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# Congress In Budget Rolls Out Red Carpet For Tax Whistleblowers



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Taxes

*I write about tax policy and how it affects business.*



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The recently passed budget bill contains extremely good news for tax whistleblowers—with Congress making it clear that the federal government welcomes and will reward whistleblowers who provide information about illegal offshore accounts, big time tax cheats as well as traditional tax evasion. Swiss

bankers and Panama tax lawyers are weeping.

The Congress (thanks, as always, to Senator Grassley, R-IA) clarified and reaffirmed that the definition of "collected proceeds" (which serves as the basis for mandatory awards to tax whistleblowers under Section 7623(b)) encompasses not just taxes, but also includes criminal and civil tax penalties, forfeitures, fines, etc. as well as FBAR penalties. It is only commonsense that the whistleblower should be rewarded for the proceeds the government collects thanks to his/her information—regardless of what form the actions by the government takes against the taxpayer (be it a penalty, a fine, a forfeiture, tax, interest, etc.).

The definition of "collected proceeds" has been subject to litigation—with the Tax Court finding for the whistleblower (in a case I litigated) that collected proceeds was a term of broad applicability (Whistleblower 21276-13W v. CIR). I wrote about that all [here](#). That case (and other cases are working through the Tax

Court) is before the D.C. Circuit—but with this action by the Congress of essentially codifying (and then some) the whistleblower victory in Tax Court—this should now be all put to bed.

The Congress also expanded in the new law the ability of whistleblowers to have access to the Tax Court—broadening essentially what whistleblowers can qualify to go to tax court. However, what the Congress gives, the Tax Court has, unfortunately, taken back somewhat—with a recent decision in a pro se case (*Kasper v. Commissioner*) that puts a bit of a fence around discovery and also makes it harder to overcome an IRS decision (the whistleblower must now show the IRS was arbitrary and capricious in its decision). That is [discussed here](#). I expect Congress to take a hard look at the Tax Court decision in that case. In the meantime, the Tax Court decision in *Kasper* underscores the importance of having good counsel if you want to effectively challenge an IRS decision in a whistleblower case.

More on the good news front for whistleblowers is the naming of the new IRS Commissioner, Charles Rettig, a respected tax litigator who has written favorably about the IRS whistleblower program. Support from the top will be a big help for the whistleblower program.

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For tax whistleblowers though, some things remain the same. The IRS is interested in cases that are current (statute of limitations open—even better if action is ongoing—remember no statute of limitations on undeclared offshore accounts); involve significant dollars; the whistleblower is an insider or has significant first-hand knowledge (not arm chair analysis); good documentation a plus; detailed legal analysis of the issue; and, bonus points if the taxpayer is up to big mischief (tax shelter, second set of books). All provided to the IRS in an easily understandable narrative (don't send them War and Peace). With this clarification of the law -- I expect that you will see a lot more outreach of

whistleblowers with IRS Criminal Investigation (CI). CI to their credit has always been first-rate to work with whistleblowers (some of my best successes have come with whistleblowers working with CI)—and the new leadership continues that tradition.

So for whistleblowers who were previously unsure about coming forward, Congress has rolled out the red carpet, put out the welcome mat and is baking cookies.

*After I wake up, feed my yellow lab and check the internet for updates on Nebraska football, I do two things: 1) help small and medium business owners (especially manufacturers, architects, engineers, computer software and agriculture) keep more of their tax dollars as Natio... MORE*