

**Fiscal Year 2013 Report to the Congress  
on the Use of Section 7623**

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## **FY 2013 Report to Congress on the Use of Section 7623**

### **I. Executive Summary**

The Tax Relief and Health Care Act of 2006 (the Act) enacted significant changes in the IRS award program for whistleblowers. For information provided to the IRS after December 19, 2006, new section 7623(b) of the Internal Revenue Code (the Code) generally requires the IRS to pay awards if information an individual provides substantially contributes to the collection of tax, penalties, interest, and other amounts when the amounts in dispute are more than \$2,000,000. The law set award ranges based on percentages of the collected proceeds, and established a Whistleblower Office within the IRS to administer those awards.

The Secretary of the Treasury must conduct an annual study and report to Congress on the use of section 7623 and the results obtained, and include any legislative or administrative recommendations for section 7623 and its application (section 406(c) of the Act). This report discusses program activities for fiscal year (FY) 2013. It includes a review of the law and regulations applicable to whistleblower awards, changes made in program administration since the Act, a description of internal and external program guidance, administrative priorities, and data on awards paid.

The primary purpose of the Act was to encourage people with knowledge of significant tax noncompliance to provide that information to the IRS. The IRS continues to receive submissions from whistleblowers, many of whom claim to have inside knowledge of the transactions they are reporting. They often provide extensive documentation to support their claims.

The IRS pays awards from collected proceeds which result from an audit or investigation. Because payments are not made until the taxpayer has exhausted all appeal rights and the statutory period for the filing of a claim for refund has expired or been waived by the taxpayer, the IRS may not make payments for several years after the whistleblower has filed the claim. The IRS paid the first awards under the 2006 amendments in FY 2011, and continued to do so since then; however, most of the awards paid during FY 2013 resulted from claims filed under the prior law.

## II. Program History

### A. Prior Law and Policy

The IRS has had the authority to pay awards to whistleblowers for many years. What is now section 7623(a)<sup>1</sup> of the Code has its origins in legislation Congress enacted in 1867. The original law provided the Secretary with the authority “to pay such sums as he deems necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same.” Before 1996, the IRS made payments from appropriated funds. In 1996, section 1209 of the Taxpayer Bill of Rights 2 (PL 104-168) expanded the purposes for which the IRS may pay awards, adding “detecting underpayments of tax” as a basis for making an award and changed the source of funds from IRS operating funds to proceeds of amounts collected from the taxpayer (other than interest).<sup>2</sup>

Before the 2006 amendments to section 7623, awards to whistleblowers were discretionary, and IRS policy determined the amount.<sup>3</sup> The policy provided a framework for assessing the contribution of the information to the collection of proceeds from a taxpayer, and allowed for awards of 1 percent, 10 percent, or 15 percent of proceeds. The published policy set a cap on awards at \$10,000,000, but the IRS waived this cap from time to time under “special agreements” with a whistleblower.

The Internal Revenue Manual (IRM) provided several grounds for rejecting a claim for award, including participation in the evasion scheme that was the subject of the report the whistleblower provided. Other common reasons for rejecting claims included:

- The information provided was of no value<sup>4</sup>.
- The IRS already had the information or the information was available in public records.
- No collection of taxes and penalties existed from which the IRS could pay an award.

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<sup>1</sup> The 2006 amendments re-designated the prior section 7623 as section 7623(a), added new provisions as section 7623(b), and included program administration requirements that were not incorporated into the Internal Revenue Code. The appendix to this report reprints section 7623, as amended, as well as additional provisions in the Act that Congress did not incorporate into the Code.

<sup>2</sup> The IRS has separate authority to pay informant expenses from appropriated funds available for confidential criminal investigation expenditures. The IRS makes those payments under authorities delegated to Criminal Investigation and they are not within the scope of the Whistleblower Office or this report to Congress.

<sup>3</sup> Regulations implementing what is now section 7623(a) appear at Code of Federal Regulations Title 26, section 301.7623-1. The last version of the policy issued prior to the 2006 amendments was published in 2004, as Policy Statement P-4-27. The policy was revised in FY 2010, through revisions of the Internal Revenue Manual that were described in the FY 2010 Annual Report. The FY 2010 Annual Report can be found at [http://www.irs.gov/pub/whistleblower/annual\\_report\\_to\\_congress\\_fy\\_2010.pdf](http://www.irs.gov/pub/whistleblower/annual_report_to_congress_fy_2010.pdf).

<sup>4</sup> The information might be of no value because it did not provide a sufficient basis for initiating an examination or investigation of the issue presented, or because the examination resulted in a “no change” finding.

## **B. 2006 Amendments**

The Tax Relief and Health Care Act of 2006 (section 406) (PL 109-432) created section 7623(b) of the Code. This section set a new framework for the consideration of whistleblower submissions and established the Whistleblower Office within the IRS to administer that framework. Operating at the direction of the Commissioner of the IRS, the Whistleblower Office coordinates with other divisions of the IRS, analyzes information submitted, and makes award determinations. The statute provides that the Whistleblower Office may investigate the claim itself or assign it to the appropriate IRS office for investigation. The Whistleblower Office does not currently investigate claims itself.

A whistleblower must meet several conditions to qualify for the section 7623(b) award program.<sup>5</sup> To qualify for a whistleblower award, the information must:

- Relate to a tax noncompliance matter in which the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed \$2,000,000; and
- Relate to a taxpayer, and for individual taxpayers only, one whose gross income exceeds \$200,000 for at least one of the tax years in question.

