

IRS Whistleblower Office Implementing Improvements

by Jeremiah Coder

Full Text Published by **taxanalysts**[®]

The director of the IRS Whistleblower Office promised February 18 that his group is working to make operations more efficient even as it receives continuing complaints about timeliness.

Stephen Whitlock said his office has now absorbed operations of the pre-2006 award program previously handled by the IRS Small Business/Self-Employed Division. The office is trying to streamline several assessment and handling processes and is considering an electronic portal to receive claim information, he said at a Civil and Criminal Tax Penalties session of the American Bar Association Section of Taxation meeting in San Diego.

Complaints about how long it takes to close whistleblower cases are unlikely to end anytime soon. Whitlock said the audit process for high-dollar cases takes longer given the complexities of those cases and the opportunities for taxpayers to appeal. While officials originally expected that high-dollar claims awards would be issued within three to five years of claim submission, it now appears that the payout time frame is likely five to seven years, because the IRS cannot pay an award until the underlying tax liability has been collected, he said.

Whistleblower cases don't automatically receive priority treatment in the audit process, Whitlock said, noting that taxpayers in those cases have the same rights as taxpayers in any other case. However, as agents become more used to seeing whistleblower cases come in with good leads and begin to appreciate the usefulness of the information provided, those cases are rising to the top, said Whitlock, who plans to establish an Internet portal for claims.

The Government Accountability Office and Senate Finance Committee member Chuck Grassley, R-Iowa, have complained about slow processing of whistleblower claims. (For prior coverage, see *Doc 2011-19188* or *2011 TNT 176-3*.)

The new statutory awards for high-dollar claims seem to be having an effect, as the IRS paid out a higher percentage of awards to dollars collected in 2011, Whitlock said. Bryan C. Skarlatos of Kostelanetz & Fink LLP said that as those larger awards turn from a trickle into a stream, "everyone is going to be talking about whistleblowers."

The IRS is committed to protecting information received under the whistleblower program, Whitlock said, citing strict need-to-know procedures that limit which IRS employees, as well as oversight agencies, have access. But, he added, whistleblowers often "out themselves" because they have raised the issue before with employers, so it's easy for companies to figure out the likely source of a claim.

The IRS has not yet found it necessary to enter into contracts with whistleblowers under section 6103(n), Whitlock said. Although the statute contemplates contracts for information disclosure only rarely, the IRS has "taken rare to a rather literal application," he said, noting that approval of those contracts requires high-level sign-off after need has been demonstrated. But audit teams could use traditional investigative techniques to ask the informant for more information without divulging protected information, he added.

When it becomes clear during the intake process that a case is criminal, the case is passed along to the IRS Criminal Investigation division, Whitlock said, adding that during the audit process, other whistleblower cases can be referred to CI after consultation with a fraud technical adviser. Whether the Justice Department will grant a whistleblower immunity in a criminal probe depends on the individual's role in the noncompliance, he said.

The IRS on February 21 released final whistleblower regulations. (For T.D. 9580, see *Doc 2012-3531*. For related coverage, see *Doc 2012-3592*.)