Practice

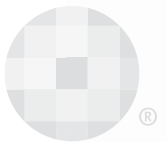
By Charles P. Rettig

Whistleblower Awards and the Bank Secrecy Act: Mutually Exclusive?

Tax whistleblowers provide valuable leads and often offer unique insights to compliance-challenged taxpayers. The IRS must act promptly when receiving specific and credible information regarding tax compliance issues when that information can be corroborated through examination activity. In these situations, the IRS Whistleblower Office is charged with processing financial awards to people who provide information about the tax indiscretions of others.

If the IRS uses information provided by the whistleblower, Code Sec. 7623 and recently finalized Treasury Regulations authorize payments to the whistleblower of up to 30 percent of the additional tax, penalty and other amounts collected or refund denied![1] In FY 2012, the IRS received 332 submissions identifying 671 taxpayers that, based on the face of the submissions, appear to meet the Code Sec. 7623(b) criteria. In its 2011 annual report to Congress, the IRS Whistleblower Office revealed a significant drop in the number of claims submitted from previous years. In FY 2011, the IRS received 314 submissions identifying 734 taxpayers under Code Sec. 7623, well below the 472 and 422 submissions received for the 2009 and 2010 years, respectively (identifying 2,178 and 5,545 taxpayers for 2009 and 2010, respectively).

The 2012 annual report noted that as of December 10, 2012, the IRS whistleblower program had 1,449 outstanding submissions awaiting resolution (up from 1,176 outstanding submissions in 2011). Average wait times included 117 days (down from 131 days) for an open claim to receive initial review by the Whistleblower Office; 424 days (up from 299 days) for an examination by the field; 260 days (down from 328 days) for review involving a subject matter expert; 233 days (up from 200 days) for appeals; 61days (down from 842 days) for review by the Criminal Investiga-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tion division; and 1,141 days (up from 285 days) for an award evaluation. There were 128 awards paid in FY 2012 aggregating $125,355,799 on $592,498,294 (21.2 percent) of amounts collected. The 2012 annual report notes ongoing changes within the Whistleblower Office intended to accelerate the award review process. Timely and comprehensive evaluation by the IRS of information provided by whistleblowers is essential to the success and integrity of this program.

At the beginning of FY 2012, the Whistleblower Office staff of 18 included 10 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. In January 2012, the Small Business/Self-Employed (SB/SE) Division transferred the Informant Claims Examination (ICE) Unit to the Whistleblower Office. This group of 13 employees is responsible for case management and administration of the discretionary award program under what is now Code Sec. 7623(a).

When the Whistleblower Office was established in 2007, its primary focus was on implementing the 2006 amendments to Code Sec. 7623, and it had no formal role in case management or award determinations for claims filed under the prior law. In 2008, the IRS delegated authority to approve Code Sec. 7623(a) awards to the Director of the Whistleblower Office, and increasing coordination of activities between the ICE Unit and the Whistleblower Office made the transfer of staff and functions a logical step in the evolution of the program.

The primary purpose of Code Sec. 7623 is to encourage people with knowledge of significant tax noncompliance to provide that information to the IRS. However, although ongoing tax-related enforcement actions have generated payment of considerable penalties associated with violations of the Bank Secrecy Act (the "BSA"),[2] in a Memorandum for Stephen A. Whitlock, Director of the IRS Whistleblower Office, IRS Counsel determined that these BSA-related recoveries may not be considered for purposes of computing the amount of the award under Code Sec. 7623 (the "Counsel Memo").[3]

Some have stated that the Counsel Memo has misinterpreted the plain language of Code Sec. 7623 (a) and (b), asserting that both subsections extend broadly beyond the confines of Title 26 and provide more bases for whistleblower awards than IRS Counsel addresses.[4] Additionally, they assert that IRS Counsel has failed to consider the legislative purpose motivating Congress's expansion of the IRS Whistleblower Program, and has not interpreted the law in accordance with similar whistleblower laws, such as the False Claims Act, which indicate a much broader construction favoring whistleblowers and the public policies and goals of the law.[5]