If the information meets the above conditions and substantially contributes to a decision to take administrative or judicial action that results in the collection of tax, penalties, interest, additions to tax, or additional amounts, the IRS will pay an award of at least 15 percent, but not more than 30 percent, of the collected proceeds resulting from administrative or judicial actions (including related actions), or from any settlement in response to an administrative or judicial action. The maximum award percentage decreases to 10 percent for cases based principally on specific allegations disclosed in certain public information sources (such as government audit reports). The Whistleblower Office also can reduce the percentage if the whistleblower planned and initiated the actions that led to the underpayment of tax. Individuals may appeal the Whistleblower Office's award determinations under section 7623(b) to the U.S. Tax Court.

## **III. Program Developments**

### **A. Staffing**

At the beginning of FY 2013, the Whistleblower Office staff of 36 included 12 senior analysts with decades of experience in a broad array of IRS compliance programs. In addition, the IRS Office of Chief Counsel has appointed a senior attorney to serve as Special Counsel to the Director of the Whistleblower Office. The Special Counsel provides legal advice to the Director and coordinates support provided by other Chief Counsel offices. At year end, the total staff of the Whistleblower Office was 39 (reflecting a net increase of 3 senior analysts), and it was actively recruiting four additional staff members.

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<sup>5</sup> If the submission does not meet the criteria for section 7623(b) consideration, the IRS may consider it for an award under the pre-Act discretionary authority (what is now section 7623(a) of the Code).

## **B. Program Guidance**

On December 18, 2012, a Notice of Proposed Rulemaking was published in the Federal Register<sup>6</sup>. The proposed regulations provide a comprehensive framework for receipt of whistleblower submissions, evaluation of the contribution of whistleblower information to IRS actions, and determination of awards under section 7623. Among other topics, the proposed regulations provide definitions of key terms, eligibility criteria, evaluation criteria, and payment procedures. Written public comments were submitted through February 19, 2013, followed by a hearing on April 10, 2013. Final regulations are expected to be published in the second quarter of FY 2014.

## **C. Program Operations**

The Whistleblower Office evaluates the submissions it receives to determine whether the information offered may materially contribute to the assessment or collection of unpaid taxes, penalties, interest, or other amounts. If an audit or investigation is conducted based on the information a whistleblower provides, the Whistleblower Office will determine whether an award is payable under either 7623(a) or 7623(b) and the amount of any award.

In FY 2011, the Whistleblower Office paid the first claims under section 7623(b). Since then, nine claims have been paid under the revised law. Taxpayer privacy laws do not permit the publication of data on specific claims unless there has been a waiver of privacy rights, and allow reporting on consolidated data only when the number of claims paid is large enough to produce a statistical report.

The number of payments made under the section 7623(b) program is not projected to grow dramatically in FY 2014. As discussed, it typically takes five to seven years to analyze, investigate and/or audit, and collect proceeds. At each stage in the tax administration process, taxpayers have rights to challenge IRS findings, including administrative and judicial appeals. The incentive for taxpayers to exercise those rights increases as the amounts in dispute get larger, which can mean a longer timeline for whistleblower submissions alleging larger dollar noncompliance.

[Table 1](#) in the Appendix provides current and historical information on claims received, including the total number of claims received for each fiscal year and the number of those claims that are open. As a general rule, the number of claims represents the number of taxpayers identified in submissions, so that a submission identifying 100 taxpayers is counted as 100 claims. Record keeping procedures for claims received prior to FY 2007 varied. The pre-2007 column includes data recorded in the Whistleblower Office tracking system, and does not capture all claims submitted during those years. It does, however, account for all open claims for those years.

[Table 2](#) in the Appendix provides data on all submissions and claims received in FY 2013. In previous annual reports, the IRS reported only the number of claims received that were designated as potential 7623(b) claims—those that appeared to have the potential to meet the \$2 million amount in dispute threshold. As was explained in the

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<sup>6</sup> <https://www.federalregister.gov/articles/2012/12/18/2012-30512/awards-for-information-relating-to-detecting-underpayments-of-tax-or-violations-of-the-internal>

FY 2012 Annual Report, the designation as a “potential 7623(b) claim” is unreliable, because it requires speculation on the results of IRS actions involving one or more taxpayers that will often not be known for years. This report identifies the IRS operating divisions to which the claims are assigned for review and action, which provides more useful information on where the work is being done within the IRS. The “potential 7623(b) claim” designation was still in use during FY 2013, so that data is included in Table 2.

Matters involving taxpayers with assets of more than \$10 million are under the jurisdiction of the Large Business and International Division, while matters involving businesses and individuals that do not meet that threshold are typically assigned to the Small Business/Self-Employed Division. These two operating divisions receive the vast majority of whistleblower claims. Criminal Investigation receives referrals from the operating divisions if developments during an examination indicate potential criminal violations, as well as a limited number of direct referrals from the Whistleblower Office.

[Table 3](#) in the Appendix identifies claims closed in FY 13, including the year of receipt and the reason for closure. As with Table 1, pre-2007 receipts are consolidated. Closure reason definitions changed in late FY 12, permitting the Whistleblower Office to collect more detailed information on the reasons for claim denial. Arraying the data by fiscal year of claim receipt shows that the largest number of award paid-in-full cases was for claims received in 2009, consistent with the admonition to whistleblowers that awards are typically not paid until five to seven years after receipt of the submission. Claims closed in the year of receipt or the subsequent year accounted for 78% of closures. The most common reasons for denial were unclear or non-specific allegations, issues that were below the threshold for IRS actions, and allegations that did not identify a tax issue.

