

Summer 2021

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Recommended Citation

Sharon Kaur, *Tax Tattletales Hit the Jackpot: Now What?*, 32 *Hastings Women's L.J.* 89 (2020).
Available at: <https://repository.uchastings.edu/hwj/vol32/iss2/5>

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Tax Tattletales Hit the Jackpot: Now What?

Sharon Kaur*

Abstract

This note examines the recent change to the Internal Revenue Service's (IRS) whistleblower program. Whistleblowers receive a percentage of the proceeds collected as a result of an action or settlement. In 2018, Congress expanded the definition of the proceeds collected to include criminal fines, civil forfeitures, and penalties arising out of the violations of reporting requirements. Prior to this change, the IRS asserted that criminal fines and civil forfeitures did not constitute "collected proceeds." Analyzing the judicial and legislative history, along with empirical data reported by the IRS, this note specifically addresses whether the change in the definition of proceeds advances the objectives of the tax whistleblower program and promotes good tax policy.

I. INTRODUCTION

"It takes many good deeds to build a good reputation, and only one bad one to lose it."¹ These famous words by Benjamin Franklin resonate with employees who blow the whistle and employers who engage in deceptive activities. In 1772, when Franklin exposed letters promoting abridgement of colonists' rights from then-governor of Massachusetts Thomas Hutchinson, 'unbeknownst to him, he became the first ever American Whistleblower.² His conduct opened the floodgates for major political and economic scandals in the nation. The Watergate scandal, the Monica Lewinsky scandal, and the

* J.D. Candidate 2021, University of California, Hastings College of the Law. I would like to thank Professor Heather Field for her guidance and advice. This note would not have been possible without her extensive feedback throughout the writing process. I would also like to thank my family, especially my parents, for their love, support, and encouragement.

1. Nuno Garoupa & Tom Ginsburg, *Reputation, Information and the Organization of the Judiciary*, 4 J. COMPARATIVE L. 228, 228 (2009).

2. Anthony F. Fata & David E. Kovel, *The New Regulatory and Self-Policing Paradigm: Whistleblowers Among Us*, 32 CBA REC. 36, 37 (2018).

recent global surveillance disclosures are some of the most shocking revelations that come to mind.

Referred to as rats, villains, snitches, and occasionally heroes, whistleblowers tend to believe that public interest outweighs professional duties and “blow the whistle” on fraudulent activities.³ Most whistleblowers are employees who report misconduct believing that it is the right action to take, it will correct a wrong, or it will support co-workers.⁴ These individuals are usually at the core of the business.⁵ They possess the specific and necessary knowledge to enable the commencement of an enforcement action against fraudulent businesses.⁶ To put this into perspective, consider the following scenario:

Sam is a bookkeeper. She discovers that her employer, Jack, is engaged in embezzlement, false recordkeeping, and is hiding assets overseas. Jack owns a multi-million dollar business that engages in domestic and foreign transactions. Sam is not involved in these fraudulent activities. After pondering over this revelation for several days, she decides to tip off the IRS and discloses information about Jack's suspicious activities. She mails copies of his fabricated bank statements and recordkeeping documents to the IRS. But, in the interim, she continues to work for him as a bookkeeper.

While most will call Sam a snitch, others might admire her for risking her career for social welfare. If Sam's allegations are credible, she might become a recipient of a whistleblower award paid out of the proceeds that the IRS collects from Jack. But how big should Sam's award be? And more specifically, what should count as “proceeds” for purposes of determining the size of Sam's whistleblower award?

Before 2018, the IRS asserted that only the proceeds collected under Title 26, which focuses on the violations of federal tax laws, may be used to calculate a whistleblower's award.⁷ Criminal fines and civil forfeitures were

3. Lois A. Lofgren, *Whistleblower Protection: Should Legislatures and the Courts Provide a Shelter to Public and Private Sector Employees Who Disclose the Wrongdoing of Employers*, 38 S.D. L. REV. 316, 316 (1993); see also RALPH NADER ET AL., WHISTLEBLOWING: THE REPORT OF THE CONFERENCE ON PROFESSIONAL RESPONSIBILITY VII (1972).

4. ETHICS RESEARCH CENTER, INSIDE THE MIND OF A WHISTLEBLOWER: A SUPPLEMENTAL REPORT OF THE 2011 NATIONAL BUSINESS ETHICS SURVEY (2012), <http://www.corporatecompliance-insights.com/wp-content/uploads/2012/05/inside-the-mind-of-a-whistleblower-NBES.pdf>.

5. Fata & Kovel, *supra* note 2, at 38.

6. *Id.*

7. Whistleblower 21276-13W v. Comm'r, 147 T.C. 121, 126 (2016) [hereinafter *Whistleblower II*].

not considered collected proceeds for the awards paid under Title 26.⁸ Civil forfeitures are enforced on property used for illegal purposes, while criminal fines are enforced against the taxpayer for engaging in fraudulent conduct.⁹ The IRS claimed that including criminal fines and civil forfeitures under Title 26 would conflict with Title 31 and Title 18.¹⁰ While Title 26 codifies federal tax laws, such as income, estate, excise, gift, tobacco, employment, and alcohol taxes, Title 31 codifies anti-money laundering laws and Title 18 relates to crimes and criminal procedure.¹¹ However, after Congress changed the law in 2018, the IRS started to include both Title 26 and non-Title 26 criminal fines and civil forfeitures in the proceeds collected for the purposes of determining a whistleblower's award.

In the above hypothetical, Sam's award will be paid out of the total proceeds that the IRS will collect from Jack. These proceeds will include Jack's penalty for the underpayment of tax, along with a criminal fine for the tax deficiency that resulted from his fraudulent conduct.¹² It will also include civil forfeitures with respect to any property that was used to commit the illegal activities.¹³ Pre-2018, Sam would have received an award calculated based on the penalty for the underpayment of tax per Title 26 (i.e., excluding non-Title 26 criminal fines and civil forfeitures). Now, post-2018, her award will be a portion of the *total* proceeds (i.e., including criminal fines and civil forfeitures). This raises a question: does the post-2018 broadened definition of proceeds collected, including criminal fines and civil forfeitures under both Title 26 and non-Title 26, increase the efficacy of the IRS whistleblower program and advance good tax policy?