IRS Statutory and Delegated Authority

The IRS has general statutory authority to administer and enforce internal revenue laws pursuant to Code Sec. 7803(a)(2)(A) ("The Commissioner [of the IRS] shall have such duties and powers as the Secretary [of the Treasury] may prescribe, including the power to – administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party.").[6] In addition, Treasury has delegated specific responsibilities to the IRS associated with implementing the Bank Secrecy Act (BSA), 31 U.S.C. §§5311–5332. These responsibilities include investigating criminal violations of the BSA, granting exemptions from BSA reporting requirements, disseminating copies of reports and ensuring that financial institutions not examined by bank supervisory agencies comply with BSA requirements.[7] Treasury also has delegated authority under 18 U.S.C. §§1956 and 1957 to the IRS to investigate money laundering violations where the underlying conduct is subject to investigation under Title 26 or the BSA, and has delegated related seizure and forfeiture authority to the IRS.[8]

IRS Authority Under Code Sec. 7623

Code Sec. 7623(a) authorizes payment of awards for information that leads to the detection of "underpayments of tax" or violations of "the internal revenue laws." This statute derives from legislation that Congress enacted in 1867 authorizing the Secretary 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."[9] The substance of Code Sec. 7623 remained substantially unchanged until 1996[10] when it was amended to (1) add detecting "underpayments of tax" as a basis for making an award, and (2) change the source of funds for award payments from government agency appropriations to proceeds of amounts collected from the taxpayer (other than interest).[11]

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As amended in 1996, Code Sec. 7623 provided: "The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for— (1) detecting underpayments of tax, and (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 (other than interest) collected by reason of the information provided, and any amount so collected shall be available for such payments."[12]

Congress again amended Code Sec. 7623 in 2006 by adding subsection 7623(b), directing payment of awards to whistleblowers in cases where the IRS proceeds with an administrative or judicial action based on the whistleblower's information and recovers funds as a result of the action or through settlement.[13] In such cases, the whistleblower should 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)."[14]

Statutory Limitations

There are currently two basic types of whistleblower awards. Pursuant to Code Sec. 7623(b)(1), if the taxes, penalties, interest and other amounts in dispute exceed $2 million, and a few other qualifications are met, the IRS will pay 15 percent to 30 percent of the amount collected. If the noncompliant taxpayer is an individual, their annual gross income must exceed $200,000.[15] There is no limit on the dollar amount of the award. A reduced award amount of up to 10 percent is available in cases based principally on disclosure of specific allegations resulting from (1) judicial or administrative hearings, (2) a governmental report, hearing, audit or investigation, or (3) the news media.[16] The award is reduced if the whistleblower "planned and initiated" the noncompliance, and the award is to be denied if the whistleblower is convicted of criminal conduct arising from their role in planning and initiating the noncompliance.[17] Awards are subject to appeal to the U.S. Tax Court.[18]

Code Sec. 7623 Does Not Define the Term "Internal Revenue Laws"

Code Sec. 7623 provides that the IRS can make a whistleblower award leading to detection of (1) "underpayments of tax," or (2) violations of "internal revenue laws."[19] The Counsel Memo determined that the plain language of the term "underpayments of tax" relates solely to tax laws[20] and that the legislative history behind Code Sec. 7623 makes clear that Congress intended the statute to apply solely to violations of tax laws.[21] In 1996, for instance, Congress added "detecting underpayments of tax" as a basis for making whistleblower awards to clarify that information pertaining to civil, as well as criminal, violations can form the basis of an award. Because Congress used the specific language "underpayments of tax" to make this clarification, when these congressional reports refer to "violations," the Counsel Memo determines that they can only be referring to tax violations. Specifically, that Congress intended the statute's original language regarding violations of "internal revenue laws" to refer to violations (both civil and criminal) of tax laws. Some have asserted that the term "internal revenue laws" should be broadly interpreted and had Congress intended to limit claims to violations of tax laws, the language relating to "internal revenue laws" would not have been included in Code Sec. 7623.

Congressional Reports pertaining to the 2006 amendments to Code Sec. 7623 seem to support that Congress intended the statute to apply to violations of tax laws.[22] Further, while neither Code Sec. 7623 nor any other Code provision specifically defines the term "internal revenue laws," the Counsel Memo cites use of the term throughout the Code, various court opinions and other relevant sources as supporting a conclusion that "internal revenue laws" refers to tax laws under Title 26 or its predecessors.[23] Accordingly, on the face of the statute, and given its legislative history and the meaning of its terms under Title 26 and other authority, the Counsel Memo concludes that Code Sec. 7623 allows the IRS to make whistleblower awards relating solely to violations of tax laws under Title 26. Specifically, the Counsel Memo concludes that Code Sec. 7623 does not authorize whistleblower awards based on the detection of violations of non-tax laws, such as those under Titles 18 and 31 over which the IRS has delegated authority.

