Whistleblower 8391-18W v. Commissioner of Internal Revenue, 161 T. C. No. 5 (U. S. Tax Ct. 2023)

The U. S. Tax Court upheld a 22% whistleblower award under I. R. C. § 7623(b), finding no abuse of discretion by the IRS Whistleblower Office (WBO). The whistleblower sought a 30% award for information provided on a dividend withholding tax scheme, but the court affirmed the WBO's decision based on the administrative record and applicable legal standards. The ruling clarifies the discretion afforded to the WBO in determining award percentages and reinforces the procedural requirements for whistleblower awards.

Parties

Whistleblower 8391-18W (Petitioner) v. Commissioner of Internal Revenue (Respondent).

Facts

In 2006, an IRS audit team began examining the tax returns of Redacted 4 and Redacted 5. In 2008, the Petitioner submitted a claim to the WBO, identifying Redacted 2 as a participant in a dividend tax withholding scheme. The audit team, already investigating Redacted 4 and Redacted 5, received Petitioner's information in 2009. This information was used during the ongoing examination, leading to the collection of proceeds. In 2018, the WBO determined that Petitioner was entitled to a 22% mandatory award of the collected proceeds. The Petitioner challenged this decision, seeking a 30% award and asserting additional claims related to the timing of payment, interest, and sequestration reduction.

Procedural History

The WBO issued a preliminary award recommendation of 22% in 2018, followed by a final determination. The Petitioner filed a petition with the U. S. Tax Court in 2018, challenging the award percentage and other issues. Both parties moved for summary judgment. The Tax Court reviewed the administrative record under the abuse of discretion standard and denied the Petitioner's motions while granting the Respondent's motion for summary judgment.

Issue(s)

Whether the WBO abused its discretion in determining a 22% award percentage under I. R. C. § 7623(b)?

Whether the WBO should have paid the 22% award while the Petitioner challenged the remaining 8%?

Whether the Petitioner is entitled to interest on the award under I. R. C. § 7623(b)?

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Whether the WBO properly applied a sequestration reduction to the award?

Rule(s) of Law

I. R. C. § 7623(b) authorizes mandatory awards for whistleblowers whose information leads to collected proceeds, with awards ranging from 15% to 30% based on the whistleblower's substantial contribution. Treasury Regulation § 301. 7623-4(c)(1)(i) specifies that awards depend on the extent of the whistleblower's substantial contributions. The Tax Court reviews WBO determinations under an abuse of discretion standard, confined to the administrative record (Kasper v. Commissioner, 150 T. C. 8 (2018)).

Holding

The Tax Court held that the WBO did not abuse its discretion in determining a 22% award for the Petitioner. The court further held that I. R. C. § 7623(b) does not provide for the payment of interest on a mandatory award. The WBO's application of a sequestration reduction was upheld as not constituting an abuse of discretion.

Reasoning

The court reasoned that the WBO's discretion in determining award percentages is broad, guided by positive and negative factors outlined in Treasury Regulation § 301. 7623-4(b). The WBO considered the administrative record, including the fact that the audit was already underway when the Petitioner's information was used, which justified the 22% award. The court rejected the Petitioner's argument for a higher award based on other claims involving the same scheme, noting that each claim's circumstances can differ. The court also found no basis for immediate payment of the 22% award while the Petitioner challenged the remaining 8%, as the regulations require final determination of all appeals before payment. The absence of an explicit statutory provision for interest on whistleblower awards, combined with the no-interest rule, led the court to deny the Petitioner's claim for interest. The court upheld the application of the sequestration reduction, citing prior precedent.

Disposition

The Tax Court denied the Petitioner's motions for partial and full summary judgment and granted the Respondent's motion for summary judgment, affirming the WBO's determination of a 22% award.

Significance/Impact

This decision reinforces the discretion afforded to the WBO in determining award percentages under I. R. C. § 7623(b), emphasizing the importance of the administrative record in such determinations. It clarifies that whistleblowers are not entitled to interest on awards and that sequestration reductions are applicable. The

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ruling underscores the procedural requirements for whistleblower awards, impacting how whistleblowers and the IRS approach such claims and reinforcing the Tax Court’s limited scope of review under the abuse of discretion standard.

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