By increasing the sum of awards paid out to whistleblowers, the broad interpretation of proceeds encourages more whistleblowers to disclose information about noncompliance. This facilitates the IRS enforcement efforts in detecting noncompliant taxpayers, thereby closing the tax gap and

8. *Id.*

9. See *infra* notes 11, 12 and accompanying text.

10. *Whistleblower II*, 147 T.C. at 126.

11. United States Census Bureau, TITLE 26, U.S. CODE, CENSUS.GOV, (Dec. 17, 2019), https://www.census.gov/history/www/reference/privacy_confidentiality/title_26_us_code_1.html [<https://perma.cc/3UQ4-UGMH>]; IRS, TITLE 31 ANTI-MONEY LAUNDERING, IRS.GOV (Jan. 15, 2020), <https://www.irs.gov/government-entities/indian-tribal-governments/title-31-anti-money-laundering> [<https://perma.cc/PTR2-YET9>]; U.S. Gov't Publishing Office, 18 U.S.C., GOVINFO.GOV (2009), <https://www.govinfo.gov/content/pkg/USCODE-2009-title18/html/USCODE-2009-title18.htm> [<https://perma.cc/Z3DW-8QCY>].

12. Internal Revenue Service, INTERNAL REVENUE MANUALS PART 9, CHAPTER 5, SECTION 13, IRS.GOV, (2009), https://www.irs.gov/irm/part9/irm_09-005-013 [<https://perma.cc/FE6S-MB8X>].

13. Internal Revenue Service, INTERNAL REVENUE MANUALS PART 9, CHAPTER 7, SECTION 2, IRS.GOV, (2012), https://www.irs.gov/irm/part9/irm_09-007-002 [<https://perma.cc/V7RE-WLBG>].

increasing the revenues collected. However, the broad definition of proceeds does not entirely incentivize individuals with heterogeneous motivations to disclose information or encourage companies to implement effective internal reporting mechanisms. To resolve the former issue, the IRS should educate the public about the benefits of the whistleblower program and publicly praise whistleblowers as heroes. To address the latter issue, the IRS should impose penalties on companies with inadequate internal reporting mechanisms. Fear of legal penalties and negative publicity will prompt these companies to investigate and rectify tax-related violations.

Part I of this article examines the emergence of whistleblower programs in general before specifically discussing the IRS whistleblower program. To better understand the policy implications of recent amendments to the IRS whistleblower statute, it is essential to consider the origins of the program, along with the changes in the legislative and judicial history of the program. Part II then analyzes whether the broad definition of proceeds advances the objective of the tax whistleblower program and discusses the policy implications, more generally, of the broadened definition of proceeds. Part III discusses problems that cannot be resolved by the expanded definition of proceeds.

II. THE TAX WHISTLEBLOWER PROGRAM

Whistleblower programs are weapons that are built on the principle that “if you know something, say something.”¹⁴ Today, these programs incentivize individuals to come forth with any information they might have on wrongdoings committed by those in their professional or personal circle. For instance, in response to the stock market collapse in 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) adding the Securities Whistleblower Incentives and Protection section to the Securities Exchange Act of 1934.¹⁵ Securities Exchange Commission (SEC) whistleblowers are awarded somewhere between ten to thirty percent of the total monetary sanctions that are collected by the Commission depending on the significance of information, degree of assistance by the whistleblower, and the Commission’s interest in deterring the violation.¹⁶ The SEC established the whistleblower program to encourage individuals to report high-quality tips and assist the Commission in detecting

14. *Whistleblower II*, 147 T.C. at 123–24.

15. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified at 15 U.S.C. § 78o); Michael H. Hurwitz & Jonathan Kovacs, *An Overview of the SEC’s Whistleblower Award Program*, 21 *FORDHAM J. CORP. & FIN. L.* 531, 533 (2016).

16. *Id.* at 535.

any wrongdoing.¹⁷ Similar programs have been established by the Commodity Futures Trading Commission (CFTC), Occupational Safety and Health Administration (OSHA), and Environmental Protection Agency (EPA).¹⁸

The main purpose of whistleblower programs is to “enlist private interests into the fight against serious threats to the U.S. economy.”¹⁹ By merging economic incentives with protective measures against retaliation, these programs foster an environment that encourages individuals with knowledge of fraudulent activities to come forward without having to report violations to their employer’s internal compliance system.²⁰ These safeguards also protect persons other than employees, such as clients, competitors, and investors, who may disclose illegal activities.²¹ In addition to deterring illegal activities and exposing otherwise concealed violations, this external reporting to whistleblower programs has the potential to improve self-reporting done by organizations themselves.²² To prevent whistleblowers from “blowing the whistle” on their misconduct, companies are likely to feel pressured to voluntarily disclose their activities.²³ Whistleblowers reduce regulatory costs by encouraging legal compliance.²⁴ Because financial activities that have increasingly been taking place are beyond regulators’ expertise, whistleblowers help regulators to anticipate and detect any financial misconduct.²⁵

One of the most prominent whistleblower programs was established by the IRS. The following sections examine the IRS whistleblower program,

17. United States SEC, SEC PROPOSES WHISTLEBLOWER RULE AMENDMENTS, SEC.GOV, <https://www.sec.gov/news/press-release/2018-120> [<https://perma.cc/G7VY-8S7M>].

18. See, e.g., United States Commodity Futures Trading Commission, CFTC LAUNCHES WHISTLEBLOWER PROGRAM’S WEBSITE, CFTC.GOV, <https://www.cftc.gov/PressRoom/PressReleases/7312-16> [<https://perma.cc/9YYZ-JQQQ>]; Richard E. Condit, *Providing Environmental Whistleblowers with Twenty-First Century Protections*, 2 AM. U. LAB. & EMP. L.F. 31, 55–56 (2011).

19. Christopher K. Warren, *Blowing the Whistle on Environmental Law: How Congress Can Help the EPA Enlist Private Resources in the Fight to Save the Planet*, 40 B.C. ENVTL. AFF. L. REV. 195, 197 (2015).

20. Warren, *supra* note 19, at 197; Joel Androphy & Kathryn Nelson, *The Intersection of the Dodd-Frank Act and the Foreign Corrupt Practices Act: What All Practitioners, Whistleblowers, Defendants, and Corporations Need to Know*, in 59 THE ADVOCATE: LITIGATION SECTION OF THE STATE BAR OF TEXAS 19, 24 (Lonny Hoffman ed., 2012).