[Tables 4](#) and [5](#) provide current status information for claims that were designated as potential 7623(b) claims. As is noted above, the designation as potential 7623(b) claims is unreliable, as it requires speculation on actions that can take years to complete. Future reports will focus on status of claims based on operating division assignment, but the transition in data collection and verification necessary to make this change is still in process.

[Table 6](#) in the Appendix provides current and historical information on claims paid. The number and amount of awards paid each year can vary significantly, especially when a small number of high-dollar claims are resolved in one year. In FY 2013, the IRS paid 122 awards, totaling \$55 million. As in previous years, most of the awards paid were based on claims covered by the pre-2006 law. The IRS has paid nine awards under the 2006 amendments since 2011, but the number for each year has not been segregated from other award payments to protect taxpayer and whistleblower privacy.

In April 2013, the Whistleblower Office issued a notice regarding the impact of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. This law required reductions in expenditures, also known as “sequestration,” starting March 1, 2013. As applied to payments under section 7623, the required reductions were 8.7 percent of the amount that would otherwise have been payable. Reductions totaling \$464,706 were applied to awards paid on or after March 1, 2013.

## D. Outreach and Communications

The IRS has developed a communications plan to address outreach to both the public and IRS personnel on changes in the whistleblower program. The plan includes efforts to identify opportunities for improvement and potential barriers to change.

The Whistleblower Office maintains a page on the IRS Intranet to make information available to IRS personnel, and provides articles for internal newsletters and speakers for professional education events to reach employees who are most likely to deal with a whistleblower case.

A dedicated page on the public website, [www.irs.gov](http://www.irs.gov)<sup>7</sup>, contains information for the public about the purpose of the Whistleblower Program, how to make a submission, and what to expect after making a submission, as well as links to Notice 2008-4 and Form 211. The Whistleblower Office makes presentations describing program developments and to obtain outside perspectives on the program to professional groups involved in the representation of taxpayers and whistleblowers, including Taxpayers Against Fraud and the American Bar Association Tax Section. The Whistleblower Office has also been consulted by other federal agencies and the tax administration agencies of other nations, as they evaluate options for establishing their own whistleblower award programs.

## IV. Administrative Priorities and Issues

The Whistleblower Office continues to work with the IRS Office of Chief Counsel and Treasury Department to develop appropriate administrative program guidance. Based on the Whistleblower Office's experiences in administering the whistleblower program since its formation in 2007, the IRS has identified several areas it believes should be addressed through administrative guidance and as well as other issues.

### A. Administrative Priorities

#### 1. Guidance

A top priority is to update formal published guidance for section 7623. As is noted in the previous section, the IRS has proposed comprehensive regulations that will revise the current regulations implementing section 7623 to reflect the 2006 amendments to the statute. Final regulations are expected to be published in the second quarter of FY 2014.

### B. Other Issues of Interest

A number of additional issues exist in the administration of the Whistleblower Program.

- 1. Rules on access to and disclosure of taxpayer information could provide stronger protection for taxpayers.** A whistleblower can appeal any determination on an award under section 7623(b)(1), (2), or (3) of the Code to the Tax Court (section 7623(b)(4) of the Code). A meaningful right to appeal

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<sup>7</sup> <http://www.irs.gov/compliance/article/0,,id=180171,00.html>



to Tax Court requires disclosure to the whistleblower of the basis for the award determination, which often will include taxpayer information that is protected from disclosure under section 6103. Consistent with section 6103(h), the IRM and the proposed regulations provide for disclosure of taxpayer information by the IRS to the whistleblower if the whistleblower enters into a confidentiality agreement and agrees not to disclose the information other than as permitted in that agreement.

The FY 2010 Annual Report noted two concerns regarding the disclosure of taxpayer information to the whistleblower as part of an award determination. First, current law does not provide an effective sanction if the whistleblower discloses taxpayer information in violation of the confidentiality agreement and section 6103(h). Second, the whistleblower may, against the wishes of the taxpayer, disclose the identity of the taxpayer in a Tax Court or other judicial proceeding. The taxpayer is not a party to any dispute between the IRS and a whistleblower over eligibility for or the amount of an award under section 7623, but in the past both pleadings and court decisions in these cases routinely included details about the taxpayer. This second concern was addressed in a revision to Tax Court rules, which now require that taxpayer information be masked in documents filed with the Court. However, release of information during discovery in Tax Court proceedings is not addressed in the new rules and has brought a new set of concerns.

In cases brought before the Tax Court, whistleblowers who challenge IRS decisions on their award claims continue to raise questions about the separate decisions made regarding the taxpayer's liability, and seek information through pre-trial discovery on those decisions. While the Tax Court has ruled in a few cases that its jurisdiction to consider whistleblower award claim appeals does not include the authority to order IRS action with respect to taxpayer liability, the scope of permitted discovery is still an open question. The ability of the IRS to successfully resist overbroad or otherwise improper whistleblower discovery requests related to taxpayer liability issues is unclear and an area of concern. There appears to be no effective sanction, and no effective restraint, when a whistleblower obtains confidential taxpayer information in discovery and chooses to release that information to the public.<sup>8</sup> It is fundamentally unfair to the taxpayer, whose issues with the IRS have been fully resolved, to have confidential information revealed in a case where the taxpayer is not a party and has no interest—other than in the protection of its private taxpayer information. The President's Budget for FY 2014 included a legislative proposal to address this issue.

