

NWC | NATIONAL WHISTLEBLOWER CENTER

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July 7, 2020

Congressman Richard Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Congressman Kevin Brady
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Neal and Ranking Member Brady:

I thank you both for your support over the years for the IRS Tax Whistleblower Program – which has been a tremendous success in identifying big-time tax cheats and bringing billions of dollars back to the U.S. Treasury. I write today on behalf of the National Whistleblower Center (NWC) to ask for your consideration and support for eight important reforms that will further strengthen and improve the IRS Tax Whistleblower Program. The NWC believes that given the extraordinary amount of public funds that are being provided through tax expenditures in response to Covid-19 – that it should be a top priority for Congress that the best anti-abuse program at the IRS – the IRS Whistleblower Program – is strengthened and improved immediately.

In short, the reforms the reforms we are recommending will ensure that the whistleblowers enjoy a real right to judicial review – a critical aspect of any successful whistleblower program; that awards are made promptly and are not subject to sequestration; that whistleblowers are awarded when the IRS proceeds based on their information; that the IRS and IRS whistleblower office are reimbursed for expenses related to the Whistleblower Program; and, that Congress is informed of the top abuses whistleblowers have brought to light by the program.

These reforms in brief (detailed whitepapers have been provided separately) are:

- 1) **De Novo Review of Whistleblower Awards in Tax Court.** Whistleblowers who often put their life and career on the line need to have confidence that they have a real judicial review of an IRS

decision – as intended in the original 2006 amendments to 26 USC 7623(b) – not a rubber stamp pro forma review as is currently the case as a result of recent Tax Court decisions.

- 2) **Ensure Prompt Payment of Awards.** Whistleblowers can wait months if not years for an award to be issued. While some of this delay is inherent to the tax system, some delays are completely within the control of the IRS. By requiring interest to run if an award letter is not issued to the whistleblower within 12 months of final collections will help encourage the IRS to make award payments a priority.
- 3) **No Sequestration of Awards.** Currently, IRS whistleblower awards are subject to sequestration under the budget rules. By contrast, whistleblowers under the False Claims Act are not subject to sequester. The sequester goes against the intent of the IRS whistleblower statute that mandates a minimum award to tax whistleblowers.
- 4) **Clarification of “Proceeds Based On.”** Just as the IRS earlier tried to deny whistleblowers through a narrow reading of “collected proceeds” in the whistleblower statute – which the Finance Committee addressed – the IRS is similarly seeking to now deny awards to whistleblowers through an improperly narrow interpretation of “Proceeds Based On.”
- 5) **Clarify Tax Court Discovery For Whistleblowers and Improve Protection of Taxpayer Information.** When whistleblowers go to Tax Court they are commonly denied by the IRS efforts to engage in basic discovery. This has led to unnecessary litigation and delay. Clarification of discovery coupled with protections of third party taxpayer information is a needed reform to ensure whistleblowers have a meaningful right to judicial review.
- 6) **Presumption of Anonymity in Tax Court.** The first and only time that the whistleblower can effectively review the IRS determination of a denial of an award is in Tax Court. The IRS is challenging the rights of whistleblowers to proceed anonymously – causing significant time and burden on whistleblowers as well as the Tax Court – and discouraging whistleblowers from exercising their rights to judicial review.
- 7) **Whistleblower Proceeds to Fund Whistleblower Office and Reimburse Exam Expenses.** Up to 25% of the proceeds collected thanks to whistleblowers shall be used to fund the Whistleblower Office and reimburse IRS examination and collection expenses. This proposal is similar to the agency reimbursement provisions of the False Claims Act and was also included in the 2006 Grassley amendments. It is also in line with the private debt collection program at the IRS which provides up to 25% from amounts collected to support the IRS collection efforts.
- 8) **Annual Whistleblower Report to Include Top Tax Violations.** To assist and inform the Congress of cutting edge tax noncompliance and abusive tax shelters – the annual IRS Whistleblower Office report shall include a discussion of the top ten tax avoidance schemes disclosed by whistleblowers.

The NWC believes that recent news only serves to underscore how critical it is to enact these reforms that will improve the IRS whistleblower program – and encourage informed and knowledgeable whistleblowers to come forward. As the Treasury Inspector General for Tax Administration (TIGTA) recently found – more than 47 percent of audits of businesses were closed with no change in the tax return. This means that honest businesses were unfortunately subject to audit (and wasting limited IRS resources) – and equally important, the IRS wasn’t focused on the bad actors. By contrast, TIGTA found in its review of the IRS whistleblower program that the audits and exams based on whistleblower information are nearly twice as productive as normal IRS examinations – and a no-change rate that is a third lower. Clearly, the tax whistleblower program is a highly effective tool for the IRS in targeting tax cheats – and helps encourage the IRS to focus its limited resources on the bad actors.

In addition, TIGTA also reported this June that there were hundreds of thousands of high-income taxpayers who have not filed a tax return – and owe billions in taxes. As has been well recognized – whistleblowers have been vital to the IRS’ success in going after millionaire and billionaire tax cheats with undeclared bank accounts in Switzerland. Whistleblowers are a vital partner to the IRS’ success in going after very wealthy taxpayers who don’t want to pay their fair share of taxes.

As Congress has provided significant funds, including tax benefits, to help our nation address the problems of Covid-19 – I know that you both share a concern on behalf of taxpayers that these tax provisions benefit businesses and families as intended. Strengthening and improving the tax whistleblower program is a critical part of preserving the integrity of our tax system and protecting the public fisc.

On behalf of the NWC, I thank you both for your leadership on the IRS Tax Whistleblower program and consideration of these needed reforms. If you have any questions, please feel free to contact me at john.kostyack@whistleblowers.org.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kostyack", with a long horizontal flourish extending to the right.

John Kostyack
Executive Director