



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, DC 20224

Whistleblower Office

June 7, 2012

Control Number: WO -25-0612-03
Expires Date: June 7, 2013
Impacted IRM: 25.2.2

MEMORANDUM FOR DISTRIBUTION FOR WHISTLEBLOWER OFFICE EMPLOYEES

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

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

This guidance will be effective August 1, 2012. We have delayed the effective date to August 1, 2012 to allow for public comment. The purpose of this interim guidance memorandum is to provide new guidance on the Whistleblower Withholding Program. It provides guidance to whistleblowers on the application process and provides guidance to Internal Revenue Service personnel on the application review process. These guidelines will be incorporated into Internal Revenue Manual (IRM) 25.2.2 as section 25.2.2.9.

The ***Application for Reduced Rate of Withholding on Whistleblower Award Payment***¹ will be used by the whistleblower to apply for a reduction in withholding from an award payment. ***The Application for Reduced Rate of Withholding on Whistleblower Award Payment*** is a new form that will be issued to every individual that will be receiving an award under section 7623(b). The form is currently under development.

The following sections of IRM 25.2.2 will be impacted by this interim guidance.

25.2.2.9 - renamed to ***Application for Reduced Rate of Withholding on Whistleblower Award Payment***.

Renumbered:
25.2.2.9-25.2.2.14 to 25.2.2.10-25.2.2.15

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

If you have any questions, please contact C. Stuart, Senior Management & Program Analyst at 631-447-4862. Comments can be forwarded to WO@irs.gov; please put control number above in the subject line.

Attachment:

Distribution:
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25.2.2.9 (08-01-2012)

Whistleblower Withholding Program (New)

Under the whistleblower withholding program, certain individuals may apply for a reduction in the rate of tax withholding applicable to awards paid to them under section 7623(b) of the Internal Revenue Code. This provides guidance to whistleblowers on the application process and provides guidance to Internal Revenue Service personnel on the application review process.

I. Background

Awards paid under section 7623 are includible in the gross income of the recipients and are subject to federal tax reporting and withholding requirements. Accordingly, the IRS withholds tax from award payments that exceed \$10,000. Generally, section 62(a) (21) provides that an allowable deduction for attorney fees and court costs paid by, or on behalf of, an individual whistleblower in connection with an award under section 7623(b) is subtracted from the individual's gross income in calculating the individual's adjusted gross income. The deduction may be claimed in the year the attorney fees and costs are paid. The amount of this above-the-line deduction, however, is limited to the amount of the award includible in the individual's gross income. Further, section 62(a) (21) does not encompass allowable deductions for attorney fees and court costs paid in connection with awards under section 7623(a).

When the IRS pays awards – and withholds tax – it does so without knowing whether the whistleblower has entered a fee agreement with an attorney or whether the whistleblower will pay any other relevant attorney fees or court costs. The whistleblower withholding program described herein is intended to minimize the likelihood of the IRS over withholding tax from award payments to whistleblowers by providing whistleblowers with a pre-award payment opportunity to substantiate their relevant attorney fees and court costs. To be considered relevant attorney fees and court costs under this program, the attorney fees and court costs must be paid in the year of the award payment. The program is not an examination of the whistleblower and is not intended to determine the whistleblower's tax liabilities. Whether or not a whistleblower is eligible to, or does, participate in the program, a whistleblower is entitled to claim any and all allowable deductions on the whistleblower's federal income tax return and to claim a refund of any overpaid taxes.

II. Eligibility

Any individual receiving an award under section 7623(b), and entitled to claim an allowable deduction in the year of the award payment for attorney fees or court costs paid in connection with the award, is eligible to apply for reduced withholding. Individuals receiving awards under section 7623(a) are not eligible to apply for reduced withholding under this program.

III. Application Process

1. To apply for reduced withholding, eligible individuals must submit an *Application for Reduced Rate of Withholding on Whistleblower Award Payment*, including attachments, and provide all of the following information.

Required Information

- i. The individual applicant's name, address, taxpayer identification number, and phone number.
 - ii. If applicable, the name, address, federal tax identification number, and phone number of applicant's authorized representative.
 - iii. The claim number(s) assigned to the award claim(s).
 - iv. A statement of the total amount of the deduction for attorney fees and court costs paid or to be paid in the year of the award payment by, or on behalf of, the applicant in connection with an award under section 7623(b), that the applicant intends to claim on the applicant's federal income tax return.
 - v. Substantiation of the total amount of the deduction described above. Attorney fees may be substantiated by attaching copies of attorney fee agreements and/or bills for legal services. Court costs may be substantiated by attaching the copies of bills or court documents reflecting the payment of costs.
 - vi. A representation that any attorney fees and costs that are substantiated, but have not yet been paid, will be paid in the same tax year that the award under section 7623(b) is received.
2. The IRS will issue an *Application for Reduced Rate of Withholding on Whistleblower Award Payment* to every individual that will be receiving an award payment under section 7623(b). An *Application for Reduced Rate of Withholding on Whistleblower Award Payment* will be forwarded at the same time that the Whistleblower Office first notifies the individual of a proposed award. The IRS will print the date on which it issues the *Application for Reduced Rate of Withholding on Whistleblower Award Payment* on the form. Individuals applying for reduced withholding must return the *Application for Reduced Rate of Withholding on Whistleblower Award Payment* to the IRS within 30 days of the date printed on the form.
 3. Applications may be submitted by the individual award claimant or by the individual award claimant's authorized representative. The Whistleblower Office requires a fully executed Form 2848, **Power of Attorney and Declaration of Representative**, before it will process an *Application for Reduced Rate of Withholding on Whistleblower Award Payment* submitted by an award claimant's representative. The person submitting the *Application for Reduced Rate of Withholding on Whistleblower Award Payment* must sign the form under penalties of perjury.

