

26 USC 7623: Expenses of detection of underpayments and fraud, etc.

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From Title 26-INTERNAL REVENUE CODE

Subtitle F-Procedure and Administration
CHAPTER 78-DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE
Subchapter B-General Powers and Duties

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§7623. Expenses of detection of underpayments and fraud, etc.

(a) In general

The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for-

- (1) detecting underpayments of tax, or
- (2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same,

in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts collected by reason of the information provided, and any amount so collected shall be available for such payments.

(b) Awards to whistleblowers

(1) In general

If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the proceeds collected as a result of the action (including any related actions) or from any settlement in response to such action (determined without regard to whether such proceeds are available to the Secretary). 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.

(2) Award in case of less substantial contribution

(A) In general

In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds collected as a result of the action (including any related actions) or from any settlement in response to such action (determined without regard to whether such proceeds are available to the Secretary), taking into account the significance of the individual's information and the role of such individual and any legal representative of such individual in contributing to such action.

(B) Nonapplication of paragraph where individual is original source of information

Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in paragraph (1) was originally provided by the individual described in paragraph (1).

(3) Reduction in or denial of award

If the Whistleblower Office determines that the claim for an award under paragraph (1) or (2) is brought by an individual who planned and initiated the actions that led to the underpayment of tax or actions described in subsection (a)(2), then the Whistleblower Office may appropriately reduce such award. If such individual is convicted of criminal conduct arising from the role described in the preceding sentence, the Whistleblower Office shall deny any award.

(4) Appeal of award determination

Any determination regarding an award under paragraph (1), (2), or (3) may, within 30 days of such determination, be appealed to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).

(5) Application of this subsection

This subsection shall apply with respect to any action-

- (A) against any taxpayer, but in the case of any individual, only if such individual's gross income exceeds \$200,000 for any taxable year subject to such action, and
- (B) if the proceeds in dispute exceed \$2,000,000.

(6) Additional rules

(A) No contract necessary

No contract with the Internal Revenue Service is necessary for any individual to receive an award under this subsection.

(B) Representation

Any individual described in paragraph (1) or (2) may be represented by counsel.

(C) Submission of information

No award may be made under this subsection based on information submitted to the Secretary unless such information is submitted under penalty of perjury.

(c) Proceeds

For purposes of this section, the term "proceeds" includes-

- (1) penalties, interest, additions to tax, and additional amounts provided under the internal revenue laws, and
- (2) any proceeds arising from laws for which the Internal Revenue Service is authorized to administer, enforce, or investigate, including:
 - (A) criminal fines and civil forfeitures, and
 - (B) violations of reporting requirements.

(d) Civil action to protect against retaliation cases

(1) Anti-retaliation whistleblower protection for employees

No employer, or any officer, employee, contractor, subcontractor, or agent of such employer, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment (including through an act in the ordinary course of such employee's duties) in reprisal for any lawful act done by the employee-

- (A) to provide information, cause information to be provided, or otherwise assist in an investigation regarding underpayment of tax or any conduct which the employee reasonably believes constitutes a violation of the internal revenue laws or any provision of Federal law relating to tax fraud, when the information or assistance is provided to the Internal Revenue Service, the Secretary of the Treasury, the Treasury Inspector General for Tax Administration, the Comptroller General of the United States, the Department of Justice, the United States Congress, a person with supervisory authority over the employee, or any other person working for the employer who has the authority to investigate, discover, or terminate misconduct, or
- (B) to testify, participate in, or otherwise assist in any administrative or judicial action taken by the Internal Revenue Service relating to an alleged underpayment of tax or any violation of the internal revenue laws or any provision of Federal law relating to tax fraud.

(2) Enforcement action

(A) In general

A person who alleges discharge or other reprisal by any person in violation of paragraph (1) may seek relief under paragraph (3) by-

- (i) filing a complaint with the Secretary of Labor, or
- (ii) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(B) Procedure

(i) In general

An action under subparagraph (A)(i) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(ii) Exception

Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

(iii) Burdens of proof

An action brought under subparagraph (A)(ii) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code, except that in applying such section-
(i) "behavior described in paragraph (1)" shall be substituted for "behavior described in paragraphs (1) through (4) of subsection (a)" each place it appears in paragraph (2)(B) thereof, and
(ii) "a violation of paragraph (1)" shall be substituted for "a violation of subsection (a)" each place it appears.

(iv) Statute of limitations

A complaint under subparagraph (A)(i) shall be filed not later than 180 days after the date on which the violation occurs.

(v) Jury trial

A party to an action brought under subparagraph (A)(ii) shall be entitled to trial by jury.

(3) Remedies

(A) In general

An employee prevailing in any action under paragraph (2)(A) shall be entitled to all relief necessary to make the employee whole.

(B) Compensatory damages

Relief for any action under subparagraph (A) shall include-

- (i) reinstatement with the same seniority status that the employee would have had, but for the reprisal,
- (ii) the sum of 200 percent of the amount of back pay and 100 percent of all lost benefits, with interest, and
- (iii) compensation for any special damages sustained as a result of the reprisal, including litigation costs, expert witness fees, and reasonable attorney fees.

