

THE IRS WHISTLEBLOWER PROGRAM IMPROVEMENT ACT

Since the modernization of the IRS Whistleblower Award Program (WB Program) in 2006, it has enabled the IRS to successfully identify and pursue significant tax noncompliance. The program has resulted in the U.S. Treasury directly collecting over \$7 billion from wealthy individuals and businesses caught dodging taxes. The WB Program has retrieved additional billions through the Offshore Voluntary Disclosure Program, which was created as a direct result of actionable information brought to the IRS by whistleblowers.

The IRS Whistleblower Program Improvement Act would make commonsense clarifications and reforms to improve the WB Program, one of the IRS's most effective tools in going after tax cheats. Specifically, the IRS Whistleblower Program Improvement Act would:

- **Provide for De Novo Review.** The current IRS whistleblower statute provides a whistleblower the right to appeal an IRS award determination to the Tax Court. The Tax Court has ruled in *Kasper v. CIR*, that it can only review IRS award determinations based on the highly deferential “abuse of discretion” standard. This provision clarifies that the Tax Court should review all such decisions “de novo,” which will allow the Court to take a fresh look at the record and evidence introduced on appeal to determine the soundness of the IRS decision. Any such review is based on the administrative record at the time of the decision and any newly discovered evidence. The provision is effective for petitions pending on or filed on or after the date of enactment.
- **Exempt WB awards from budget sequestration.** The Office of Management and Budget has determined that IRS whistleblower awards are subject to budget sequester which can reduce mandatory awards below the statutory floor of 15 percent. Other whistleblower award programs, such as the False Claims Act, are not subject to sequestration. IRS awards are necessarily 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 generate significant revenue to the Treasury should receive the full congressionally mandated awards under section 7623. The provision exempts section 7623 awards from budget sequestration. The provision is effective for any sequestration order issued after the date of enactment. □
- **Create a presumption of anonymity for whistleblowers to proceed 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 occasionally contested motions by a whistleblower to proceed anonymously. Disclosure of the whistleblower's identity puts the individual in jeopardy and deters other whistleblowers from coming forward to share 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 clarifies that the Tax Court *shall* grant anonymity to whistleblowers upon request, absent the showing of an overriding societal interest. The provision is effective for petitions which are pending on, or filed on or after, the date of enactment.

- **Require the IRS to issue a whistleblower award in a timely manner or pay interest on awards.** Whistleblower claims can take years to go through the IRS review and award determinations process. Whistleblowers have expressed concerns that the IRS has sometimes delayed issuing awards even after the IRS has collected all proceeds. This provision is intended to ensure the IRS pays awards in a timely manner. Interest begins to accrue on an award if the IRS fails to provide notice of a preliminary award recommendation within 12 months after the first date on which all proceeds are collected and no opportunity remains for the taxpayer to contest the liability or seek a refund. In general, the provision is effective 180 days after the date of enactment. The provision requires interest on whistleblower awards beginning on the date that is 18 months after the date of enactment.
- **Ensure conformity of tax treatment of attorney's fees between the two IRS award programs.** The 2006 amendments to section 7623 provided that whistleblower attorney's fees are not to be included in income under the new mandatory award program created under section 7623(b). However, similar treatment was not put in place for awards under the discretionary IRS award program described in section 7623(a). The provision ensures conformity of tax treatment of attorney's fees between the two IRS award programs and with other federal whistleblower award programs. The provision is effective for taxable years ending after the date of enactment.
- **Improve annual reporting on the WB Program to Congress.** The provision requires that the IRS Whistleblower Program's annual report to Congress list the top 10 areas where whistleblowers have identified tax avoidance schemes. This real-time information on violations will assist congressional tax writing committees in strengthening the tax laws. The provision is effective for reports for fiscal years ending after the date of enactment.