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Reg. Section 301.7623-4(c)(3)(iii)(B)

Amount and payment of award

(a) In general. The Whistleblower Office will pay all awards under section 7623(a) and determine and pay all awards under section 7623(b). For all awards under section 7623 and §§301.7623-1 through 301.7623-4, the Whistleblower Office will-

(1) Analyze the claim by applying the rules provided in paragraph (c) of this section to the information contained in the administrative claim file to determine an award percentage; and

(2) Multiply the award percentage by the amount of collected proceeds. If the award determination arises out of a single whistleblower administrative proceeding involving multiple actions, the Whistleblower Office may determine separate award percentages on an action-by-action basis and apply the separate award percentages to the collected proceeds attributable to the corresponding actions. The Internal Revenue Service (IRS) will pay all awards in accordance with the rules provided in paragraph (d) of this section. All relevant factors will be taken into account by the Whistleblower Office in determining whether an award will be paid and, if so, the amount of the award. No person is authorized under this section to make any offer or promise or otherwise bind the Whistleblower Office with respect to the amount or payment of an award.

(b) Factors used to determine award percentage.

(1) Positive factors. The application of the following non-exclusive factors may support increasing an award percentage under paragraphs (c)(1) or (2) of this section-

(i) The whistleblower acted promptly to inform the IRS or the taxpayer of the tax noncompliance.

(ii) The information provided identified an issue or transaction of a type previously unknown to the IRS.

(iii) The information provided identified taxpayer behavior that the IRS was unlikely to identify or that was particularly difficult to detect through the IRS's exercise of reasonable diligence.

(iv) The information provided thoroughly presented the factual details of tax noncompliance in a clear and organized manner, particularly if the manner of the presentation saved the IRS work and resources.

(v) The whistleblower (or the whistleblower's legal representative, if any) provided exceptional cooperation and assistance during the pendency of the action(s).

(vi) The information provided identified assets of the taxpayer that could be used to pay liabilities, particularly if the assets were not otherwise known to the IRS.

(vii) The information provided identified connections between transactions, or parties to transactions, that enabled the IRS to understand tax implications that might not otherwise have been understood by the IRS.

(viii) The information provided had an impact on the behavior of the taxpayer, for example by causing the taxpayer to promptly correct a previously-reported improper position.

(2) Negative factors. The application of the following non-exclusive factors may support decreasing an award percentage under paragraphs (c)(1) or (2) of this section-

(i) The whistleblower delayed informing the IRS after learning the relevant facts, particularly if the delay adversely affected the IRS's ability to pursue an action or issue.

(ii) The whistleblower contributed to the underpayment of tax or tax noncompliance identified.

(iii) The whistleblower directly or indirectly profited from the underpayment of tax or tax noncompliance identified, but did not plan and initiate the actions that led to the underpayment of tax or actions described in section 7623(a)(2) .

(iv) The whistleblower (or the whistleblower's legal representative, if any) negatively affected the IRS's ability to pursue the action(s), for example by disclosing the existence or scope of an enforcement activity.

(v) The whistleblower (or the whistleblower's legal representative, if any) violated instructions provided by the IRS, particularly if the violation caused the IRS to expend additional resources.

(vi) The whistleblower (or the whistleblower's legal representative, if any) violated the terms of the confidentiality agreement described in §301.7623-3(c)(2)(iv).

(vii) The whistleblower (or the whistleblower's legal representative, if any) violated the terms of a contract entered into with the IRS pursuant to §301.6103(n)-2.

(viii) The whistleblower provided false or misleading information or otherwise violated the requirements of section 7623(b)(6)(C) or §301.7623-1(c)(3).

(c) Amount of award percentage.

(1) Award for substantial contribution.

(i) In general. If the IRS proceeds with any administrative or judicial action based on information brought to the IRS's attention by a whistleblower, such whistleblower shall, subject to paragraphs (c)(2) and (3) of this section, receive as an award at least 15 percent but not more than 30 percent of the collected

proceeds resulting from the action (including any related actions) or from any settlement in response to such action. The amount of any award under this paragraph depends on the extent of the whistleblower's substantial contribution to the action(s). See paragraph (c)(4) of this section for rules regarding multiple whistleblowers.