21. Warren, *supra* note 19, at 198–205.

22. Amy Deen Westbrook, *Cash for Your Conscience: Do Whistleblower Incentives Improve Enforcement of the Foreign Corrupt Practices Act*, 75 WASH & LEE L. REV. 1097, 1106 (2018).

23. *Id.*

24. *Id.*

25. Christina Parajon Skinner, *Whistleblowers and Financial Innovation*, 94 N.C. L. REV. 861, 867, 879–80 (2016).

which has become a substantial source of revenue for the federal government. Section A looks at the origins of the tax whistleblower laws. Section B provides a brief description of the claim filing process. Section C analyzes the growth of the program based on the proceeds collected and the amounts awarded. Section D focuses on the different interpretations of the term “proceeds” over the past few decades.

A. Tax Whistleblower Statutes

The tax whistleblower program was established to reward individuals who inform on taxpayers engaged in tax fraud. The primary purpose of this program is to reduce the tax gap and adequately motivate whistleblowers to disclose information.²⁶ The IRS defines a whistleblower as an “individual who provides information to the [agency] regarding violations of the tax laws or related statutes and submits a claim for an award under Section 7623 with respect to the information.”²⁷ These whistleblowers have emerged as an important tool for the IRS.²⁸ The IRS has attempted to implement technological mechanisms to detect fraudulent returns.²⁹ However, due to the immense pressure to increase revenue and “administer new tax credits with fewer resources,” the IRS has to rely on “enforcement personnel and information leverage.”³⁰ A whistleblower acts as a substitute for “enforcement personnel by identifying wrongdoing and by providing a roadmap for prosecution.”³¹ Thus, the IRS employs its whistleblower program as a tool to deter tax fraud in a cost-effective manner.³²

The following parts explain the development in the tax whistleblower statute in a chronological manner. Part 1 describes the original tax whistleblower statute. Part 2 examines the provision that was added to further enhance the whistleblower program.

1. Establishment of the Tax Whistleblower Law

The tax whistleblower statute, IRC section 7623(a), dates back to 1867.³³ This original provision permitted the Secretary to award sums as

26. Stephen W. Carman, *More Cheese for the Rats: Tax Court and Congress Give Big Win to Whistleblowers with Broad Definition of Proceeds*, 83 MO. L. REV. 155, 169 (2018).

27. 26 C.F.R. § 301.6103(n)-2 (2011).

28. Karie Davis-Nozemack & Sarah J. Webber, *Lost Opportunities: The Underuse of Tax Whistleblowers*, 67 ADMIN. L. REV. 321, 326 (2015).

29. *Id.*

30. *Id.* at 324, 326.

31. *Id.* at 327.

32. Yehonatan Givati, *Of Snitches and Riches: Optimal IRS and SEC Whistleblower Rewards*, 55 HARV. J. ON LEGIS. 105, 123 (2017).

33. IRS, *History of the Whistleblower/Informant Program* (May 1, 2019), <https://www.irs.gov/compliance/history-of-the-whistleblower-informant-program>; Jay Nanavati, *The IRS Whistleblower Regulations: A Hindrance to Tax Enforcement*, THE CPA J.

deemed necessary “for detecting and bringing to trial and punishment persons guilty of violating the internal revenues or conniving at the same.”³⁴ The only change to this law since 1867 has been the addition of another clause, allowing awards to be distributed specifically for “detecting underpayments of tax,” in 1996.³⁵ The IRS originally made payments out of its appropriated funds; however, after the 1996 amendments, the source of funds was changed to the “proceeds collected from the taxpayer.”³⁶ Issuance of awards was completely discretionary prior to the 2006 amendments.³⁷ The awards were calculated based on the contribution of the whistleblower’s information to the collection of proceeds.³⁸ Awards were generally one, ten, or fifteen percent of the total proceeds, not exceeding \$10 million.³⁹

2. Mandatory Award for Disclosures

As part of the Tax Relief and Health Care Act in 2006, Congress added the IRC section 7623(b), which required the IRS to award “at least 15 percent but not more than 30 percent of the proceeds collected as a result of the action (including any related actions⁴⁰)” if an individual “substantially” contributed to the collection of “tax, penalties, interest, and other amounts” when the proceeds in dispute exceed \$2 million.⁴¹ This provision applies to any action against a taxpayer, including any individual with gross income of more than \$200,000 for the taxable years subject to the action.⁴² Awards are mandatory if these conditions are met. Whistleblowers who do not qualify for the IRC section 7623(b) may still be eligible for an award under Section

(Dec. 2018), <https://www.cpapjournal.com/2018/12/18/the-irs-whistleblower-regulations/> (discussing how the original creation of tax whistleblower statute about 153 years ago was codified and added to the Internal Revenue Code as section 7623(a)).

34. 26 U.S.C. § 7623(a) (2019); IRS, WHISTLEBLOWER PROGRAM FY 2008 ANNUAL REPORT TO CONGRESS 2 (2008), https://www.irs.gov/pub/whistleblower/whistleblower_annual_report.pdf.

35. 26 U.S.C. § 7623(a) (2019); Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1473 (1996).

36. IRS, Whistleblower Program First Report to Congress 2 (2008), <https://www.irs.gov/pub/irs-prior/p5241--2008.pdf>.

37. *Id.*

38. *Id.*

39. *Id.*

40. *See infra* note 104. The proposed regulations limited “related action” to a subsequent/second action against the person identified in the original information. An action against any other person is permitted if the other person is directly related to the person identified in the information, facts relate to the tax underpayments or the IRC violations that are similar to those described in the information, and the IRS has initiated an action against the other person based on facts provided.

41. 26 U.S.C. § 7623(b) (2019); IRS, Whistleblower Program First Report to Congress 2 (2008), <https://www.irs.gov/pub/irs-prior/p5241--2008.pdf>.

42. 26 U.S.C. § 7623(b) (2019).

7623(a).⁴³ Nevertheless, Congress added the new provision because the whistleblower program was underused “due to administrative problems and inadequate incentives for whistleblowers.”⁴⁴ The whistleblower program was considered to be capable of producing more revenue. This new provision became applicable to whistleblower claims filed after the enactment date of December 20, 2006.⁴⁵ The enactment of Section 7623(b) has altered the whistleblower claims process as discussed in the following section.