Do "Collected Proceeds" Under Code Sec. 7623 Include Amounts Unrelated to a Tax Liability?

Code Sec. 7623 provides that any award for information related to underpayments of tax or violations

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of internal revenue laws "shall be paid from the proceeds of amounts collected by reason of the information provided."[24] The statute then explains that such "collected proceeds" from which an award should be paid include "penalties, interest, additions to tax, and additional amounts."[25]

"Collected proceeds" are the funds the IRS obtains directly from a taxpayer(s), which are based upon the information the whistleblower has provided. Effective February 22, 2012, Reg. §301.7623-1 defined "amounts collected and collected proceeds" as including tax, penalties, interest, additions to tax and additional amounts collected by reason 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. Criminal fines, which must be deposited into the Victims of Crime Fund, cannot be used for payment of whistleblower award.

The terms "penalties," "additions to tax" and "additional amounts" have a specific meaning under the Code that does not extend beyond the definition of "tax." Code Sec. 6665 states that "any reference in this title to 'tax' imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by [chapter 68]." [26] Neither Code Sec. 7623 nor its legislative history seems to contain any indication that Congress intended the terms "penalties," "additions to tax" and "additional amounts" to have a meaning different than that established in Code Sec. 6665 as applicable to the entire Code. "Penalties," "additions to tax" and "additional amounts" under Code Sec. 7623 thus cannot include penalties or recoveries that the IRS can assess or make under non-Code provisions, such as Title 18 or Title 31, because such penalties or recoveries are not assessed under chapter 68 of the Code. Accordingly, the Counsel Memo concludes that these terms refer to amounts assessed under chapter 68 that increase the total amount of tax liability.[27]

The Tax Court has confirmed the foregoing with respect to penalties that the IRS imposes under the BSA, 31 U.S.C. §5321, for failure to file foreign bank account reports (FBARs). In *Williams*, the Tax Court held that it lacked jurisdiction to consider challenges to FBAR penalties stating that, pursuant to Code Sec. 7442, it had jurisdiction only as conferred by Title 26 and predecessor "internal revenue statutes."[28] Neither the deficiency procedures, which form the basis of most of the Tax Court's jurisdiction, nor any other jurisdictional grounding in Title 26 extended to FBAR penalties in Title 31.[29] Moreover, while Code Sec. 6665 expanded the definition of "tax" to include additions to tax, additional amounts, and penalties, the Tax Court was "aware of no statute that would expand 'tax' as used in the lien and levy statutes in Title 26 to include the FBAR penalty of Title 31."[30]Accordingly, the Counsel Memo concludes that penalties, additions to tax, and additional amounts included as "collected proceeds" under Code Sec. 7623(b) do not encompass amounts associated with non-Title26 violations. Amounts recovered for violations of Titles 18 or 31 thus may not be considered for purposes of computing an award under Code Sec. 7623.

Are Penalties and Fines Under Titles 31 and Title 18 Nevertheless "Available" for Payment of Whistleblower Awards?

Code Sec. 7623 provides that whistleblower awards must be paid out of "proceeds of amounts collected" based on the whistleblower's information and that those amounts "shall be available" for such payment.[31] Code Sec. 5321 of Title 31 contains civil penalty provisions for any violation of the BSA, its implementing regulations, or any geographic targeting or special measures order issued under them, as well as penalties for evading BSA reporting or recordkeeping requirements. However, Code Sec. 5321 does not specify any particular fund or account into which amounts paid as penalties are to be deposited. Accordingly, pursuant to 31 U.S.C. §3302(b) (the "miscellaneous receipts" statute), amounts paid as BSA penalties are deposited into Treasury's General Fund.[32] Once these amounts go into the General Fund, a specific appropriation is required to can get them out.[33]

No appropriation currently exists that authorizes taking money from the General Fund for payment of whistleblower awards under Code Sec. 7623. Rather, by mandating that "proceeds of amounts collected" based on a whistleblower's information "shall be available" for payment of whistleblower awards, Congress has created a permanent appropriation funded with collected proceeds.[34] Accordingly, money from Treasury's General Fund, including amounts paid as penalties under 31 U.S.C. §5321 and deposited into the General Fund, may not go toward payment of whistleblower awards. The Counsel Memo concludes that such amounts are therefore not presently "available" for award payments under Code Sec. 7623 and can't be included as "collected proceeds."