(ii) Computational framework. Starting the analysis at 15 percent, the Whistleblower Office will analyze the administrative claim file using the factors listed in paragraph (b)(1) of this section to determine whether the whistleblower merits an increased award percentage of 22 percent or 30 percent. The Whistleblower Office may increase the award percentage based on the presence and significance of positive factors. The Whistleblower Office will then analyze the contents of the administrative claim file using the factors listed in paragraph (b)(2) of this section to determine whether the whistleblower merits a decreased award percentage of 15 percent, 18 percent, 22 percent, or 26 percent. The Whistleblower Office may decrease the award percentage based on the presence and significance of negative factors. Although the factors listed in paragraphs (b)(1) and (2) of this section are described as positive and negative factors, the Whistleblower Office's analysis cannot be reduced to a mathematical equation. The factors are not exclusive and are not weighted and, in a particular case, one factor may override several others. The presence and significance of positive factors may offset the presence and significance of negative factors. But the absence of negative factors does not constitute a positive factor.

(iii) Examples. The operation of the provisions of paragraph (c)(1)(ii) of this section may be illustrated by the following examples. The examples are intended to illustrate the operation of the computational framework. The examples provide simplified descriptions of the facts relating to the claims for award, the information provided, and the facts relating to the underlying tax cases. The application of section 7623(b)(1) and paragraph (c)(1)(ii) of this section will depend on the specific facts of each case.

Example (1). Facts. Whistleblower A, an employee in Corporation's sales department, submitted to the IRS a claim for award under section 7623 and information indicating that Corporation improperly claimed a credit in tax year 2006. Whistleblower A's information consisted of numerous non-privileged documents relevant to Corporation's eligibility for the credit. Whistleblower A's original submission also included an analysis of the documents, as well as information about meetings in which the claim for credit was discussed. When interviewed by the IRS, Whistleblower A clarified ambiguities in the original submission, answered questions about Corporation's business and accounting practices, and identified potential sources to corroborate the information.

Some of the documents provided by Whistleblower A were not included in Corporation's general record-keeping system and their existence may not have been easily uncovered through normal IRS examination procedures. Corporation initially denied the facts revealed in the information provided by Whistleblower A, which were essential to establishing the impropriety of the claim for credit. IRS examination of Corporation's return confirmed that the credit was improperly

claimed by Corporation in tax year 2006, as alleged by Whistleblower A. Corporation agreed to the ensuing assessments of tax and interest and paid the liabilities in full.

Analysis. In this case, Whistleblower A provided specific and credible information that formed the basis for action by the IRS. Whistleblower A provided information that was difficult to detect, provided useful assistance to the IRS, and helped the IRS sustain the assessment. Based on the presence and significance of these positive factors, viewed against all the specific facts relevant to Corporation's 2006 tax year, the Whistleblower Office could increase the award percentage to 22 percent of collected proceeds. If, however, Whistleblower A's claim reflected negative factors, for example Whistleblower A violated instructions provided by the IRS and the violation caused the IRS to expend additional resources, then the Whistleblower Office could, based on this negative factor, reduce the award percentage to 18 or 15 percent (but not to lower than 15 percent of collected proceeds).

Example (2). Facts. Whistleblower B, an employee of Financial Advisory Firm 1 (Firm 1), submitted to the IRS a claim for award under section 7623 and information indicating that Firm 1 helped clients engage in activities that were intended to, and did, result in substantial tax underpayments. The activities were designed to avoid detection by the IRS, and prior IRS audits of several clients of Firm 1 had failed to detect underpayments of tax. Whistleblower B learned of the activities after being reassigned to a new position with Firm 1. Whistleblower B provided the information to the IRS soon after he understood the scope, nature and impact of the activities. The information provided consisted of numerous documents containing client profiles and marketing strategies, as well as descriptions of the transactions and structures used by Firm 1 and its clients to obscure the clients' identities and to generate the substantial tax underpayments. Whistleblower B also provided an analysis of the documents, as well as information about meetings in which the transactions and structures were discussed. When interviewed by the IRS, Whistleblower B clarified ambiguities in the original submission, answered questions about Firm 1's execution of specific client transactions, and identified potential sources to corroborate the information provided. Whistleblower B also notified the IRS of steps taken by Firm 1 to limit the disclosure of information requested by the IRS, enabling the IRS to obtain full disclosure of the information through the targeted use of summonses.

