

Whistleblowers to Get Full Share of Collected Proceeds, Including Fines and Forfeitures

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BY ROGER RUSSELL

The Tax Court held a husband and wife who supplied information to the Internal Revenue Service are entitled to a full 24 percent of the “collected proceeds,” which includes a criminal fine and civil forfeitures to the government, not just tax restitution.

In the case, *Whistleblower 21276-13W v. Commissioner*, the targeted taxpayer pleaded guilty to conspiring to defraud the IRS, file false federal income tax returns, and evade federal income tax. The unidentified taxpayer paid tax restitution of \$20,000,000; a criminal fine of \$22,050,000; a civil forfeiture of \$15,821,000, representing gross fees the taxpayer received from its U.S. clients; and the relinquishment of all claims to \$16,260,693 that had been previously forfeited to the United States.

Code section 7623(b) provides for a mandatory whistleblower award if certain requirements are met. A husband and wife (petitioners) each filed a Form 211, Application for Award for Original Information with the IRS Whistleblower Office, which rejected the claims on the basis that “additional tax, penalties, interest or other proceeds” had been collected before the respective Forms 211 were filed. The petitioners appealed and the Tax Court held last year that the Form 211 is not required to be filed with the Whistleblower Office before the whistleblower supplies information to other parts of the IRS or other government agencies in order to be eligible for an award. The IRS and the petitioners agreed that the petitioners are eligible for an award in the amount of 24 percent of the “collected proceeds.” At issue is whether collected proceeds included criminal fine and civil forfeitures in addition to amount collected as tax restitution.

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The Tax Court held last week that it does. While the term “collected proceeds” is not statutorily defined, it noted that the Supreme Court has said that “‘proceeds’ is a word of great generality” and that “proceeds are not necessarily money.”

“We are leery of arbitrarily limiting the meaning of an expansive and general term such as ‘collected proceeds,’ the court said.

“Section 7623(b)(1) uses plain language,” the court concluded. “The words and terms in question are commonly understood. The term for amounts used to calculate the award is ‘collected proceeds.’ The term ‘collected proceeds’ means all proceeds collected by the Government from the taxpayer. The term is broad and seeping; it is not limited to amounts assessed and

collected under Title 26 [the Tax Code].”

“Potential whistleblowers with information about offshore accounts and big time tax fraud should especially be heartened by this decision,” wrote Dean Zerbe, partner for Zerbe, Fingeret, Frank & Jadav, the lead attorney in the case, in a [Forbes article](#) about the case.

The view of “collected proceeds,” limiting the term to just taxes paid under Title 26, “brought a great deal of uncertainty for whistleblowers who are deciding whether to come forward about illegal offshore accounts and criminal tax activities,” Zerbe said. “Happily now the Tax Court has with this decision plowed the field for them and given the IRS and Treasury ample authority to state that will as a matter of policy for all whistleblowers make awards for civil forfeitures and criminal penalties, including FBAR penalties.”

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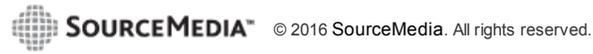
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