

Out For Money & Blood: How to Bring a Whistleblower Case

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Panelists:

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**GREEN &
SKLARZ** LLC

Speakers



Eric Green



Walter Pagano



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Michael Villa, Jr.

Agenda

- The Whistleblower Program
- Filing a Claim
- Challenging an Award Decision

Whistleblower

The IRS will pay money to people who blow the whistle on persons who fail to pay the taxes they owe. If the IRS proceeds with an administrative or judicial action, against a taxpayer, based on information provided by the whistleblower, it can award up to 30% of the additional tax, penalty and other amounts collected, including criminal fines and civil forfeitures, and violations of reporting requirements.



History of the Whistleblower Program

- 26 USC section 7623(a) has been used since March 1867. It allowed the Secretary of the Treasury to pay amounts he deemed necessary “for detecting and bringing to trial and punishment person guilty of violating the internal revenue laws or conniving at the same.”
- Before 2006 the only change since 1867 was in 1996 which allowed payments to be made “for detecting underpayments of tax”.
- In 2006 the Tax Relief and Health Care Act of 2006 made a key change in the law adding section 7623(b). Changed program from “may pay” to “shall pay”. The new law states awards must be at least 15 but not more than 30% of collected proceeds. The new law also added whistleblower appeal rights.
- In 2018 the Bipartisan Budget Act defined proceeds, including some non-Title 26 proceeds.
- In 2019 the president signed the Taxpayer First Act into law which included changes involving the notification process to whistleblowers and made protection available against whistleblower retaliation.

Claim Process

- The whistleblower must submit IRS Form 211 "Application for Award for Original Information" that is signed and submitted under penalties of perjury.
- The Form 211 should contain the following:
 1. A description of tax noncompliance including a written narrative explaining the issue
 2. Information to support narrative such as location of assets, ledger sheets, receipts, bank records, contracts, emails, copies of books and records.
 3. Description of documents or supporting evidence not in whistleblower's possession, and their location.
 4. Explanation of how whistleblower became aware of information.
 5. Description of the whistleblowers present or former relationship to the subject of claim.

Form 211 (July 2018)	Department of the Treasury - Internal Revenue Service Application for Award for Original Information	OMB Number 1545-0409 Date Claim received Claim number (completed by IRS)
Section A – Information About the Person or Business You Are Reporting		
1. Is this <input type="checkbox"/> New submission or <input type="checkbox"/> Supplemental submission If a supplemental submission, list previously assigned claim number(s)		2. Last 4 digits of Taxpayer Identification Number(s) (e.g., SSN, ITIN, or EIN)
3. Name of taxpayer (include aliases) and any related taxpayers who committed the violation		
4. Taxpayer's address, including ZIP code		5. Taxpayer's date of birth or approximate age
6. Name and title and contact information of IRS employee to whom violation was first reported, if known		
7. Alleged Violation of Tax Law (check all that apply)		
<input type="checkbox"/> Income Tax <input type="checkbox"/> Employment Tax <input type="checkbox"/> Estate & Gift Tax <input type="checkbox"/> Tax Exempt Bonds <input type="checkbox"/> Employee Plans <input type="checkbox"/> Governmental Entities <input type="checkbox"/> Exempt Organizations <input type="checkbox"/> Excise <input type="checkbox"/> Other (Identify) _____		
8. Describe the Alleged Violation. State all pertinent facts to the alleged violation. (Attach a detailed explanation and include all supporting information in your possession and describe the availability and location of any additional supporting information not in your possession.) Explain why you believe the act described constitutes a violation of the tax laws		
9. Describe how you learned about and/or obtained the information that supports this claim. (Attach sheet if needed)		
10. What is your relationship (current and former) to the alleged noncompliant taxpayer(s)? Check all that apply. (Attach sheet if needed)		
<input type="checkbox"/> Current Employee <input type="checkbox"/> Former Employee <input type="checkbox"/> Attorney <input type="checkbox"/> CPA <input type="checkbox"/> Relative/Family Member <input type="checkbox"/> Other (describe) _____		
11. Do you still maintain a relationship with the taxpayer <input type="checkbox"/> Yes <input type="checkbox"/> No		
12. If yes to number 11, describe your relationship with the taxpayer		
13. Are you involved with any governmental or legal proceeding involving the taxpayer <input type="checkbox"/> Yes <input type="checkbox"/> No		
14. If yes to number 13, Explain in detail. (Attach sheet if needed)		
15. Describe the amount of tax owed by the taxpayer(s). Provide a summary of the information you have that supports your claim as to the amount owed (i.e. books, ledgers, records, receipts, tax returns, etc.). (Attach sheet if needed)		
16. Fill In Tax Year (TY) and Dollar Amount (\$), if known TY _____ \$ _____ TY _____ \$ _____ TY _____ \$ _____ TY _____ \$ _____ TY _____ \$ _____		
Section B – Information About Yourself		
17. Name of individual claimant		18. Claimant's date of birth (MMDDYYYY)
19. Last 4 digits of Claimant's SSN or ITIN		20. Are you currently an IRS employee <input type="checkbox"/> Yes <input type="checkbox"/> No
21. Are you the spouse or a dependent of an IRS employee <input type="checkbox"/> Yes <input type="checkbox"/> No		22. Are you currently an IRS contractor <input type="checkbox"/> Yes <input type="checkbox"/> No
23. Are you a Federal, State or Local Government employee <input type="checkbox"/> Yes <input type="checkbox"/> No		24. Address of claimant, including ZIP code
25. Telephone number (including area code)		26. Email address
27. 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		
Signature of Claimant		Date
Catalog Number 16571S		Form 211 (Rev. 7-2018)