Analysis. Ultimately, the IRS collected tax, penalties, and interest from Firm 1 and multiple clients. In addition, Treasury and the IRS issued a notice identifying the impropriety of the transactions and structures employed by Firm 1 and its clients. Whistleblower B provided specific and credible information that formed the basis for action by the IRS. The information provided identified transactions that were difficult to detect. Whistleblower B acted promptly after he understood the activities at issue and he provided useful assistance to the IRS. Whistleblower B's assistance, and the information he provided, helped the IRS overcome the efforts made to obscure the activities and the clients' identities. And the information provided by Whistleblower B contributed to the decision to issue the

notice, which may have a positive effect on client behavior and save IRS resources. Based on the presence and significance of these positive factors, the Whistleblower Office could increase the award percentage to 30 percent of collected proceeds. If Whistleblower B directly or indirectly profited from Firm 1's and the clients' activities resulting in the tax underpayments, then the Whistleblower Office could, based on this negative factor, reduce the award percentage to 26, 22, 18 percent or 15 percent (but not to lower than 15 percent of collected proceeds).

(2) Award for less substantial contribution.

(i) In general. If the Whistleblower Office determines that the action described in paragraph (c)(1) of this section is based principally on disclosures of specific allegations resulting from a judicial or administrative hearing; a government report, hearing, audit, or investigation; or the news media, then the Whistleblower Office will determine an award of no more than 10 percent of the collected proceeds resulting from the action (including any related actions) or from any settlement in response to such action. If the whistleblower is the original source of the information from which the disclosures of specific allegations resulted, however, then the award percentage will be determined under paragraph (c)(1) of this section.

(ii) Computational framework. The Whistleblower Office will analyze the administrative claim file to determine-

(A) Whether the claim involves specific allegations regarding a tax underpayment or a violation of the internal revenue laws that reasonably may be inferred to have resulted from a judicial or administrative hearing; a government report, hearing, audit, or investigation; or the news media;

(B) Whether the action described in paragraph (c)(1) of this section was based principally on the disclosure of the specific allegations; and

(C) Whether the whistleblower was the original source of the information that gave rise to the specific allegations. If the Whistleblower Office determines that the action was based principally on disclosures of specific allegations, as stated in paragraph (c)(2)(ii)(B) of this section, and that the whistleblower was not the original source of the information, then, starting at 1 percent, the Whistleblower Office will analyze the administrative claim file using the factors listed in paragraph (b)(1) of this section to determine whether the whistleblower merits an increased award percentage of 4 percent, 7 percent, or 10 percent. The Whistleblower Office will then determine whether the whistleblower merits a decreased award percentage of zero, 1 percent, 4 percent, or 7 percent using the factors listed in paragraph (b)(2) of this section. The Whistleblower Office may increase the award percentage based on the presence and significance of positive factors and may decrease (to zero) the award percentage based on the presence and significance of negative factors. Like the analysis described in paragraph (c)(1)(ii) of this section, the Whistleblower Office's analysis cannot be reduced to a mathematical equation. The factors are not exclusive and are not weighted and, in a particular case, one factor may

override several others. The presence and significance of positive factors may offset the presence and significance of negative factors. But the absence of negative factors does not constitute a positive factor.

(iii) Example. The operation of the provisions of paragraph (c)(2)(ii) of this section may be illustrated by the following example. The example is intended to illustrate the operation of the computational framework. The example provides a simplified description of the facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case(s). The application of section 7623(b)(2) and paragraph (c)(2)(ii) of this section will depend on the specific facts of each case.

