

TAX WHISTLEBLOWER

IRS TAX REWARDS BULLETIN



Over \$5 Billion in Tax Claims Submitted to IRS Tax Whistleblower Office

ABOVE THIS LAW

outlines the new tax law, which requires the IRS to reward TWBs from 15 to 30 percent of the amount recovered using his/her information.

CASE RISKS

outlines issues that require the IRS to handle TWB information carefully.

LET'S PRETEND

... a day in your life as a WBO analyst.

TAX WHISTLEBLOWER II

will focus on "insiders," legal privilege and confidentiality issues of CPAs and attorneys. Let's Pretend ... a day in your life as shy US hedge fund CFO (shy about paying taxes, that is).

CARMODY LEGAL PLLC

specializes in fling tax whistleblower claims. Our "think like the target" forensic investigative method enables us to unravel complex tax avoidance schemes with clinical precision. We present comprehensive and clear submissions to the WBO that contain no impenetrable jargon or bluster.

Uncle Sam Will Pay You for Good Information

ABOVE THIS LAW

Why This Statute Now. The IRS has turned to insiders (knowledgeable persons) to help it regain control over US tax avoidance and evasion, which the IRS estimates at \$400 billion annually. The IRS realized its personnel had neither the experience nor information flow to prevent tax avoidance structured by tax advisors (US and non-US) working collusively against it. Congress thought "insider" participation garnered through the reward process would bolster information flow to the IRS.

WBO's Evolution. The IRS tax whistleblower office (**WBO**) has been a resounding success. Its caseload has risen from approximately 120 in 2007, to more than 2000 in 2008. It has hired more senior IRS officers to assist with its backlog.

Law In Outline. The IRS must pay each tax whistleblower (**TWB**) a minimum of 15% and maximum of 30% of the amount it collects using the TWB's report. Main features:

- ◆ The amount of tax, interest and penalties owed must exceed \$2 million;
- ◆ The statute applies to any tax underpayment; tax fraud or IRS prosecution is not required;
- ◆ *Any individual* TWB with appropriate information can claim a reward whether a US citizen or not;
- ◆ The award percentage will vary from 15% to 30% depending on the "substantiality" of the TWB's contribution to the recovery; and
- ◆ Secure WBO procedures protect disclosure of TWBs' identities and the existence of a TWB claim.

We have not outlined certain minor legal elements that do not create meaningful obstacles for TWBs.

Risk of Disclosure of Taxpayer Information; "One Bite" Rule

CASE RISKS

Risk of Dismissal. The IRS's case against a taxpayer can be dismissed for procedural reasons in various circumstances. Two examples: 1) revealing "taxpayer information" to a third party and 2) basing a tax case on illegally obtained information. The severe penalty has conditioned the IRS to be cautious with TWB claims for two main reasons. Firstly, TWB claims necessarily involve "taxpayer information" since they will require the IRS to take action against the target taxpayer. Secondly, the enormous reward potential may entice TWBs to use illegally obtained information to support their claims.

Protected 'Taxpayer Information.'

Nixon-era legislation limits the IRS's ability to communicate with third parties about protected "taxpayer information," which includes information related to a taxpayer's tax filings. TWBs may provide target tax information to the IRS, but the IRS may not transmit information to TWBs. From a TWB's perspective, this means it may be difficult or impossible to supplement or clarify his or her original WBO submission.

Tainted Information. The IRS is careful not to ground a tax proceeding on illegally obtained information. However, the well established "one bite" rule allows the the IRS to accept TWB information, even that obtained under questionable or perhaps illegal circumstances, without jeopardizing the case.

Solution: Comprehensive and

Clear Presentation. The substantial penalty for possible mistakes under either limitation means TWBs must be careful. If the IRS trips up, the

TWB's case may fail. Given the risks, it is best to assume the "one bite" rule applies to a TWB claim, and prepare the WBO claim submission as if one had a solitary opportunity to present the case. The WBO submission must, therefore, be *comprehensive* while remaining *comprehensible*; fluent without jargon or "filler." The WBO should not have to seek additional clarification for any aspect of a filed claim, though it may, if it wishes, in most cases.

A Day In Your Life as a WBO Analyst

LET'S PRETEND . . .

you are a highly experienced WBO senior analyst. There is a large heap of claims on your WBO desk and more arrive with disturbing regularity. You are behind in your work when a new TWB submission arrives. This new submission is neat, organized and blessedly short. It even has a two page Executive Summary with a diagram of the reported tax structure and a CD-ROM containing electronic copies of everything on the hard copy filing. This will save you time scanning everything into the IRS system. You have dealt with this Tax Whistleblower Counsel often. Therefore, you are assured he would file a viable claim. You will take a quick look at the file.

"First, I assess the risk adjusted value of the case. This means balancing the strength of the legal case and weighted risk of loss, against the value of the tax recovery. Counsel places a respectable \$110 million price tag on the case. Even if I apply a high 20% risk of loss, this case will be a high revenue source.

Second, I assess the credibility of the claim. Does this claim explain how the tax avoidance operated, and does the corroborating information seem reliable. The TWB is the target's former tax manager/GC so

she would know what was going on there.

This Cayman Islands structure for a NYC hedge fund looks like a Rube Goldberg contraption -- a superficially complicated "thing" that actually does "no-thing." A badge of fraud if you ask me.

The TWB states there is a legal opinion that this works. I know the firm, a "tax opinion mill." So let's apply a 100% discount to the opinion. Probably generous at that!

Our TWB doesn't have all the docs, but she identifies what we need so no roadblock there.

The submission's "Executive Summary" is clear and precise. The narrative hangs together factually and legally. I can use the WORD version on the the CD-ROM to cut and paste my case summary for my field officers.

Hopefully, I can process my caseload, but the stream of new cases doesn't help. So many claims drone on and on and on -- mixed up and confused, littered with useless, impenetrable jargon and filler. I can't explain a scheme to my field officers I don't understand myself.

My field officers will love this one. The narrative is fluent, cogent and we won't be delayed by "information deficit." The facts and law are all here. I don't need to consult the TWB or her counsel.

Well, I don't think so Mr. Hedge Fund Guy. Not this time. I will get this done today and lighten our backlog.

All good."

Zero Risk of Disclosure

THE TAKEAWAY

Offshore Planning. The WBO program and claim filing process is straightforward. The IRS will pay huge rewards to any individual (whatever passport he or she carries) for solid information about large scale US tax avoidance. Treasury is

interested in all solid information concerning tax avoidance, but especially about offshore planning in tax havens like Ireland, Cayman, and Guernsey, as examples.

Security Procedures. The IRS's internal security procedures mean there is *no* disclosure risk for a TWB claim. Indeed, those procedures prevent any discovery that an IRS action was based on a whistleblower claim. Only if the TWB reveals that he or she filed a WBO claim would that fact become public, a situation he or she would control, and therefore with zero risk.

Tax Opinions. Many transactions are arranged by tax advisors who provide supporting tax law "opinions." Legal opinions are not necessary to support tax planning that is above board. Therefore, we view legal opinions as helpful roadmaps that detail questionable tax avoidance situations for the WBO rather than as obstacles.

A LOW RISK/HIGH PAYOUT CHANCE OF A LIFETIME

If you have information about large scale US tax avoidance don't squander your once in your life time opportunity. It's like knowing the winning lottery numbers in advance!

If we can help you, please e-mail or call us confidentially.

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