

**Out For Money & Blood:
How to Bring a Whistleblower Case**

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Eric Green, Green & Sklarz LLC, New Haven, CT



- Managing partner in Green & Sklarz LLC, a boutique tax firm with offices in Connecticut and New York.
- Focus is civil and criminal taxpayer representation before the Department of Justice Tax Division, Internal Revenue Service and state Departments of Revenue Services.
- Has served as a columnist for CCH's Journal of Practice & Procedure.
- Attorney Green is the past Chair of the Executive Committee of the Connecticut Bar Association's Tax Section.
- Eric is a Fellow of the American College of Tax Counsel ("ACTC").

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Michael A. Villa, Jr., Meadows Collier, Dallas, TX

- Mike focuses on resolving federal tax controversies and white collar crime, including securities, tax and bank fraud. He represents individuals, closely-held businesses, and large corporations in IRS audits, appeals, and litigation, as well as in business disputes and lawsuits involving fraud, breach of contract, breach of fiduciary duty, deceptive trade practices act violations, non-compete violations, business torts, and other commercial disputes.
- Mike was named a Texas Super Lawyer in Texas Monthly and Texas Super Lawyer Magazines in 2013-2019. In 2010-2013, he was named a Texas Rising Star
- Prior to joining the firm in 2007, Mike worked in Washington, D.C. as a Congressional intern to U.S. Senator John Breaux (Retired) and worked as an Associate with a regional law firm in New Orleans, Louisiana. In 2004-2005, he served as a Judicial Clerk to the Honorable James J. Brady, U.S. District Court, Middle District of Louisiana.
- Mike was admitted to practice in Texas in 2005 and in Louisiana in 2004.



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Agenda

- The Whistleblower Program
- Filing a Claim
- Challenging an Award Decision

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Whistleblower

The IRS will pay money to people who blow the whistle on persons who fail to pay the taxes they owe. If the IRS proceeds with an administrative or judicial action, against a taxpayer, based on information provided by the whistleblower, it can award up to 30% of the additional tax, penalty and other amounts collected, including criminal fines and civil forfeitures, and violations of reporting requirements.



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Claim Process

➤ The whistleblower must submit IRS Form 211 "Application for Award for Original Information" that is signed and submitted under penalties of perjury.

➤ The Form 211 should contain the following:

1. A description of tax noncompliance including a written narrative explaining the issue
2. Information to support narrative such as location of assets, ledger sheets, receipts, bank records, contracts, emails, copies of books and records.
3. Description of documents or supporting evidence not in whistleblower's possession, and their location.
4. Explanation of how whistleblower became aware of information.
5. Description of the whistleblowers present or former relationship to the subject of claim.

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DEPARTMENT OF THE TREASURY
 Internal Revenue Service
 Washington, D.C. 20224
 December 4, 2019

Re: Claim Number(s)

Dear:

We received your submission dated October 10, 2019. Your claim is still open and under active consideration. You are invited to sign your identity information due to Section 5105 of the Internal Revenue Code. Final Offer of Credits and priority form that provide information for all taxpayers.

If you want to change the address to which you want correspondence directed, you must file this office a notice of the change of address. Failure to notify this office of a change of address regarding this claim could result in you not receiving the advance correspondence.

Additional information about the whistleblower claim process can be found in Publication 1075, The Whistleblower Claim Process. Publication 1075 can be found online at irs.gov.

If you have further questions about your claim, please call or write the Whistleblower Office at the address below or call 800-829-1070.

Internal Revenue Service
 Whistleblower Operations Team, 800-829-1070
 1375 N. Hyde Park Blvd.
 Ogden, UT 84401

Thank you for your interest in compliance with the law.

Sincerely,
 Annette Cooper, Director
 Annette Cook, Program Manager
 Whistleblower Office, 8774

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Awards

- The IRS will pay an award of at least 15% but not more than 30% of the proceeds collected attributable to the information submitted by the whistleblower.
- Awards will be processed as either a 7623(b) award or a discretionary 7623(a) award.
- To qualify for the IRC section 7623(b) award the information must relate to a tax noncompliance matter in which the tax, penalties, interest, additions to tax and additional proceeds in dispute exceed \$2,000,000 and relate to a taxpayer whose gross income exceeds \$200,000 for at least one of the tax years in question.
- If the submission does not meet criteria for IRC section 7623(b) then the IRS will consider it for the discretionary program under IRS section 7623(a).



