

How to Bring an IRS Whistleblower Case for Fun & Profit

Eric L. Green, Esq.
Michael A. Villa, Jr., Esq.



1

Eric Green, Esq.

- ▶ 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.
- ▶ Eric is a contributing columnist for Bloomberg Tax and 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").

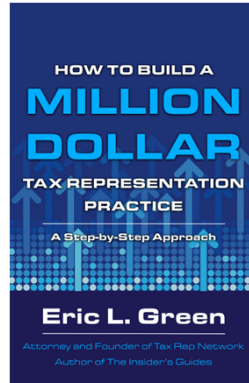


2

2

Eric Green, Esq.

- Eric is the host of the weekly Tax Rep Network Podcast
- Eric is the founder of Tax Rep Network, an online community designed to help tax professionals build their IRS Representation Practice
- He is the author of the Accountant's Guides in IRS Representation
- Partnered with UConn and creator of the IRS Representation Certificate Program
- Creator of the Tax Rep App



3

3

Michael A. Villa, Jr., Esq.



- ▶ Mike was named the Best Lawyers® 2024 Litigation and Controversy-Tax "Lawyer of the Year" in Dallas/Fort Worth. He has also been named a Texas Super Lawyer in Texas Monthly and Texas Super Lawyer Magazines in 2013-2022. In 2010-2013, he was named a Texas Rising Star. 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.
- ▶ 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.



4

4

10th Annual NE IRS Rep Conference

- ▶ Back at Mohegan Sun
- ▶ 11/30/23 (QU) and 12/1/23 (Mohegan)
- ▶ Free for Members
- ▶ <https://irsrepconference.com>



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5

5

Orlando will be even better!!!!

- ▶ 12/13/23 – 12/15/23
- ▶ Drury Plaza Hotel – Disney Springs
- ▶ Members pay cost
- ▶ Includes breakfast, cocktail reception and wifi
- ▶ <https://taxrepllc.com/2023-summit>



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6

6

Housekeeping

- ▶ 4 polls, must do at least 3 for credit
- ▶ Look for a link later to claim your certificate
- ▶ Any issues, email us at:
support@taxrepllc.com
- ▶ 10 Minute Coffee Break at the top of the hour



Coffee Break



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.



Claims Issued, Open, and Closed 2017-2019

	2021	2022
Collected	\$245.6 Million	\$172.7 Million
Awards-IRC 7623(a)	159	106
Awards-IRC 7623(b)	20	26
Awards (\$)	\$36.1 Million	\$37.8 Million

Awards – IRC 7623(b)(1)

- ▶ At least 15 percent but not more than 30 percent of the proceeds collected as a result of the action.
- ▶ Taxpayer's income is greater than \$200,000 and the amount in dispute is greater than \$2 million
- ▶ Based upon what is ultimately collected
- ▶ The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.

Awards – IRC 7623(b)(2)

- ▶ If the information comes from a public source then an award is still available
- ▶ Not more than 10%
- ▶ If the whistleblower planned the action that led to the underpayment or was convicted of a crime the award may be reduced to zero
- ▶ Appeals are made to the US Tax Court

What to Expect After a Claim is Mailed

- ▶ If the information is speculative, not credible, not specific, the IRS will send the whistleblower a claim rejection.
- ▶ If the IRS decides the claim should be further investigated, it will be forwarded to a Subject Matter Expert for review.
- ▶ An expert may or may not debrief the whistleblower about the information submitted.
- ▶ On average, it is taking 10 years or longer to complete the claim process.

Why 10 Years?

- ▶ Submission is reviewed
- ▶ Forwarded to civil or criminal function
- ▶ Investigation done, if pursued
- ▶ TP Appeals, potentially litigates
- ▶ IRS then has to collect



Bring the claim to IRS Criminal Investigation



- ▶ Eric and Mike believe the best avenue to make sure the case gets worked is directly into CI
- ▶ Assures it does not get weeded out in Utah
- ▶ Makes sure those in a position to act on it can
- ▶ **NOT THE OFFICIAL POSITION OF THE IRS**

Before we call IRS-CI

- ▶ Before you seriously consider blowing the whistle....
- ▶ How much exposure do you have?
- ▶ You cannot put the genie back in the lamp once you let it out!