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Likewise, criminal fines under Titles 31 and 18 are not "available" for payment of IRS whistleblower awards.[35] Under the Victims of Crimes Act, Congress requires that all criminal fines, with certain exceptions, be paid into the Crime Victims Fund (CVF).[36] Congress did not include fines arising under Titles 18 or 31 among the specific exceptions to this requirement. In addition, nothing in the Victims of Crimes Act, Title 18, or Title 31 indicates that Congress intended to exclude fines under Titles 18 or 31 from this requirement. Accordingly, such fines must be deposited into the CVF.[37] Because criminal restitution ordered pursuant to 18 U.S.C. §3556 goes to the IRS, as opposed to the CVF or Treasury General Fund, amounts paid as such restitution are "available" for payment of IRS whistleblower awards. Other amounts paid as criminal fines under Titles 31 or 18, which are deposited into the CVF, are not "available" for payment of whistleblower awards under Code Sec. 7623, and also cannot be included as "collected proceeds."

Are Awards for Information Related to Violations of Titles 31 and 18 "Otherwise Provided by Law"?

Code Sec. 7623 authorizes the Secretary "to pay such sums as he deems necessary for "detecting underpayments of tax or violations of internal revenue laws, but only "in cases where such expenses are not otherwise provided for by law."[38] Accordingly, if another statute authorizes payment of awards for information related to certain types of violations, awards with respect to those violations would not be available under Code Sec. 7623. Title 31 contains its own provisions for whistleblower awards based on information leading to recoveries for BSA violations or property seized under Title 18.

Under Title 31, "[t]he Secretary may pay a reward to an individual who provides original information which leads to a recovery of a criminal fine, civil penalty, or forfeiture, which exceeds $50,000, for a violation of [chapter 53 of Title 31.]"[39] Title 31 provides for payment of awards for information pertaining to violations of the Title 31 provisions, as well as the Title 18 provisions involving forfeiture, for which the IRS has delegated authority. In addition, Title 31 allows for "purchase" of information pertaining to violations of the Title 18 provisions involving money laundering for which the IRS has delegated authority. Accordingly, even if the Title 31 and 18 provisions under the IRS's authority could be considered "internal revenue laws" under Code Sec. 7623, Title 31 already provides for payment of sums for information related to violations of these laws. Accordingly, the Counsel Memo concludes that because expenses for such payments are "otherwise provided by law," Code Sec. 7623 does not provide a basis for awards pertaining to violations of Title 31 and Title 18 violations.

Where Do We Go from Here?

The Counsel Memo concludes that amounts recovered for violations of nontax laws may not be considered for purposes of computing a whistleblower award under Code Sec. 7623. Information that pertains to Title 18 or Title 31 violations but nonetheless leads to recovered amounts for a Title 26 violation, however, may provide the basis of an award under Code Sec. 7623. Further, the Counsel Memo concludes that nothing in Code Sec. 7623 precludes the IRS from paying an award in situations where the information provided relates to either a Title 18 or Title 31 violation, but the IRS's investigation based on that information leads to detection of violations of tax laws. In such circumstances, the IRS may pay an award so long as, based on the information provided, the IRS recovers proceeds directly associated with a violation of tax laws. If, on the other hand, the IRS receives information pertaining to a Title 26 violation that leads not to a recovery under Title 26, but to a recovery for violations of Titles 18 or 31, the Counsel Memo concludes that the IRS may not pay an award under Code Sec. 7623. The IRS may pay awards under Code Sec. 7623, based on a whistleblower's information, only if it recovers amounts related to violations of tax laws.

"The IRS's effort to improve compliance is critical to reducing the Tax Gap and maintaining the integrity of the voluntary tax compliance system."[40] In the tax enforcement arena, the IRS has often been "asked to do more with less" revenue. Regardless, the IRS should not stretch any interpretations set forth within Code Sec. 7623. To the extent Code Sec. 7623 might somehow be deemed ambiguous, Congress should resolve the ambiguities in favor of whistleblowers. Code Sec. 7623 should clearly require payment of whistleblower awards from all proceeds collected by the government that relate to—or are in any way connected with—the information provided by the whistleblower, without regard to what Title the particular provision providing for such a penalty may be codified. This is especially so in matters relating to tax evasion.

