay awards after December 1 of a calendar year and, instead, will pay awards in the next calendar year.
- The Whistleblower Office will notify the applicant (or the applicant's authorized representative, if applicable) of its decision regarding the withholding rate applied to the award.

7. Applicants will not be given an opportunity to appeal the decision of the Whistleblower Office. Nonetheless, regardless of the decision of the Whistleblower Office, applicants may claim any and all allowable deductions on their federal income tax return and may claim a refund of any overpaid taxes.

#### **25.2.2.11 (06-18-2010)**

##### **Appeal Rights under IRC 7623(b)**

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

#### **25.2.2.12 (08-07-2015)**

##### **Confidentiality of the Whistleblower**

1. The IRS will protect the identity of the whistleblower to the fullest extent permitted by the law.
2. To the extent that the IRS Whistleblower Office determines that an individual is a "whistleblower" under IRC 7623, such individual shall be deemed to be a confidential whistleblower whose identity shall be protected in accordance with IRC 6103(h) (4). Any contact made between the IRS and the whistleblower will not be a third-party contact under IRC 7602(c). (See IRM 4.11.57, *Third Party Contacts*)
3. 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 make every effort to notify the whistleblower before deciding whether to proceed in such a case.

##### **Note:**

In all instances *prior* to any disclosure of a whistleblower's identity, Counsel must be contacted. This must be done as early as possible to help ensure sufficient time to document justification and seek appropriate authorization for any such disclosure.

#### **25.2.2.13 (08-07-2015)**

##### **Award Payment Procedures**

1. Whistleblower awards are paid from collected proceeds. The Office of Management and Budget (OMB) apportions the amount of whistleblower payments based on prior year actual expenses. 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 (08-07-2015)**

##### **Roles and Responsibilities**

1. ICE Team will obtain CPB approval of the availability of funds for each award payment prior to processing the payment.
2. Revenue Financial Management (RFM) will:
  1. Produce an SF 133 based on a TIER file report for Informant Payments using CFO Vision.
  2. Transmit copies of the SF 133 to CPB and the Ogden Campus ICE Unit.
3. Corporate Performance Budget/Budget Execution Office (CPB) will:
  1. Reconcile the SF 133 with the Informant Awards tracking spreadsheet.
  2. Submit an apportionment request (SF 132) for additional amounts to OMB when actual expected award payments are expected to exceed the available funding.
  3. Approve and track all whistleblower awards prior to payment.

#### **25.2.2.13.2 (08-07-2015)**

##### **Procedures**

1. The ICE Team 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.

2. CPB will enter the amount of the request on a tracking sheet that incorporates data from the SF 133 report for Informant Payments.
3. CPB will approve the request if funding is available.
4. 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.
5. When the ICE Team 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.
6. The Ogden accounting unit will process the Account Adjustment Voucher (Form 2424) and the Manual Refund Voucher (Form 3753).
7. The Ogden IRACS team will journalize the Informant Award account (Journal 495) and the Manual Refund (Journal 515).
8. Accounting will maintain a separate file of all manual refunds issued as Whistleblower Awards to specifically issue Form 1099 MISC.
9. Form 1099 MISC will be issued to taxpayers annually (mailed by January 31). Accounting will contact the ICE Team for a list of Whistleblower Award recipients to verify proper issuance.
10. After processing Form 1099 MISC is complete, Accounting will forward a copy of the transmittal to the ICE Team and the Whistleblower Office 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 IRC 7623, including an analysis of the use of such section during the preceding year and the results of such use.