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.



Form 211

Form 211 (July 2018)	Department of the Treasury - Internal Revenue Service Application for Award for Original Information	OMB Number 1545-0409 Date Claim received Claim number (completed by IRS)
Section A – Information About the Person or Business You Are Reporting		
1. Is this <input checked="" type="checkbox"/> New submission or <input type="checkbox"/> Supplemental submission If a supplemental submission, list previously assigned claim number(s)		2. Last 4 digits of Taxpayer Identification Number(s) (e.g., SSN, TIN, or EIN) 1111
3. Name of taxpayer (include aliases) and any related taxpayers who committed the violation Name of Target		
4. Taxpayer's address, including ZIP code XXX Green Avenue, City, State Zip		5. Taxpayer's date of birth or approximate age Approx 60 years old
6. Name and title and contact information of IRS employee to whom violation was first reported, if known Special Agent In-Charge's Name, Boston Field Office		
7. Alleged Violation of Tax Law (check all that apply)		
<input checked="" type="checkbox"/> Income Tax <input checked="" type="checkbox"/> Employment Tax <input type="checkbox"/> Estate & Gift Tax <input type="checkbox"/> Tax Exempt Bonds <input type="checkbox"/> Employee Plans <input type="checkbox"/> Governmental Entities <input type="checkbox"/> Exempt Organizations <input type="checkbox"/> Excise <input type="checkbox"/> Other (identify) _____		
8. Describe the Alleged Violation. State all pertinent facts to the alleged violation. (Attach a detailed explanation and include all supporting information in your possession and describe the availability and location of any additional supporting information not in your possession.) Explain why you believe the act described constitutes a violation of the tax laws Taxpayer to avoid income tax and employment tax, is cashing checks and paying undocumented workers in cash, and employees partially in cash		
9. Describe how you learned about and/or obtained the information that supports this claim. (Attach sheet if needed) I am an employee of the target		
10. What is your relationship (current and former) to the alleged noncompliant taxpayer(s)? Check all that apply. (Attach sheet if needed)		
<input checked="" type="checkbox"/> Current Employee <input type="checkbox"/> Former Employee <input type="checkbox"/> Attorney <input type="checkbox"/> CPA <input type="checkbox"/> Relative/Family Member <input type="checkbox"/> Other (describe) _____		
11. Do you still maintain a relationship with the taxpayer <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
12. If yes to number 11, describe your relationship with the taxpayer I continue to be his part-time employee		
13. Are you involved with any governmental or legal proceeding involving the taxpayer <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
14. If yes to number 13, explain in detail. (Attach sheet if needed) N/A		
15. Describe the amount of tax owed by the taxpayer(s). Provide a summary of the information you have that supports your claim as to the amount owed (i.e. books, ledgers, records, receipts, tax returns, etc.). (Attach sheet if needed) Estimated cash paid per year is \$300,000. Income tax and employment tax would be roughly \$190,000 per year		
16. Fill in Tax Year (TY) and Dollar Amount (\$), if known TY 2019 \$ 190,000 TY 2018 \$ 190,000 TY 2017 \$ 190,000 TY 2016 \$ 190,000 TY 2015 \$ 190,000		



What to Expect

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- On average, it is taking 10 years or longer to complete the claim process.



Claim Received

ERIC GREEN
C/O GREEN & SKLARZ LLC
ONE AUDUBON STREET 3RD FLOOR
NEW HAVEN, CT 06511-6431

Claim Number: 2020-XXXXXX
RE: Target Last Name
Contact Representative Number: 801-620-2169
(This is not a toll-free number)
Contact Address: Internal Revenue Service
1973 N Rulon White Blvd, MS 4110
Ogden, UT 84404

Dear Eric Green:

We received your Form 211 with the information you furnished and have assigned the above claim number(s). We will evaluate the information you provided to determine if an investigation is warranted and an award is appropriate. Please retain this notice for future reference.