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If the analysis set forth in the Counsel Memo is correct, Congress should revise the asserted basis for denying such awards in an effort to encourage whistleblowers throughout the world to come forward. If some appropriation is required to authorize tapping the Treasury's General Fund for payment of whistleblower awards under Code Sec. 7623, Congress should consider moving in that direction.

All recognize the potential benefits to our system of tax administration associated with a successful whistleblower program. At the end of FY 2012, the IRS Whistleblower Office had an entire staff of 36. From outside the IRS, it seems that a staff of 36 would have some difficulty reviewing, coordinating with the Operating Divisions, processing and administering almost 1,500 open claims submitted under Code Sec. 7623(b). Tax enforcement operations of the IRS (including the Whistleblower Office) must be appropriately funded and staffed.

The whistleblower statute is intended to provide valuable leads to the IRS which effectively preserves other precious tax enforcement resources. Information provided by whistleblowers is helpful when IRS resources are being stretched thin and compliance functions curtailed. Further, a visible, well-respected IRS whistleblower program increases public interest in the program and could cause countless otherwise compliance-challenged taxpayers to voluntarily comply ... deterrence can be a persuasive and relatively inexpensive tax enforcement tool.

Endnotes

1 *See* Charles Rettig, Practice, *The IRS Whistleblower Program: Making Money the Old Fashioned Way!* J. Tax Practice and Procedure, April–May 2012, at 13.

2 31 U.S.C. §§5311–5332; *See* Charles Rettig, Practice, *IRS Provides Updated Guidance Regarding Offshore Voluntary Disclosure Program,* J. Tax Practice and Procedure, June–July 2012, at 13.

3 *See* Memorandum for Stephen A. Whitlock, Director, Whistleblower Office dated April 12, 2012, from Mark S. Kaizen, Associate Chief Counsel, General Legal Services re "Scope of Awards Payable under I.R.C. §7623." GLS-139043-11; HQ-1527-11.

4 *See* November 5, 2012 letter to Acting IRS Commissioner IRS Steven Miller from Dean Zerbe and Steve Kohn of the National Whistleblowers Center, Washington, D.C.

5 *Id.*

6 *See also F.L. Engle,* SCt, 84-1 ustc ¶9134, 464 US 206, 226–27, 104 SCt 597 ("The Commissioner has broad authority to prescribe all 'needful rules and regulations' for the enforcement of the tax laws, and it is up to him to choose the method that best implements the statutory mandate.") (citing Code Sec. 7805(a)).

7 GLS-139043-11 HQ-1527-11 *See* Treas. Dir. 15-41 (1992).

8 *See* Treas. Dir. 15-42 (2002).

9 Internal Revenue Service, *FY 2009 Report to the Congress on the Use of Section 7623,* at 2 (July 21, 2011) (quoting 1867 legislation).

10 *See id.*

11 Taxpayer Bill of Rights 2, P.L. 104-168, §1209(a), 110 Stat. 1452, 1473 (1996).

12 P.L. 104-168, § 1209(a).

13 *See* Tax Relief and Health Care Act of 2006, P.L. 109-432, §406, 120 Stat. 2922, 2958 (2006); *see also* Code Sec. 7623(b)(1).

14 *Id.*

15 Code Sec. 7623(b)(5).

16 IRM 25.2.2.2 (June 18, 2010).

17 Code Sec. 7623(b)(3).

18 Code Sec. 7623(b)(4).

19 Code Sec. 7623.

20 *See* IRM 4.10.12.1.2(3) (Nov. 11, 2007) ("Title 26 of the United States Code, reproduced separately as the Internal Revenue Code (Code), contains most of the Federal tax law."); Internal Revenue Service, Tax Code, Regulations and Official Guidance, available online at *www.irs.gov/Taxpros/article/0,,id=98137,00.html#26cfr* (Title 26, the Treasury Tax Regulations, and other official IRS guidance, including revenue rulings, revenue procedures, notices, and announcements, form the corpus of federal tax law).

