

Big Win for IRS Whistleblowers as U.S. Tax Court Ruling on 'Collected Proceeds' Stands

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In March, a settlement between the IRS and two whistleblowers finally put to rest a long-pending dispute about the amount of money IRS whistleblowers can receive for successfully reporting tax fraud or other serious tax underpayments. Under the [IRS whistleblower reward program](#), a whistleblower who provides information to the IRS about an individual or business's underpayment of taxes can receive an award from the IRS if the information leads the IRS to recover money and certain other conditions are met. 26 U.S.C. § 7623. (For example, the IRS's total recovery must be over \$2 million and if the taxpayer is an individual, she must have earned \$200,000 or more for at least one of the years that she underpaid.) If the IRS recovers money from the taxpayer, the whistleblower is entitled to receive an award between 15 percent and 30 percent of “the proceeds collected as a result of the action.” *Id.* § 7623(b)(1).

Determining a Tax Whistleblower Award

In 2013, two whistleblowers filed an IRS tip that sparked a dispute with the IRS about what money counts as “proceeds collected as a result of the action.” The whistleblowers' IRS tip led to a criminal prosecution of a Swiss bank that helped taxpayers avoid paying taxes. The bank had to pay \$20 million in restitution—compensation for the amount of taxes that were underpaid—and approximately \$54 million in criminal fines and [civil forfeiture](#), a legal maneuver in which the government seizes assets that it alleges were involved in a crime. Since the beginning of the IRS whistleblower reward program, there was never any question that a whistleblower's reward would include a percentage of the taxes that the IRS collected from the taxpayer. However, the whistleblowers in this case, [Whistleblower 21276-13W and 21277-13W v. CIR](#) (named using the numbers assigned to the petitioners, whose identities remain confidential), argued that they should also receive a portion of the fines and assets that the government seized.

U.S. Tax Court Rules on Scope of “Collected Proceeds”

In a decision in 2015, the United States Tax Court held that the whistleblowers could pursue their awards under § 7623(b)(1), allowing for awards based on a percentage of the “proceeds collected.” [Whistleblower 21276-13W and 21277-13W v. CIR](#) 144, TC 15 (2015). After that decision, the IRS reached a deal with the whistleblowers awarding them 24% of the unpaid taxes collected as a result of their tip. The saga continued, however, because the whistleblowers persisted in arguing that the “proceeds” should include the criminal fines and civil forfeiture in addition to the \$20 million restitution, but the IRS disagreed. [In an opinion on August 3, 2016](#), the Tax Court attempted to resolve their dispute, holding that the whistleblowers could recover a portion of the criminal fine and civil forfeitures that the government recovered. [Whistleblower 21276-13W and 21277-13W v. CIR](#) 147, TC 4 (2016). The Court used strong language in reaching its decision: “we herein hold that the phrase ‘collected proceeds’ is sweeping in scope and is not limited to amounts assessed and collected under title 26 [the IRS Code].” *Id.* at 23. To support its conclusion, the Court explained that there was nothing in the language of § 7623(b)(1) that limited the definition of collected proceeds to those collected under the IRS Code. It also emphasized that the purpose of the whistleblower program is to

incentivize people to report tax underpayments, and that § 7623(b)(1) was enacted to create a more robust program “in response to the ineffectiveness of the prior, discretionary whistleblower program, now codified as section 7623(a).” *Id.* at 7-8.

The IRS appealed the decision to the U.S. Court of Appeals for the District of Columbia Circuit, Whistleblower 21276-13W and 21277-13W v. CIR, Case Nos. 17-1119 and 1120 (D.C. Cir.), but before the D.C. Circuit could hear the case, the IRS reached a [settlement](#) with the two whistleblowers. It agreed to dismiss its appeal and pay the whistleblowers an additional \$12.9 million (24% of the criminal fines and civil forfeiture). The settlement keeps in place the Tax Court opinion that the definition of “proceeds” under § 7623(b)(1) includes all proceeds that the government receives, including criminal fines and assets seized through civil forfeiture. It also keeps in place a robust incentive for whistleblowers, who can rely on this interpretation to receive hefty awards when they successfully report tax fraud.