



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

25.2.1

JANUARY 16, 2025

## EFFECTIVE DATE

(01-16-2025)

## PURPOSE

- (1) This transmits revised IRM 25.2.1, *General Operating Division Guidance for Working Whistleblower Claims*.

## BACKGROUND

- (1) This section provides procedures and guidance for all IRS personnel to follow when dealing with whistleblowers' claims for award.

## MATERIAL CHANGES

- (1) IRM 25.2.1.6.1(8): Updated to reflect Chief Tax Compliance Officer due to the IRS's executive structure that went into effect in April 2024.

## EFFECT ON OTHER DOCUMENTS

This supersedes IRM 25.2.1 dated November 30, 2023.

## AUDIENCE

All Operating Divisions and Functions

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25.2.1

General Operating Division Guidance for Working Whistleblower Claims

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25.2.1.1  
(01-11-2018)  
**Program Scope and Objectives**

- (1) *Purpose:* This IRM provides procedures and guidance for all IRS Personnel and must be strictly adhered to. Any deviation from this IRM must be approved by the Whistleblower Office (WO).
- (2) *Audience:* IRS Personnel considering, working, receiving, or otherwise assigned a whistleblower claim. This includes classifiers, SMEs, field personnel, and managers of these employees.
- (3) *Policy Owner:* Director, WO is the policy owner of this program.
- (4) *Program Owner:* Director, WO is the program office responsible for oversight over this program.

25.2.1.1.1  
(11-30-2023)  
**Background**

- (1) On December 20, 2006, the Tax Relief and Health Care Act of 2006 was enacted. Section 406 of the Act amends Internal Revenue Code (IRC) 7623 concerning the payment of awards to whistleblowers. The amendment made significant changes to the IRS award program and also required the establishment of a Whistleblower Office within the IRS, which has responsibility for the administration of the award program. The 2006 amendments re-designated the prior IRC 7623 as IRC 7623(a), added new provisions as IRC 7623(b), and included program administration requirements that were not incorporated into the Internal Revenue Code.
- (2) The Bipartisan Budget Act of 2018 added a new subsection (c) to IRC 7623. This defined the term proceeds to include penalties, interest, additions to tax, and additional amounts provided under the internal revenue laws, and any proceeds arising from laws for which the Internal Revenue Service is authorized to administer, enforce, or investigate. This includes criminal fines and civil forfeitures, and violations of reporting requirements.
- (3) On July 1, 2019, Section 1405(a) of the Taxpayer First Act (TFA) of 2019 amended IRC 7623 and 6103, adding several important provisions to help improve whistleblower services. In addition, TFA of 2019 created protections of whistleblowers against retaliation.
- (4) Operating at the direction of the Commissioner of the IRS, the WO coordinates with other IRS units, analyzes information submitted, and makes award determinations.

25.2.1.1.1.1  
(11-30-2023)  
**Whistleblower Claim Processing Timeframe Targets**

- (1) In all cases, timely action by IRS personnel considering whistleblower information is essential.
- (2) The IRS has worked diligently to improve the process by which whistleblower information is considered for action.
- (3) The following guidelines reflect the continued expectations for timely action on whistleblower claims.
- (4) These are targets, and may be exceeded when necessary to address unique facts and circumstances and to ensure that the decision on whether to proceed with compliance action considers all relevant information:

- a. Acknowledgement letters should be sent to whistleblowers within 30 days of receipt of the Form 211, "*Application for Award for Original Information*".
  - b. Initial evaluation and classification should be completed within 90 days. This is a cumulative period encompassing case building, and review by all necessary operating division classification functions.
  - c. Subject Matter Expert (SME) or their designee(s) should complete review within 90 days of receipt.
  - d. The Division Counsel Offices should provide a legal opinion on any material identified by an operating division as potentially tainted within 45 days of receipt.
  - e. ICE Indicators should be updated within 30 days of receipt of a complete Form 11369, "*Confidential Evaluation Report on Claim for Award*", and required attachments.
  - f. Review of the Form 11369, "*Confidential Evaluation Report on Claim for Award*" should be completed within 30 days of receipt of a complete Form 11369, "*Confidential Evaluation Report on Claim for Award*" package.
  - g. The WO should notify whistleblowers of an award decision within 90 days of the WO's determination that collected proceeds from an action have been fully collected.
- (5) The WO issues the following letters related to the TFA of 2019:
- *Notification of Referral of Audit or Examination* - The purpose of this letter is to notify the whistleblower if the claim is referred for audit or examination. This does not mean an audit or examination has been or will be opened. The letter is required to be mailed within 60 days of the date the claim is referred.
  - *Notification of Payment* - The purpose of this letter is to notify the whistleblower if the subject of the whistleblower claim makes a tax payment related to the tax period for which the information provided by the whistleblower relates. It may take several years from the date of notification before a final resolution of all tax matters has occurred. The letter is required to be mailed within 60 days of the date a payment of tax is made on a finalized liability related to the information provided in the whistleblower's claim for an award.
  - *Status and Stage Letter* - The purpose of this letter is to inform the whistleblower of the status (open or closed) and stage (the current process the whistleblower claim is in) of the whistleblower claim. This letter is mailed within 90 days of when the WO receives a written request following the IRS Guidance in Pub 5251, *The Whistleblower Claim Process*.
- (1) On December 20, 2006, the Tax Relief and Health Care Act of 2006 was enacted. Section 406 of the Act amends IRC 7623 concerning awards to whistleblowers. The amendment made significant changes to the IRS award program and also required the establishment of a WO within the IRS, which has responsibility for the administration of the award program. The 2006 amendments re-designated the prior IRC 7623 as IRC 7623(a), added new provisions as IRC 7623(b), and included program administration requirements that were not incorporated into the Internal Revenue Code. In addition, the Act explicitly provides that the WO may determine whether to proceed with an action or refer the claim to another division for their consideration.

25.2.1.1.2  
(03-10-2023)  
**Authority**

- (2) The authority to determine and approve awards under IRC 7623 for individuals who provide information to the IRS related to the detection of underpayments of tax, or to the detection and bringing to trial and punishment of persons guilty of violating the internal revenue laws or conniving at the same is delegated to the Director of the WO under Delegation Order 25-7 (Rev 5).
- (3) The operating divisions do not have authority to determine or approve awards under IRC 7623. The operating division completes and submits Form 11369 (See IRM 25.2.1.5.5, *Form 11369 Requirements*). The WO will evaluate and apply all facts to the applicable laws, policies, and procedures to determine and approve awards.
- (4) The WO collaborates with Small Business Self Employed's (SBSE) Initial Claim Evaluation (ICE) Team to perform various tasks throughout the Form 211 claim process. Items sent to the ICE Team are considered sent to the WO.
- (5) In some instances it may be in the best interest of the Government to have a formal agreement with the whistleblower when it is necessary to share IRC 6103 protected information obtained by the IRS from the taxpayer or a third party with the whistleblower. In these situations, 26 CFR 301.6103(n)-2 authorizes a contract for services with the whistleblower. The organization taking action on the claim is responsible for evaluating whether an IRC 6103(n) contract should be pursued (See IRM 25.2.1.6, *IRC 6103(n) Contract, General*).

