

The IRS Whistleblower Program Improvement Act of 2021

The IRS Whistleblower Program Improvement Act of 2021 makes several commonsense clarifications and reforms to the IRS Whistleblower Award Program (WB Program). Since the modernization of Section 7623 in 2006, the WB Program has been an enormous success in assisting the IRS in identifying and pursuing significant tax noncompliance. The modern program has resulted in the U.S. Treasury directly collecting over \$6 billion from wealthy individuals and businesses caught dodging taxes. The WB Program has yielded additional billions from the indirect impact on taxpayer compliance, such as the Offshore Voluntary Disclosure Program (OVDP). The OVDP was created as a direct result of actionable information brought to the IRS by whistleblowers.

The WB Program is an important pillar of IRS's compliance and enforcement efforts because it directs IRS's limited resources to specific instances of tax noncompliance and provides general deterrence for taxpayers who know that they cannot keep their violations of the tax laws secret. The provisions in this legislation will improve one of the IRS' most effective tools in going after tax cheats – the WB Program. The legislation includes the following seven proposals:

1. **Provide for *De Novo* Review.** The current IRS WB statute provides a whistleblower the right to appeal an IRS award determination to the Tax Court. In a recent case, the Tax Court ruled (*Kasper v. CIR*, 150 T.C. No. 2 (2018)) it can only review IRS award determinations based on an “abuse of discretion” standard. A highly deferential standard. This provision clarifies that the Tax Court should review all such decisions “De Novo”, which will allow the Tax Court to take a fresh look at the record and evidence introduced on appeal to determine the soundness of the IRS decision.
2. **Exempt WB Awards from Budget Sequester.** The Office of Management and Budget has determined that IRS WB awards are subject to sequester which can reduce mandatory awards below the statutory floor of 15 percent. Further, other whistleblower award programs, such as the False Claims Act, are not subject to sequestration. WB awards are paid out of collected proceeds or amounts that the Government would not have received but for the actionable information provided by the whistleblower. Those who risk coming forward and generating billions of dollars in revenue to the Treasury should not be shortchanged in Congressionally mandated awards under Section 7623. The proposal would exempt 7623 awards from budget sequestration.
3. **Presumption of Anonymity in Tax Court.** The Tax Court has generally used its own discretion to allow IRS whistleblowers to proceed anonymously before the court. However, the IRS has increasingly contested motions by a whistleblower to proceed anonymously. Such efforts to disclose the whistleblower's identity puts the individual in jeopardy and deters the willingness of other whistleblowers from coming forward and sharing actionable information. Further, identification of the whistleblower may lead to the identification of the taxpayer (who is not a party to the case). This provision establishes a rebuttable presumption in favor anonymity to provide security to whistleblowers, and mitigate needless, costly, and time-delaying litigation in the Tax Court.

4. **Interest on Whistleblower Awards.** Whistleblower claims can take years to go through the IRS review and award determinations process. IRS whistleblowers have expressed concerns that the IRS has sometimes dragged its feet on issuing awards even after the IRS has collected all proceeds. This provision seeks to ensure IRS pays awards in a timely manner by requiring the IRS issue an award determination within one year of all proceeds being collected and no opportunity remains for the taxpayer to contest the liability or seek a refund. Interest would only begin to be accrue on an award if IRS fails to act by the end of one year.
5. **Retention of Collected Proceeds to Fund Program Costs.** Similar to the False Claims Act, the Commodity Futures Trading Commission whistleblower award program, and the IRS debt collection program, the proposal will allow the IRS to retain 3 percent of proceeds collected (up to \$10 million indexed for inflation) under the WB Program to be retained and used for program costs associated with administering the program. This includes reimbursing IRS enforcement divisions for costs associated with investigating whistleblower claims. These dedicated funds will ensure that the whistleblower program is properly supported and foster greater support for the program at the IRS.
6. **Correction Regarding Deduction for Attorney's Fees.** The 2006 amendments to 7623 provided that whistleblower attorney's fees would not be included in income under the new mandatory award program created under 7623(b). However, similar treatment was not put in place for awards under the discretionary IRS award program – 7623(a). The proposal ensures conformity of tax treatment of attorney's fees between the two IRS award programs and with other federal whistleblower award programs.
7. **Improve Annual Report.** The proposal would require that the WB Program's annual report to Congress list the top ten areas where whistleblowers have identified tax avoidance schemes. This real time information on violations will assist Congress's tax-writing committees in strengthening the tax laws.

These proposals are critically important in updating, clarifying, and improving the IRS whistleblower award program. Giving tax whistleblowers confidence that their rights will be protected by a fair, impartial judicial review; that they will receive the full award to which they are entitled in a timely manner; and, not subject to double taxation on attorney's fees will help ensure that whistleblowers continue to come forward with key and vital information about tax law violations.