**2. The law does not provide for whistleblower protection.**<sup>9</sup> Unlike other laws that encourage whistleblowers to report information to the government, section 7623 does not prohibit retaliation against the whistleblower. When the

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<sup>8</sup> This issue was included in the FY 2010 report.

<sup>9</sup> This issue was included in the FY 2010 report.

whistleblower is an employee of the taxpayer, retaliation can take the form of a job-related action. In other cases, whistleblowers may face threats of physical harm or damage to economic interests. In such cases, whistleblowers reporting information under section 7623 may have recourse under state law, but federal law does not appear to provide a remedy. The President's Budget for FY 2014 included a legislative proposal to address this issue.

The IRS has, as a matter of policy and as an application of section 6103, committed to protect a whistleblower's identity, and even the fact that the agency received whistleblower information in a particular case. This commitment is qualified; however, as the IRS tells whistleblowers it may identify them if they are an essential witness in a judicial proceeding or if ordered to do so by a court of competent jurisdiction. Despite the IRS's commitment to protect whistleblower identities, litigation has highlighted a tension between the IRS's commitment to whistleblowers and its obligations in civil discovery. Certain litigants have sought information on informant involvement in tax matters even in cases where the government did not identify the whistleblower as a potential witness at trial. The appropriate response to such a request should be to neither confirm nor deny informant involvement, because a truthful denial in some cases will allow individuals to draw a conclusion in other cases. The authority to take this approach is premised in case law, however, and an adverse ruling on a discovery request could open the door to fishing expeditions to identify whistleblower involvement and targeted requests to determine whether particular individuals made whistleblower submissions.

**3. There are statutory and computational limitations to determining what constitutes "collected proceeds."** The FY 2010 Annual Report highlighted issues related to the definition of collected proceeds. Taxpayer audits and investigations are sometimes resolved in a manner that does not result in collected proceeds from which an award may be paid. This can occur when the taxpayer has a net operating loss carryback or carry forward. In addition, if a taxpayer is prosecuted for a criminal violation of the internal revenue laws, a sentence after conviction may include fines. Criminal fines are not available to pay awards under section 7623 because the Victims of Crime Act (42 U.S.C. section 10601 et seq.) requires that all criminal fines be deposited in the Victims of Crime Fund.

The Whistleblower Office has identified another area where recoveries from taxpayers cannot be used to pay awards under section 7623. The IRS is responsible for administering internal revenue laws under Title 26 of the United States Code. The IRS has also been delegated responsibility to administer other laws, such as those related to the Bank Secrecy Act and Foreign Bank Account Reports (FBARs). The IRS has used FBAR penalties as an important component in its efforts to combat use of offshore bank accounts to evade U.S. tax obligations. However, those laws appear in Title 31 of the United States Code, which also provides for a separate award program for information that leads to the identification of violations. The authority to pay awards under

section 7623 extends only to recoveries under title 26, and does not permit awards to be paid based on collection of FBAR penalties.

**4. The dollar amount thresholds for “gross income” and “amounts in dispute” should be clarified.**<sup>10</sup> Section 7623(b)(5) sets two thresholds for application of section 7623(b), which also serve to define the jurisdiction of the U.S. Tax Court to review whistleblower award determinations. The general rule applicable to all claims requires that “the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed \$2,000,000.” The law also provides that subsection (b) shall apply “in the case of any individual [taxpayer], only if such individual’s gross income exceeds \$200,000 for any tax year....” Because neither term is defined in the statute, there is uncertainty in both the administration of the whistleblower program and in determining whether the U.S. Tax Court has jurisdiction to consider an appeal.

The “individual’s gross income” limitation was apparently included in the law to ensure that the focus of the award program under section 7623(b) is on relatively high income taxpayers. In the absence of a definition, the IRS must look to other provisions of the Internal Revenue Code to determine how to calculate “gross income.” This may require complex calculations in cases where allocation of partnership income or other similar issues apply. The IRS questions whether this effort is intended or justified, given that failure to satisfy the gross income threshold generally shifts the claim from a mandatory section 7623(b) claim to a discretionary section 7623(a) claim. To the extent that the individual income threshold was intended to provide a limit on U.S. Tax Court jurisdiction, the practical impact appears to be limited. Few cases involving individual taxpayers exceeding the \$2,000,000 threshold do not have at least one taxpayer whose income exceeds \$200,000 or at least one taxpayer that is not an individual.

Similar concerns pertain to the \$2,000,000 “amount in dispute” threshold. Section 7623(b)(5)(B) requires that “the tax, penalties, interest, additions to tax, and additional amounts in dispute” must exceed \$2,000,000. The term “in dispute” is not defined in the law, the legislative history, or elsewhere in the Internal Revenue Code, nor does the law or legislative history indicate the point at which the amount in dispute is determined. An allegation by a whistleblower does not create a dispute between the IRS and a taxpayer, nor does the amount asserted by the whistleblower to be owed by a taxpayer satisfy the statutory threshold. The IRS requires that the dispute in question be between the IRS and one or more taxpayers (or persons who may be required to pay penalties or “other amounts”). In cases where action is taken on multiple taxpayers as a result of information provided by a whistleblower, the IRS aggregates the disputed amounts of multiple taxpayers to determine whether the \$2,000,000 threshold has been exceeded.