21 *See* H.R. Rep. No. 104-506, at 51 (1996) ("The bill [amending Code Sec. 7623] clarifies that rewards may be paid for information relating to civil violations, as well as criminal violations."); H.R. Rep. No. 104-350, at 1400 (1995 (Conf. Rep.) ("The House bill [amending Code Sec. 7623] clarifies that rewards may be paid for information relating to civil violations, as well as criminal violations.").

22 *See, e.g.,* S. Rep. No. 109-336, at 31 (2006) ("The provision [amending Code Sec. 7623] reforms the reward program for individuals who provide information regarding violations of the tax laws to the Secretary.") emphasis added); H.R. Rep. No. 109-203, at 1166 (2006) ("The Senate amendment reforms the reward program for individuals who provide information regarding violations of the tax laws to the Secretary."); Joint Comm. On Taxation, 109th Cong., General Explanation of Tax Legislation Enacted in the 109th Congress at 745 (2007) ("The provision [amending Code Sec. 623] reforms the reward program for individuals who provide information regarding violations of the tax laws to the Secretary.").

23 *See* Counsel Memo referenced in note 1 above.

24 Code Sec. 7623(a).

25 Code Sec. 7623(b)(1).

26 Code Sec. 6665(a)(2); *see also* Code Sec. 6671(a) ("The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes.").

27 *See R.F. Lundy,* SCt, 96-1 ustc ¶50,035, 516 US 235, 250, 116 SCt 647 (1996) (absent evidence of contrary congressional intent, "identical words used in different parts" of the Internal Revenue Code should have "the same meaning").

28 *J.B. Williams III,* 131 TC 54, Dec. 57,547 (2008).

29 *Id.,* at 57–58.

30 *Id.,* at 58 n.6.

31 Code Sec. 7623(a).

32 *See* GAO, 2 Principles of Federal Appropriations Law 6-166–6-175 (3d ed. 2006) (agencies must deposit into the General Fund of the Treasury any funds received from sources outside the agency absent statutory authority to retain the funds or deposit them elsewhere).

33 *See id.,* at 6-168–6-169.

34 *See* 31 U.S.C. §§701(2), 1101(2) (an appropriation refers to any provision of law, not necessarily in an annual appropriations act, authorizing an obligation or expenditure of funds for a given purpose); see also Matter of: Permanent Appropriation of Mobile Home Inspection Fees, 59 Comp. Gen. 215, 217 (1980) (statute that authorizes the deposit of fees into a special

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Endnotes

fund for a particular purpose constitutes a permanent, indefinite appropriation). Because Congress has specified "amounts collected" as the funding source, or appropriation, for IRS whistleblower awards, only funds from that source may go towards award payments. *See* GAO, 2 Principles of Federal Appropriations Law 6-235 (3d ed. 2006) (all expenditures for a particular purpose must come from the appropriation for that specific purpose).

[35] 31 U.S.C. §5322 and related regulations, as well as 18 U.S.C. §1960, impose criminal fines for BSA violations. 18 U.S.C. §§1956 and 1957, which the IRS enforces, also provide for criminal fines, while 18 U.S.C. §3571 provides generally for criminal fines for those guilty of federal offenses.

[36] *See* 42 U.S.C. §10601(b)(1).

[37] *See generally Smith,* SCt, 499 US 160, 167 (1991) (where Congress explicitly enumerates certain exceptions to a statutory requirement, additional exceptions should not be inferred absent evidence of legislative intent).

[38] Code Sec. 7623(a).

[39] 31 U.S.C. §5323(a). Chapter 53 includes the BSA provisions for which the IRS has delegated authority. See Treas. Dir. 15-41 (1992). In addition, Title 31 establishes the "Department of the Treasury Forfeiture Fund." *See* 31 U.S.C. §9703(a). The Fund is available to the Secretary, at his discretion, for payment of awards for information leading to a civil or criminal forfeiture involving a Treasury law enforcement organization, and for purchases of evidence or information regarding a violation of 18 U.S.C. §§1956 or 1957, for which the IRS has delegated authority, or violations that may subject property to forfeiture under 18 U.S.C. §§981 or 982. *See* 31 U.S.C. §9703(a)(2)(A), (B).

[40] TIGTA Report, *IRS Whistleblower Program: Improved Oversight is Still Needed,* May 10, 2012 (TIGTA-2012-19).

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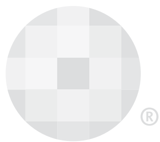
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