## 25.2.1.1.3 (11-30-2023) Terms

- (1) **Claim:** A claim is a whistleblower's application for an award. A whistleblower makes a claim for award by filing Form 211, *Application for Award for Original Information*, with the WO. The claim for award includes an information submission that is the basis for the claim. When a whistleblower files more than one Form 211 with the WO, the WO will analyze the Form 211 to determine whether it is a new submission or a supplemental submission that relates to an existing claim.
- (2) **Claim File:** A claim file is the record of the investigation of the information submitted by the whistleblower. See IRM 25.2.1.5.6, *Whistleblower Claim File*, for a description of what is contained in the file.
- (3) **Denial:** A denial is a determination that a claim is not eligible for an award. The table below contains denial reasons and their corresponding descriptions:

| Denial Reason   | Description   |
|---|---|
| Examination Resulted in "No Change" or Whistleblower Issues resulted in "No Change" | Claims where the IRS took action on the whistleblower's information and either the entire action resulted in no change or action resulted in changes but not on the issues raised by the whistleblower. |

| Denial Reason                                      | Description  |
|--|--|
| Information Already Known                          | Claims where the operating division referred the whistleblower's information to a field group that currently had the target taxpayer under an open audit or investigation, and the field group was already aware of the issue/information raised by the whistleblower information.   |
| Issues Below Threshold for the IRS Action          | Claims assigned to and reviewed by the operating division classification functions. The whistleblower's information contained valid and legitimate issues but, due to limited resources, the IRS was unable to justify an action for the assessment potential of the issues.   |
| No Actionable Issue                                | Claims assigned to and reviewed by the operating division classification functions. The operating division concluded information provided by the whistleblower was not actionable.   |
| No Collected Proceeds (Uncollectible)              | Claims where the IRS completed the administrative and judicial actions and the actions resulted in adjustments attributable to the whistleblower, but no proceeds were collected and statute of limitations for collecting the proceeds has expired.   |
| Short or Expired Assessment Statute of Limitations | Claims assigned to and reviewed by the operating division classification functions. The whistleblower's information contained valid and legitimate issues but the statute of limitations for making an assessment was either too short or expired at the time the information was reviewed by the operating division and the IRS was unable to take action on the information. |
| Surveyed by Operating Division                     | Claims that the operating division referred for an administrative action, but the field did not initiate action on the information.  |



- (4) **Examination:** References in this IRM to an examination, also extend to other IRS proceedings, including audit, investigation, collection, and revocation.
- (5) **Form 11369 Package:** The Form 11369, *Confidential Evaluation Report on Claim for Award*, and any required attachments.
- (6) **Investigation:** References in this IRM to an investigation, also extend to other IRS proceedings, including audit, investigation, collection, and revocation.
- (7) **Rejection:** A rejection is a determination that relates to the whistleblower's eligibility to file a claim for award, or the submission of information and claims for award (i.e., failure to sign under penalties of perjury, incomplete Form 211 or the IRS was unable to identify the taxpayer based on the information provided by the whistleblower).
- (8) **Submission:** Submission is an internal term used by the WO to refer to a claim (or group of claims aggregated by the WO for administrative purposes).

## 25.2.1.1.4 (11-30-2023) Acronyms

- (1) ARC - Award Recommendation and Coordination
- (2) CDO - Case Development and Oversight
- (3) ICE - Initial Claim Evaluation
- (4) OD - Operating Division
- (5) POA - Power of Attorney
- (6) PSP - Planning and Special Programs
- (7) SME - Subject Matter Expert
- (8) SPPO - Strategic Planning and Program Operations
- (9) WO - Whistleblower Office

## 25.2.1.1.5 (11-30-2023) Related Resources

- (1) The following resources provide additional information on the WO:
  - WO intranet website - <https://irsgov.sharepoint.com/sites/WO>
  - IRS.gov public website - <https://www.irs.gov/compliance/whistleblower-office>
  - IRM 1.1.26, *Organization and Staffing, Whistleblower Office*
  - IRM 25.2.2, *Whistleblower Awards*
  - Pub 5251, *The Whistleblower Claim Process*

## 25.2.1.2 (04-29-2019) Initial Form 211 Processing

- (1) Whistleblower Claims are applications for an award filed on a Form 211, *Application for Award for Original Information*. A Form 3949-A, *Information Referral*, will not be processed or treated as a claim for an award. Individuals that want to file a claim for award with the IRS must submit Form 211, *Application for Award for Original Information*.
- (2) Upon receipt of a Form 211, the WO will conduct the following review:

- a. Is the new Form 211 related to a previously filed Form 211? If not, the WO will continue to process the claim. If the new Form 211 is related to a previously submitted Form 211, the WO will review the claims and determine if the new Form 211 should be processed as a new claim or associated with the prior claim.
  - b. Does the Form 211 contain all the required information? If not, the WO may correspond with the whistleblower for the missing information or the WO may reject the claim. If the WO rejects a claim, then the WO will provide notice of the rejection to the whistleblower stating the basis for the rejection. If the WO rejects a claim because it does not contain all required information, then the whistleblower may perfect and resubmit the claim.
- (3) Once a decision is made to build the claim as a new claim, the WO will input the claim information into the database and notify the whistleblower and representative, if there is one, of the receipt of the information and claim number(s). The whistleblower will be notified that it could take several years until final resolution of all tax matters and a decision is made concerning the payment of an award.
- Note:** When a whistleblower submits a Form 211, the WO will assign claim number(s), as necessary, and communicate the assigned claim number(s) to the whistleblower.
- (4) The claim file will be forwarded to the appropriate operating division for classification.
- (5) If the Form 211 claim lists multiple taxpayers with one or more of the taxpayers being under the jurisdiction of a different operating division than the other taxpayers:
- a. The WO will clearly identify in the file the applicable operating division for each taxpayer.
  - b. If the operating division wishes to select one or more claim numbers from the submission but the submission has carryover with other operating divisions or other claim numbers are under the jurisdiction of other operating divisions, then the operating division will coordinate with other operating divisions.

25.2.1.3  
(05-28-2020)  
**Classifying  
Whistleblower Claims**

- (1) Classification is performed by the operating division.
- (2) Claims will be forwarded to the appropriate operating division for classification to determine whether a claim should be forwarded for investigation taking into consideration information the whistleblower raised and utilizing the standard classification guidelines. The recommendation from classification reflects an enforcement decision of the operating division.
- (3) Claims submitted on multiple taxpayers (whether on one Form 211 or multiple forms), will be forwarded to classification at the same time.

25.2.1.3.1  
(03-10-2023)  
**Roles and Responsibility  
of Classification**

- (1) Classifiers must use sound judgment, technical expertise, professional knowledge and experience to identify complex, as well as obvious issues. The classifier will determine whether the information should be forwarded for further review. Those claims not forwarded for further review can be denied based on classification's rationale for not forwarding the claim. The recommendation from classification reflects an enforcement decision of the operating division.
- (2) Classification's role is only to determine if the information on the Form 211 warrants further review. It is not classification's responsibility to determine whether a whistleblower is entitled to an award.

25.2.1.3.2  
(11-30-2023)  
**Classification Steps (in  
general)**

- (1) These steps are general procedures which should be followed on all whistleblower claims.
- (2) **Considering Relevant Information and attachments.** The first step in classifying the Form 211 submission will be reviewing the Form 211 and any attachments or additional information provided by the whistleblower. If the claim contains multiple Forms 211, classification needs to consider each Form 211 on its own merits. Normal risk analysis techniques should be utilized in determining whether to forward the information for further investigation. If the Form 211 is regarding an individual having personal expenses paid for by an entity, then the classifier cannot select/consider the individual without the entity. Review relationships in the allegations, to determine what entities impact the issues.