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<sup>10</sup> This issue was included in the FY 2010 report.

The IRS and whistleblowers would have greater certainty about the application of section 7623(b) if the “gross income” and “amount in dispute” thresholds were replaced by a reference to a threshold that can be reasonably ascertained, such as the amount of collected proceeds.

**5. The Whistleblower Office has limited information about the extent of the whistleblower’s contribution in some criminal cases.**<sup>11</sup> In some criminal cases, information available to the Whistleblower Office on the extent of the whistleblower’s contribution may be limited by grand jury secrecy rules. The Whistleblower Office is not allowed to review and consider grand jury information protected from disclosure under the Federal Rules of Criminal Procedure, unless an exception to the secrecy rules is granted on a case-by-case basis. Without that information, it may not be possible for the Whistleblower Office to independently assess the extent of the whistleblower’s contribution when making a determination regarding an award under section 7623.

## **VI. Appendices**

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<sup>11</sup> This issue was included in the FY 2010 report.

## ***Revised Section 7623 and other provisions of law***

### **A. Revised 26 USC Section 7323**

TITLE 26 - INTERNAL REVENUE CODE

Subtitle F - Procedure and Administration

CHAPTER 78 - DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

Subchapter B - General Powers and Duties

Sec. 7623. Expenses of detection of underpayments and fraud, etc.

(a) In General- The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for -

(1) detecting underpayments of tax, or

(2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same,

in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts collected by reason of the information provided, and any amount so collected shall be available for such payments.

(b) Awards to Whistleblowers-

(1) IN GENERAL- If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.

(2) AWARD IN CASE OF LESS SUBSTANTIAL CONTRIBUTION-

(A) IN GENERAL- In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action, taking into account the significance of the individual's information and the role of such individual and any legal representative of such individual in contributing to such action.

(B) NONAPPLICATION OF PARAGRAPH WHERE INDIVIDUAL IS ORIGINAL SOURCE OF INFORMATION- Subparagraph (A) shall not apply if the information resulting in the

initiation of the action described in paragraph (1) was originally provided by the individual described in paragraph (1).

(3) REDUCTION IN OR DENIAL OF AWARD- If the Whistleblower Office determines that the claim for an award under paragraph (1) or (2) is brought by an individual who planned and initiated the actions that led to the underpayment of tax or actions described in subsection (a)(2), then the Whistleblower Office may appropriately reduce such award. If such individual is convicted of criminal conduct arising from the role described in the preceding sentence, the Whistleblower Office shall deny any award.

(4) APPEAL OF AWARD DETERMINATION- Any determination regarding an award under paragraph (1), (2), or (3) may, within 30 days of such determination, be appealed to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).

(5) APPLICATION OF THIS SUBSECTION- This subsection shall apply with respect to any action--

(A) against any taxpayer, but in the case of any individual, only if such individual's gross income exceeds \$200,000 for any taxable year subject to such action, and

(B) if the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed \$2,000,000.

(6) ADDITIONAL RULES-

(A) NO CONTRACT NECESSARY- No contract with the Internal Revenue Service is necessary for any individual to receive an award under this subsection.

(B) REPRESENTATION- Any individual described in paragraph (1) or (2) may be represented by counsel.

(C) SUBMISSION OF INFORMATION- No award may be made under this subsection based on information submitted to the Secretary unless such information is submitted under penalty of perjury.'

## **B. Other provisions of Section 406 of the Tax Relief and Health Care Act of 2006**

(a)(2) ASSIGNMENT TO SPECIAL TRIAL JUDGES-

(A) IN GENERAL- Section 7443A(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking 'and' at the end of paragraph (5), by re-designating paragraph (6) as paragraph (7), and by inserting after paragraph (5) the following new paragraph:

(6) any proceeding under section 7623(b)(4), and'.

(B) CONFORMING AMENDMENT- Section 7443A(c) is amended by striking 'or (5)' and inserting '(5), or (6)'.

(3) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES- Subsection (a) of section 62 (relating to general rule defining adjusted gross income) are amended by inserting after paragraph (20) the following new paragraph:

'(21) ATTORNEYS FEES RELATING TO AWARDS TO WHISTLEBLOWERS- Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any award under section 7623(b) (relating to awards to whistleblowers). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of such award.'

(b) Whistleblower Office-

(1) IN GENERAL- Not later than the date which is 12 months after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance for the operation of a whistleblower program to be administered in the Internal Revenue Service by an office to be known as the 'Whistleblower Office' which--

(A) shall at all times operate at the direction of the Commissioner of Internal Revenue and coordinate and consult with other divisions in the Internal Revenue Service as directed by the Commissioner of Internal Revenue,

(B) shall analyze information received from any individual described in section 7623(b) of the Internal Revenue Code of 1986 and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office, and

(C) in its sole discretion, may ask for additional assistance from such individual or any legal representative of such individual.

(2) REQUEST FOR ASSISTANCE- The guidance issued under paragraph (1) shall specify that any assistance requested under paragraph (1)(C) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under paragraph (1)(A). No individual or legal representative whose assistance is so requested may by reason of such request represent himself or herself as an employee of the Federal Government.