Claims Issued, Open, and Closed 2017-2019

	2017	2018	2019
Claims Issued	11,946	12,286	11,394
Open Claims	28,197	29,198	25,314
Closed Claims	14,445	12,833	16,655

➤ In 2019 the whistleblower office closed 16,655 claims which was a 29.8% increase from 2018.

What to Expect After a Claim is Mailed

- If the information is speculative, not credible, not specific, the IRS will send the whistleblower a claim rejection.
- If the IRS decides the claim should be further investigated, it will be forwarded to a Subject Matter Expert for review.
- An expert may or may not debrief the whistleblower about the information submitted.
- On average, it is taking 5-7 years or longer to complete the claim process.





Whistleblower Office

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

December 18, 2016

Claim Number
RE: .
Contact Representative Number: 801-620-2139
(This is not a toll-free number)
Contact Address: Internal Revenue Service
1973 N Rulon White Blvd, MS 411D
Ogden, UT 84404

Dear

We received your Form 211 with the information you furnished and have assigned the above claim number(s). We will evaluate the information you provided to determine if an investigation is warranted and an award is appropriate. Please retain this notice for future reference.

It is necessary for you to provide your contact information in the event we need additional information regarding your claim or to conduct an interview.

If we initiate an investigation as a result of your information, it is important to understand that it could take several years until final resolution of all tax matters. This is especially true if the taxpayer exercises all administrative and judicial appeal rights. In addition, before we can pay an award, we must collect any additional taxes, penalties, or fines, assessed by reason of your information. Collection action could also take several years.

At the conclusion of our review and/or investigation, we will only be able to tell you whether or not the information you provided met our criteria for paying an award. Unfortunately, we cannot tell you specific details about what actions we took, if any, using the information you gave us. Internal Revenue Code Section 6103 protects the tax information of all taxpayers and prevents us from making these disclosures.

We will notify you as soon as all actions relating to your claim have been completed. Please note that we will be sending all correspondence from this office regarding this claim to you at the address you provided. If you move or change the address to which you want correspondence directed, you must inform this office in writing of the change of address. Failure to notify this office of a change of address regarding this claim could result in you not receiving time-sensitive correspondence.

Additional information about the whistleblower claim process can be found in Publication 5251, *The Whistleblower Claim Process*. Publication 5251 can be found online at IRS.gov.

Sincerely,

/s/ Layne Carver for

Joseph Hebb, Program Manager
Whistleblower Office, SPPA



Whistleblower Office

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

Date: August 17, 2019
Claim Number:
Contact Number:
(801) 620-2169
Contact Address:
Internal Revenue Service
Whistleblower Office / RCT M/S 4110
1973 N Rulon White Blvd
Ogden, UT 84404

Dear ,

We are writing to inform you that the taxpayer referenced in claim number listed above has been referred for an audit or examination. This does not mean that an audit or examination has been or will be opened.

Internal Revenue Code (IRC) section 6103(k)(13) requires that the Whistleblower Office provide this notice to you, however, IRC 6103 generally limits the Whistleblower Office from providing further information. It is important to understand that it could take several years until a determination can be reached on this claim. This notification does not mean the claim will receive an award.

Disclosure of the information contained in this letter to any person, except as authorized by USC Title 26, may be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution under IRC 7213(a)(2).

Sincerely,

/s/ Layne Carver for

Joseph Hebb, Program Manager
Whistleblower Office, SPPA

Requesting an Update

- When calling the whistleblower office, they will only tell the whistleblower if a claim is open or closed. They will **not** provide information on whether an action was taken such as an audit, or criminal investigation over the phone.
- The IRS will only provide claim information if they are responding to a written request for a Status and Stage update or as part of a determination letter. It must meet the following criteria:
 1. Request must be in writing.
 2. Whistleblower must have filed the Form 211.
 3. The request must be made by the whistleblower's agent with an executed form 2848.
 4. Must state the claim number.