**Note:** Document any related taxpayer returns considered in the claim history. If you decide to further investigate the related taxpayer, you must contact the WO to have a new claim number opened for the related taxpayer.

- (3) **Determine whether the allegations meet threshold tolerances.** Classifiers should follow the guidance for Materiality/Significance of the Issue found in IRM 4.1.5.3, *Classification*.
- (4) **Review relevant return information.** Utilize resources available to the classifier. This may include, EUP, IDRS, YK1, Accurint, Tier Structure Tool, CKGE and other appropriate intranet and internet sources. Review all relevant returns necessary to fully consider the claim. This may include related taxpayers and/or prior/subsequent tax periods.
- (5) **Consider whether the claim contains an actionable issue.** Claims are considered non-actionable if the claim lacks any basis or viability. If the allegations are based on or supported by information, including public information, then the claim should be further reviewed. If the submission does not contain an actionable issue, or offers no basis or rationale, then no further review is required.
- (6) **Determine whether the tax year(s) in question has/have a viable assessment statute.** Follow your operating division's guidelines for statutes. If the allegations are specific to a closed year, or a year with minimal time remaining on the statute, consider whether the issues/information could be applicable to a current year (e.g., timing issues, methods of accounting, or issues which may be recurring in nature).

- (7) **Determine whether the claim should be forwarded or coordinated with another operating division.**
- (8) **Determine whether the information meets the operating division's criteria for selecting for field exam or referring to the subject matter expert (SME).**
- (9) **Determine whether the information should be forwarded for further investigation.**

25.2.1.3.3  
(03-10-2023)

#### **Unacceptable Reasons for Denial**

- (1) **The claim involves a future year that has not been filed** – the claim should be returned to the WO with instructions to return the claim for consideration once the return has been filed. Provide a follow-up date the WO should send the claim back to classification. The follow-up date should not be earlier than the required filing date and no later than the due date with extension.
- (2) **Classification suspects the information is already known to the IRS or otherwise adds no value to an existing audit.** This is not a determination that can be made at the classification level. This determination can only be made by the field. Consider the information, perform risk analysis, and select or deny the same as any other claim. If there is an existing audit, then let the exam team consider the information. If the claim is regarding an audit or other action that has closed, then contact the WO.
- (3) **The information provided by the whistleblower is publicly available information, the whistleblower has no firsthand knowledge of the issue.** This is not a determination which can be made at the classification level. Classification must still consider the information and compare it to the return to determine if a potential tax issue exists. Congress authorized payment on information obtained from various public sources in IRC 7623. Claims submitted with publicly available information must still be considered, regardless of the whistleblower's firsthand knowledge of the situation.

25.2.1.3.4  
(03-10-2023)

#### **Documenting Classification's Recommendation**

- (1) In general, documentation should provide enough detail to support the recommendation. At a minimum detail should include:
  - a. An explanation or record of evidence gathered through research.
  - b. Analysis conducted during the classification process.
  - c. Support for recommendation.
- (2) In the case of a recommendation to deny the claim, the documentation should clearly state the reason the classifier felt the claim should be denied. The WO may need to provide the basis for the denial to the whistleblower and will need adequate explanation/support of the operating division's recommendation.
- (3) In the case of a referral to an examination team or SME, the documentation should clearly identify why the claim is being referred stating all relevant information. This will avoid duplication of efforts by the field/SME.

25.2.1.3.5  
(03-10-2023)

#### **Notifying the WO of Classification's Recommendation**

- (1) The recommendation from classification reflects an enforcement decision of the operating division.

- (2) If a decision is made to assign the claim to the field, then the classification function is responsible for providing the following information to the WO:
  - a. The claim number
  - b. MFT
  - c. TIN
  - d. Applicable years
  - e. Area or group assigned to the claim, if applicable
- (3) If a decision recommends denying the claim, then provide the agreed upon classification sheet or the Form 11369, *Confidential Evaluation Report on Claim for Award*, to the WO. Follow instructions attached to the form and IRM. Common reasons for denial are:
  - a. The claim did not include an actionable issue.
  - b. The statute was short or expired.
  - c. The amounts alleged are not material.
  - d. The area does not have sufficient resources to work the claim.

## 25.2.1.3.6 (05-28-2020) Selecting a Claim

- (1) If the classification function determines the whistleblower's information warrants referral for further investigation, the classification function will notify the WO (see IRM 25.2.1.3.5, *Notifying the WO of Classification's Recommendation*). The classification function should follow existing procedures to forward the whistleblower claim to appropriate group or subject matter expert in accordance with the operating division's instructions:
  - a. A copy of the Form 211, *Application for Award for Original Information*;
  - b. Any supporting allegations or documents; and
  - c. Returns requested by the classifier, if applicable. This may include an MeF or other information used to classify the claim.

**Note:** Whistleblowers' communications are confidential. All whistleblower claims, reports and information shall be transmitted in a double sealed confidential envelope marked "To Be Opened By Addressee Only" with *Other Gov TDF 15-05.11*, Sensitive But Unclassified (SBU) Cover Sheet. All electronic transmissions must be through secure e-mail.

- (2) The WO will place an AIMS ICE indicator "1" to identify examination cases for which there is a whistleblower claim. For returns already established on AIMS, the WO will input the ICE indicator "1." The examination case cannot be closed on AIMS unless the ICE indicator is changed from a "1" to a "2" by the WO. This will be completed after the WO has verified the operating division has provided all of the necessary information needed to make an award determination. IRM 25.2.2.5, *Information and Whistleblower Awards - Whistleblower Awards, Post Field Review*.

## 25.2.1.3.7 (05-28-2020) Referring Submissions to Case Development and Oversight

- (1) Submissions may be referred to Case Development and Oversight (CDO) for coordination/oversight if the submission is a bulk submission.
- (2) Bulk submissions are defined as submissions containing 20 or more claim numbers that the operating division classifier would forward for further investigation.

25.2.1.4  
(01-11-2018)  
**Subject Matter Expert**

- (3) Submissions containing fewer than 20 claim numbers for further investigation will not be sent to CDO for assignment.
- (1) The SME function acts as an additional level of review in the operating division.
- (2) All claims assigned to a SME are subject to the debriefing requirement. This requires the SME to either perform (and document) the debriefing or document the reason a debriefing was not performed.
- (3) All potential IRC 7623(b) claims and some IRC 7623(a) claims are routed to the SME for a review prior to further investigation.
- (4) IRC 7623(a) claims are generally only routed to the SME if classification believes the claim may benefit from a debriefing or if the classifier believes the claim may have improperly obtained information or other potential "taints" that could compromise the tax case.

25.2.1.4.1  
(05-28-2020)  
**Roles and Responsibilities**

- (1) The SME will evaluate the Form 211 and accompanying information to determine whether it may materially contribute to the identification, development or resolution of taxpayer liability or collection issues.
- (2) If during the SME's review, information is identified that cannot be used, the information deemed to be tainted should be returned to the WO Analyst assigned the claim along with any analysis received from Counsel regarding the use of the information. The integrity of the tax case is preserved by withholding that information from the auditor or investigator, and ensuring that the SME is not involved in the examination.
- (3) The SME may consult with operating division Counsel to identify any potential legal issues in developing the issues presented by the whistleblower, and may decide to obtain additional subject matter expertise for a team analysis of the matter. The initial legal advice should address possible limitations, if any, identified on interactions with the whistleblower and other issues including the potential application of privileges.

