



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, DC 20224

Whistleblower Office

June 7, 2013

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MEMORANDUM FOR DISTRIBUTION FOR ALL WHISTLEBLOWER OFFICE EMPLOYEES

FROM: STEPHEN WHITLOCK */s/ Stephen Whitlock*
Director, Whistleblower Office

SUBJECT: Updates to Internal Revenue Manual (IRM) 25.2.2 Information and Whistleblower Awards, Whistleblower Awards

The purpose of this memorandum is to reissue the interim guidance dated June 7, 2012, with control number WO-25-0612-02, entitled Updates to Internal Revenue Manual (IRM) 25.2.2 Information and Whistleblower Awards, Whistleblower Awards. This interim guidance memorandum is being issued to communicate changes to the Whistleblower Award Determination Administrative Proceeding. These guidelines will be incorporated into Internal Revenue Manual (IRM) sections 25.2.2 and the applicable exhibits.

The following sections of IRM 25.2.2 will be re-written as outlined in the attachment to this Interim Guidance Memorandum:

IRM 25.2.2.8
Exhibit 25.2.2-7 through 25.2.2-16
Exhibit 25.2.2-17

The following Exhibit has been added and/or renumbered:

New:

Exhibit 25.2.2-13 – Response to Preliminary Award Recommendation
Exhibit 25.2.2-16 – Waiver of Appeal

Renumbered:

Exhibit 25.2.2-14 - Determination Letter
Exhibit 25.2.2-15 - Determination Report
Exhibit 25.2.2-17 - Award Calculation Computation Guidelines

If you have any questions, please contact our office at 202-622-0351. Comments can be forwarded to WO@irs.gov; please put control number above in the subject line.

Attachment:

Whistleblower Award Determination Administrative Proceeding
IRM Exhibit 25.2 Administrative Proceeding

Distribution:

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25.2.2.8 (06-18-2010)

Whistleblower Award Administrative Proceeding

Will be revised to read as follows:

25.2.2.8 (08-01-2012)

Whistleblower Award Determination Administrative Proceeding

- (1) After receipt of all Forms 11369 and other necessary information from the affected IRS divisions, the Whistleblower Office may begin the award determination process. The award determination administrative proceeding related to the review and determination process begins on the date that the Whistleblower Office becomes aware that there is a final determination of tax for those actions that compose the award determination.
- (2) After the statutory period for filing a claim for refund expires or there is an agreement between the taxpayer and the IRS that there has been a final determination of tax for the specific period and the right to file a claim for a refund has been waived, the Whistleblower Office will prepare an award recommendation. Prior to communicating the award recommendation to the whistleblower, a committee of the Whistleblower Executive Board will be briefed regarding the award recommendation. Upon completion of the briefing, the award recommendation will be communicated to the whistleblower in a Preliminary Award Recommendation package containing the following documents:
 - a. Preliminary Award Recommendation Letter ([Exhibit 25.2.2-7](#));
 - b. Summary Report ([Exhibit 25.2.2-8](#));
 - c. Response to Summary Report ([Exhibit 25.2.2-9](#));
 - d. Confidentiality Agreement ([Exhibit 25.2.2-10](#)).
 - e. Application for Reduced Rate of Withholding on Whistleblower Award Payment and information relating thereto.¹

¹ Due to the importance of releasing this guidance regarding the Whistleblower Withholding Program, any all references to Application for Reduced Rate of Withholding on Whistleblower Award Payment form indicated throughout this document is only to the draft, which is still being developed.

(3) Whistleblowers are given 30 days to respond to the Summary Report. The whistleblower can respond in one of four ways with the resulting consequences:

1. If the whistleblower takes no action, then the determining official of the Whistleblower Office will make an award determination.
2. If the whistleblower signs, dates, and returns the Response to Summary Report agreeing to the preliminary award recommendation, accepting it as the award determination and waiving the right to appeal the award determination to the United States Tax Court, then the Whistleblower Office will begin award payment procedures under IRM 25.2.2.13 as promptly as possible.
3. If the whistleblower submits comments on the Summary Report but does not sign, date, and return the Confidentiality Agreement, the comments will be added to the administrative claim file and reviewed for purposes of making an award determination, then the determining official of the Whistleblower Office will make an award determination.
4. If the whistleblower signs, dates, and returns the Confidentiality Agreement, then the Whistleblower Office will provide the whistleblower with additional information underlying the award recommendation and the administrative review opportunity described below.

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

(4) If the whistleblower signs, dates, and returns the Confidentiality Agreement, then the Whistleblower Office will provide the whistleblower with the following documents:

- a. Detailed Report Letter (Exhibit 25.2.2-11);
- b. Detailed Report (Exhibit 25.2.2-12); and
- c. Response to Detailed Report (Exhibit 25.2.2-13).

The Detailed Report Letter contains instructions on scheduling an appointment for the whistleblower (and the whistleblower's representative, if there is one) to review the documents supporting the recommendation. If scheduled, this review will take place at the Whistleblower Office in Washington, D.C., unless the Whistleblower Office, in its sole discretion, decides to hold the meeting at another location. The Whistleblower Office will supervise the review of the documents and whistleblowers will not be permitted to make copies of the documents.

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

- a. If the whistleblower takes no action, then the determining official of the Whistleblower Office will make an award determination.
- b. If the whistleblower schedules an appointment to review the documents supporting the recommendation, then the whistleblower will have 30 days from the date of the meeting to provide written comments to the Whistleblower Office.
 - i. If no written comments are submitted to the Whistleblower Office, then the determining official of the Whistleblower Office will make an award determination.
 - ii. If written comments are submitted to the Whistleblower Office, the written comments will be reviewed for purposes of making an award determination; then the determining official of the Whistleblower Office will make an award determination.
- c. If the whistleblower does not schedule an appointment but does submit written comments on the Detailed Report, the comments will be reviewed for purposes of making an award determination; then the determining official of the Whistleblower Office will make an award determination.

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

- (6) A violation of the terms of the confidentiality agreement may be considered a negative factor in determining the specific award percentage, and may result in reduction of the award percentage to the minimum required by law.
- (7) All correspondence sent by the Whistleblower Office to a whistleblower during the administrative award proceeding as well as all correspondence, including written comments, received by the Whistleblower Office from the whistleblower in response to such correspondence will become part of the administrative claim file.
- (8) The determining official of the Whistleblower Office will make the award determination based on a review of the administrative claim file. If the award determination amount differs substantially from the recommended amount, prior to communicating the award determination to the whistleblower, the committee of the Whistleblower Executive Board will again be briefed. After the briefing, the Whistleblower Office determination will be communicated to the whistleblower in a determination letter package containing the following documents:
 - a. Determination Letter (Exhibit 25.2.2-14)
 - b. Determination Report (Exhibit 25.2.2-15)
 - c. Determination – Waiver of Appeal (Exhibit 25.2.2-16)

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

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

- (9) The Whistleblower Office will initiate payment actions when the period for seeking Tax Court review has lapsed, when the whistleblower notifies the Whistleblower Office that the right to seek review has been waived, or when the Tax Court has issued a decision and all further judicial appeals have been waived or exhausted.

(10) The Preliminary Award Recommendation package, the Summary Report, the Detailed Report and the Determination Letter package, as described above, will contain taxpayer return information. The Whistleblower Office is authorized to disclose this taxpayer return information, within the administrative proceeding as described above, under I.R.C. § 6103(h) (4).