WHISTLEBLOWER OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

December 4, 2019

Re: Claim Number(s):

Dear :

We received your correspondence dated October 15, 2019. Your claim is still open and under active consideration. We are unable to give you any specific information due to (Section 6103 of the Internal Revenue Code) Federal Disclosure and privacy laws that protect tax information for all taxpayers.

If you move or change the address to which you want correspondence directed, you must inform this office in writing of the change of address. Failure to notify this office of a change of address regarding this claim could result in you not receiving time-sensitive correspondence.

Additional information about the whistleblower claim process can be found in Publication 5251, *The Whistleblower Claim Process*. Publication 5251 can be found online at IRS.gov.

If you have further questions about your claim, please call or write the Whistleblower Office at the address below or call 801-620-2169.

Internal Revenue Service
Initial Claim Evaluation Team, M/S 4110
1973 N. Rulon White Blvd.
Ogden, UT 84404

Thank you for your interest in compliance with the tax laws

Sincerely,

/s/ Layne Carver for

Joseph Hebb, Program Manager
Whistleblower Office, SPPA

Awards

- The IRS will pay an award of at least 15% but not more than 30% of the proceeds collected attributable to the information submitted by the whistleblower.
- Awards will be processed as either a 7623(b) award or a discretionary 7623(a) award.
- To qualify for the IRC section 7623(b) award the information must relate to a tax noncompliance matter in which the tax, penalties, interest, additions to tax and additional proceeds in dispute exceed \$2,000,000 and relate to a taxpayer whose gross income exceeds \$200,000 for at least one of the tax years in question.
- If the submission does not meet criteria for IRC section 7623(b) than the IRS will consider it for the discretionary program under IRS section 7623(a).