B. Filing a Tax Whistleblower Claim with the IRS

The IRC section 7623(b) was enacted to encourage more whistleblowers to file claims. However, prior to filing a claim, an informant needs to be aware of certain requirements. Informants, also known as claimants, must disclose their identities; anonymous claims are not processed.⁴⁶ The claim must be filed by a person who is actually an individual, not a corporation or partnership.⁴⁷ A claim filed by an individual who is an employee of the federal, state or local government, or who is required by law to disclose information is not processed under the IRC sections 7623(a) and 7623(b).⁴⁸ These individuals, along with any business entities, are not eligible for whistleblower tax awards.⁴⁹ Most importantly, claims without specific and credible information are deemed meritless and are denied.⁵⁰

To file a tax whistleblower claim, an individual must first submit the IRS Form 211 (“Application for Award for Original Information”) to the IRS Whistleblower Office (WO).⁵¹ This form is separated into two sections. Section A asks questions about the taxpayer subject to the whistleblower claim (name, address, identification number, date of birth, etc.), type of unpaid tax, description of alleged violation, how the claimant learned of the violation, and an estimate of tax owed.⁵² Section B requests information

43. 26 U.S.C. § 7623(a) (2019).

44. Carman, *supra* note 26, at 159.

45. Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, 120 Stat. 2922 (2006); IRS, *IRC 7623(b)* (Dec. 20, 2019), <https://www.irs.gov/compliance/internal-revenue-code-irc-7623b>.

46. IRS, *How do you File a Whistleblower Award Claim Under Section 7623(a) or (b)* (Dec. 20, 2019), <https://www.irs.gov/compliance/how-do-you-file-a-whistleblower-award-claim-under-section-7623-a-or-b>.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. Form 211, *Application for Award for Original Information*, 1 (2018).

52. Form 211, *Instructions for Form 211, Application for Award for Original Information*, 2 (2018).

about the claimant (name, address, date of birth, social security number, etc.) and requires the claimant to sign under the penalty of perjury.⁵³

The initial phase of the claim process can be divided into two steps. First, the WO's Initial Claim Evaluation unit examines the claims for completion and submits the information into a management information system known as E-Trak.⁵⁴ Claims that are purely speculative with no specific or credible issues, are ineligible for an award, or are missing information are rejected.⁵⁵ The WO conducts this initial review within thirty to ninety days.⁵⁶ The IRC section 7623(b) claims that are rejected have an administrative proceeding and can be petitioned to the tax court.⁵⁷ Second, the WO routes claims warranting further review to the appropriate operating division (OD) – Large Business and International, Small Business/Self-Employed, Tax Exempt and Government Entities, or Criminal Investigation.⁵⁸ The OD subject matter expert (SME) evaluates the claim and determines its potential for an IRS action.⁵⁹ If the OD SME determines the claim to be an IRC section 7623(b) claim with more than \$2 million of proceeds in dispute, then it is assigned to the Case Development and Oversight unit for review.⁶⁰ These review steps are designed to be completed in ninety days, but only about sixty-seven percent of the IRC section 7623(b) claims are processed during this period.⁶¹ Once the claim has been selected for an audit or an enforcement proceeding (i.e., a collections action or a criminal investigation), it moves to the field examination and appeals phase that may lag over several years.⁶² During this period, whistleblowers may be interviewed once by the IRS, but other than that interaction, they will not receive any information about the investigation until a decision has been made about the claim.⁶³

53. *Id.*

54. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-16-20, IRS WHISTLEBLOWER PROGRAM: BILLIONS COLLECTED, BUT TIMELINESS AND COMMUNICATION CONCERNS MAY DISCOURAGE WHISTLEBLOWERS 8 (2015) (noting that the E-Trak follows the progress of claims throughout the review process) [hereinafter GAO-16-20].

55. IRS, THE WHISTLEBLOWER CLAIM PROCESS, PUB. NO. 5251, <https://www.irs.gov/pub/irs-pdf/p5251.pdf>; GAO-16-20, *supra* note 54, at 8.

56. IRS, THE WHISTLEBLOWER CLAIM PROCESS, PUB. NO. 5251, <https://www.irs.gov/pub/irs-pdf/p5251.pdf>.

57. *Id.*

58. *Id.*; see also GAO-16-20, *supra* note 54, at 3, 8–10.

59. GAO-16-20, *supra* note 54, at 10.

60. *Id.* at 8.

61. *Id.* at 9.

62. *Id.* at 10; IRS, THE WHISTLEBLOWER CLAIM PROCESS, PUB. NO. 5251, <https://www.irs.gov/pub/irs-pdf/p5251.pdf>.

63. IRS, THE WHISTLEBLOWER CLAIM PROCESS, PUB. NO. 5251, <https://www.irs.gov/pub/irs-pdf/p5251.pdf>.

After the examination and appeals period is over, the WO determines the award percentage based on the information contributed by the whistleblower.⁶⁴ The minimum award is set at fifteen percent, and the WO uses positive factors to decide whether the award percentage should be raised, with the maximum set at thirty percent.⁶⁵ Positive factors may include the whistleblower's promptness in informing the IRS, clarity of facts, and originality of the claim.⁶⁶ However, the WO also considers negative factors, such as delay in reaching out to the IRS, violation of any confidentiality agreement with the IRS, and conveyance of misleading information, to determine whether the award should be decreased.⁶⁷ If the whistleblower was involved in the malfeasance that led to the underpayment of tax or was not the original source of specific allegations, then the maximum percentage of the award is ten percent.⁶⁸ An individual is not the original source of specific allegations if they arise from an earlier administrative or judicial hearing, government audit, report, hearing or investigation, or news.⁶⁹ Moreover, the WO must deny an award to a claimant who is criminally convicted for initiating actions that led to the underpayment of tax or another violation of IRS laws.⁷⁰

Once the right to appeal for the taxpayer against whom the whistle was blown (targeted taxpayer) expires, the collected proceeds are finalized, and the WO applies the calculated percentage to collected proceeds.⁷¹ Upon the receipt of this preliminary award, a whistleblower has the option to appeal if there is any disagreement over the amount awarded.⁷² If the targeted taxpayer does not pay the enforced fines and penalties, the WO has to wait for the ten-year collection statute to expire before making any other decision about the award.⁷³ If the taxpayer does not make any payment, the whistleblower receives no award.⁷⁴

64. GAO-16-20, *supra* note 54, at 10.

65. *Id.* at 25.