(c) Report by Secretary- The Secretary of the Treasury shall each year conduct a study and report to Congress on the use of section 7623 of the Internal Revenue Code of 1986, including--

(1) an analysis of the use of such section during the preceding year and the results of such use, and

(2) any legislative or administrative recommendations regarding the provisions of such section and its application.

(d) Effective Date- The amendments made by subsection (a) shall apply to information provided on or after the date of the enactment of this Act.

**Table 1: Claims Received, by Fiscal Year of Receipt.**

The table below provides information on claims recorded in the Whistleblower Office information system, by fiscal year of receipt. There are often multiple claims associated with a single whistleblower submission, because the submission identifies more than one taxpayer. The table includes the number of claims received each year, and the number of those claims that were open as of the date of the report.

In 2009, the Whistleblower Office began using a new information system, and began applying rules to account for multiple taxpayers identified in a single whistleblower submission. The significant increase in claims from 2008 to 2009 is attributable in part to this change in record keeping rules. The pre-2007 column includes claims that were recorded in the new information system—it does not include pre-2007 claims that were closed before the Whistleblower Office began using the new information system in 2009.

**Claims Received By Fiscal Year of Receipt**

|                       | Pre-2007 | 2007 | 2008 | 2009 | 2010  | 2011 | 2012 | 2013 | Total |
|-----------------------|----------|------|------|------|-------|------|------|------|-------|
| Total Claims Received | 1177     | 1463 | 1923 | 6991 | 13155 | 8084 | 9239 | 9268 | 51390 |
| Claims Open           | 799      | 1373 | 1060 | 2025 | 6253  | 2308 | 3095 | 5417 | 22330 |



**Table 2: Fiscal Year 2013 Receipts, by Operating Division**

Whistleblower claims are assigned to one of the IRS operating divisions or to Criminal Investigation, based on characteristics of the taxpayers identified by the whistleblower. For example, taxpayers with assets of more than \$10 million are generally under the jurisdiction of the Large Business and International Division, while matters related to tax exempt bonds are under the jurisdiction of the Tax Exempt and Government Entities Division. A claim initially assigned to LB&I, SBSE or TEGE may be referred to Criminal Investigation if development of the case by the civil operating division reveals a potential criminal violation. The Whistleblower Office also makes a limited number of direct referrals to Criminal Investigation, such as cases where the allegations relate to illegal source income or other matters where development by a civil operating division would be unnecessary or inappropriate. The operating division is not specified for some claims because there may be more than one operating division with responsibility for issues identified in the submission.

The table includes data on whistleblower submissions and claims associated with those submissions. As a general rule, multiple claim numbers are assigned when the submission identifies multiple taxpayers. The table also identifies the claim type. Claims listed as 7623(b) appear to have the potential to exceed the \$2 million threshold for amount that defines 7623(b) claims in the law, with all others classified as 7623(a) claims. As has been noted in previous reports, the Whistleblower Office has concluded that distinguishing between potential 7623(a) claims and potential 7623(b) claims during the initial evaluation of whistleblower submissions is misleading, and is discontinuing the practice. The actual amount in dispute cannot be known until an examination or investigation is completed. Classification during initial evaluation based on the potential results is speculative at best.

**Fiscal Year 2013 Receipts, by Operating Division**

| Operating Division |             | Claim Type |         | Grand Total |
|--------------------|-------------|------------|---------|-------------|
|                    |             | 7623(a)    | 7623(b) |             |
| CI                 | Submissions | 44         | 35      | 79          |
|                    | Claims      | 86         | 234     | 320         |
| LB&I               | Submissions | 175        | 209     | 384         |
|                    | Claims      | 326        | 998     | 1324        |
| SBSE               | Submissions | 3090       | 79      | 3169        |
|                    | Claims      | 6919       | 285     | 7204        |
| TEGE               | Submissions | 204        | 20      | 224         |
|                    | Claims      | 322        | 45      | 367         |
| Not Specified      | Submissions | 199        | 12      | 211         |
|                    | Claims      | 241        | 16      | 257         |
| Total Submission   |             | 3712       | 355     | 4067        |
| Total Claims       |             | 7894       | 1578    | 9472        |

### ***Table 3: Fiscal Year 2013 Closures, by Fiscal Year of Receipt***

In the summer of fiscal year 2012, the Whistleblower Office modified its information system to capture additional information on the reasons for closing claims. The table below reports the closing reasons for claims closed in fiscal year 2013. For all claims other than those listed as “award paid in full,” the claim was denied.

There are sometimes multiple reasons for closing a claim, such as limited time remaining on the applicable statute of limitations and insufficient resources to pursue the matter because of higher priority work in the unit to which the claim is assigned. In those cases, one reason is noted in the automated claim record based on the facts and circumstances presented.

When a submission identifies multiple taxpayers, different closing reasons could be applicable to different taxpayers identified in the same submission, based on the results of IRS actions regarding each taxpayer. There may be an award paid with respect to one taxpayer, and a “no change” result with respect to another.

The closing reasons distinguish between examinations that find no additional taxpayer liability, and those in which a liability was found on issues other than those identified by the whistleblower. Awards are paid if the information provided by the whistleblower is the basis for assessment and collection of tax. When the information provided by the whistleblower has no relevance to the assessments, the claim is denied and the “Examination Result on Whistleblower Issues Was ‘No Change’ ” closing reason applies.

