***Myers v. Commissioner, 148 T. C. No. 20 (2017)***

In Myers v. Commissioner, the U. S. Tax Court dismissed a whistleblower's appeal for lack of jurisdiction due to untimely filing. David T. Myers, denied a whistleblower award by the IRS, failed to file his petition within 30 days of receiving actual notice of the denial. The court ruled that each IRS communication denying the claim constituted an appealable determination, and Myers' delay in filing, despite receiving the notices, rendered his petition untimely. This case underscores the strict 30-day filing requirement for whistleblower award appeals under I. R. C. sec. 7623(b)(4).

**Parties**

David T. Myers, the petitioner, filed pro se in the U. S. Tax Court against the Commissioner of Internal Revenue, the respondent. The case was designated as Docket No. 2181-15W.

**Facts**

David T. Myers filed a Form 211 with the IRS Whistleblower Office on August 17, 2009, alleging tax violations by his former employer due to misclassification of employees as independent contractors. After frequent communication with the Whistleblower Office, his claim was denied by a letter dated March 13, 2013, stating that no additional tax proceeds resulted from his information, making him ineligible for an award. Despite ongoing correspondence throughout 2013 and 2014, subsequent letters from the Whistleblower Office reiterated the denial. Myers continued to submit additional material but did not appeal until January 26, 2015, after receiving the final denial letter on March 6, 2014.

**Procedural History**

Myers filed his petition with the U. S. Tax Court on January 26, 2015, following the Whistleblower Office's final denial letter dated March 6, 2014. The Commissioner moved to dismiss the case for lack of jurisdiction, asserting that Myers failed to file his petition within the 30-day period mandated by I. R. C. sec. 7623(b)(4). The court heard the motion and, after consideration of the parties' filings and testimony, took the matter under advisement.

**Issue(s)**

Whether each letter from the IRS Whistleblower Office constitutes an appealable determination under I. R. C. sec. 7623(b)(4)?

Whether the receipt of actual notice of the IRS's determinations by Myers, without prejudicial delay, starts the 30-day period for filing a petition under I. R. C. sec. 7623(b)(4)?

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## Rule(s) of Law

I. R. C. sec. 7623(b)(4) provides that an appeal to the Tax Court from a whistleblower award determination must be filed within 30 days of such determination. The court has jurisdiction over such appeals provided the IRS makes a determination under I. R. C. sec. 7623(b)(1), (2), or (3), and the appeal is timely filed. A determination is broadly defined and does not require formalities; a written notice that the IRS has considered the information and decided on the eligibility for an award is generally sufficient.

## Holding

The court held that each of the five letters from the IRS Whistleblower Office to Myers constituted an appealable determination under I. R. C. sec. 7623(b)(4). Furthermore, the court found that Myers received actual notice of these determinations without prejudicial delay and had ample opportunity to file a timely petition. Since Myers failed to file his petition within 30 days of receiving any of the determinations, the court lacked jurisdiction and dismissed the case.

## Reasoning

The court reasoned that the Whistleblower Office's letters to Myers met the broad standard for a determination as established in previous case law. The court noted that despite the lack of formal requirements, a determination is appealable if it informs the claimant of the IRS's decision on their claim's eligibility for an award. The court applied principles from deficiency jurisprudence, which state that the 30-day period for filing an appeal starts upon receipt of actual notice. The court found direct evidence of Myers' receipt of the letters and his subsequent actions, such as sending a facsimile and continuing to correspond with the IRS, indicating timely receipt. The court rejected Myers' argument for equitable relief based on the Whistleblower Office's failure to use certified mail, as the Internal Revenue Manual's provisions are discretionary and do not create enforceable rights. The court also considered the lack of prejudice due to the IRS's non-compliance with the manual's mailing directive, as Myers had received and acknowledged the letters without delay.

## Disposition

The U. S. Tax Court dismissed the case for lack of jurisdiction due to Myers' failure to file his petition within the 30-day period following receipt of the IRS's determinations.

## Significance/Impact

The Myers decision reinforces the strict application of the 30-day filing rule under I. R. C. sec. 7623(b)(4) and clarifies that each communication from the IRS regarding a whistleblower claim can be considered an appealable determination. It emphasizes

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the importance of timely filing upon receipt of actual notice and highlights the discretionary nature of the Internal Revenue Manual's provisions. This ruling may impact how whistleblowers approach their appeals, stressing the need for prompt action upon receiving any form of denial from the IRS. Subsequent cases have cited Myers to support the principle that the 30-day period commences upon actual notice, even without formal notification methods.

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