4. A completed *Application for Reduced Rate of Withholding on Whistleblower Award Payment* must be submitted to the address provided on the letter notifying the whistleblower of the withholding program. Applications for reduced withholding may not be submitted electronically or by fax.

IV. Application Review Process

1. Upon receipt of an *Application for Reduced Rate of Withholding on Whistleblower Award Payment*, the Whistleblower Office will promptly review and evaluate the form and all attachments. The Whistleblower Office will not consider any claimed deductions or tax attributes of the applicant other than the above-the-line deduction for attorney fees and court costs paid or to be paid in the year of the award payment by, or on behalf of, the applicant in connection with an award under section 7623(b).
2. The Whistleblower Office may contact the applicant (or applicant's authorized representative, if applicable) if the Whistleblower Office, in its sole discretion, decides that the contact would assist its review and evaluation of the form and attachments.
3. The Whistleblower Office will perform a tax compliance check of the applicant for the previous three tax years, to ensure the applicant has satisfied all applicable filing requirements. If the applicant has not satisfied all applicable filing requirements, then the Whistleblower Office will reject the application and initiate payment of the award, applying the standard withholding rate.
4. If, in its sole discretion, the Whistleblower Office decides that the applicant has substantiated relevant attorney fees or court costs, then the Whistleblower Office will calculate the appropriate rate of tax withholding. The Whistleblower Office will calculate the appropriate withholding rate taking into account only the timing and amount of the above-the-line deduction for relevant attorney fees and costs. For purposes of the calculation, the Whistleblower Office will assume that the applicant falls into the highest bracketed tax rate. The Whistleblower Office's decision that the applicant has substantiated relevant attorney fees and costs is neither a determination of the applicant's entitlement to claim a deduction on the applicant's federal income tax return nor a determination of the applicant's tax liabilities. Any reduction in the rate of withholding from an award payment is at the Whistleblower Office's discretion and does not preclude the IRS from examining the applicant's tax liability for the year(s) at issue.
5. If the Whistleblower Office decides that the appropriate withholding rate is lower than the standard withholding rate applicable to award payments that exceed \$10,000, then the Whistleblower Office will apply the reduced withholding rate in initiating payment of the award. The Whistleblower Office will only apply the reduced withholding rate to award payments on the award

claim(s) identified on the *Application for Reduced Rate of Withholding on Whistleblower Award Payment*. In cases in which the Whistleblower Office applies a reduced withholding rate but the claimant has not yet paid the substantiated attorney fees and court costs, the IRS will not pay awards after December 1 of a calendar year and, instead, will pay awards in the next calendar year.

6. The Whistleblower Office will notify the applicant (or the applicant's authorized representative, if applicable) of its decision regarding the withholding rate applied to the award.
7. Applicants will not be given an opportunity to appeal the decision of the Whistleblower Office. Nonetheless, regardless of the decision of the Whistleblower Office, applicants may claim any and all allowable deductions on their federal income tax return and may claim a refund of any overpaid taxes.

Frequently Asked Questions

Q1. I paid attorney fees and court costs in connection with an award under section 7623(b). Am I eligible to apply for reduced withholding on an award payment?

A1. Yes. Allowable deductions for attorney fees and court costs paid by, or on behalf of, a whistleblower in connection with an award under section 7623(b) may warrant reduced withholding. A deduction for attorney fees and court costs may be claimed in the year the attorney fees and costs are paid. Whistleblowers claiming such above-the-line deductions are eligible to apply for reduced withholding. Whistleblowers claiming below-the-line deductions for attorney fees and court costs paid in connection with an award under section 7623(a) are not eligible to apply for reduced withholding on an award payment.

Q2. I'm entitled to claim deductions on my federal income tax return other than allowable deductions for attorney fees and costs. Am I eligible to apply for reduced withholding based on all of my deductions?