66. Bryan C. Skarlatos & Joseph Septimus, *New Proposed Regulations Flesh Out IRS Whistleblower Program*, 14 J. TAX PRACTICE & PROCEDURE 21, 23 (2012).

67. *Id.*

68. 26 U.S.C. § 7623(b)(2)(A) (2019); GAO-16-20, *supra* note 54, at 25; IRS, WHISTLEBLOWER PROGRAM FIRST REPORT TO CONGRESS 3-4 (2008), <https://www.irs.gov/pub/irs-prior/p5241--2008.pdf>.

69. 26 U.S.C. § 7623(b)(2)(A) (2019).

70. 26 U.S.C. § 7623(b)(3) (2019).

71. GAO-16-20, *supra* note 54, at 14.

72. *Id.*

73. IRS, THE WHISTLEBLOWER CLAIM PROCESS, PUB. NO. 5251 (Oct. 2019), <https://www.irs.gov/pub/irs-pdf/p5251.pdf>.

74. *Id.*

C. Growth of Tax Whistleblower Awards

The WO's claims process spans over many years, with no guarantee of an award. Yet, with the implementation of the IRC section 7623(b) in 2006, submissions from whistleblowers started "almost immediately" and 2007 became a year of transition for the whistleblower program.⁷⁵ Although data regarding the whistleblower claims that "would have qualified for the mandatory awards" under Section 7623(b) prior to its enactment are unavailable, "initial results suggest that whistleblowers with significant knowledge were coming forward as a result of the changes to the award program."⁷⁶

The following table reflects the amount of proceeds collected and amount of proceeds paid as awards over the past sixteen years.⁷⁷ The awards paid out in the earlier Fiscal Years (FY) 2007 through 2010 were based on the IRC section 7623(a) with lower percentages.⁷⁸ The IRS does not issue awards until the targeted taxpayer exhausts "all appeal rights and the statutory period for the filing of a claim for refund" expires.⁷⁹ Due to this delay in the process, the awards under Section 7623(b) were not paid until FY 2011.⁸⁰ Even then, most of the awards paid were from claims filed under Section 7623(a). Note Section 7623(b) only applies to claims that were filed after December 20, 2006.⁸¹

75. IRS, WHISTLEBLOWER PROGRAM FIRST REPORT TO CONGRESS 2 (2008), <https://www.irs.gov/pub/irs-prior/p5241--2008.pdf>. Note section 406(c) of Tax Relief and Health Care Act of 2006 requires the Secretary of the Treasury to report to Congress on the use of Section 7623 annually.

76. IRS, WHISTLEBLOWER PROGRAM FY 2008 ANNUAL REPORT TO THE CONGRESS 1 (2008), <https://www.irs.gov/pub/irs-prior/p5241--2009.pdf>.

77. *Id.* at 10; IRS, WHISTLEBLOWER PROGRAM FY 2012 ANNUAL REPORT TO THE CONGRESS 17 (2012), <https://www.irs.gov/pub/irs-prior/p5241--2013.pdf>; IRS, WHISTLEBLOWER PROGRAM FY 2015 ANNUAL REPORT TO THE CONGRESS 11 (2015), <https://www.irs.gov/pub/irs-prior/p5241--2016.pdf>; IRS, WHISTLEBLOWER PROGRAM FY 2016 ANNUAL REPORT TO THE CONGRESS 10 (2016), <https://www.irs.gov/pub/irs-prior/p5241--2017.pdf>; IRS, WHISTLEBLOWER PROGRAM FY 2019 ANNUAL REPORT TO THE CONGRESS 8 (2019), <https://www.irs.gov/pub/irs-prior/p5241--2020.pdf>.

78. IRS, WHISTLEBLOWER PROGRAM FY 2011 ANNUAL REPORT TO THE CONGRESS 15 (2011), <https://www.irs.gov/pub/irs-prior/p5241--2012.pdf>.

79. *Id.* at 1.

80. *Id.*

81. *See supra* note 45 and accompanying text.

*Table 1: Awards Collected and Awards Paid, Fiscal Years 2004-2019*⁸²

Year Award Paid*	Number of Awards Paid	Amounts Collected	Amount of Awards Paid
2004	259	\$74,130,794	\$4,585,143
2005	169	\$93,677,606	\$7,602,685
2006	220	\$258,590,435	\$24,184,458
2007	227	\$181,784,287	\$13,600,205
2008	198	\$155,985,834	\$22,370,756
2009	110	\$206,032,872	\$5,851,608
2010	97	\$464,695,459	\$18,746,327
2011	97	\$48,047,500	\$8,008,430
2012	128	\$592,498,294	\$125,355,799
2013	133	\$343,674,315	\$54,054,587
2014	101	\$309,990,568	\$52,281,628
2015	99	\$501,317,481	\$103,486,677
2016	418	\$368,907,298	\$61,390,910
2017	242	\$190,583,750	\$33,979,873
2018	217	\$1,441,255,859	\$312,207,590
2019	181	\$616,773,127	\$120,305,278

*The IRS generally does not complete the claim process in the same year it was filed; there is no correlation between the claim submission year and the award paid year.⁸³ For example, hundreds of claims filed in 2007 are still open.⁸⁴

The 2006 legislative change was not the only change to Section 7623(b) during the years listed in Table 1. As will be discussed later in Part I.D.2, Congress enacted another change in 2018, and the 2018 change expanded the definition of the term “proceeds” for purposes of determining the amount of whistleblower awards.⁸⁵ Table 1 does not, however, fully capture the impact of that change because, as discussed above, awards are not paid out in the same year that claims are filed.⁸⁶ Table 2 below does not indicate any significant increase in the total claim submissions over the past

82. See sources cited *supra* note 77.

83. See *infra* Part II.B on the claims process.

84. IRS, WHISTLEBLOWER PROGRAM FY 2019 ANNUAL REPORT TO CONGRESS 15 (2019), <https://www.irs.gov/pub/irs-prior/p5241--2020.pdf>.

