



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF CHIEF COUNSEL

February 22, 2010

MEMORANDUM FOR STEVEN WHITLOCK, DIRECTOR
WHISTLEBLOWER OFFICE

FROM Linda Horowitz /s/
Deputy Associate Chief Counsel

SUBJECT Criminal Fines and Whistleblower Awards

This responds to your question of whether criminal fines may be used for the payment of whistleblower awards under I.R.C. § 7623. For the reasons discussed below, we advise that criminal fines, which must be deposited into the Crime Victims Fund (CVF), can not be used for the payment of whistleblower awards.

I.R.C. § 7623(a) provides that the Secretary is authorized to pay awards to whistleblowers for (1) detecting underpayments of tax, or (2) detecting and bringing to trial and punishment persons guilty of violation the internal revenue laws or conniving at the same. The statute further provides that awards to whistleblowers will be paid from “the proceeds of amounts collected by reason of the information provided, and any amount so collected shall be available for payments.” The statute does not define collected proceeds. Treas. Reg. § 301.7623-1(a) and (c) state that collected proceeds include “additional amounts collected because of the information provided” and that “payment of a reward will be made as promptly as the circumstances permit but not until the taxes, penalties, or fines involved have been collected.” Neither the statute nor the implementing regulation specify that criminal fines are included as “collected proceeds”.¹

Because I.R.C. § 7623(a) expressly refers to criminal prosecution as one of the actions that can result in payment of an award, you have asked if a fine imposed in a criminal case is within the scope of “proceeds” collected by reason of the information provided. For the reasons discussed below, because the IRS does not collect fines imposed by a court in connection with a criminal prosecution, we do not think that these fines can be considered “collected proceeds”. Under the Victims of Crimes (VOC) Act of 1984, criminal fines assessed by the U.S. District Courts are deposited into the Crime Victims Fund (CVF). 42 U.S.C. § 10601(b)(1) (“there shall be deposited in the Fund ... all fines that are collected from persons convicted of offenses against the United States.”). Notably, the VOC Act enumerates certain fines that are not required to be deposited

¹ Similarly, I.R.C. § 7623(b) states that individuals shall receive an award of at least 15% but not more than 30% “of the collected proceeds (including penalties, interest, additions to tax, and additional amounts).” Again, the statute does not reference criminal fines as “collected proceeds”.

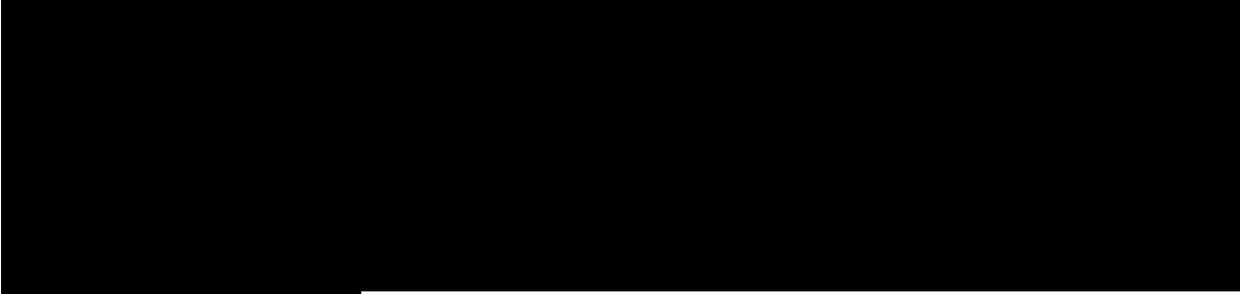
into the CVF but Title 26 offenses are not among the specified exceptions to the requirement to deposit criminal fines into the CVF. 42 U.S.C. §§ 10601(b)(1)(A), (B). Furthermore, because the CVF is available for supporting victim assistance and compensation programs, once the criminal fines are deposited into the CVF, there is no legal basis or mechanism by which the IRS can retrieve these monies to pay awards to whistleblowers under Title 26. *Id.* at §§ 10602 and 10603.²

Although it is true, as you point out, that the 1996 amendment to I.R.C. § 7623 providing that award payments will be made from collected proceeds was enacted after the VOC Act, we do not think, as you suggest, that I.R.C. § 7623 can be interpreted to constitute an implied exception to the VOC Act. Where Congress explicitly enumerates certain exceptions, additional exceptions are not to be implied in the absence of evidence of a contrary legislative intent. See 73 Am. Jur. 2d. Statutes § 215, *citing Andrus v. Glover Const. Co.*, 446 U.S. 608 (1980). As discussed above, the VOC Act requires that all criminal fines be deposited into the CVF with certain enumerated exceptions, which do not include fines for Title 26 offenses. Nor are we aware of any specific legislative intent in amending I.R.C. § 7623 which could be read to create an exception to the VOC Act. Indeed, the VOC Act and I.R.C. § 7623 can easily be read harmoniously, giving full effect to Congressional intent for both statutes.

You have also asked about the propriety of paying whistleblower awards from criminal fines when the IRS has entered into a special agreement that includes fines as part of the award calculation.



² We also note that the CVF provides a source of funding that is separate and distinct from the IRS. *United States of America v. Baxley, III*, 2008 WL 3889594(M.D. Fla.)(August 18, 2008)(Denying defendant's motion seeking to set-off a \$10,000 criminal fine paid and deposited into the CVF because the defendant erroneously overpaid \$29,000 in taxes to the IRS).

Because criminal fines do not constitute collected proceeds under I.R.C. 7623, the IRS has no legal authority to pay an award based on such fines, even if the IRS had agreed to do so. It is well settled that the actions of a government official cannot give rise to monetary liability where the payment would be contrary to an act of Congress. Moreover, a court has no authority to order such a payment because to do so would nullify Congress' authority under the Appropriations Clause of the Constitution. Office of Personnel Management v. Richmond, 496 U.S. 414, 426 (1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Finally, we have considered whether the Service could make award payments to the informants in this instance based on the equitable doctrine of quantum meruit. Because I.R.C. 7623 specifies that award payments will be made from the proceeds the IRS collects from the taxpayer(s), collected proceeds constitute the exclusive source of funding for making award payments. See GAO, *Principles of Federal Appropriations Law*, page 2-21. The exhaustion of the specific appropriation does not authorize charging additional amounts for that same purpose to a more general appropriation. Therefore, because collected proceeds are the exclusive funding source for I.R.C. § 7623 awards any other potential funding sources, such as annual appropriations, are not available to pay an award based on criminal fines.³ For this reason, quantum meruit does not provide a basis to pay an award to the informants in this instance. The Comptroller General considered a similar question in connection with the IRS' procurement of T Shirts to be given to CFC Campaign donors. The Comptroller found that the expenditure of appropriated funds for the T-shirts was not authorized as a necessary expense under Title 31 and that there was not any other appropriation from which the purchase would be legally authorized. Even where the IRS had entered into a valid contract to purchase these T-shirts, the Comptroller held that equitable remedies were not available where the government purchases goods or services in the absence

³ We have considered whether there is any basis to make an award payment as a necessary expense of the Enforcement appropriation. However, any such payment could only be characterized as an I.R.C. § 7623 award for which collected proceeds are the exclusive funding source.

of statutory authority. ⁴ *Matter of: Government Liability for Unauthorized Purchase of T-Shirts*, 71 Comp. Gen. 145 (1992).

If you have any questions or need additional assistance, please contact Linda Horowitz at (202) 927-0900.

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