

IRS Whistleblower Awards – 5 Keys to Success

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In working with the IRS on a number of whistleblower submissions, and talking and listening to senior IRS officials, it is clear that there are 5 keys to having the IRS give a hard consideration to your claim:

Current

The IRS is going to be much more interested in a submission that is dealing with a tax matter in open tax years. For a big corporation, this can often be back 7 – 8 years, but for an individual or a small or medium company it may be more likely 3 years from the date the return was filed. A plus if the issue is ongoing – ex. it started 7 years ago and is continuing through to today.

So if your story starts with – “In 1999 . . .” – not a good place to be in general.

Why is that? The IRS would have to open up a tax year that has been closed in some cases (particularly a big company audit) and in other cases have to look to prove fraud or that there was a significant misstatement of taxes. These are high hurdles for the IRS to clear – and they have plenty of other fish-to-fry. It is not to say if you’ve got chapter and verse on tax fraud from 6 years ago it’s not worth submitting, but you better have a lot else going for you (see below).

Real Dollars

While the threshold is \$2 million – the IRS has to prioritize and a credible whistleblower coming in with a discussion about tax evasion at a major company involving big dollars – tens or hundreds of millions or even billions is going to get a stronger look. Related to that – is that the tax dollars are collectible – is this company solvent? paying taxes (paying taxes in near future)?

However, that said, if it is a case involving an individual and the dollars are involved are north of \$2 million dollars – it will likely move to the top of the IRS SBSE workload.

Documents

Who doesn’t love documents? The IRS sure does. It’s one thing to say “Jimmy’s got a Swiss bank account.” It’s another thing to say – “Here’s Jimmy’s account statement from Credit Suisse.” Having good documents that support your statements is of great help – (and a related point – organizing the documents so the IRS can understand what –is-what is equally important). While the IRS doesn’t expect you to have A-Z on the documents (although that is certainly nice) – having enough documents to show some of the fire as well as the smoke is a good place to be. If you don’t have documents (or great documents) having supporting witnesses and names of participants and promoters can be critical to catching the IRS’ attention.

Knowledge/Creditability

In general, the IRS is going to be in a happier place if the whistleblower is viewed as someone with good information, understands the issues and is well-placed. While the whistleblower doesn’t necessarily have to be an insider (although that’s great) the whistleblower needs to be seen as credible. Part-in-parcel, it can be helpful to have a submission that reflects also an understanding of the tax laws at issue – applying the facts to the law.

Bad Actors/Industries

While not as important as the other factors, I do see that the IRS has stronger interests in some areas (ex. offshore banks and accounts) than others. In particular, the IRS sharpens its pencils when the whistleblower highlights that there are potential bad actors – knowing violations or disregard of the tax laws.

While these are rules of the road – it is important to bear in mind that the IRS is facing a tough time in its work – down from 107,000 employees to now roughly 87,000 employees in the last 7 years. In addition, the IRS is saddled with a great deal of the Affordable Care Act (ACA), growing identity theft problems, increased filers, etc. In short, the world has changed at the IRS a great deal from 2006 when the whistleblower law was passed. I have found that, at times, it can be vital to bang the pots with IRS senior management to get their attention on a whistleblower submission.

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