85. See *infra* note 123.

86. See *infra* Part II.B on the claims process.

few years.⁸⁷ There is an incremental change of 3.25 percent from 2017 to 2018 followed by a decline of 3.43 percent in 2019 with respect to claim submissions. Notwithstanding any political or economic changes, the fluctuating data demonstrate that the new definition of proceeds may not have incentivized claimants (any more than usual) to file a claim. On the other hand, the changes made to the definition of proceeds apply to information with respect to any claim for which a final determination of award has not been made before February 9, 2018,⁸⁸ therefore, the awards paid out in fiscal years 2018 and 2019 reflect the inclusion of criminal fines and civil forfeitures in proceeds collected. Even though the number of awards paid have decreased to 217 and 181 during their respective fiscal years, 2018 and 2019, the amount of proceeds paid out in awards has increased, as shown in Table 1. Therefore, the broader definition of proceeds has increased the awards paid out in the most recent fiscal years.

Table 2: Fiscal Years 2017-2019 Claim Submissions⁸⁹

Year	IRC Section 7623(a) claims*	IRC Section 7623(b) claims	Total Claim Submissions
2017	4,157	271	4,428
2018	4,188	384	4,572
2019	4,046	369	4,415

*If a claim does not meet the IRC section 7623(b) requirements, the WO can review it for an award under the discretionary standard of the IRC section 7623(a).⁹⁰

Another reason why the amounts collected and amounts paid only reflected taxes, penalties, interests and additional amounts collected based on the whistleblower information⁹¹ prior to 2018 was the Victims of Crime Act that required all the criminal fines to be deposited into the Victims of Crime Fund.⁹² In 2018, the non-Title 26 amounts collected for criminal fines,

87. IRS, WHISTLEBLOWER OFFICE ANNUAL REPORT TO CONGRESS 12 (2017), <https://www.irs.gov/compliance/whistleblower-office-annual-reports>; IRS, WHISTLEBLOWER OFFICE ANNUAL REPORT TO CONGRESS 11 (2018), <https://www.irs.gov/compliance/whistleblower-office-annual-reports>; IRS, WHISTLEBLOWER OFFICE ANNUAL REPORT TO CONGRESS 11 (2019), <https://www.irs.gov/compliance/whistleblower-office-annual-reports>.

88. *See infra* note 124.

89. *See sources cited supra* note 87.

90. IRS, WHISTLEBLOWER PROGRAM FY 2019 ANNUAL REPORT TO CONGRESS 11 (2019), <https://www.irs.gov/compliance/whistleblower-office-annual-reports>.

91. IRS, WHISTLEBLOWER PROGRAM FY 2012 ANNUAL REPORT TO CONGRESS 14 (2012), <https://www.irs.gov/compliance/whistleblower-office-annual-reports>.

92. 28 C.F.R. § 94 (2006); U.S. DEP'T OF JUST., CRIME VICTIMS FUND, <https://www.ovc.gov/about/victimsfund.html>. The Victims of Crime Act of 1984 established the Crime Victims Fund that is funded by the penalties, criminal fines, forfeited bail bonds, and special assessments collected from federal offenders. In 1993, the initial cap on how much

civil forfeitures, and violations of reporting requirements added up to \$809,915,922, while the amounts collected under Title 26 was \$631,339,937.⁹³ In 2019, the non-Title 26 amounts collected were much lower at about \$110,003,100, while the Title 26 amounts constituted a much higher percentage of the total amounts collected at \$506,770,027.⁹⁴ The addition of non-Title 26 criminal fines and civil forfeitures to collected proceeds validates the assumption that the broad definition of “proceeds” significantly impacts the amounts collected and amounts paid for claims that were not finalized prior to 2018.

D. What Does “Proceeds” Mean?

The monetary award is a major component of the tax whistleblower policy. Therefore, the following section traces the developments in how “proceeds collected” has been defined for purposes of determining the amount of whistleblower awards.

1. Initial Changes to the Definition of “Proceeds Collected”

As explained above in Part I.A.2, Congress’s Taxpayer Bill of Rights 2, which was passed in 1996, established that rewards may be paid out for information on criminal and civil violations.⁹⁵ The bill also clarified that the rewards were to be paid out of proceeds collected as a result of the information disclosed, and that an annual report of the program was also required.⁹⁶ However, that legislation did not explain how “proceeds collected” was defined for purposes of determining the amount of whistleblower awards.

In 2006, the IRS published an Internal Revenue Manual (IRM) clarifying that tax crimes include violations of criminal statutes of Title 26, Title 18 and/or Title 31 as applicable to Title 26.⁹⁷ Despite this guidance

amount can be deposited into the fund was lifted, therefore, all of the penalties and fines collected were allowed to be deposited to support crime victims. A few years later, in Fiscal year 2000, Congress limited the amount of funds available for distribution as a precaution to maintain a stable source of support for victims. Since its inception, the Crime Victims Fund has accumulated billions of dollars from penalties and fines.

93. IRS, WHISTLEBLOWER PROGRAM ANNUAL REPORT TO CONGRESS 11 (2018), <https://www.irs.gov/compliance/whistleblower-office-annual-reports>.

94. IRS, WHISTLEBLOWER PROGRAM ANNUAL REPORT TO CONGRESS 3 (2019), <https://www.irs.gov/compliance/whistleblower-office-annual-reports>.

95. Taxpayer Bill of Rights 2, 104 H.R. 506.; Jeffrey Neiman, *Whistleblowers to Get a Larger Cut of IRS Recouped Taxes*, LAW360 EXPERT ANALYSIS (2018), <https://www.law360.com/articles/1029447/whistleblowers-to-get-a-larger-cut-of-irs-recouped-taxes>.

