

The Whistleblower Program

A tool for improving tax code administration

By Joseph L. LiPari, CPA, MBA and Patricia J. Villano, CPA, MBA, AEP

The IRS Whistleblower/Informant Program has been in existence since 1867 and allows the Secretary of the Treasury to pay awards “for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same” [IRC §7623(a)]. Except for a minor amendment in 1996, the law had remained unchanged until December 2006 with the passage of the *Tax Relief and Health Care Act of 2006*, which included fundamental changes to the IRS informant awards program.

The key change in the law was the addition of §7623(b). This change mandated that the amount of awards under this section would no longer be at the discretion of the Treasury Secretary. Now it's required that the whistleblower receive an amount equal to 15 to 30 percent of the collected proceeds. The 2006 law also provided for whistleblower appeal rights, and the IRS was required to create a Whistleblower Office reporting to the Commissioner, which has now been in existence for ten years.

the alleged violation of income tax law by checking the corresponding box on the form and estimate the amount of unreported income if known. The choices of alleged violations on Form 3949-A vary widely in scope but include claiming false deductions, organized crime, earned income credit, public/political corruption, unreported income, narcotics income, kickback and gambling, to name a few. There's even a question asking the informant if he or she considers the taxpayer dangerous.

Fiscal year 2016 was an especially big year under the Program, with 418 awards totaling more than \$61 million going to whistleblowers.

In his Annual Report to Congress for Fiscal Year 2015, Lee D. Martin, the Director of the Whistleblower Office, wrote: "The Internal Revenue Service Whistleblower Program, which was revised and expanded by Congress in 2006, is an important tax administration tool. Information received from tax whistleblowers—individuals who report to the IRS on violations of tax laws by others—has assisted the IRS in detecting tax compliance issues and in collecting additional tax revenue. It is without question that the Whistleblower Program makes an important contribution to the tax system, both by helping encourage compliance (through a deterrent effect on those who may otherwise engage in tax evasion or avoidance) and by contributing to tax gap reduction. In fact, submissions of valuable information have resulted in wide range audits and investigations yielding significant collection of unpaid taxes."

How the Whistleblower Program Works

The informant has the choice of reporting the alleged and suspected tax law violation anonymously if he or she wishes. If this route is taken, the process is simple. The whistleblower must complete Form 3949-A, *Information Referral*, and mail it to the IRS office in Fresno, California. This form cannot be completed online.

On Form 3949-A, the whistleblower will provide information about the individual or business being reported (i.e., name, address, federal ID number if known, etc.). The informant will also need to describe

Informants who choose to file Form 3949-A do not have to provide their personal information. Section C, *Information about Yourself*, states that "this information is not required to process your report, but would be helpful if we need to contact you for any additional information." It goes on to state, "We never share this information with the person or business you are reporting."

The filing of Form 3949-A does not require a signature and allows the whistleblower to report the alleged violation and "walk away" without any fear of recourse or retaliation. Of course, however, by taking this anonymous route, the informant will not be eligible for any potential monetary awards in the future.

The whistleblower must complete Form 211, *Application for Award for Original Information*, and meet several conditions to qualify for the §7623(b) award as previously discussed. Form 211 is similar to Form 3949-A, but asks for more detailed information. The informant must provide the following:

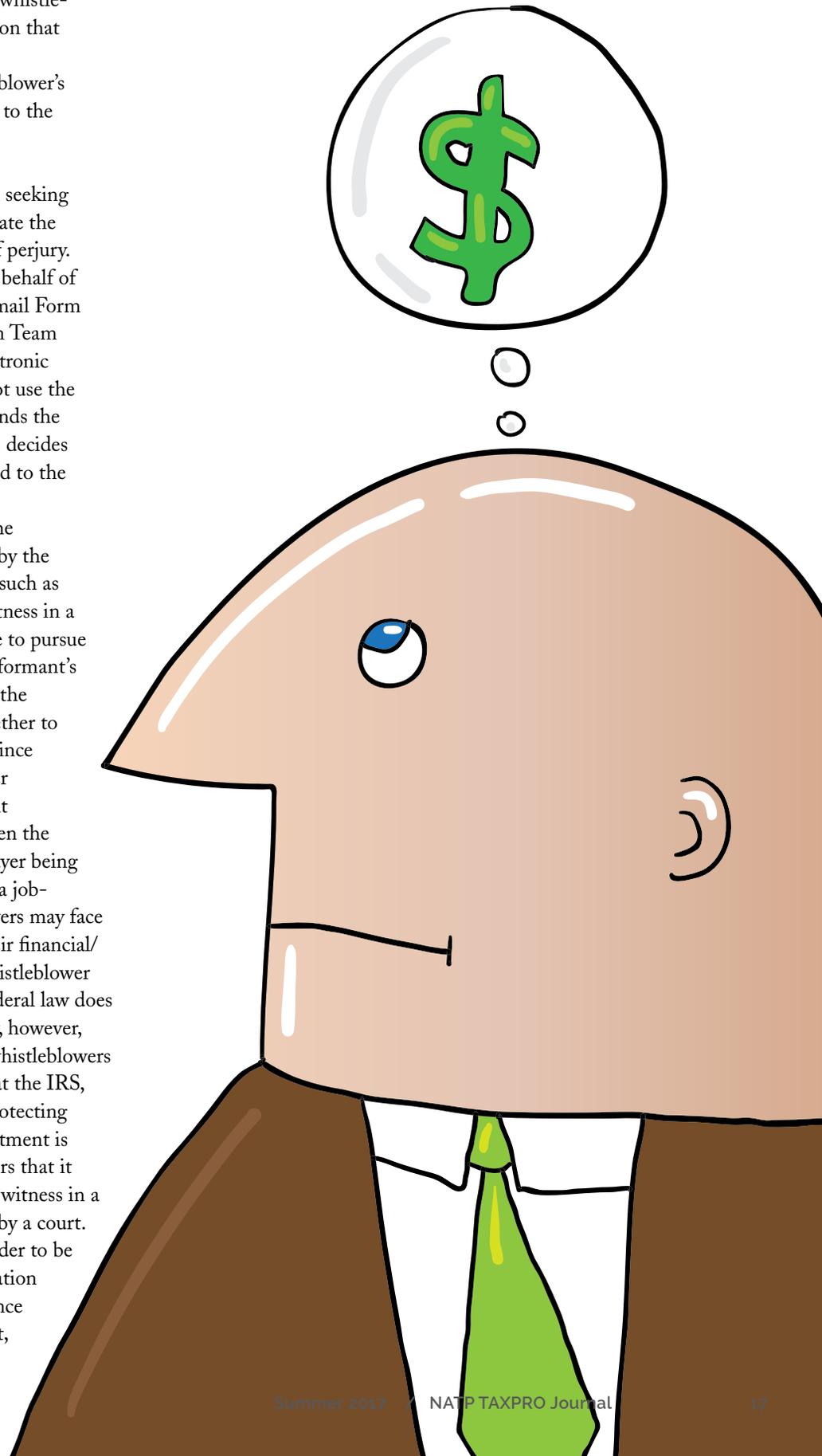
- A description of the amounts due, including a written narrative explaining the issues;
- Information to support the narrative, such as the location of the assets and copies of books and records, ledger sheets, receipts, bank records, contracts and emails;
- A description of documents or supporting evidence not in the whistleblower's possession or control, and their location;

- An explanation of how and when the whistleblower became aware of the information that forms the basis of the claim; and
- A complete description of the whistleblower's present or former relationship (if any) to the subject of the claim.

The first and foremost requirement in seeking an award is that the informant sign and date the application (Form 211) under penalties of perjury. A representative cannot sign the form on behalf of the whistleblower. Whistleblowers must mail Form 211 to the IRS's Initial Claims Evaluation Team at their Ogden, Utah office. Faxed or electronic claims are not allowed. If the IRS does not use the information, the Whistleblower Office sends the informant a claim denial letter. If the IRS decides the claim has merit, the claim is forwarded to the field for examination or investigation.