Example. Facts. Whistleblower A submitted to the IRS a claim for award under section 7623 and information indicating that Taxpayer B was the defendant in a criminal prosecution for embezzlement. Whistleblower A's information further indicated that evidence presented at Taxpayer B's trial revealed Taxpayer B's efforts to conceal the embezzled funds by depositing them in bank accounts of entities controlled by Taxpayer B. Taxpayer B's failure to pay tax on the embezzled funds was not explicitly stated during the judicial hearing, but could be reasonably inferred from the facts and circumstances, including Taxpayer B's efforts to conceal the funds.

Analysis. In this case, Whistleblower A's information is based principally on disclosures of specific allegations resulting from a judicial hearing. Absent information demonstrating that the investigation leading to the embezzlement charge was based on information provided by Whistleblower A, section 7623(b)(2) and paragraph (c)(2) of this section apply to the determination of Whistleblower A's award. In this case, there is no reason for the Whistleblower Office to increase the applicable award percentage above 1 percent, the starting point for its analysis, given the absence of positive factors. Accordingly, Whistleblower A may receive an award of 1 percent of collected proceeds.

(3) Reduction in award and denial of award.

(i) In general. If the Whistleblower Office determines that a claim for award is brought by a whistleblower who planned and initiated the actions, transaction, or events (underlying acts) that led to the underpayment of tax or actions described in section 7623(a)(2), then the Whistleblower Office may appropriately reduce the amount of the award percentage that would otherwise result under section 7623(b)(1) and paragraph (c)(1) of this section or section 7623(b)(2) and paragraph (c)(2) of this section, as applicable. The Whistleblower Office will deny an award if the whistleblower is convicted of criminal conduct arising from his or her role in planning and initiating the underlying acts.

(ii) Threshold determination. A whistleblower planned and initiated the underlying acts if the whistleblower-

(A) Designed, structured, drafted, arranged, formed the plan leading to, or otherwise planned, an underlying act,

(B) Took steps to start, introduce, originate, set into motion, promote or otherwise initiate an underlying act, and

(C) Knew or had reason to know that an underpayment of tax or actions described in section 7623(a)(2) could result from planning and initiating the underlying act.

(D) The whistleblower need not have been the sole person involved in planning and initiating the underlying acts. A whistleblower who merely furnishes typing, reproducing, or other mechanical assistance in implementing one or more underlying acts will not be treated as initiating any underlying act. A whistleblower who is a junior employee acting at the direction, and under the control, of a senior employee will not be treated as initiating any underlying act.

(E) If the Whistleblower Office determines that a whistleblower has satisfied this initial threshold of planning and initiating, the Whistleblower Office will then reduce the award amount based on the extent of the whistleblower's planning and initiating, pursuant to paragraph (c)(3)(iii) of this section.

(iii) Computational framework. After determining the award percentage that would otherwise result from the application of section 7623(b)(1) and paragraph (c)(1) of this section or section 7623(b)(2) and paragraph (c)(2) of this section, as applicable, the Whistleblower Office will analyze the administrative claim file to make the threshold determination described in paragraph (c)(3)(ii) of this section. If the whistleblower is determined to have planned and initiated the underlying acts, then the Whistleblower Office will reduce the award based on the extent of the whistleblower's planning and initiating. The Whistleblower Office's analysis and the amount of the appropriate reduction determined in a particular case cannot be reduced to a mathematical equation. To determine the appropriate award reduction, the Whistleblower Office will-

(A) Categorize the whistleblower's role as a planner and initiator as primary, significant, or moderate; and



(B) Appropriately reduce the award percentage that would otherwise result from the application of section 7623(b)(1) and paragraph (c)(1) of this section or section 7623(b)(2) and paragraph (c)(2) of this section, as applicable, by 67 percent to 100 percent in the case of a primary planner and initiator, by 34 percent to 66 percent in the case of a significant planner and initiator, or by 0 percent to 33 percent in the case of a moderate planner and initiator. If the whistleblower is convicted of criminal conduct arising from his or her role in planning and initiating the underlying acts, then the Whistleblower Office will deny an award without regard to whether the Whistleblower Office categorized the whistleblower's role as a planner and initiator as primary, significant, or moderate.