96. Neiman, *supra* note 95.

97. IRM 9.5.3.1 (2006), https://www.irs.gov/irm/part9/irm_09-005-003#idm140538254164048.

manual, the IRS commissioner took the position that proceeds only included amounts collected under Title 26.⁹⁸

In 2011, the Treasury proposed regulations (“Proposed Regulations I”) under Section 7623 to define “collected proceeds” as follows:

Tax, penalties, interest, additions to tax, and additional amounts collected by reason of the information provided; amounts collected prior to receipt of the information if the information provided results in the denial of a claim for refund that otherwise would have been paid; and a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided.⁹⁹

On February 22, 2012, the Proposed Regulations I were finalized largely as proposed.¹⁰⁰ Accordingly, in 2012, the IRS published an IRM modifying the definition of proceeds to comply with these regulations for the purposes of applying to the IRC sections 7623(a) and 7623(b).¹⁰¹

On December 28, 2012, the Treasury proposed regulations (“Proposed Regulations II”) that built on the definition of collected proceeds specified in the final regulations published earlier in 2012.¹⁰² In addition to restating the definition of proceeds from these final regulations, the Proposed Regulations II provided that criminal fines deposited into the Victims of Crime Fund are not part of the “collected proceeds.”¹⁰³ Comments were received in response to the Proposed Regulations II requesting the inclusion of amounts recovered under Title 18 and Title 31 in the proceeds collected to incentivize whistleblowers to disclose information on violations under

98. Neiman, *supra* note 95. Critics argue that the exclusion of civil and criminal violations from collected proceeds undermines IRS’ own directives. The separation of Title 26 from other titles without basis dissuades informants from exposing fraudulent activities.

99. Rewards and Awards for Information Relating to Violations of Internal Revenue Laws, 76 Fed. Reg. 2852 (proposed Jan. 14, 2011), <https://www.federalregister.gov/documents/2011/01/18/2011-928/rewards-and-awards-for-information-relating-to-violations-of-internal-revenue-laws>.

100. Treas. Reg. § 301.7623-1(g) (2012). pmbf., <https://www.federalregister.gov/documents/2012/02/22/2012-3989/rewards-and-awards-for-information-relating-to-violations-of-internal-revenue-laws>.

101. IRM 25.2.2.13 (2012). Note that the IRS originally interpreted proceeds to be “monies the IRS obtains directly from a taxpayer which are based upon the information the whistleblower has provided.”

102. Awards for Information Relating to Detecting Underpayments of Tax or Violations of the Internal Revenue Laws, 77 Fed. Reg. 74798 (proposed Dec. 14, 2012), <https://www.federalregister.gov/documents/2012/12/18/2012-30512/awards-for-information-relating-to-detecting-underpayments-of-tax-or-violations-of-the-internal>.

103. *Id.*

these titles.¹⁰⁴ However, when the Proposed Regulations II were finalized on August 12, 2014, these final regulations provided that non-Title 26 amounts did not constitute collected proceeds since the language of the IRC section 7623 only permits awards for detecting violations of the IRC and underpayments of tax.¹⁰⁵ The final regulations also provided that the criminal fines deposited into the Victims of Crime Fund should not be considered collected proceeds.¹⁰⁶

Consistent with the 2012 final regulations, the 2014 final regulation Section 301.7623-2(d) defined “collected proceeds” as follows:

Tax, penalties, interest, additions to tax, and additional amounts collected because of the information provided; amounts collected prior to receipt of the information if the information provided results in the denial of a claim for refund that otherwise would have been paid; and a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided. Collected proceeds are limited to amounts collected under the provisions of title 26, United States Code.¹⁰⁷

Because the Victims of Crime Act of 1984 requires the entire sum of fines collected in criminal tax cases to be deposited into the Victims of Crime Fund, the Treasury regulations retained the rule requiring these fines to be deposited into the Victims of Crime Fund.¹⁰⁸ These amounts did not constitute collected proceeds.¹⁰⁹ At this point, the definition of collected proceeds was narrow. It did not include criminal fines and civil forfeitures that were collected under both Title 26 and non-Title 26 claims. The regulations providing guidance on information submitted concerning tax underpayments or violations of the IRC have not changed since 2014.

2. Uprouar in the Courtroom: Judiciary Interprets Proceeds

Controversy over the definition of collected proceeds arose in court cases related to a whistleblower claim originally filed in 2015.¹¹⁰ In the first

104. TREAS. REG. § 301.7623-2 (Aug. 14, 2014), <https://www.federalregister.gov/documents/2014/08/12/2014-18858/awards-for-information-relating-to-detecting-underpayments-of-tax-or-violations-of-the-internal>.

105. *Id.*

106. *Id.*

107. TREAS. REG. § 301.7623-2(d) (Aug. 14, 2014).

108. *See* TREAS. REG. § 301.7623-2 (Aug. 14, 2014), <https://www.federalregister.gov/documents/2014/08/12/2014-18858/awards-for-information-relating-to-detecting-underpayments-of-tax-or-violations-of-the-internal>.

109. *Id.*

110. Whistleblower 21276-13W v. C.I.R., 144 T.C. 290, 291 (2015) [hereinafter *Whistleblower I*].

case, *Whistleblower I*, petitioners, husband and wife, helped the Department of Justice (DOJ) stage a sting operation to get incriminating evidence against the businesses involved in tax evasion (“targeted businesses”).¹¹¹ The targeted businesses were found guilty of conspiring to commit offense and defraud of the IRS in violation of Title 18.¹¹² A defendant found guilty of an offense may be required to pay a criminal fine for filing false tax returns, evading income taxes, and conspiring to defraud the IRS; in this case, the targeted businesses were sentenced to pay \$22,050,000 in criminal fines.¹¹³ Civil forfeitures constitute forfeiture of property used in a transaction (i.e., money laundering) with the intent to evade taxes or file false tax returns; in this case, the targeted businesses were sentenced to pay \$15,821,000 in civil forfeitures.¹¹⁴ Overall, the targeted businesses were required to pay over \$74 million in tax restitution, criminal fines and civil forfeitures.¹¹⁵ When petitioners filed Form 211 with the WO seeking awards for their contributions to the IRS’s investigation, multiple disputes ensued.¹¹⁶ *Whistleblower I* resolved the first disputed issue, holding that petitioners did not have to file Form 211 before disclosing information to the IRS to qualify for an award.¹¹⁷

In 2016, the second case, *Whistleblower II*, focused on the second dispute regarding the definition of proceeds. This case posed the question whether criminal fines and civil forfeitures were part of the collected proceeds for the purposes of the whistleblower award.¹¹⁸ Reading the words “collected proceeds” within the context of the statute and interpreting them by their plain meaning, the court found that criminal fines and civil forfeitures constituted collected proceeds.¹¹⁹ The court concluded that if Congress had intended to limit proceeds to Title 26, it would have explicitly done so.¹²⁰ The court also pointed out that the IRC itself refers to laws outside of Title 26.¹²¹ By holding that criminal fines and civil forfeitures are collected proceeds, which are not limited to Title 26, the judiciary introduced an expansive interpretation of collected proceeds.¹²²

111. *Id.* at 293–95.