**Note:** If consulting Counsel, the SME should do so early in the process. Counsel's review may take up to 45 days and could impede the SMEs ability to conduct their review within their 90 day timeframe.

- (4) SMEs are the only individuals in the operating division that may debrief a whistleblower. However, the SMEs may involve others in the debriefing call.
- (5) The SME will make a decision to refer the claim to the field or recommend denial of the claim.
- (6) The SME coordinates IRC 6103(n) contracts with exam, the whistleblower, and Counsel. See IRM 25.2.1.6.1, *IRC 6103(n) Contract Guidance*.



25.2.1.4.2  
(11-30-2023)  
**Debriefing the Whistleblower**

- (1) A debriefing may yield additional information that the whistleblower did not recognize as relevant to the taxpayer's matters, information about the credibility of the whistleblower, information relevant to legal issues that can affect the use of documents, and lead to other sources of information. It can aid in understanding complex issues or hidden relationships, or identify connections between the taxpayer and others who may be involved in the alleged noncompliance.
- (2) A debriefing may also clarify the whistleblower's submission.
- (3) Exhibit 25.2.1-1, *Debriefing Checksheet*, contains information that must be reviewed with the whistleblower and their representative, if applicable, at the start of the debriefing.
- (4) Generally, the SME will debrief the whistleblower on all claims referred to them unless the SME determines that a debriefing is unlikely to result in information that would be material to the evaluation of the submission. Instances a SME may choose to forgo the opportunity to debrief the whistleblower include, but are not limited to:
  - a. Claims with allegations based solely on publicly available information with no additional analysis, information, statements, or explanation from the whistleblower.
  - b. Claims with allegations based on facts known to be erroneous or an incorrect interpretation of applicable law or regulations.
  - c. Claims that are un-selectable (i.e., statute is short or expired; the adjustment potential does not warrant an examination; insufficient resources to work the claim; the claim did not include an actionable issue; the taxpayer does not have a balance due).
- (5) A decision not to perform a debriefing must be specifically explained in the claim record, including documentation in e-Trak.
- (6) All debriefing notes, including audio recordings, must be included in the whistleblower claim file and uploaded to e-Trak.

**Note:** If the debriefing notes or audio recordings include privileged information, they should not be in the whistleblower file sent to the field. All privileged information must be returned to the WO in a double sealed confidential envelope marked "To Be Opened By Addressee Only" with TDF 15-05.11 Sensitive But Unclassified (SBU) Cover Sheet as the cover sheet. Follow IRM 10.5.1.6.9.3, *Transmission, Shipping*.

- (7) Debriefing the whistleblower with respect to any supplemental submission is at the discretion of the operating division.

25.2.1.4.2.1  
(01-11-2018)  
**When to Involve Counsel in the Debriefing**

- (1) Counsel is available to assist on legal issues that may arise during a debriefing. This may not be necessary in every case, but if you feel there may be issues that will need Counsel's attention, please contact the appropriate Division Counsel contact for assistance. Examples of instances that may need Counsel's attention include any documents or information identified as potentially privileged communications or other communications with possible legal/constitutional risks. Generally, Counsel will participate in the debriefing via teleconference. When Counsel participates in the debriefing, they are primarily

looking for information about the nature and the source of the information that has been provided to determine whether the material is in fact privileged and whether any privilege has been waived or whether there are other legal risks to the IRS using the information.

- (2) The SME must coordinate with the appropriate Division Counsel contact when:
  - a. The whistleblower is a current employee of the taxpayer.
  - b. The whistleblower is representing or has represented the taxpayer before the IRS
  - c. The SME identifies a potential privilege issue, including when the information or documents reflect communications with attorneys or federally authorized tax practitioners.

25.2.1.4.3  
(01-11-2018)  
**Taint Review**

- (1) One of the primary functions of the SME is to insulate the investigation functions from contact with information that may jeopardize any adjustments (or resulting collections).
- (2) The taint review refers to the part of the whistleblower process where the SME (with help from Counsel and the WO as needed) evaluates the organization's ability to forward the information provided by the whistleblower.
- (3) Tainted information can include, but is not limited to, information that was illegally obtained by the whistleblower, or subject to a valid claim of privilege.
- (4) Information the taint review determines is privileged will not be further used by the IRS and must be returned by the SME to the WO.
- (5) It is the responsibility of the SME to identify information and documents that are potentially subject to a valid claim of privilege. Counsel will then make a final determination if privilege exists or if there is insufficient evidence to confirm that there is no privilege.

25.2.1.4.3.1  
(03-10-2023)  
**Privileged Communications**

- (1) The following list outlines examples of potentially privileged communications. These examples are for awareness purposes only. The SME should not be making these legal decisions on whether information is privileged without Counsel involvement.
  - a. **Attorney-Client Privilege:** The attorney-client privilege applies when legal advice is sought from a professional legal advisor in their capacity as such, and the communications relating to that legal advice purpose are made in confidence. Communications subject to the attorney-client privilege are at the client's discretion permanently protected from disclosure by the client or their adviser unless waived. Frequently, there are questions whether a client is seeking or the lawyer is giving legal advice or business advice. Questions also arise whether communications are made in confidence or whether there are third parties present to the communication.
  - b. **Work Product Doctrine:** The work product doctrine protects materials prepared in anticipation of litigation or for trial. These can be prepared by an attorney or non-attorney so long as it is prepared in anticipation of litigation. For instance, a taxpayer may hire an expert to prepare a valuation knowing that the IRS is about to issue a Statutory Notice of Deficiency.



- c. **Spousal Privileges:** The spousal communication privilege protects confidential communication made between spouses while married. This privilege survives the dissolution of the marriage. If something was communicated to a spouse while married, either spouse can prevent the other from testifying based on that communication regardless of whether the marriage still exists.

**Note:** This is contrasted by the spousal testimonial privilege which basically says that one spouse cannot be compelled to testify adversely against the other spouse in a criminal trial.

- d. **Tax Practitioners:** The tax practitioner's privilege is provided in IRC 7525 and it extends the same protections as the attorney-client privilege for communications between a client and a federally authorized tax practitioner, if such communications would have been privileged if the communication had been between a client and an attorney. This privilege only applies in noncriminal tax matters and noncriminal tax proceedings in Federal court.

**Note:** It does not apply to written communications in connection with the direct or indirect promotion of the participation of a person in any tax shelter.

- (2) Other legal and constitutional issues may be implicated by whistleblower information. For instance, the government can violate an individual's 4th amendment rights against unreasonable searches and seizures if it uses a whistleblower as an agent of the government. This can arise when a whistleblower is a current employee of a taxpayer and the government acts as more than a passive recipient of the information provided by a whistleblower. In all cases it is imperative that the IRS act as a passive recipient of information provided by whistleblowers.
- (3) All whistleblowers should be encouraged to provide all information in their possession or knowledge at the time of the debriefing and should be informed that the failure to do so may prevent the IRS from pursuing subsequently provided information.

25.2.1.4.3.2  
(03-10-2023)

## **Whistleblowers who are Current Representatives of the Taxpayer**

- (1) Under no circumstances is it appropriate for the IRS to use any information from a whistleblower regarding a taxpayer (or related taxpayers) once the IRS identifies that the whistleblower is currently that taxpayer's representative in any proceeding or administrative matter pending before the IRS (In other words, any proceeding in which the IRS has a stake in the outcome, be it part of the examination, consideration by the Office of Appeals, refund litigation, or the Tax Court). In addition to not using the information, in such cases there is to be no further interaction with the person as the taxpayer's representative and the representative should be advised of this outcome immediately.
- (2) It is the representative's responsibility to explain to the taxpayer why they can no longer represent the taxpayer before the IRS. At the same time, we want to make sure within the IRS, the correct people know the representative is now excluded from further participation in the taxpayer's matter.