**Exhibit 25.2.2-1  
Debriefing Checksheet**

Debriefing Checksheet		
Whistleblower's Name:		
(Name of Designated Representative)		
<b>Note:</b> 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. <b>PROVIDING TRUTHFUL INFORMATION:</b> The whistleblower 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. <b>VOLUNTARY INFORMATION:</b> The whistleblower 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. <b>NOT EMPLOYEE OF THE GOVERNMENT:</b> The whistleblower 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. <b>EVALUATION OF THE INFORMATION:</b> The whistleblower 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. <b>POTENTIAL THAT AUDIT OR INVESTIGATION MAY TAKE YEARS TO RESOLVE:</b> The whistleblower 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. <b>RECORDATION OF THE INTERVIEW:</b> 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 whistleblower 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 during the debriefing. (Under the privacy laws, the notes of the interview made by Service personnel will not be available to the whistleblower or their representative.)		
7. <b>PROTECTING THE IDENTITY OF THE INFORMANT:</b> The whistleblower 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 whistleblower and their counsel of any public disclosures.)		
8. <b>AWARD AUTHORITY:</b> The whistleblower 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 provided.		
9. <b>TAXABILITY OF PAYMENTS:</b> The whistleblower was advised that all awards are taxable income. U.S. citizens and U.S. residents should be advised that taxes will be withheld, and that the entire amount of the award should be reported on his/her individual income tax return. Nonresident aliens should be advised that awards should be reported and taxes will be withheld unless exempted by a U.S. income tax treaty.		
10. <b>Contacts:</b> the whistleblower 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.		
<b>By my signature below, I certify that the above information was discussed on the dates indicated.</b>		
IRS Representative: Date:		
Whistleblower's Signature: Date:		
Representative signature Date:		

**Exhibit 25.2.2-2  
Award Calculation Computation Guidelines**

**For Submissions before 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 percent first \$75,000 5 percent next \$25,000 1 percent any additional recovery	\$ 100,000
Information (not specific) which caused the examination and 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 percent first \$75,000 2 <sup>1</sup> / <sub>1</sub> percent next \$25,000 1 <sup>1</sup> / <sub>4</sub> percent any additional recovery	\$ 100,000

FOR	THEN	Dollar Limitation not to exceed
Information that caused the investigation but was of no value in determining tax liability.	1 percent first \$75,000 1/4 percent 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 percent	\$ 2 million
Information that caused the investigation and was of value in the determination of tax liabilities although not specific.	10 percent	\$ 2 million
Information that caused the investigation but had no direct relationship to the determination of tax liabilities.	1 percent	\$ 2 million

**For Submissions on or after August 13, 2004 but before July 1, 2010, 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 percent	\$ 10 million
Information that caused the investigation and was of value in the determination of tax liabilities although not specific.	10 percent	\$ 10 million
Information that caused the investigation but had no direct relationship to the determination of tax liabilities.	1 percent	\$ 10 million

