

September 1, 2010

MEMORANDUM FOR Stephen A. Whitlock
Director, Whistleblower Office

From: Christopher B. Sterner /s/
Deputy Chief Counsel (Operations)

Subject: Payment of Refund Protection and Credit Reduction Claims

This memorandum reconsiders whether I.R.C. § 7623 authorizes the payment of an award to a whistleblower where the whistleblower's information leads to the denial of a refund claim that otherwise would have been paid or the reduction of a credit balance that would have been applied to offset other tax liabilities. [REDACTED]

[REDACTED] we have concluded that "collected proceeds" under the statute can include denied refunds and the reduction of an overpayment of a credit balance when the information provided by the whistleblower prevents the IRS from paying the refund or applying a credit balance to offset other tax liabilities.

Section 7623(a) permits the IRS to pay awards to whistleblowers from proceeds that the IRS collects based upon the information provided by the whistleblower. Treasury Regulation 301.7623-1(a) provides that whistleblowers who provide information to the IRS which results in the denial of a refund that otherwise would have been paid are eligible for an award because the denied refund constitutes collected proceeds. The Treasury regulation is only applicable to claims under subsection (a). While the language of section 7623 differs slightly between subsections (a) and (b), we do not think the difference is meaningful and therefore the legal analysis concerning the propriety of paying refund protection claims should be the same for subsections (a) and (b).

The language of subsections (a) and (b) has the legal effect of authorizing the IRS to disburse money that it collects from taxpayers to pay awards to whistleblowers when the proceeds are attributable to the information provided by the whistleblower to the IRS. These collected proceeds constitute a permanent appropriation. See Matter of: Permanent Appropriation of Mobile Home Inspection Fees, 59 CG 215 (1980). The question, therefore, is whether a protected refund or the reduction or elimination of a credit balance, based upon information provided to the IRS by a whistleblower,

constitutes collected proceeds from which whistleblowers may be paid an award under section 7623.

When a whistleblower provides information to the IRS about an improper refund, and the IRS has not yet paid the refund to the taxpayer, the result is that monies are retained by the Government that otherwise would have been paid to the taxpayer. The monies that are protected when a refund is not issued constitute collected proceeds. By concluding that the prevented refund constitutes collected proceeds, we are reaching the same result that would occur if the IRS issued the refund to the taxpayer, initiated an action to recover the refund, and then used the money collected from the taxpayer to pay the whistleblower an award. This interpretation treats the protected refund as collected proceeds without requiring the unnecessary, burdensome and resource intensive steps of paying the refund and then recovering it.

The same analysis applies to the credit balance situation. When a whistleblower provides information to the IRS which results in the reduction or elimination of an overpayment credit balance, monies are retained that would otherwise be used to satisfy the outstanding tax liabilities of the taxpayer. Thus, the reduction or elimination of an overpayment credit balance is collected proceeds.

The above interpretation of "collected proceeds" is not the only interpretation of that term as it is used in section 7623

section 7623 could be read to require that proceeds be physically collected from the taxpayer in order to make an award payment. In the refund prevention and credit balance situation, the IRS is not physically collecting money from the taxpayer based upon the information provided by the whistleblower. While the IRS has collected "proceeds" from the taxpayer, at the time the IRS collects these proceeds from the taxpayer the collection is not based on the information provided by the whistleblower. Consequently, the IRS has not collected monies from the taxpayer because of the information provided by the whistleblower and there are no "collected proceeds" within the meaning of section 7623. such a restrictive interpretation of section 7623 is not the only legally permissible interpretation of "collected proceeds." Interpreting "collected proceeds" to include refunds not issued and the elimination or reduction of credit balances is not only a legally permissible interpretation of that term, it would be consistent with the purpose of section 7623, which is to provide an incentive to whistleblowers to come forward with information about tax noncompliance.