If we initiate an investigation as a result of your information, it is important to understand that it could take several years until final resolution of all tax matters. This is especially true if the taxpayer exercises all administrative and judicial appeal rights. In addition, before we can pay an award, we must collect any additional taxes, penalties, or fines, assessed by reason of your information. Collection action could also take several years.

At the conclusion of our review and/or investigation, we will only be able to tell you whether or not the information you provided met our criteria for paying an award. Unfortunately, we cannot tell you specific details about what actions we took, if any, using the information you gave us. Internal Revenue Code Section 6103 protects the tax information of all taxpayers and prevents us from

Case Referred



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

Whistleblower Office

ERIC GREEN
C/O GREEN & SKLARZ LLC
ONE AUDUBON STREET 3RD FLOOR
NEW HAVEN, CT 06511-6431

Date: February 7, 2020
Claim Number: 2020-XXXXXX
Contact Number: (801) 620-2169
Contact Address:
Internal Revenue Service
Whistleblower Office / ICE M/S 4110
1973 N Rulon White Blvd
Ogden, UT 84404

Dear Eric Green:

We are writing to inform you that the taxpayer referenced in claim number listed above has been referred for an audit or examination. This does not mean that an audit or examination has been or will be opened.



21

21

Status Update

Whistleblower Office

Whistleblower Name
Street Address
City, State Zip

Date: March 2, 2022
Claim Number: 2020-XXXXXX
Contact Number: 801-620-2169 (Not a toll-free number)
Contact Address:
Internal Revenue Service
M/S 4110
1973 N Rulon White Blvd
Ogden, UT 84404

Dear Whistleblower Name:

We are responding to your request for information on the status and stage of your claim referenced above. Internal Revenue Code (IRC) section 6103(k)(13) requires that the Whistleblower Office provide this notice to you. Your claim is currently open. The subject of your claim is currently in the OD Field/Investigation stage.



22

22

Claim Rejected

WHISTLEBLOWER OFFICE

Date: 01/26/2021

ERIC GREEN
ONE AUDUBON STREET 3RD FLOOR
NEW HAVEN, CT 06511-6431

Re: Claim Number(s) 2020-XXXXXX

Dear Eric Green:

FINAL DECISION UNDER SECTION 7623(a)

The Whistleblower Office has considered your Form 211, Application for Award for Original Information, dated 12/19/2019. Internal Revenue Code section 7623 provides that an award may be paid only if the information provided results in the collection of tax, penalties, interest, additions to tax, or additional amounts. The Whistleblower Office has made a final decision to reject your claim for an award.

The claim has been rejected because the IRS decided not to pursue the information you provided.

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23

23

Collections Happening!



Department of the Treasury
Internal Revenue Service
Whistleblower Office

Date: 06/27/2023

Contact telephone number:
(801) 620-2169

Contact Address:
Internal Revenue Service
Whistleblower Office - ICE
M/S 4110
1973 N Rulon White Blvd
Ogden, UT 84404

Eric Green
One Audubon Street 3rd Floor
New Haven, CT 06511-6431

Re: Claim Number: 2020-XXXXXX

Dear Eric Green:

We are writing to inform you that a total of 16 separate payments of tax have been received between 08/01/2019 - 05/31/2023 with respect to tax liabilities, and tax periods, to which the information you provided in your Form 211 submitted on 12/19/2019, relates.

Internal Revenue Code (IRC) Section 6103(k)(13) requires that the IRS provide this notice to you; however, IRC Section 6103 generally limits the Whistleblower Office from providing additional information. It is important to understand that it could take several years until a determination can be reached on this claim. This notification does not mean the claim will receive an award.