- (3) If you discover the whistleblower is a current representative of the taxpayer, then you must immediately inform your appropriate Division Counsel contact of the situation.

25.2.1.4.4  
(03-10-2023)

**Notifying the WO of the  
SME's Recommendation**

- (1) If a decision is made to assign the claim to the field, then the SME is responsible for providing the following information to the WO regarding the claim being forwarded to the field:
- The claim number
  - MFT
  - TIN
  - Applicable years
- (2) If a decision recommends denying the claim then provide the Form 11369, *Confidential Evaluation Report on Claim for Award*, to the WO. Follow instructions attached to the Form and IRM. Common reasons for denial are:
- The claim did not include an actionable issue.
  - The statute was short or expired.
  - The amounts alleged are not material.
  - The area does not have sufficient resources to work the claim.

25.2.1.4.5  
(03-10-2023)

**Unacceptable Reasons  
for Denial**

- (1) **SME suspects the information is already known to the IRS or otherwise adds no value to an existing audit.** Generally, this is not a determination that can be made without considering the field's information (e.g., workpapers, risk analysis, audit plan, etc.). This determination is made by the WO after any operating division investigation by reviewing the field's information submitted with the Form 11369 (including workpapers, lead sheets, risk analysis, audit plan, activity record, etc.). Consider the information, perform risk analysis, consider the claim for the debriefing requirement, and forward for investigation or deny the claim. If there is an existing audit then let the exam team consider the information. If the claim is regarding an audit or other action that has closed, then contact the WO.
- (2) **The information provided by the whistleblower is publicly available information, the whistleblower has no firsthand knowledge of the issue.** The SME must still consider the information and compare it to the return to determine if a potential tax issue exists. Congress authorized awards for information obtained from various public sources in IRC 7623. Claims submitted with publicly available information should still be considered, regardless of the whistleblower's firsthand knowledge of the situation.

25.2.1.5  
(01-11-2018)

**Working a Whistleblower  
Claim**

- (1) The examiner cannot be the same person as the SME or the individual who classified the Form 211.
- (2) The examiner/team should not contact the whistleblower for additional information. If the examiner/team determines an additional discussion (debriefing) with the whistleblower would result in information that may be material to the evaluation of the submission, the examiner/team should contact the area/industry Whistleblower Program SME to debrief the whistleblower. A debriefing may yield additional information that the whistleblower did not recognize as relevant to the taxpayer's matters, information about the credibility of the whistleblower, information relevant to legal issues that can affect the use of documents, and

leads to other sources of information. A debriefing may also clarify the whistleblower's submission. The WO Intranet site lists the SME for each area/industry. The SME will follow IRM 25.2.1.4.2, *Debriefing the Whistleblower*, to debrief the whistleblower. The SME will provide the results of the debriefing to the examiner/team.

**Note:** Privileged information should be removed by the SME and returned to the WO prior to sending the file to exam.

- (3) Issues alleged by whistleblowers should be corroborated using independently developed information.
- (4) Examination must maintain a separate whistleblower claim file for storing information/documents related to the whistleblower claim. The examination activity record should not have any references to the whistleblower. A separate activity record should be maintained in the whistleblower claim file. The following should be stored/maintained in the whistleblower claim file:
  - a. Whistleblower Activity Record;
  - b. Form 211 filed by the whistleblower and any and all information supplied by the whistleblower either as part of the original submission or obtained during any further contacts with the whistleblower, including electronic media;
  - c. Copies of any debriefing notes, recorded interviews, etc. held with the whistleblower and/or their representative;
  - d. Copies of any memorandums prepared by Counsel in regards to information submitted by the whistleblower (Unless the memo was removed by the SME because it contained a description or discussion of existing privileged communications);and
  - e. Copies of email and other internal communication related to the whistleblower's claim.
  - f. There should be no mention or discussion of the whistleblower in the regular examination activity log, workpapers, or case file.
- (5) At the conclusion of the investigation the whistleblower claim file must be returned to the WO with the Form 11369. IRM 25.2.1.5.5, *Form 11369 Requirements*, and the accompanying subsection list additional information required to be submitted to the WO with the whistleblower claim file and the Form 11369.
- (6) If the investigation of whistleblower information leads to the expansion of the audit to additional years or taxpayers, the examiner/team needs to notify the WO. The WO will add ICE indicators to the account. If the audit is expanded to include new taxpayers, the WO will establish additional claim numbers for the new taxpayers. The examiner/team should also notify the SME if the operating division procedures require it.

**Note:** Establishing ICE indicators is for tracking purposes, and does not mean that the expansion will ultimately be determined "related." The WO will determine if a claim is related during the award evaluation stage.

- (7) Exam should have no contact with the whistleblower. To avoid any IRC 6103 violation or other disclosure concerns, any request regarding the status of a

claim should be forwarded to the WO. No information about the claim or the underlying tax matters can be discussed with the whistleblower or the whistleblower's representative.

- (8) If it becomes necessary to transfer a whistleblower claim to another agent, group, area, or operating division the transferring examiner/team must submit a Form 11369 following IRM 25.2.1.5.5.3, *Form 11369 for Transferred Claims*.
- (9) A completed Form 11369 is required prior to the transfer of a criminal case to civil compliance, Technical Services for Fraud Suspense, or routing to Appeals. The tax administrative file forwarded to Technical Services/Appeals should NOT contain any whistleblower information.

25.2.1.5.1  
(05-28-2020)

#### **AIMS ICE Indicators**

- (1) ICE indicators are generally placed on tax modules in AIMS that relate to a whistleblower claim.
  - a. "1" – This indicator is used to prevent closure by the field (Status under 20). If this indicator is on the account then the WO needs a Form 11369 and the attachments documenting the field's investigation of the whistleblower's information. This indicator is updated once all information required from the field is received.
  - b. "2" – This indicator is used to show everything is received. This indicator will remain on the account indefinitely and will allow closure of the claim.
  - c. "3" – This indicator is used to prevent closure by Appeals or campus functions (Status 20 or higher – this includes Tech Services). If this indicator is on the account then the WO needs a final RAR (or equivalent) showing a breakout of the final adjustments/tax/penalties/interest. This indicator is updated once the final RAR (or equivalent) is received.
- (2) Once the WO has received and reviewed the complete Form 11369 package, the ICE indicator will be updated as follows:
  - a. Agreed/fully resolved cases: WO will change the ICE indicator to "2", which will allow closure of the case to status 90.
  - b. Unagreed cases: WO will change the indicator to "3", which will allow the case to be updated to Status Code 80 and above, but will prevent it from being closed to Status Code 90. When the case is resolved, the WO will change the ICE indicator from "3" to "2", which will allow closure of the case to status 90.
- (3) The WO will update the ICE indicator within 30 days of the date a properly completed Form 11369 is received. Cases with a short statute (90 days or less remaining on the statute) will be expedited.

25.2.1.5.2  
(01-11-2018)

#### **Field Guidance on Working Whistleblower Claims**

- (1) In general, normal audit steps should be followed in these cases. The work to conduct an investigation of a whistleblower issue(s) is no different from the work performed in other cases, including the development of civil or criminal fraud when applicable. Field personnel should be cognizant of the badges of fraud.
- (2) Normal risk analysis techniques should be utilized in determining whether to initiate an audit of the taxpayer and/or issue. The decisions to survey or audit the return is determined based on this risk analysis. The scope of the exam is determined by the examiner/team.

