

Tax Whistleblowers: Winning in Tax Court



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One of the critical elements of the IRS whistleblower law ([26 USC 7623](#)) is the provision -- (7623(b)(4)) -- that allows the whistleblower to go to Tax Court for review of an IRS decision on their case. By providing that whistleblowers can go to Tax Court – Congress ensured that whistleblowers are not at the mercy of the IRS as to receiving an award. There has been in some corners cynicism/uncertainty about whether the Tax Court would provide real protections for whistleblowers – and translating into whistleblowers getting awards. The pudding has arrived with the proof.

Two cases (Whistleblower 21276-13W v. CIR and Whistleblower 10949-13W v. CIR) were recently settled (or partially settled) with the IRS -- resulting in the whistleblowers receiving significant award amounts. Both of these cases, for which I served as cocounsel,[\[1\]](#) had earlier favorable Tax Court opinions (144 TC 15 – 2015 and TC Memo 2014-94 – 2014) – which addressed key issues regarding the cases – and paved the way for a settlement. These are the first award payments made to whistleblowers who had decisions in Tax Court cases. Of note, Whistleblower 21276-13 v. CIR was the first time whistleblowers represented by counsel were subject to a substantial hearing in Tax Court (a partial trial/special session for discovery of relevant facts).

These cases highlight how incredibly useful and important whistleblowers can be to the work of the U.S. government – one case exposed an effort to finance terrorism and the other case involved big-time tax cheats (think millionaires and billionaires). Hats off to the courageous whistleblowers who came forward but also to the dedicated (but sadly anonymous) IRS Criminal Investigation agents; FBI agents and US Attorneys who saw the importance of these whistleblowers' information and grabbed with both hands the chance to use the whistleblowers and their information to realize big wins for the public.

These two cases make clear that whistleblowers can go to Tax Court, have their rights protected and at the end of the day receive a substantial award. Happy day. A thanks to the professionalism and courtesy of the IRS Counsel – Richard Hatfield and John Arthur – in resolving these cases as well as the significant time and energy of the IRS whistleblower office – Director Lee Martin as well as Ken Chatham and Felipe Castellanoz of the whistleblower office for their dedication and efforts. Director Lee Martin in the most recent IRS whistleblower [annual report](#) emphasized the need to move forward on getting awards into the hands of whistleblowers. Resolving and settling these two cases is a good indication of better tomorrows when it comes to awards for whistleblowers.

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The best cases for Tax Court are those that the whistleblower has a high confidence that the IRS used the information provided (and the information was substantive) and resulted in dollars being collected by the government from a specific taxpayer(s). The whistleblower should anticipate that the government lawyers may throw up a host of arguments as to why the whistleblower shouldn't get an award -- (“filed 211 late;” “information provided without signature;” “information provided to wrong office;” “already aware of taxpayer;” “already aware of issue;” “dollars collected – but not viewed as ‘collected proceeds;’” etc.). However, the whistleblower shouldn't be dissuaded by the government's arguments if at the core the information they provided was used and the government's coffers were filled.

While there are cases that are good possibilities for Tax Court that don't have certainty on those two elements (information used/dollars collected) the closer you are to that pole the better.

A key to success in Tax Court for a whistleblower is understanding and navigating the Tax Court rules and guidance on discovery. While getting the administrative file from the Whistleblower Office is a start it is often necessary to move beyond the administrative file to determine what actually happened with the whistleblowers information -- all with an eye to making certain that you are meeting the statutory elements for an award under Section 7623 as well as responding to the regulatory factors for determining the percentage amount for the award. Whistleblowers should also know that the Tax Court has been sympathetic to whistleblowers who believe that they need to proceed anonymously.

Discovery in a whistleblower case is not an easy path – with the challenge being that the whistleblower is often in a position of limited knowledge of what happened with the information provided and the ultimate results (unlike a typical tax case where the IRS knows what it did and the taxpayer knows what they did). However, it can be done with focus, patience, planning and knowledge.

The Tax Court is clearly fulfilling its statutory role as a protector of the rights of whistleblowers -- and whistleblowers with good cases should give consideration to filing to protect their rights.

[1] *Serving with me as counsel were my colleagues at ZFF&J - Jeremy Fingeret and Felipe Bohnet-Gomez as well as cocounsels Robert Amsel, RTR in Miami; Steve Kohn and David Colapinto of Kohn, Kohn and Colapinto of Washington, D.C. for the first case and Jeff Hansen of Texas for the second. All part of a team effort that made a good result possible for the whistleblowers.*