The data in this table was collected during a period of transition from old definitions to new ones. When the Whistleblower Office found that the “other” closing reason was used more often than expected, it provided additional training and guidance on the information needed to properly apply the closing reason definitions. The Whistleblower Office will continue to examine trends in closing reasons, and may adjust definitions or add definitions to provide a more complete picture of action taken on whistleblower information.

## Reasons for Fiscal Year 2013 Closures

| Reason  | Fiscal Year of Claim Receipt |           |            |            |            |            |             |             | Total       |
|---|------------------------------|-----------|------------|------------|------------|------------|-------------|-------------|-------------|
|   | Pre-2007                     | 2007      | 2008       | 2009       | 2010       | 2011       | 2012        | 2013        |             |
| Award Paid in Full in 2013  | 40                           | 9         | 14         | 51         | 15         | 1          |             |             | 130         |
| Allegations Unclear/Non Specific  |                              |           | 38         | 15         | 51         | 131        | 759         | 813         | 1807        |
| Issues Below Threshold for IRS action   |                              |           |            | 4          | 35         | 59         | 247         | 618         | 963         |
| Information Already Known   | 121                          | 1         | 1          | 1          | 7          | 14         | 554         | 148         | 847         |
| Lack of Resources/Other Priorities  |                              |           |            |            | 6          | 9          | 40          | 11          | 66          |
| Examination Result Was "No Change"  | 1                            | 1         | 11         | 31         | 34         | 59         | 25          |             | 162         |
| Examination Result on Whistleblower Issues Was "No Change"                    |                              | 7         | 7          | 1          | 8          | 30         | 5           |             | 58          |
| No Collected Proceeds   | 56                           | 3         | 3          | 16         | 16         | 23         | 16          | 2           | 135         |
| No Tax Issue  | 3                            |           | 6          | 37         | 46         | 45         | 217         | 562         | 916         |
| Insufficient Time Remaining on Statute of Limitations                         |                              |           |            | 12         | 42         | 50         | 43          | 48          | 195         |
| Statute of Limitations Expired Before Whistleblower Information Was Submitted | 2                            |           |            | 7          | 16         | 12         | 53          | 144         | 234         |
| Closed - Other  | 4                            | 3         | 24         | 51         | 57         | 95         | 235         | 613         | 1082        |
| <b>Total</b>  | <b>227</b>                   | <b>24</b> | <b>104</b> | <b>226</b> | <b>333</b> | <b>528</b> | <b>2194</b> | <b>2958</b> | <b>6595</b> |

#### ***Table 4: Current status for open 7623(b) claims***

The chart below provides information on the status of open claims identified as potentially exceeding the \$2,000,000 threshold for section 7623(b). These claims are identified during initial review of submissions by the Whistleblower Office, and then forwarded to subject matter experts (SMEs) in the IRS operating divisions. The SMEs determine whether the whistleblower information will be provided to field offices for audit or investigation, considering the quality of the information provided, IRS enforcement priorities and, in some cases, legal limitations on the use of the information submitted. Once information is provided to a field office, it may be incorporated into an on-going audit or investigation, a new audit or investigation may be started, or it may be deferred or declined in favor of higher priority cases or issues. Upon completion of an audit or investigation, or after a decision by an SME or a field office not to act on the information provided by the whistleblower, the file is returned to the Whistleblower Office. The Whistleblower Office determines whether a whistleblower is eligible for an award and, if so, the amount of the award.

The tables below include a category called “Whistleblower Office-Case Suspended.” Action on claims may be suspended for several reasons. These reasons include waiting for collection action after tax has been assessed, waiting for the taxpayer to exhaust or waive appeal rights, and waiting for action on related cases. A related case suspension would be appropriate when a whistleblower submission identifies multiple taxpayers, and the IRS decides to take action on some but not others. The declined cases would be suspended until the actions on other taxpayers are resolved. Another reason to suspend for related cases would be that actions have been completed on some taxpayers, but the amount in dispute is below the \$2,000,000 threshold for section 7623(b). Suspending action to determine whether additional actions could push the aggregate amount in dispute over the threshold preserves the whistleblower’s potential Tax Court appeal right. Prior to August 8, 2012 information system changes, the Whistleblower Office could not record the reason for suspension within the information system in a way that would permit statistical reporting. Those system changes now permit collection and reporting on this information going forward, but require over 20,000 record changes to update previously recorded claims with the new data fields. The table below reflects application of the additional reasons for suspension in 32 percent of the total number of suspended claims. The Whistleblower Office is continuing to update records on the remaining claims to reflect the reason for suspension.