(iv) Factors demonstrating the extent of a whistleblower's planning and initiating. The application of the following non-exclusive factors may support a determination of the extent of a whistleblower's planning and initiating of the underlying acts-

(A) The whistleblower's role as a planner and initiator. Was the whistleblower the sole decision-maker or one of several contributing planners and initiators? To what extent was the whistleblower acting under the direction and control of a supervisor?

(B) The nature of the whistleblower's planning and initiating activities. Was the whistleblower involved in legitimate tax planning activities? Did the whistleblower take steps to hide the actions at the planning stage? Did the whistleblower commit any identifiable misconduct (legal, ethical, etc.)?

(C) The extent to which the whistleblower knew or should have known that tax noncompliance could result from the course of conduct.

(D) The extent to which the whistleblower acted in furtherance of the noncompliance, including, for example, efforts to conceal or disguise the transaction.

(E) The whistleblower's role in identifying and soliciting others to participate in the actions reported, whether as parties to a common transaction or as parties to separate transactions.

(v) Examples. The operation of the provisions of paragraphs (c)(3)(ii) and (iii) of this section may be illustrated by the following examples. These examples are intended to illustrate the operation of the computational framework. The examples provide simplified descriptions of the facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case. The application of section 7623(b)(3) and paragraph (c)(3) of this section will depend on the specific facts of each case.

Example (1). Facts. Whistleblower A is employed as a junior associate in a law firm and is responsible for performing research and drafting activities for, and under the direction and control of, partners of the law firm. Whistleblower A performed research on financial products for Partner B that Partner B used in advising a client (Corporation 1) on a financial strategy. After Corporation 1 executed the strategy, Whistleblower A submitted a claim for award under section 7623 along with information about the strategy to the IRS. The IRS initiated an examination of Corporation 1 based on Whistleblower A's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined.

Analysis. Whistleblower A did nothing to design or set into motion Corporation 1's activities. Whistleblower A did not know or have reason to know that an underpayment of tax or actions described in section 7623(a)(2) could result from the research and drafting activities. Accordingly, as a threshold matter,

Whistleblower A was not a planner and initiator of Corporation 1's strategy, and the award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section is not subject to reduction under section 7623(b)(3) and paragraph (c)(3) of this section.

Example (2). Facts. Whistleblower C is employed in the human resources department of a corporation (Corporation 2). Corporation 2 tasked Whistleblower C with hiring a large number of temporary employees to meet Corporation 2's seasonal business demands. Whistleblower C organized, scheduled, and conducted job fairs and job interviews to hire the seasonal employees. Whistleblower C was not responsible for, had no knowledge of, and played no part in, classifying the seasonal employees for Federal income tax purposes. Whistleblower C later discovered, however, that Corporation 2 classified the seasonal employees as independent contractors. After discovering the misclassification, Whistleblower C submitted a claim for award under section 7623 along with non-privileged information describing the employee misclassification to the IRS. The IRS initiated an examination of Corporation 2 based on Whistleblower C's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined.

Analysis. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would not be subject to a reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Whistleblower C did not satisfy the requirements of the threshold determination of a planner and initiator. Whistleblower C did not know and had no reason to know that her actions could result in an underpayment of tax or actions described in section 7623(a)(2) or that Corporation 2 would misclassify the employees as independent contractors.

Example (3). Facts. Whistleblower D is employed as a supervisor in the finance department of a corporation (Corporation 3) and is responsible for planning Corporation 3's overall financial strategy. Pursuant to the overall financial strategy, Whistleblower D and others at Corporation 3, in good faith but incorrectly, planned tax-advantaged transactions. Whistleblower D and others at Corporation 3 prepared documents needed to execute the transactions. After Corporation 3 executed the transactions, Whistleblower D reached the conclusion that the tax consequences claimed were incorrect and Whistleblower D submitted a claim for award under section 7623 along with non-privileged information about the transactions to the IRS. The IRS initiated an examination of Corporation 3 based on Whistleblower D's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined.

