FOR IMMEDIATE RELEASE

Contact: Miranda Houchins
202-296-4883
mhouchins@taf.org

Big Wins on Whistleblower Taxes and Awards in the February 2018 Budget Bill

WASHINGTON, D.C. [2/12/18]— We are pleased to confirm that the budget legislation signed into law by the President on February 9, 2018 includes the two tax code amendments that TAF advocated for during the run-up to the enactment of the December 2017 tax bill and during the budget process. Our sincere thanks go out to Sen. Chuck Grassley and his staff, who pushed for the inclusion of these provisions in both pieces of legislation, saw to the correction of drafting problems that appeared in both, and got the amendments across the finish line.

The relevant provisions are Sections 41107 and 41108, which appear at pp. 231-34 of the final bill. In addition, ten technical corrections were made to the bill at the eleventh hour, the ninth of which (on p. 3) corrects a drafting error in Section 41107 that would have limited its application. The corrected version ensures that relief from double taxation will apply to awards under all state false claims acts, not just those that comply with Section 1909 of the Social Security Act (commonly referred to as "DRA-compliant state false claims acts"). The section as it appeared in the final Senate version of December's tax bill is identical to the corrected version signed into law on February 9, 2018.

1. Section 41107

Back in 2004-05, Taxpayers Against Fraud was instrumental in crafting legislation that ended double taxation of whistleblower awards under the federal False Claims Act (FCA) and the Internal Revenue Service (IRS) whistleblower program. Before the IRS code was amended in 2005, whistleblowers were taxed for 100% of their FCA and IRS awards, and their lawyers were then taxed *again* for the share of the award that was legally assigned to them. The 2005 amendments eliminated this unfair tax burden and have saved FCA and IRS whistleblowers significant sums of money over the last twelve years, but did not provide the same relief to awards under later-enacted federal whistleblower laws or state false claims acts. The February 2018 amendments finally provide consistent tax treatment to whistleblowers in all of these programs, eliminating the double taxation of recoveries under state *qui tam* laws and the whistleblower programs created by the 2010 Dodd-Frank Act. Section 41107 (at pp. 231-32 of the bill) eliminates the double taxation of attorneys' fees incurred in connection with recoveries under the SEC (Securities and Exchange Commission) and CFTC (Commodity Futures Trading Commission) whistleblower programs and under state false claims acts (consistent with the treatment of awards under the federal FCA and the IRS Whistleblower Program).

During the drafting of the December tax bill, Sen. Grassley's staff agreed that the differential treatment of fees under the various state false claims acts would be inconsistent with the underlying tax policy and would create an unintended consequence of the amendment and a serious accounting problem for whistleblowers and their

attorneys following the resolution of multi-state false claims cases. Attorneys pursuing FCA cases manage litigation as a unified pursuit of claims on behalf of all government stakeholders, not as a state-by-state exercise. The differential treatment of the state FCAs would have required whistleblowers and their attorneys to parse out – for taxation purposes – what portion of the fees recovered were attributable to the pursuit of claims under each individual state statute, with as many as 31 state FCAs in play. When the defective version of the provision appeared again in the final budget bill two days before passage, Sen. Grassley's aides went back to the key Finance Committee staffers and got it fixed.

Section 41107 (at pp. 231-32 of the bill) eliminates the double taxation of attorneys' fees incurred in connection with recoveries under the SEC (Securities and Exchange Commission) and CFTC (Commodity Futures Trading Commission) whistleblower programs and under state false claims acts (consistent with the treatment of awards under the federal FCA and the IRS Whistleblower Program). During the drafting of the December tax bill, Sen. Grassley's staff agreed that the differential treatment of fees under the various state false claims acts would be inconsistent with the underlying tax policy and would create an unintended consequence of the amendment and a serious accounting problem for whistleblowers and their attorneys following the resolution of multi-state false claims cases. Attorneys pursuing FCA cases manage litigation as a unified pursuit of claims on behalf of all government stakeholders, not as a state-by-state exercise. The differential treatment of the state FCAs would have required whistleblowers and their attorneys to parse out – for taxation purposes – what portion of the fees recovered were attributable to the pursuit of claims under each individual state statute, with as many as 31 state FCAs in play. When the defective version of the provision appeared again in the final budget bill two days before passage, Sen. Grassley's aides went back to the key Finance Committee staffers and got it fixed.

2. Section 41108

Section 41108 (at pp. 232-34 of the bill) defines the term "proceeds" under the IRS whistleblower program to include "(1) penalties, interest, additions to tax, and additional amounts provided under the internal revenue laws, and (2) any proceeds arising from laws for which [sic] the Internal Revenue Service is authorized to administer, enforce, or investigate, including (A) criminal fines and civil forfeitures, and (B) violations of reporting requirements."

As TAFEF member Michael Sullivan points out, the IRS whistleblower amendments are far-reaching and finally reject the narrow agency interpretation of "proceeds." The program now explicitly permits whistleblower rewards on criminal fines and other IRS recoveries that in the past have been the subject of contention and litigation.

Both sections have an effective date of December 31, 2017. The amended definition of "proceeds" in Section 41107 will apply in all matters in which a final determination of award had not been made as of the effective date, regardless of when the whistleblower provided information to the IRS.

About TAFEF

TAFEF is a public interest non-profit dedicated to fighting fraud against the government by incentivizing integrity. Through public-private partnerships, our organization protects and strengthens these incentive-based laws to advance the efficient use of taxpayer dollars.

###