The IRS will protect the identity of the informant to the fullest extent permitted by the law; however, under some circumstances, such as when the whistleblower is an essential witness in a judicial proceeding, it may not be possible to pursue the investigation without revealing the informant's identity. Fortunately, the IRS will inform the whistleblower of this before deciding whether to proceed in such cases. This is important since the law does not provide for whistleblower protection. Section 7623 does not prohibit retaliation against the whistleblower. When the whistleblower is an employee of the taxpayer being reported, retaliation can take the form of a job-related action. In other cases, whistleblowers may face threats of physical harm or damage to their financial/economic interests. In these cases, the whistleblower may have recourse under state law, but federal law does not presently provide a remedy. Currently, however, there is a legislative proposal to provide whistleblowers with protection from retaliation. Note that the IRS, as a matter of policy, has committed to protecting a whistleblower's identity, but this commitment is qualified, since the IRS tells whistleblowers that it may identify them if they are an essential witness in a judicial proceeding or if ordered to do so by a court.

In addition to signing Form 211 in order to be eligible for a §7623(b) award, the information provided must relate to a tax noncompliance matter in which the tax, penalties, interest,



additions to tax and additional amounts in dispute exceed \$2,000,000 and relate to a taxpayer. If the suspected cheater is an individual, he or she must also have gross income of at least \$200,000 for at least one of the tax years in question.

After a claim is submitted, the IRS may notify the informant of the status of the claim, but not the action taken in the case (i.e., whether the claim is still open or has been closed). If closed, the IRS can say that a claim is payable, including the amount, or that the claim has been denied. A claim can be denied for a number of reasons:

- The IRS already has the information from a different source;
- The IRS conducts an audit or investigation that leads to no finding of taxpayer liability;
- A finding is made but the taxpayer is successful in an administrative or judicial appeal; or
- A finding of liability is made and sustained but there is no collection because the taxpayer has no assets.

If the information meets the above monetary threshold criteria and substantially contributes to an administrative or judicial action that results in the collection of tax, penalties, interest, additions to tax or additional amounts, the IRS will pay an award of at least 15 percent, but not more than 30 percent of the collected proceeds. If monetary thresholds are not

met, then these §7623(b) awards are not available, but discretionary awards may still be provided up to a maximum of 15 percent.

The IRS pays awards from collected proceeds only. Hence, payments are not made until the taxpayer has exhausted all appeal rights and the statutory period for the filing of a claim for refund has expired or been waived by the taxpayer. Therefore, the IRS usually does not make award payments for five to seven years after the whistleblower has filed the claim. The Whistleblower Office will communicate the final claim determination in writing to the claimant. Final determinations regarding awards under §7623(b) may, within 30 days of such determination, be appealed to the United States Tax Court. All awards will be subject to federal tax reporting and withholding requirements, and the whistleblower will receive a Form 1099.

Whistleblower Program Results

The IRS Whistleblower Program is an important tool for improving the administration of the tax code. The information received from informants assists the IRS in detecting tax compliance and tax evasion issues. Average, law abiding taxpayers must be confident that there is a system in place to thwart and expose individuals and business entities who do not play by the rules and avoid paying their fair share of taxes. Since 2007, information received from whistleblowers has assisted the IRS in collecting over \$3.4 billion dollars in tax revenue, and the IRS has awarded more than \$465 million to whistleblowers. Fiscal year 2016 was an especially big year under the Program, with 418 awards totaling more than \$61 million going to whistleblowers. Congress can strengthen this already powerful program by enacting the legislative proposals before them that would provide better protection for whistleblowers, especially by providing legal protections to whistleblowers from retaliation from employers. Such action would undoubtedly make the Whistleblower Program even more effective and further reduce the tax gap. ■

About the Authors

Joseph L. LiPari, CPA, MBA is an associate professor in the Department of Accounting and Finance at Montclair State University, Montclair, New Jersey.

Patricia J. Villano, CPA, MBA, AEP is an instructional specialist in the Department of Accounting and Finance at Montclair State University, Montclair, New Jersey.