**Status of Open 7623(b) Claims**  
(as of 3/6/14)

| <b>Current Status</b>   | <b>Submissions</b> | <b>Taxpayers</b> | <b>Whistleblowers</b> | <b>Claim #s</b> |
|---|--------------------|------------------|-----------------------|-----------------|
| Not specified   | 7                  | 16               | 7                     | 16              |
| Taxpayer has sought review by IRS Appeals   | 62                 | 195              | 54                    | 165             |
| CI Initial Review Prior to Accepting for Investigation  | 15                 | 257              | 13                    | 255             |
| Operating Division Field Examination  | 730                | 2753             | 554                   | 2532            |
| Operating Division Subject Matter Expert Review   | 56                 | 111              | 44                    | 107             |
| Whistleblower Office - Award Evaluation   | 3                  | 4                | 3                     | 3               |
| Whistleblower Office - Case Suspended   | 125                | 4804             | 82                    | 4722            |
| Whistleblower Office - Case Suspended: OD Evaluating Bulk Claim Involving a Large Number of Taxpayers                                   | 25                 | 508              | 5                     | 443             |
| Whistleblower Office - Case Suspended: Awaiting Collection Action   | 31                 | 82               | 30                    | 74              |
| Whistleblower Office - Case Suspended: Whistleblower Litigation Regarding Award Determination   | 5                  | 11               | 5                     | 10              |
| Whistleblower Office - Case Suspended Payment Received, Awaiting Expiration of Statute of Limitations on Taxpayer Claim for Refund      | 29                 | 201              | 28                    | 161             |
| Whistleblower Office - Case Suspended: Related Claims Still in Process  | 173                | 2134             | 124                   | 1984            |
| Whistleblower Office - Case Suspended for Resolution of TEFRA Key Case  | 8                  | 63               | 5                     | 60              |
| Whistleblower Office - Reviewing Results of Field Action To Determine Whether There is Sufficient Information to Make an Award Decision | 377                | 674              | 294                   | 621             |
| Whistleblower Office - Initial Review   | 75                 | 379              | 71                    | 378             |
| <b>Total</b>  | 1721               | 12192            | 1320                  | 11531           |

**Table 5: Days in current status for open 7623(b) claims**

The table below reflects the number of days in current status from the date that the claim cleared the previous status. For example, the time that a claim is in operating division Field Examination is measured from the date operating division subject matter expert review was completed. The data collection used to generate this data did not consider the possibility that a claim may not move through the process linearly. For example, the claim reported as “longest” in operating division subject matter expert status was transferred for consideration of a field examination after completion of a criminal investigation.

As previously discussed, the Whistleblower Office has significantly revised the information system to begin collecting data that will account for circumstances such as the return of a claim for further review. Changes were also made in the definition of the “Whistleblower Office – Award Evaluation” status, and four new “Whistleblower Office – Suspended” statuses were added, as described in the text accompanying Table 4. The information system revisions to reflect these changes require manual updates to thousands of records, and are expected to be complete in FY 2014. Table 5 does not yet reflect these changes. After these updates are completed, future reports will more accurately capture the current time in status.

**Days in Current Status, 7623(b) Claims**  
(as of 3/6/14)

| <b>Current Status</b>   | <b>Average Days</b> | <b>Longest Days</b> | <b>Shortest Days</b> |
|---|---------------------|---------------------|----------------------|
| Taxpayer has sought review by IRS Appeals   | 250                 | 1422                | 7                    |
| CI Initial Review Prior to Accepting for Investigation  | 96                  | 385                 | 24                   |
| Operating Division Field Examination  | 317                 | 2407                | 1                    |
| Operating Division Subject Matter Expert Review   | 190                 | 1125                | 0                    |
| Whistleblower Office - Award Evaluation   | 90                  | 236                 | 12                   |
| Whistleblower Office - Case Suspended   | 270                 | 611                 | 1                    |
| Whistleblower Office - Case Suspended: Awaiting Collection Action   | 159                 | 538                 | 5                    |
| Whistleblower Office - Case Suspended: Whistleblower Litigation Regarding Award Determination   | 163                 | 447                 | 7                    |
| Whistleblower Office - Case Suspended Payment Received, Awaiting Expiration of Statute of Limitations on Taxpayer Claim for Refund      | 243                 | 828                 | 9                    |
| Whistleblower Office - Case Suspended: Related Claims Still in Process  | 380                 | 1220                | 2                    |
| Whistleblower Office - Case Suspended for Resolution of TEFRA Key Case  | 469                 | 527                 | 37                   |
| Whistleblower Office - Reviewing Results of Field Action To Determine Whether There is Sufficient Information to Make an Award Decision | 263                 | 1553                | 1                    |
| Whistleblower Office - Initial Review   | 64                  | 405                 | 5                    |

**Table 6: Awards Paid, Fiscal Years 2009 to 2013**

The table below includes data on awards paid and collections attributable to whistleblower information in those cases. The year in which an award is paid is generally not the year in which the collections occurred, because the IRS must wait until the taxpayer appeal rights have been waived or exhausted. All awards paid through FY 2010 were paid under section 7623(a), the pre-amendment law governing award claims. FY 2011 through FY 2013 awards paid include nine awards paid under 7623(b).

In FY 2013, the total award payments were reduced by \$464,706, as required by the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, for awards paid on or after March 1, 2013. The total award amount before reductions was \$53,519,630, representing 14.6% of total amounts collected.

**Amounts Collected and Awards Paid under Section 7623  
FY 2009-2012**

|  | 2009          | 2010          | 2011         | 2012          | 2013          |
|--|---------------|---------------|--------------|---------------|---------------|
| <b>Awards Paid</b>                                       | 110           | 97            | 97           | 128           | 122           |
| <b>Collections over \$2,000,000</b>                      | 5             | 9             | 4            | 12            | 6             |
| <b>Total Amount of Awards Paid</b>                       | \$5,851,608   | \$18,746,327  | \$8,008,430  | \$125,355,799 | \$53,054,302  |
| <b>Amounts Collected</b>                                 | \$206,032,872 | \$464,695,459 | \$48,047,500 | \$592,498,294 | \$367,042,420 |
| <b>Awards paid as a percentage of amounts collected.</b> | 2.8%          | 4.0%          | 16.7%        | 21.2%         | 14.6%         |