- (3) Issues that are alleged by whistleblowers should be corroborated using independently developed information. This independently developed information will be the basis for any proposed assessment of liability.
- (4) Documenting Activity Record – When documenting the activity record there should be no reference to the whistleblower. When reviewing whistleblower information, the activity record documentation should be general such as, “Worked on gathering information for the development of [Issue Name] issue”. A separate activity record specifically for the whistleblower (which would remain in the whistleblower claim file separate from the audit file) must be kept for more details on what actions were taken involving the whistleblower information.
- (5) No information regarding the whistleblower can be included in exam’s administrative file. All information concerning the whistleblower must be returned to the WO in the Whistleblower Claim file. See IRM 25.2.1.5.6, *Whistleblower Claim File*.
- (6) A Form 11369 is required at the conclusion of the investigation regardless of whether the exam resulted in a survey, no-change, no-change with adjustments, agreed, or unagreed case. See IRM 25.2.1.5.5, *Form 11369 Requirements*.

25.2.1.5.3  
(04-29-2019)  
**Expanding the Audit**

- (1) If the audit of a case involving a whistleblower is expanded to other years or taxpayers, the examiner must contact the WO.
- (2) The WO will place ICE indicators on the appropriate modules and create new claim numbers if needed.

25.2.1.5.4  
(11-30-2023)  
**Protection of Whistleblower Information**

- (1) The identity or existence of a whistleblower must not be disclosed to anyone, including other IRS officials or employees except on a “need to know” basis in the performance of their official duties. There should be no mention of the whistleblower or the SME on any documents that will be associated with the examination case file.
- (2) To maintain maximum security and protect the whistleblower’s identity, keep all documents, screen displays, and forms secured. All employees are responsible for safeguarding and protecting information. Whistleblower information must be kept confidential. See IRM 10.5.1, **Privacy and Information Protection, Privacy Policy**.
- (3) To the fullest extent permitted by the law, the IRS will protect the identity of the whistleblower and will neither confirm nor deny the existence of a whistleblower. In some instances, however, it may be necessary and in the government’s best interests to reveal the identity of a whistleblower in a judicial proceeding. The decision to disclose the identity of a whistleblower must be coordinated with Counsel and the WO. .
- (4) Any contact made between the IRS and the whistleblower is not considered a third party contact under IRC 7602(c)

25.2.1.5.5  
(03-10-2023)  
**Form 11369**  
**Requirements**

- (5) Field personnel must obtain approval from the WO prior to sharing any information or documentation provided by a whistleblower outside of the IRS examination team. Requests must be directed to the WO SPPO Associate Director.
- (1) The Form 11369 package is a tool used to inform the WO about the investigation of the whistleblower's information. The form and attachments will assist the WO in making an award determination.
- (2) The Form 11369 package should explain how the whistleblower's information was used, how it did or did not contribute to the identification and/or development of issue(s), and any other information that may assist the WO in making an award determination.
- (3) A Form 11369 and narrative is required for each relevant taxpayer affected by an IRS investigation (audit, collection, revocation, etc.). Taxpayers are relevant to a whistleblower submission when:
  - a. The whistleblower identifies the taxpayers in the claim; or
  - b. The whistleblower information is considered in a civil, criminal, or judicial proceeding involving a taxpayer other than the taxpayer(s) identified in the claim(s).

**Note:** For jointly filed returns, one joint form should be completed. See IRM 25.2.1.5.5.2, *Form 11369 for Surveyed Claims*, for rules on surveyed claim numbers.

- (4) A narrative fully explaining the issues identified by the whistleblower and the whistleblower's contribution, if any, to the investigation is mandatory and should be attached to each Form 11369. The narrative should include all relevant dates including when significant actions were initiated. This must include detailed feedback on how the whistleblower's information was used in any IRS investigation; regardless of whether the laws administered, enforced, or investigated are outside of Title 26. This feedback must also include information regarding other agencies involved and which agency has jurisdiction of the proceeds, if applicable.

**Note:** If the investigation was open prior to receiving the whistleblower's information, then the narrative should explain what was known/what issues were identified prior to receiving the whistleblower's information.

- (5) A completed Form 11369 package must be submitted to the WO in order to have the ICE indicator updated in AIMS. A completed Form 11369 must also be submitted to the WO prior to transferring a whistleblower claim to another group, area, or operating division (such as CI or Appeals).
- (6) If the Form 11369 package is incomplete, the WO will:
  - a. Contact the Agent/Manager to obtain missing signatures via fax or email. If a response is not received within 5 days, the case will be returned to the originator.
  - b. The WO will return the file to the agent at their appropriate Area Office for all other missing documentation with an explanation on the transmittal regarding what is missing.



- c. For imminent statute claims that need to be closed, the ICE Unit will contact the examiner and request the missing documentation by telephone.
  - d. If the agent submits an older version of the Form 11369 (any version other than the current version found in the form repository), then the out-dated Form 11369 will be returned to the agent. The out-dated form does not provide the information needed by the WO for an award determination.
- (7) The WO will review the information provided on the Form 11369 to determine whether the whistleblower's information substantially contributed to an action. The WO may need to contact the operating division or the RA/SA/RO team to obtain additional information or to review related files. Communication protocol developed between the operating division and the WO will be followed regarding how the team will be contacted.
- (8) It may take the WO up to 30 days to update the ICE indicator after the Form 11369 is received from the investigating function. The ICE Indicator will not be updated until the entire claim file is reviewed and accepted by the WO employee assigned to the case. If a Form 11369 package is missing information, it may take longer than 30 days to update the ICE indicator.
- (9) You must return the whistleblower claim file (See IRM 25.2.1.5.6, *Whistleblower Claim File*) to the WO. To expedite the processing of the Form 11369 exam may fax the information to the ICE team at 855-244-3575. However, you must return the whistleblower claim file and Form 11369 package to the WO within one day of faxing or emailing the information. The whistleblower claim file must be mailed to:
- Internal Revenue Service  
ICE Team  
1973 N. Rulon White Blvd. M/S 4111  
Ogden, UT 84404
- (10) If the claim was initially forwarded by an analyst in the WO through the SME then the Form 11369 package should be returned to the forwarding WO analyst (and through the SME if operating division procedures require it). If uncertain who the WO analyst is or whether this applies, contact the WO's ICE Team at (801) 620-2172.

25.2.1.5.5.1  
(01-11-2018)  
**Form 11369 Package  
Examined Claims**

- (1) For examined claims resulting in adjustments (including a no-change with adjustments) the Form 11369 package should contain the following documentation:
- a. Form 11369 for each taxpayer (for jointly filed returns one joint form should be completed). The Form 11369 must be signed by the agent and manager assigned to the case (digital/electronic signatures are acceptable).
  - b. Narratives to fully explain any contributions of the whistleblower in the case and fully document the actions taken in regard to the issues.
  - c. Form 3198, *Special Handling Notice for Examination Case Processing*.
  - d. Full Revenue Agents Report/ Special Agent's Report/ Income Tax Discrepancy Adjustments including explanation of all adjusted items.
  - e. Signed copy of any agreement resolving the tax matters (e.g. Form 4549, 870, 870-AD or 906.)