(4) Rights retained by employee

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.

(5) Nonenforceability of certain provisions waiving rights and remedies or requiring arbitration of disputes

(A) Waiver of rights and remedies

The rights and remedies provided for in this subsection may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(B) Predispute arbitration agreements

No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 904; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 104-168, title XII, §1209(a), July 30, 1996, 110 Stat. 1473; Pub. L. 109-432, div. A, title IV, §406(a)(1), Dec. 20, 2006, 120 Stat. 2958; Pub. L. 115-123, div. D, title II, §41108(a)-(c), Feb. 9, 2018, 132 Stat. 158; Pub. L. 116-25, title I, §1405(b), July 1, 2019, 133 Stat. 998.)

AMENDMENTS

2019-Subsec. (d), Pub. L. 116-25 added subsec. (d).

2018-Subsec. (b)(1), (2)(A), Pub. L. 115-123, §41108(a)(2), (b), substituted "proceeds collected as a result of the action" for "collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action" and inserted "(determined without regard to whether such proceeds are available to the Secretary)" after "in response to such action".

Subsec. (b)(5)(B), Pub. L. 115-123, §41108(c), substituted "proceeds" for "tax, penalties, interest, additions to tax, and additional amounts".

Subsec. (c), Pub. L. 115-123, §41108(a)(1), added subsec. (c).

2006-Pub. L. 109-432 designated existing provisions as subsec. (a), inserted heading, in par. (1), substituted "or" for "and" at end, in concluding provisions, struck out "(other than interest)" after "amounts", and added subsec. (b).

1996-Pub. L. 104-168 substituted "of underpayments and fraud, etc." for "and punishment of frauds" in section catchline and amended text generally. Prior to amendment, text read as follows: "The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law."

1976-Pub. L. 94-455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-25, title I, §1405(c)(2), July 1, 2019, 133 Stat. 1000 , provided that: "The amendment made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [July 1, 2019]."

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-123, div. D, title II, §41108(d), Feb. 9, 2018, 132 Stat. 158 , provided that: "The amendments made by this section [amending this section] shall apply to information provided before, on, or after the date of the enactment of this Act [Feb. 9, 2018] with respect to which a final determination for an award has not been made before such date of enactment."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable to information provided on or after Dec. 20, 2006, see section 406(d) of Pub. L. 109-432, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-168, title XII, §1209(c), July 30, 1996, 110 Stat. 1474 , provided that: "The amendments made by this section [amending this section] shall take effect on the date which is 6 months after the date of the enactment of this Act [July 30, 1996]."

WHISTLEBLOWER OFFICE

Pub. L. 109-432, div. A, title IV, §406(b), Dec. 20, 2006, 120 Stat. 2959 , provided that:

"(1) IN GENERAL.-Not later than the date which is 12 months after the date of the enactment of this Act [Dec. 20, 2006], the Secretary of the Treasury shall issue guidance for the operation of a whistleblower program to be administered in the Internal Revenue Service by an office to be known as the "Whistleblower Office" which-

"(A) shall at all times operate at the direction of the Commissioner of Internal Revenue and coordinate and consult with other divisions in the Internal Revenue Service as directed by the Commissioner of Internal Revenue, and
"(B) shall analyze information received from any individual described in section 7623(b) of the Internal Revenue Code of 1986 and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office,

and
"(C) in its sole discretion, may ask for additional assistance from such individual or any legal representative of such individual.

"(2) REQUEST FOR ASSISTANCE.-The guidance issued under paragraph (1) shall specify that any assistance requested under paragraph (1)(C) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under paragraph (1)(A). No individual or legal representative whose assistance is so requested may by reason of such request represent himself or herself as an employee of the Federal Government."

REPORT BY SECRETARY

Pub. L. 109-432, div. A, title IV, §406(c), Dec. 20, 2006, 120 Stat. 2960 , provided that: "The Secretary of the Treasury shall each year conduct a study and report to Congress on the use of section 7623 of the Internal Revenue Code of 1986, including-

- "(1) an analysis of the use of such section during the preceding year and the results of such use, and
- "(2) any legislative or administrative recommendations regarding the provisions of such section and its application."

STUDY OF PAYMENTS MADE FOR DETECTION OF UNDERPAYMENTS AND FRAUD

Pub. L. 105-206, title III, §3804, July 22, 1998, 112 Stat. 783 , provided that: "Not later than 1 year after the date of the enactment of this Act [July 22, 1998], the Secretary of the Treasury shall conduct a study and report to Congress on the use of section 7623 of the Internal Revenue Code of 1986 including-

- "(1) an analysis of the present use of such section and the results of such use; and
- "(2) any legislative or administrative recommendations regarding the provisions of such section and its application."

ANNUAL REPORT TO CONGRESS ON PAYMENTS MADE UNDER THIS SECTION AND RESULTANT COLLECTIONS

Pub. L. 104-168, title XII, §1209(d), July 30, 1996, 110 Stat. 1474 , provided that: "The Secretary of the Treasury or his delegate shall submit an annual report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the payments under section 7623 of the Internal Revenue Code of 1986 during the year and on the amounts collected for which such payments were made."