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Awards Paid 2017-2019

| | 2017 | 2018 | 2019 |
|-----------------------------------|---------------|-----------------|---------------|
| Total Claims Related to Awards | 367 | 423 | 510 |
| Total Number of Awards | 242 | 217 | 181 |
| Total IRC §7623(b) Awards | 27 | 31 | 24 |
| Total Amount of Awards | \$33,979,873 | \$312,207,590 | \$120,305,278 |
| Proceeds Collected | \$190,583,750 | \$1,441,255,859 | \$616,733,127 |
| Awards as % of proceeds collected | 17.8% | 21.7% | 19.5% |

➤ In 2019 the IRS made 181 awards totaling \$120,305,278 which is 19.5% of total amounts collected.

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Whistleblower Office

- In 2019 the whistleblower office staff comprised of 37 employees
- The whistleblower office will respond in writing to the address the whistleblower provided.
- The office will notify the Whistleblower when a case they provided information on has been referred for audit or examination.
- Since 2007 the whistleblower office made awards of \$931.7 million based on collection of \$5.7 billion.

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Reasons for Closure

- The 4 most common reasons for closures were:
 1. Rejected claims with non-credible or speculative allegation
 2. Decided not to pursue claim due to quality of claim information, statute of limitations is too short for enforcement action, or lack of credibility.
 3. Issues below threshold for IRS action.
 4. Claims denied due to the examination resulting in a no change.
- In 2019, nearly 51% of claims rejected due to allegations not being specific, or credible.

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Challenging the Decision

- United States Tax Court has jurisdiction over challenges on whistleblower awards under Rule 13(b)
- When petitioning the court, check "Notice of Determination under Section 7623 Concerning Whistleblower Action"
- IRS has discretion on which claims it pursues, and you don't get paid if it doesn't collect any proceeds

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Cline vs Commissioner (3/16/20)

- P filed two whistleblower claims with the Whistleblower Office ("WO") of the Internal Revenue Service ("IRS").
- The first claim alleged that a taxpayer failed to report income for 2012 and 2013. It was denied by the WO because the information provided did not result in the collection of any proceeds by the IRS.
- The second claim alleged that a taxpayer fraudulently failed to report income from business activity for 2016 and possibly also for other years. It was rejected by the WO for failing to provide specific and credible information regarding tax underpayments or violations of internal revenue laws.
- Held: The WO did not abuse its discretion when it denied P's first claim and rejected P's second claim.

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Lewis vs. Commissioner (4/8/2020)

- R determined P is entitled to a whistleblower award under I.R.C. sec. 7623.
- P argues that R abused his discretion in the computation of his award by excluding reported, paid tax from the collected proceeds and by determining that there was no possibility of future proceeds relating to the deceased target taxpayer's estate.
- P also argues that R abused his discretion by reducing his award pursuant to the budget sequester provisions of the Budget Control Act of 2011
- Held: The amendments to I.R.C. sec. 7623 in the Bipartisan Budget Act of 2018, Pub. L. No. 115-123, sec. 41108(a), 132 Stat. at 158, apply to the determinations of the Whistleblower Office (WO) until the whistleblower award can no longer be further challenged in court or elsewhere.
- Held, further, the WBO did not abuse its discretion when it determined that the sequestration provisions in effect for the year of payment would apply to P's whistleblower award.

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IRS Final Authority Over Tax Due

Apruzzese v. Commissioner, T.C., No. 12151-17W, 10/21/19

- Two whistleblowers claimed that an estate omitted and undervalued assets on federal estate and gift tax returns.
- Based on the whistleblowers' information, the IRS examined several tax returns and adjusted the tax due on the estate tax and gift tax returns. It assessed tax and interest of \$424,019.
- The whistleblower office issued a preliminary award of \$43,424 to each claimant.
- The whistleblower disagreed with the proposed award. He essentially argued that the tax due should have been higher and resulted in a higher award. The whistleblower office disagreed and the award remained the same.
- One of the whistleblowers filed a petition in Tax Court and argued that the tax adjustments were too low and was seeking to have the court to recalculate the tax or order the IRS to re-examine the taxpayer.
- The Tax Court ruled that while the court had jurisdiction to review the award determination, it did not have the authority to review the underlying determinations regarding the alleged tax liability and granted the government's motion for summary judgment.

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Questions

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