A2. No. The award withholding program provides an opportunity for the I.R.S. and whistleblowers claiming allowable above-the-line deductions for attorney fees and court costs paid in connection with an award under section 7623(b) to avoid potential over withholding on award payments. The program is not an opportunity to determine a whistleblower's tax liabilities. Any reduction in the rate of withholding from an award payment is at the Whistleblower Office's discretion and does not preclude the I.R.S. from examining the whistleblower's tax liability for the year or years at issue.

Q3. Will I receive a notice from the I.R.S. informing me that I am eligible to apply for reduced withholding on an award payment?

A3. Yes. If you are receiving an award under section 7623(b), then we will send you an *Application for Reduced Rate of Withholding on Whistleblower Award Payment*, when we first notify you of a proposed award. You should use this form to apply for reduced withholding.

Q4. When can I apply for reduced withholding on an award payment?

A4. You must apply by submitting an *Application for Reduced Rate of Withholding on Whistleblower Award Payment* to the I.R.S.'s Whistleblower Office within 30 days of the date the I.R.S. issued the form. This date can be found in the top right hand corner of the form.

Q5. What happens if I submit my application more than 30 days after the date on the *Application for Reduced Rate of Withholding on Whistleblower Award Payment*?

A5. We may not reduce the rate of withholding on your award payment. If this results in overwithholding, you may be able to claim a refund on your federal income tax return.

Q6. What information do I need to provide when I apply for reduced withholding?

A6. You must provide your name, address, taxpayer identification number, and phone number. If your application is submitted by your authorized representative, then you must provide your authorized representative's name, address, federal tax identification number, and phone number.

You must provide the claim number(s) assigned by the I.R.S.'s Whistleblower Office to your claim(s). These numbers can be found on correspondence sent to you by the I.R.S.'s Whistleblower Office in respect of your claim(s).

Your application must state the amount of the attorney fees and costs paid or to be paid in the year of the award payment in connection with an award under section 7623(b) and that you intend to claim as a deduction on your federal income tax return.

Your application must also substantiate the amount of attorney fees and costs that you paid or will pay in the year of the award payment. You should attach copies of fee agreements, bills, or other relevant documents.

If you have substantiated the amount of attorney fees and costs that you have incurred, but you have not yet paid those costs, then your application must represent that you will pay the attorney fees and costs in the same tax year in which you receive your award.

Finally, the application must be signed and dated under penalty of perjury by the individual submitting the application.

Q7. Can my authorized representative submit the application form on my behalf?

A7. Yes. Your authorized representative must, however, have a valid power of attorney on file with the I.R.S.

Q8. Can I submit the application electronically or by fax?

A8. No. Applications must be sent to the I.R.S.'s Whistleblower Office, at the address listed on the letter which notified you of the withholding program.

Q9. For what reasons might my application be rejected?

A9. Approval or rejection of your application for reduced withholding is entirely at the I.R.S.'s discretion. Upon receipt of your application, we will do a tax compliance check to make sure that you have filed your three most recent federal income tax returns. If you have not filed required returns, then we may reject your application. We may also reject your application if it does not contain all of the requested information, if it fails to substantiate the amounts you claim to have paid, or if we do not receive it within the 30-day period described in Q&A4, above.

Q10. Will someone from the I.R.S.'s Whistleblower Office contact me to discuss my application?

A10. If we need additional information to approve or reject your application, or to compute a reduced rate of withholding, then we may contact you. Any such contacts will occur at our discretion.

Q11. When will I know if my application has been accepted?

A11. The Whistleblower Office will notify you of the decision to accept or reject your application.

Q12. Is there a way to appeal a rejection of my application?

A12. No. As described in Q&A11, above, we will not notify you of whether your application has been accepted or rejected. If your application is rejected and the I.R.S. does not apply a reduced withholding rate to your payment, but you are entitled to claim allowable deductions for attorney fees and court costs paid in connection with an award under section 7623(b), then you may be able to claim a refund on your federal income tax return.

Q13. Will submitting an application for reduced withholding delay the payment of my award?

A13. Since we will be forwarding the *Application for Reduced Rate of Withholding on Whistleblower Award Payment* to you early in the proposed award process, an application for reduced withholding should not delay the payment of an award as finally determined. However, if you submit an application for reduced withholding near the end of the 30-day period, then it is possible that our consideration of your application could delay our initiation of your award payment. Any such delay, however, will be short because we will accept or reject your application promptly. Nonetheless, we encourage you to apply for reduced withholding as soon as possible after receiving the *Application for Reduced Rate of Withholding on Whistleblower Award Payment*, as described in Q&A3, above, to minimize the possibility of even a short delay in payment of your award.

Q14. Who can I contact for more information about the award withholding program?

A14. You can contact the I.R.S.'s Whistleblower Office at 202-622-0351 or WO@IRS.gov.

Q15. Why are checks not going to be mailed after December 1?

A14. The December 1 payment cutoff is intended to ensure that we don't compromise the ability of the whistleblower to pay the fees and costs in the year of the award payment.