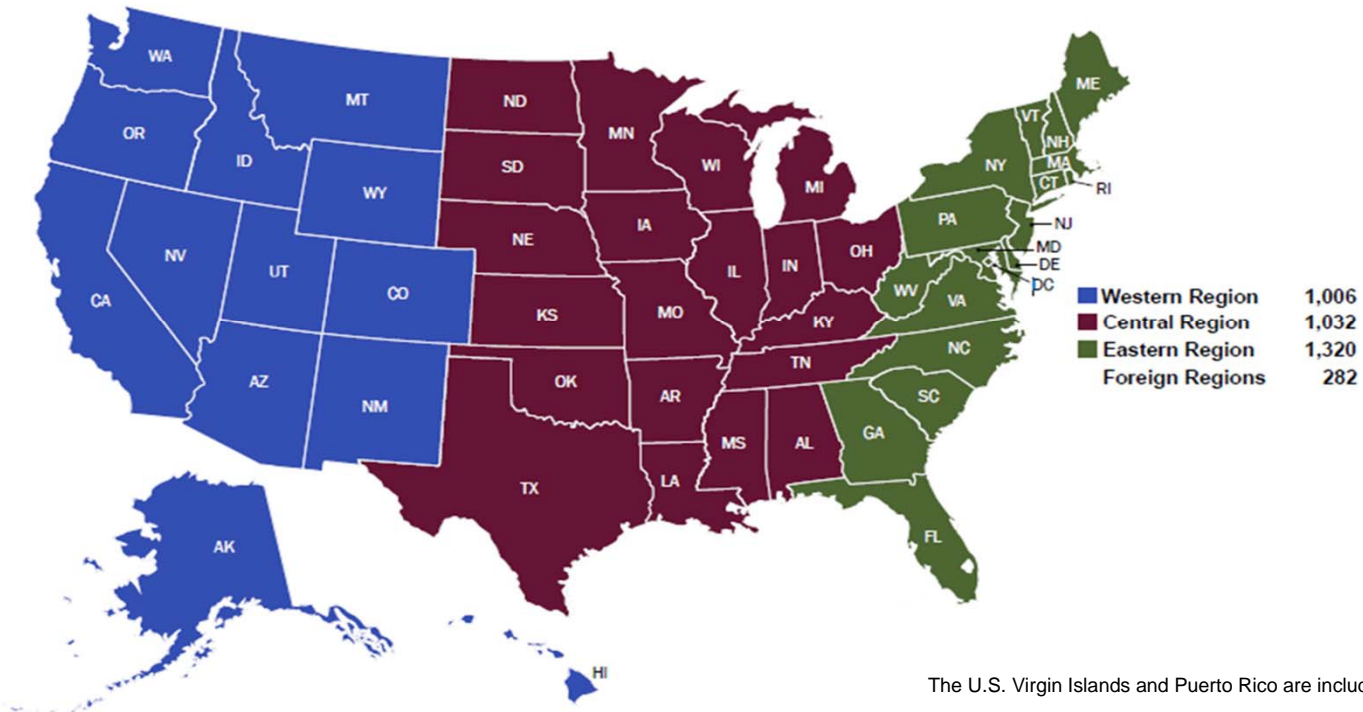


Awards Paid 2017-2019

	2017	2018	2019
Total Claims Related to Awards	367	423	510
Total Number of Awards	242	217	181
Total IRC §7623(b) Awards	27	31	24
Total Amount of Awards	\$33,979,873	\$312,207,590	\$120,305,278
Proceeds Collected	\$190,583,750	\$1,441,255,859	\$616,733,127
Awards as % of proceeds collected	17.8%	21.7%	19.5%

- In 2019 the IRS made 181 awards totaling \$120,305,278 which is 19.5% of total amounts collected.

Number of Whistleblowers by Geographic Region



Whistleblower Office

- In 2019 the whistleblower office staff comprised of 37 employees
- The whistleblower office will respond in writing to the address the whistleblower provided.
- The office will notify the Whistleblower when a case they provided information on has been referred for audit or examination.
- Since 2007 the whistleblower office made awards of \$931.7 million based on collection of \$5.7 billion.

Reasons for Closure

- The 4 most common reasons for closures were:
 1. Rejected claims with non-credible or speculative allegation
 2. Decided not to pursue claim due to quality of claim information, statute of limitations is too short for enforcement action, or lack of credibility.
 3. Issues below threshold for IRS action.
 4. Claims denied due to the examination resulting in a no change.
- In 2019, nearly 51% of claims rejected due to allegations not being specific, or credible.

Challenging the Decision

- United States Tax Court has jurisdiction over challenges on whistleblower awards under Rule 13(b)
- When petitioning the court, check “Notice of Determination under Section 7623 Concerning Whistleblower Action”
- IRS has discretion on which claims it pursues, and you don’t get paid if it doesn’t collect any proceeds

Cline vs Commissioner (3/16/20)

- P filed two whistleblower claims with the Whistleblower Office (“WO”) of the Internal Revenue Service (“IRS”).
- The first claim alleged that a taxpayer failed to report income for 2012 and 2013. It was denied by the WO because the information provided did not result in the collection of any proceeds by the IRS.
- The second claim alleged that a taxpayer fraudulently failed to report income from business activity for 2016 and possibly also for other years. It was rejected by the WO for failing to provide specific and credible information regarding tax underpayments or violations of internal revenue laws.
- Held: The WO did not abuse its discretion when it denied P’s first claim and rejected P’s second claim.

Lewis vs. Commissioner (4/8/2020)

- R determined P is entitled to a whistleblower award under I.R.C. sec. 7623.
- P argues that R abused his discretion in the computation of his award by excluding reported, paid tax from the collected proceeds and by determining that there was no possibility of future proceeds relating to the deceased target taxpayer's estate.
- P also argues that R abused his discretion by reducing his award pursuant to the budget sequester provisions of the Budget Control Act of 2011
- Held: The amendments to I.R.C. sec. 7623 in the Bipartisan Budget Act of 2018, Pub. L. No. 115-123, sec. 41108(a), 132 Stat. at 158, apply to the determinations of the Whistleblower Office (WO) until the whistleblower award can no longer be further challenged in court or elsewhere.
- Held, further, the WBO did not abuse its discretion when it determined that the sequestration provisions in effect for the year of payment would apply to P's whistleblower award.

IRS Final Authority Over Tax Due

Apruzzese v. Commissioner, T.C., No. 12151-17W, 10/21/19

- Two whistleblowers claimed that an estate omitted and undervalued assets on federal estate and gift tax returns.
- Based on the whistleblowers' information, the IRS examined several tax returns and adjusted the tax due on the estate tax and gift tax returns. It assessed tax and interest of \$424,019.
- The whistleblower office issued a preliminary award of \$43,424 to each claimant.
- The whistleblower disagreed with the proposed award. He essentially argued that the tax due should have been higher and resulted in a higher award. The whistleblower office disagreed and the award remained the same.
- One of the whistleblowers filed a petition in Tax Court and argued that the tax adjustments were too low and was seeking to have the court to recalculate the tax or order the IRS to re-examine the taxpayer.
- The Tax Court ruled that while the court had jurisdiction to review the award determination, it did not have the authority to review the underlying determinations regarding the alleged tax liability and granted the government's motion for summary judgment.

Questions