### Exhibit 25.2.2-3

#### Whistleblower Withholding Program Frequently Asked Questions

Q1	I paid attorney fees and court costs in connection with an award under IRC 7623(b). Am I eligible to apply for reduced withholding on an award payment?
A1	Yes. Allowable deductions for attorney fees and court costs paid by, or on behalf of, a whistleblower in connection with an award under IRC 7623(b) may warrant reduced withholding. A deduction for attorney fees and court costs may be claimed in the year the attorney fees and costs are paid. Whistleblowers claiming such above-the-line deductions are eligible to apply for reduced withholding. Whistleblowers claiming below-the-line deductions for attorney fees and court costs paid in connection with an award under IRC 7623(a) are not eligible to apply for reduced withholding on an award payment.
Q2	I'm entitled to claim deductions on my federal income tax return other than allowable deductions for attorney fees and costs. Am I eligible to apply for reduced withholding based on all of my deductions?
A2	No. The award withholding program provides an opportunity for the I.R.S. and whistleblowers claiming allowable above-the-line deductions for attorney fees and court costs paid in connection with an award under IRC 7623(b) to avoid potential over withholding on award payments. The program is not an opportunity to determine a whistleblower's tax liabilities. Any reduction in the rate of withholding from an award payment is at the Whistleblower Office's discretion and does not preclude the I.R.S. from examining the whistleblower's tax liability for the year or years at issue.
Q3	Will I receive a notice from the I.R.S. informing me that I am eligible to apply for reduced withholding on an award payment?
A3	Yes. If you are receiving an award under IRC 7623(b), then we will send you an <i>Application for Reduced Rate of Withholding on Whistleblower Award Payment</i> , when we first notify you of a proposed award. You should use this form to apply for reduced withholding.
Q4	When can I apply for reduced withholding on an award payment?
A4	You must apply by submitting an Application for Reduced Rate of Withholding on Whistleblower Award Payment to the I.R.S.'s Whistleblower Office within 30 days of the date the I.R.S. issued the form. This date can be found in the top right hand corner of the form.
Q5	What happens if I submit my application more than 30 days after the date on the Application for Reduced Rate of Withholding on Whistleblower Award Payment?
A5	We may not reduce the rate of withholding on your award payment. If this results in over withholding, you may be able to claim a refund on your federal income tax return.
Q6	What information do I need to provide when I apply for reduced withholding?
A6	You must provide your name, address, taxpayer identification number, and phone number. If your application is submitted by your authorized representative, then you must provide your authorized representative's name, address, federal tax identification number, and phone number. You must provide the claim number(s) assigned by the I.R.S.'s Whistleblower Office to your claim(s). These numbers can be found on correspondence sent to you by the I.R.S.'s Whistleblower Office in respect of your claim(s). Your application must state the amount of the attorney fees and costs paid or to be paid in the year of the award payment in connection with an award under IRC 7623(b) and that you intend to claim as a deduction on your federal income tax return. Your application must also substantiate the amount of attorney fees and costs that you paid or will pay in the year of the award payment. You should attach copies of fee agreements, bills, or other relevant documents. If you have substantiated the amount of attorney fees and costs that you have incurred, but you have not yet paid those costs, then your application must represent that you will pay the attorney fees and costs in the same tax year in which you receive your award. Finally, the application must be signed and dated under penalty of perjury by the individual submitting the application.
Q7	Can my authorized representative submit the application form on my behalf?
A7	Yes. Your authorized representative must, however, have a valid power of attorney on file with the I.R.S.
Q8	Can I submit the application electronically or by fax?
A8	No. Applications must be sent to the I.R.S.'s Whistleblower Office, at the address listed on the letter which notified you of the withholding program.
Q9	For what reasons might my application be rejected?
A9	Approval or rejection of your application for reduced withholding is entirely at the I.R.S.'s discretion. Upon receipt of your application, we will do a tax compliance check to make sure that you have filed your three most recent federal income tax returns. If you have not filed required returns, then we may reject your application. We may also reject your application if it does not contain all of the requested information, if it fails to substantiate the amounts you claim to have paid, or if we do not receive it within the 30-day period described in A4, above.
Q10	Will someone from the I.R.S.'s Whistleblower Office contact me to discuss my application?
A10	If we need additional information to approve or reject your application, or to compute a reduced rate of withholding, then we may contact you. Any such contacts will occur at our discretion.

Q11	When will I know if my application has been accepted?
A11	The Whistleblower Office will notify you of the decision to accept or reject your application.
Q12	Is there a way to appeal a rejection of my application?
A12	No. As described in A11, above, we will notify you of whether your application has been accepted or rejected. If your application is rejected and the I.R.S. does not apply a reduced withholding rate to your payment, but you are entitled to claim allowable deductions for attorney fees and court costs paid in connection with an award under IRC 7623(b), then you may be able to claim a refund on your federal income tax return.
Q13	Will submitting an application for reduced withholding delay the payment of my award?
A13	Since we will be forwarding the Application for Reduced Rate of Withholding on Whistleblower Award Payment to you early in the proposed award process, an application for reduced withholding should not delay the payment of an award as finally determined. However, if you submit an application for reduced withholding near the end of the 30-day period, then it is possible that our consideration of your application could delay our initiation of your award payment. Any such delay, however, will be short because we will accept or reject your application promptly. Nonetheless, we encourage you to apply for reduced withholding as soon as possible after receiving the Application for Reduced Rate of Withholding on Whistleblower Award Payment, as described in A3, above, to minimize the possibility of even a short delay in payment of your award.
Q14	Who can I contact for more information about the award withholding program?
A14	You can contact the I.R.S.'s Whistleblower Office at 202-317-3500 or WO@IRS.gov or the analyst assigned to your claim.
Q15	Why are checks not going to be mailed after December 1?
A15	The December 1 payment cutoff is intended to ensure that we don't compromise the ability of the whistleblower to pay the fees and costs in the year of the award payment.

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