- f. Any opinions from Counsel/subject matter experts on issues attributable to the whistleblower information.
- g. Copies of first four pages of each tax return and any schedules impacted by the whistleblower's information.
- h. Full copy of the initial examination plan and mid-cycle revisions.
- i. Workpapers, lead sheets, Form 5701, *Notice of Proposed Adjustments* and the accompanying Form 886-A, *Explanation of Items*, on all issues.
- j. Copy of activity record for examination/collection case.
- k. Copies of any IRC 6103(n) contracts entered into with the whistleblower and/or explanation of extraordinary cooperation by whistleblower.
- l. Any information that reflects actions by the whistleblower that may have had a negative impact on the IRS's ability to examine the taxpayer(s).
- m. Any other information that may assist the WO in making an award determination.

**Note:** The above list should not be interpreted as exclusive; additional information may be sought by the WO depending on the facts and circumstances in order to support any award denials or payments.

- (2) For examined claims resulting in a straight no-change (no-change with adjustments should follow the paragraph above) the Form 11369 package should contain the following documentation:
  - a. Form 11369 for each taxpayer (for jointly filed returns one joint form should be completed). The Form 11369 must be signed by the agent and manager assigned to the case (digital/electronic signatures are acceptable).
  - b. Narratives to fully explain any contributions of the whistleblower in the case and fully document the actions taken in regard to the issues.
  - c. Form 3198, *Special Handling Notice for Examination Case Processing*
  - d. Full Revenue Agents Report (RAR)/ Special Agent's Report including explanation of all adjusted items (This step item is not required if the operating division does not require RARs for no-changes).

25.2.1.5.5.2  
(01-11-2018)  
**Form 11369 for  
Surveyed Claims**

- (1) All claims that have been surveyed must have a completed Form 11369 with all required signatures and documentation supporting the survey. All surveyed claim packages must contain the following:
  - a. Narrative explaining why the case was surveyed;
  - b. Manager Approval; and
  - c. Agent / PSP signature (Agent signature not required if surveyed before assignment).
- (2) The narrative must state the reason for survey. Stating or writing claim surveyed is not a reason or basis to survey the case. Reasons to survey a claim may include items such as, but not limited to:
  - a. Lack of resources to perform an examination;
  - b. Short or Expired Statute of Limitations
  - c. An examination is likely to result in minimal tax implications;
- (3) For surveyed claims involving multiple taxpayers only one Form 11369 and narrative explaining why the claim was surveyed is required.



25.2.1.5.5.3  
(11-30-2023)  
**Form 11369 for  
Transferred or  
Reassigned Claims**

- (1) The field personnel, team, or SME that has been assigned a claim who is transferring or reassigning such claim to another field personnel, team, SME, or operating division must complete a Form 11369 package and submit it through existing procedures to the WO. All transferred or reassigned Form 11369 claim packages must contain:
  - a. Narrative explaining why the case was transferred, the destination, and contact information for the new group;
  - b. Copies of any relevant workpapers, activity records, or other documentation showing work related to the whistleblower's issues; and
  - c. Manager Approval
- (2) Narrative should fully explain:
  - a. Any contributions of the whistleblower in the case;
  - b. Document the investigation of the issues raised by the whistleblower; and
  - c. Basis for the Transfer.

25.2.1.5.6  
(11-30-2023)  
**Whistleblower Claim File**

- (1) Examination must maintain a separate whistleblower claim file for storing information related to the whistleblower claim. When documenting activity, the activity record must not have any references to the whistleblower. Instead a separate activity record must be maintained in the whistleblower claim file. The following should be stored/maintained in the whistleblower claim file:
  - a. Whistleblower Activity Record.
  - b. Form 211 filed by the whistleblower and any and all information supplied by the whistleblower either as part of the original submission or obtained during any further contacts with the whistleblower, including electronic media.
  - c. Copies of any debriefing notes, recorded interviews, etc. held with the whistleblower and/or their representative.
  - d. Copies of any memorandums prepared by Counsel in regards to information submitted by the whistleblower.
  - e. Copies of email and other internal communication related to the whistleblower's claim

**Note:** There should be no mention or discussion of the whistleblower in the regular examination activity log, workpapers, or case file.

- (2) At the conclusion of the examination the whistleblower claim file must be returned to the WO with the Form 11369. IRM 25.2.1.5.5, *Form 11369 Requirements*, and the accompanying subsection lists additional information required to be submitted to the WO with the whistleblower claim file and the Form 11369.

**Note:** This information will ultimately be included in the whistleblower administrative claim file compiled by the WO pursuant to 26 CFR 301.7623-3(e)(2).

- (3) The file exam forwards to Appeals (unagreed) or Centralized Case Processing (agreed) must NOT contain any whistleblower information.
- (4) **Freedom of Information Act (FOIA) Requests** - FOIA requests for release of information on a whistleblower claim requires approval of the WO Director. Field personnel are not permitted to provide any whistleblower information to

the IRS Disclosure Office. FOIA requests for disclosure of whistleblower information are processed by the WO and release of whistleblower information must be approved by the WO Director. FOIA requests including whistleblower information must be directed to the WO SPPO Associate Director.

**Note:** FOIA caseworkers searching for copies of non-Whistleblower Office administrative files (e.g. examination files from a Revenue Agent or collection files from a Revenue Officer) cannot request or secure any Whistleblower Office records (e.g. whistleblower claim file information) directly from any non-Whistleblower Office business unit. WO Director approval is required prior to providing any whistleblower record to IRS Disclosure Office. See IRM 11.3.41, *Disclosure Case Processing and Inventory Management*.

25.2.1.6  
(05-28-2020)  
**IRC 6103(n) Contract,  
General**

- (1) Under IRC 6103(a), returns and return information are confidential unless the Code authorizes disclosure.
- (2) IRC 6103(n) is the authority by which returns and return information may be shared pursuant to a tax administration contract.
- (3) Regulations published under 26 CFR 301.6103(n)-2 describe the circumstances in which the IRS may disclose information to a whistleblower and, if applicable, the legal representative of the whistleblower, in connection with written contracts for services.
- (4) These regulations provide that it is in the IRS's discretion to determine whether to enter into a written contract with the whistleblower and, if applicable, the legal representative of the whistleblower.
- (5) The IRS cannot enter into a contract solely for the purpose of sharing return information with a whistleblower, the purpose of entering the contract must be for services for tax administration purposes.
- (6) The Director, WO, issued a memorandum to heads of the exam and Criminal Investigation functions (See *IRC 6103(n) Contract Guidance*).

25.2.1.6.1  
(01-16-2025)  
**IRC 6103(n) Contract  
Guidance**

- (1) The following outlines the principles and steps to be followed when considering a IRC 6103(n) contract with a whistleblower. Additional guidance can be found at 26 CFR 301.6103(n)-2 and should be consulted for specific guidance and definitions.
- (2) A debriefing interview should be conducted first by the SME prior to consideration of a contract. If necessary, a secondary debriefing should be completed to clarify any submitted information and the knowledge of the whistleblower prior to entering into a contract. The secondary debriefing could be done after the claim is in the field so the field could have input in the questions asked.
- (3) Exam team(s) should evaluate whether the claim is one in which the disclosure of return information to the whistleblower and ongoing interaction with the whistleblower would benefit tax administration and promote the effective resolution of the issues. In coordination with Division Counsel, exam teams should also consider evidentiary risks of ongoing interaction with the whistleblower, for instance, entering into a IRC 6103(n) contract with a whistleblower currently employed by the entity being examined could be viewed as engaging the whistleblower as an agent of the IRS. Also, entering into a IRC 6103(n) contract with a whistleblower that has access to privileged and confidential in-

formation could cause concerns under the exclusionary rule and the attorney-client or other privileges. Exam team(s) considering a IRC 6103(n) contract should ensure the premises of the whistleblower are consistent with IRS requirements set forth in Pub 4812, *Contractor Security Controls*.