Analysis. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would be subject to an appropriate reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Whistleblower D satisfies the requirements of the threshold determination of a planner and initiator. Whistleblower D planned the

transactions, prepared the necessary documents, and knew that an underpayment of tax could result from the transactions. Whistleblower D was not the sole planner and initiator of Corporation 3's transactions. Whistleblower D did nothing to conceal Corporation 3's activities. Corporation 3 had a good faith basis for claiming the disallowed tax benefits. On the basis of those facts, Whistleblower D was a moderate-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Whistleblower D's award by 0 to 33 percent.

Example (4). Facts. Same facts as Example 3, except that Whistleblower D independently planned a high-risk tax avoidance transaction and prepared draft documents to execute the transaction. Whistleblower D presented the transaction, along with the draft documents, to Corporation 3's Chief Financial Officer. Without the further involvement of Whistleblower D, Corporation 3's Chief Financial Officer, Chief Executive Officer, and Board of Directors subsequently approved the execution of the transaction. After Corporation 3 executed the transaction, Whistleblower D submitted a claim for award under section 7623 along with non-privileged information about the transaction to the IRS. The IRS initiated an examination of Corporation 3 based on Whistleblower D's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined.

Analysis. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would be subject to an appropriate reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Whistleblower D satisfies the requirements of the threshold determination of a planner and initiator. Whistleblower D planned the transaction, prepared the necessary documents, and knew that an underpayment of tax or actions described in section 7623(a)(2) could result from the transaction. Working independently, Whistleblower D designed and took steps to effectuate the transaction while knowing that the planning and initiating of the transaction was likely to result in tax noncompliance. Whistleblower D, however, did not approve the execution of the transaction by Corporation 3 and, therefore, was not a decision-maker. On the basis of these facts, Whistleblower D was a significant-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Whistleblower D's award by 34 to 66 percent.

Example (5). Facts. Whistleblower E is a financial planner. Whistleblower E designed a financial product that the IRS identified as an abusive tax avoidance transaction. Whistleblower E marketed the transaction to taxpayers, facilitated their participation in the transaction, and, initially, took steps to disguise the transaction. After several taxpayers had participated in the transaction, Whistleblower E submitted a claim for award under section 7623 along with non-privileged information to the IRS about the transaction and the participating taxpayers. The IRS initiated an examination of the identified taxpayers based on Whistleblower E's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. Whistleblower E was not criminally prosecuted.

Analysis. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would be subject to an appropriate reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Whistleblower E satisfies the requirements of the threshold determination of a planner and initiator. Whistleblower E designed the financial product, marketed and facilitated its use by taxpayers, and knew that an underpayment of tax or actions described in section 7623(a)(2) could result from the transaction. Whistleblower E was the sole designer of the transaction, solicited clients to participate in the transaction, and facilitated and attempted to conceal their participation in the transaction. Whistleblower E knew that the planning and initiating of the taxpayers' participation in the transaction was likely to result in an underpayment of tax or actions described in section 7623(a)(2). On the basis of these facts, Whistleblower E was a primary-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Whistleblower E's award by 67 to 100 percent.

(4)Multiple whistleblowers. If two or more independent claims relate to the same collected proceeds, then the Whistleblower Office may evaluate the contribution of each whistleblower to the action(s) that resulted in collected proceeds. The Whistleblower Office will determine whether the information submitted by each whistleblower would have been obtained by the IRS as a result of the information previously submitted by any other whistleblower. If the Whistleblower Office determines that multiple whistleblowers submitted information that would not have been obtained based on a prior submission, then the Whistleblower Office will determine the amount of each whistleblower's award based on the extent to which each whistleblower contributed to the action(s). The aggregate award amount in cases involving two or more independent claims that relate to the same collected proceeds will not exceed the maximum award amount that could have resulted under section 7623(b)(1) or section 7623(b)(2), as applicable, subject to the award reduction provisions of section 7623(b)(3), if a single claim had been submitted.

