TESTIMONY
BY MARK SCOTT
ON
PROPOSED REGULATIONS ON AWARDS FOR INFORMATION RELATING TO DETECTING UNDERPAYMENTS OF TAX OR VIOLATIONS OF THE INTERNAL REVENUE LAWS
BEFORE A
PUBLIC HEARING
INTERNAL REVENUE SERVICE BUILDING
APRIL 10, 2013

Thank you for the opportunity to speak this morning.

I. Relevant Background and Experience of Mark Scott (1 minute)

My name is Mark Scott. I'm an attorney in private practice. My comments today will primarily address the impact of the proposed whistleblower regulations on the federal tax compliance of State and local governments.

II. Section 301.7623-1(b)(2)(ii): Concerns raised by the broad exclusion of employees of State and local governments (4 minutes)

State and local governments have created more than 60,000 separate entities with authority to issue tax-exempt bonds. Many of these entities, such as hospital districts, are treated as integral parts of State or local governments. Under the proposed regulations, all employees of these entities would be generally prohibited from filing whistleblower claims.

I would note that the existing regulations carve out only employees of the IRS for exclusion from claim-filing. I understand why this exclusion might be broadened to include those state agencies, bodies or commissions who receive return information under 6103(d), but I could not find any support for the substantial broadening of this exclusion to cover literally thousands of entities that could be defined as state or local governments. Nor could I come up with any policy justification for the proposed substantial broadening of this exclusion. Therefore I am at a loss to explain why this exclusion was broadened. And, as I discussed in my written submission, I believe this would add substantial complexity to the regulations as determining which of these entities is a state or local government can oftentimes be very difficult. Therefore, I hope you simplify the regulations by generally permitting all employees of state and local governmental entities to file whistleblower claims, especially claims based on tax violations of their employers, with only a limited exclusion for claims based on confidential return information received pursuant to 6103(d).

III. Section 301.7623-4(c)(2)(i) and (ii). Concerns raised by including the words "public source information including" before recitation of statutory list of public record

exclusions and concerns raised by the substitute application of a "reasonable inference" test. 5 minutes

With respect to the 10% cap, I could not find any authority to expand on the list of public source information defined in the statute, so I would ask for a simple change: the word "including" in 7623-4(c)(2)(i) should simply be changed to the word "means".

Lastly, and again with respect to the 10% cap, substituting a subjectively applied reasonable inference test for an objectively applied, specific allegation test is fraught with uncertainty, especially as this reasonable inference test will be applied only AFTER the tax violation has been highlighted by the whistleblower.

I believe it is beyond dispute that the reasonable inference of an IRS employee trained in tax law is not the same standard as a specific allegation of wrongdoing. It doesn't even approximate the same standard.

The IRS could greatly simplify the regulations by jettisoning this substitute "reasonable inference" test. Perhaps I'm a bit pessimistic, but, to be honest, I'm not hopeful that will happen.

Therefore, I'm proposing an alternative that should help clarify the application of the test. I didn't arrive at this alternative on my own, the same clarification is implied by the IRM.

Simply, if the reasonable inference test is retained, the correct standard should be whether the violation is discernible to the public; in other words, whether an average person—someone not trained in tax law--could reasonably infer a tax violation from the public domain information.

That should, at the very least, increase certainty of application for this substitute test.

Let me wrap up.

When the IRS Office of Tax Exempt Bonds first stood up in 2000, we received quite a few tips. TIGTA agreed that my office was effective in using these tips to target our limited resources to the worst transactions, which also had the positive effect of reducing the negative impact of nonproductive examinations on compliant State and local taxpayers. The effective use of this information was one of the primary reasons for the successful introduction of the new bond examination program.

Therefore, it should come as no surprise that I am a strong believer in the IRS whistleblower program and the positive impact an efficiently run whistleblower program can have on ensuring effective IRS examination divisions even during lean times.

For that reason, I thank you for your work and appreciate the opportunity to provide my 2 cents today on the proposed whistleblower regulations.