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24

24

Takeaways

- ▶ Government does not have to act
- ▶ These things take a long time
- ▶ Based upon what is exactly collected
- ▶ You may not get anything
- ▶ IRS almost always wins in Tax Court – complete discretion

Reasons for Whistleblower Office 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.

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

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.

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.

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.

Summarize

You are the mercy of the IRS:

- ▶ IRS can decide to pursue the claim or not
- ▶ IRS can decide to collect and if so how much they can collect
- ▶ The IRS can decide to compromise or write-off

Ethical Issues

- ▶ Can we just whistle blow and collect if we know our client is cheating?
- ▶ What if they are a former client?
- ▶ What if they were at my old firm and were not my actual client but one of the firm?

Ethical Standards

- ▶ Circular 230, Section 10.21
- ▶ AICPA Code of Professional Conduct
- ▶ Revised AICPA Statements on Standards for Tax Services – Exposure Draft
- ▶ Enrolled Agent Code of Ethics and Rules of Professional Conduct (11/09/2019)
- ▶ ABA Model Rule 1.6(b) – Must maintain confidences except if there is imminent harm, then disclosure can be considered

Circular 230

10.21 – Knowledge of Client’s Omission, Error, or Non-Compliance

- ▶ Duty – Must advise the client promptly and discuss consequences
- ▶ Document this in your file!

AICPA Code of Professional Conduct

1.700 – Confidential Client Information – Member shall not disclose any confidential client information without the client’s specific consent

- ▶ Does not prohibit a member’s compliance with applicable laws and regulations
- ▶ Third-party rule – Member should seek legal counsel

Enrolled Agent Code of Ethics & Rules of Professional Conduct

Code of Ethics

1. Paragraph #4 – Maintain the confidentiality of professional relationships
2. Paragraph #6 – Comply with Circular 230
3. Paragraph #7 – Authority to withdraw

Enrolled Agent Code of Ethics & Rules of Professional Conduct

Rules of Professional Conduct

1. Paragraph #3 – Maintain a confidential relationship between themselves and clients and former clients
2. May disclose only when authorized or legally obligated to do so
3. Paragraph #17 – Advise a client if EA suspects the client may have not complied with the revenue laws or may have made an error or omission
4. Paragraph #18 – Authority to withdraw
5. Paragraph #20 – Obligation to protect the former client's interest

UBS Whistleblower gets \$104 million

BUSINESS NEWS SEPTEMBER 11, 2012 / 10:21 AM / UPDATED 11 YEARS AGO

Whistleblower in UBS tax case gets record \$104 million

By Patrick Temple-West, Lynnley Browning

5 MIN READ



(Reuters) - The whistleblower in a breakthrough tax fraud case against Swiss bank UBS AG has won a record-setting \$104 million reward from the U.S. Internal Revenue Service, a handsome payout that could entice more informants to come forward.

Plus 40 months in federal prison....

Path-Breaking UBS Whistleblower Rewarded With Jail Sentence

National Whistleblowers Center Concerned That The Treatment of Mr. Birkenfeld Will Discourage Future Whistleblowers

Washington, D.C. August 21, 2009. Today whistleblower Bradley C. Birkenfeld was sentenced to 3 years and 4 months in prison for assisting a client at UBS to evade taxes. Mr. Birkenfeld on his own initiative blew the whistle on UBS, Switzerland's largest bank. His disclosure and cooperation with U.S. authorities provided inside information into the bank's conduct and began the dismantling of the historic secrecy of Swiss banks. In fact by blowing the whistle, Mr. Birkenfeld's disclosure directly led to a ground-breaking legal settlement in which UBS agreed to pay \$780 million in fines and UBS and the Swiss Government have agreed to turn over the names of thousands of Americans suspected of tax evasion.

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- ▶ Includes breakfast, cocktail reception and wifi
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41

41

Questions?



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42

42