- (4) Some examples of factors where, if present, a IRC 6103(n) contract should be considered are:
  - Issues involving transactions not recorded on the books and records of the taxpayer;
  - Issues where the whistleblower has substantial industry expertise. Particularly when there are complex transactions, or emerging compliance issues, it may be beneficial to have a whistleblower assist in evaluating the taxpayer's responses to IDRs; and
  - Issues involving substantial factual development where the whistleblower's knowledge could be beneficial.
- (5) The decision to use a IRC 6103(n) contract to develop an examination or investigation with the assistance of a whistleblower ultimately rests with the operating division.
- (6) When an Exam team believes a contract is appropriate, a request should be initiated through the SME. Approval is required by the executive responsible for the team and final approval by the operating division at no lower than the Deputy Commissioner level.
- (7) If approved, the SME will contact the whistleblower and whistleblower's representative to confirm that the whistleblower wants to enter into and execute such contract. All IRC 6103(n) contracts must be coordinated with Division Counsel, General Legal Services (GLS), Procedure and Administration, and Procurement.
- (8) The SME will provide the WO notice of any IRC 6103(n) contract and send a copy of the contract within ten days. These contracts will be tracked by the WO. After receiving notice, the WO will provide notification of the contract to the Chief Tax Compliance Officer's Office. However, questions regarding the contract terms/conditions should be coordinated with local Field Counsel as necessary.
- (9) Employees considering such contracts should be aware of the limitations associated with sharing information pursuant to IRC 6103(n) contracts. A IRC 6103(n) contract does not allow the IRS to share all information with a whistleblower – only such information the IRS deems necessary in connection with the proper or reasonable performance of the contract. If the contract can be performed by sharing only parts or portions of the returns or return information, then only those parts or portions may be disclosed.
- (10) Further, as a condition of the contract, a whistleblower must agree that any return information disclosed will not be disclosed or otherwise used by the whistleblower except as expressly authorized by the IRS in writing.
- (11) Whistleblowers must be made aware that he or she becomes subject to civil and criminal penalties for the unauthorized inspection or disclosure of return information as provided in IRC 7431, 7213 and 7213A.

- (12) The regulations governing IRC 6103(n) contracts also provide that whistleblowers and their legal representatives who receive return information pursuant to a IRC 6103(n) contract must comply with all applicable conditions and requirements that the IRS may prescribe for purposes of protecting the confidentiality of the return information and preventing unauthorized disclosures and inspections of the return information. These requirements, which include standards for computer security, physical security of return information, and methods of destruction of return information, are set forth in Pub 4812. IT Security and Physical Security can be contacted via email at *Pub4812@irs.gov* to assist in the safeguard review and provide their respective expertise.
- (13) As part of a IRC 6103(n) contract, whistleblowers and their legal representatives who receive return information must agree to permit an inspection of their premises by the IRS relative to the maintenance of the return information disclosed to them under the contract. If the services contemplated by the IRC 6103(n) contract can be performed without the physical release of returns or return information to the whistleblower or the return or return information can be shared with the whistleblower in an IRS office, the IRS should retain control of the documents.

# General Operating Division Guidance for Working Whistleblower Claims 25.2.1

page 25

Exhibit 25.2.1-1 (05-28-2020)

## Debriefing Checksheet

| Debriefing Checksheet  |
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| Whistleblower's Name:  |
| (Name of Designated Representative)  |
| <b>Note:</b> If you do not have information about something discussed during the debriefing, do not interpret that as a request that you obtain additional information. The debriefing is to help us understand what you know.   |
| Item   |
| <b>1. PROVIDING TRUTHFUL INFORMATION:</b> The whistleblower was advised of the importance of being truthful in the information provided to the United States Government, both in the application and during the interview. Deliberate false statements can affect the eligibility for an award, and the amount of any award that may be paid.  |
| <b>2. VOLUNTARY INFORMATION:</b> The whistleblower was advised that the assistance and the information provided to the United States Government is entirely voluntary. That they are not acting on behalf of the United States Government or at the direction of the United States Government with respect to the information that they are voluntarily providing.   |
| <b>3. NOT EMPLOYEE OF THE GOVERNMENT:</b> The whistleblower was advised that they are not an employee or agent of the United States Government and they cannot take any independent action on behalf of the United States Government. They may not represent themselves as an employee or agent of the Internal Revenue Service or the United States Government.   |
| <b>4. EVALUATION OF THE INFORMATION:</b> The whistleblower was advised that the IRS will evaluate the information submitted and determine whether it will use that information in an investigation or audit. That evaluation will consider the information submitted, other information available to the IRS, and the potential return from an investigation or audit compared to other matters the IRS could choose to pursue and a wide range of other legal and policy issues. The IRS does not act on every case of possible tax noncompliance.  |
| <b>5. POTENTIAL THAT AUDIT OR INVESTIGATION MAY TAKE YEARS TO RESOLVE:</b> The whistleblower was advised that the matter may not be resolved quickly. It is not uncommon for an audit or investigation to continue for several years, particularly when the affected taxpayer exercises appeal rights. If the matter relates to a large taxpayer, it may be incorporated into a broader audit plan that may address several tax years and multiple tax issues.   |
| <b>6. RECORDATION OF THE INTERVIEW:</b> The whistleblower was advised that a record will be made of any interview and of all written communications between the IRS and the whistleblower or their representative. These records will be kept separate from the investigation or audit case file to protect the whistleblower's identity from inappropriate disclosure. The whistleblower was advised that they may be asked to consent to audio recording of any interview. They were advised that if an audio recording is not conducted, the IRS will rely on the interview notes as evidence of any information provided during the debriefing. (Under the privacy laws, the notes of the interview made by IRS personnel will not be available to the whistleblower or their representative.) |

**Exhibit 25.2.1-1 (Cont. 1) (05-28-2020)****Debriefing Checksheet**

**7. PROTECTING THE IDENTITY OF THE INFORMANT:** The whistleblower was advised that the IRS will protect against the disclosure of their identity, and even the fact that a whistleblower has provided information, to the maximum extent that the law allows. Their identity will not be disclosed by the IRS unless we deem it to be in the United States Government's best interests. The IRS will use its best efforts to notify the whistleblower prior to any disclosure. Despite our best efforts to protect the whistleblower's identity, there is no way to guarantee that the whistleblower's role will not become known to or suspected by the taxpayer. (The IRS will notify the whistleblower and their counsel of any public disclosures.)

**8. AWARD AUTHORITY:** The whistleblower was advised that the WO has authority with respect to any award, payments, or other compensation. The individuals present at this interview cannot make any promises or guarantees with respect to any award for the information the whistleblower provided.

**9. TAXABILITY OF PAYMENTS:** The whistleblower was advised that all awards are taxable income. United States citizens and United States residents should be advised that taxes will be withheld, and that the entire amount of the award should be reported on their individual income tax return. Nonresident aliens should be advised that awards should be reported and taxes will be withheld unless exempted by a United States income tax treaty.

**10. Contacts:** The whistleblower was advised not to make contact with any representatives of the IRS in regards to this matter unless specifically directed to do so. All contacts as to the status of the submission should be addressed to the WO and all supplemental information should be submitted to the WO.