(d)Payment of Award.

(1)In general. The IRS will pay any award determined under section 7623 and §§301.7623-1 through 301.7623-4 to the whistleblower(s) that filed the corresponding claim for award. Payment of an award will be made as promptly as the circumstances permit, but not until there has been a final determination of tax with respect to the action(s), as defined in paragraph (d)(2) of this section, the Whistleblower Office has determined the award, and all appeals of the Whistleblower Office's determination are final or the whistleblower has executed an award consent form agreeing to the amount of the award and waiving the whistleblower's right to appeal the determination.

(2)Final determination of tax.

(i) In general. For purposes of §§301.7623-1 through 301.7623-4, a final determination of tax means that the proceeds resulting from the action(s) subject to the award determination have been collected and either the statutory period for filing a claim for refund has expired or the taxpayer(s) subject to the action(s) and the IRS have agreed with finality to the tax or other liabilities for the period(s) at issue and the taxpayer(s) have waived the right to file a claim for refund. A final determination of tax does not preclude a subsequent final determination of tax if

the IRS proceeds based on the information provided following the payment, denial, or rejection of an award.

(ii) Example. The provisions of paragraph (d)(2)(i) of this section, regarding subsequent final determination of tax, may be illustrated by the following example:

Example. Information provided to the IRS by a whistleblower, under section 7623 and §301.7623-1, identifies a taxpayer (Corporation 1), describes and documents specific facts relating to Corporation 1's activities, and, based on those facts, alleges that Corporation 1 owed additional taxes in Year 1. The Whistleblower Office processes the incoming claim and provides the information to an IRS Operating Division (Operating Division 1). Operating Division 1 reviews the claim and the allegations and ultimately decides not to proceed with an action against Corporation 1. Operating Division 1 conveys its determination not to proceed with an action against Corporation 1 to the Whistleblower Office on a Form 11369 along with all of the relevant supporting documents. The Whistleblower Office provides written notice to the whistleblower, denying any award pursuant to §301.7623-3(c)(8), and the whistleblower does not appeal the notice to Tax Court within 30 days.

Two months after the Whistleblower Office denies the award, the Whistleblower Office recognizes a potential connection between the information provided and a recently-initiated, ongoing, examination of a second taxpayer by a second IRS Operating Division (Operating Division 2). The Whistleblower Office provides the information to Operating Division 2. Operating Division 2 evaluates the information and proceeds with an action against Taxpayer 2 based on the information provided. Ultimately, Operating Division 2 assesses and collects taxes resulting from the action and totaling \$3 million. Following the conclusion of the whistleblower's participation in a whistleblower administrative proceeding described in §301.7623-3(c) and the expiration of the statutory period for filing a claim for refund by Taxpayer 2, the Whistleblower Office determines the amount of the award and communicates the award to the whistleblower in a determination letter. The whistleblower may appeal the notice to the Tax Court within 30 days.

(3)Joint Whistleblowers. If multiple whistleblowers jointly submit a claim for award, the IRS will pay any award in equal shares to the joint whistleblowers unless the joint whistleblowers specify a different allocation in a written agreement, signed by all the joint whistleblowers and notarized, and submitted with the claim for award. The aggregate award payment in cases involving joint whistleblowers will be within the award percentage range of section 7623(b)(1) or section 7623(b)(2), as applicable, and subject to the award reduction provisions of section 7623(b)(3).

(4)Deceased Whistleblower. If a whistleblower dies before or during the whistleblower administrative proceeding, the Whistleblower Office may substitute an executor, administrator, or other legal representative on behalf of the deceased whistleblower for purposes of conducting the whistleblower administrative proceeding.

(5)Tax treatment of award. All awards are includible in gross income and subject to current Federal tax reporting and withholding requirements.

(e)Effective/applicability date. This rule is effective on August 12, 2014. This rule applies to information submitted on or after August 12, 2014, and to claims for award under section 7623(b) that are open as of August 12, 2014.