112. 18 U.S.C. § 371 (2020); *Whistleblower II*, 147 T.C. 121, 122 (2016).

113. *Whistleblower II*, 147 T.C. at 123; 18 U.S.C. §§ 371, 3571 (2020).

114. *Whistleblower II*, 147 T.C. at 123; 18 U.S.C. § 981(a)(1)(A) (2016).

115. *Whistleblower II*, 147 T.C. at 123.

116. *Whistleblower I*, 144 T.C. at 290.

117. *Whistleblower I*, 144 T.C. at 300.

118. *Whistleblower II*, 147 T.C. at 123.

119. *Id.* at 136, 138.

120. *Id.* at 130.

121. *Id.* at 131.

122. *Id.* at 136, 138.

3. Legislative Follows Judicial: Congress Defines Collected Proceeds

On February 9, 2018, Congress passed the Bipartisan Budget Act (BBA) of 2018, and among many other changes, this law amended the definition of “proceeds” for purposes of the determination of whistleblower awards.¹²³ The revised definition, adopted in response to the *Whistleblower I and II* litigation and lobbying, defined “proceeds” broadly to not only include “penalties, interest, additions to tax, and additional amounts provided under the internal revenue laws,” but to also include criminal fines, civil forfeitures and penalties arising out of the violations of reporting requirements.¹²⁴ As a result of the amendments made by the BBA, the IRC section 7623(c) now reads:

For purposes of this section, the term ‘proceeds’ includes –

- (1) Penalties, interest, additions to tax, and additional amounts provided under the internal revenue laws, and
- (2) any proceeds arising from laws for which the Internal Revenue is authorized to administer, enforce, or investigate, including –
 - (A) criminal fines and civil forfeitures, and
 - (B) violations of reporting requirements.¹²⁵

While the judicial decision held that the civil forfeitures and criminal fines constitute collected proceeds for awards paid out under Section 7623(b), the revised statutory language broadened the definition of “proceeds” for awards paid out under both Sections 7623(a) and (b). In addition to adopting the court’s approach for Section 7623(b), Congress applied the same approach for Section 7623(a), which was not addressed by the court. Nevertheless, with the statutory revision and codification of the broad definition of proceeds, both the legislature and judicial branches were on board with the change. But what are the implications of this expansive definition of proceeds?

III. BROAD DEFINITION OF “PROCEEDS COLLECTED” ADVANCES GOALS OF THE TAX WHISTLEBLOWER PROGRAM

Recognizing that the tax whistleblower program was established as an external reporting mechanism allowing employees to report fraudulent activities to the government in exchange for a reward, the sections below discuss how the broad definition of proceeds advances the goals of the

123. BIPARTISAN BUDGET ACT OF 2018, PUB. L. NO. 115-123, §132 STAT. 64, 158 (2018).

124. BIPARTISAN BUDGET ACT OF 2018, PUB. L. NO. 115-123, §132 STAT. 64, 158 (2018); Neiman, *supra* note 95.

125. 26 U.S.C. § 7623(c) (2019).

whistleblower program and analyzes whether the broadened definition of proceeds promotes good tax policy more generally.

A. Goals of the Whistleblower Program

The goals of the tax whistleblower program are to incentivize whistleblowers to “blow the whistle,” thereby encouraging companies to develop internal reporting mechanisms to identify compliance problems and facilitating the IRS enforcements efforts to close the tax gap and increase federal revenue. The following subparts analyze whether the broadened definition of “proceeds collected” advances these objectives.

1. Incentive to “Blow the Whistle”

A larger monetary award can incentivize more employees to disclose insider information to external reporting programs.¹²⁶ Studies have shown that a large monetary award (versus a small monetary award) is a stronger incentive,¹²⁷ therefore, the IRS whistleblower program’s broad definition of proceeds encourages more employees to report externally. Admittedly, financial incentive is not likely to influence the decision of employees who are motivated primarily by a sense of duty. But the expectation of an award might influence these individuals to some extent, even if it is not the primary reason why they decide to blow the whistle. Regardless of the definition of proceeds, the whistleblower program incentivizes taxpayers to disclose tax violations. However, the prospect of a larger potential payout with the broader definition of proceeds incentivizes more employees to report to the IRS. Thus, the broad definition of proceeds, which increases the award payout, encourages more employees to report directly to the IRS.

By offering a higher award payout, the broad definition of proceeds does more to encourage ex-spouses, former business partners, and even individuals facing criminal charges to report on others engaged in unlawful conduct.¹²⁸ Unlike employee whistleblowers who are typically motivated by moral outrage or a sense of duty,¹²⁹ ex-spouses and former business partners

126. Jennifer M. Pacella, *Inside or Out? The Dodd-Frank Whistleblower Program’s Antiretaliation Protections for Internal Reporting*, 86 TEMP. L. REV. 721, 758 (2014).

127. Justin Blount & Spencer Markel, *The End of the Internal Compliance World as We Know it, or an Enhancement of the Effectiveness of Securities Law Enforcement? Bounty Hunting Under the Dodd-Frank Act’s Whistleblower Provisions*, 17 FORDHAM J. CORP. & FIN. L. 1023, 1052 (2012).

128. Geoffrey Christopher Rapp, *Mutiny by the Bounties? The Attempt to Reform Wall Street by the New Whistleblower Provisions of the Dodd-Frank Act*, B.Y.U. L. REV. 73, 141 (2012).

129. Alon Faiman, “No One Likes a Tattle Tale,” or Do they? *Why the Implementation of a Broad Definition of “Collected Proceeds” Under the Tax Whistleblower Program is a Major Win for Whistleblowers and Taxpayers*,” 12 CHARLESTON L. REV. 173, 209–10 (2018).

who report tax cheats may be “motivated by revenge.”¹³⁰ Despite this self-serving behavior, ex-spouses and disgruntled business partners still reveal useful information to the government.¹³¹ Similarly, individuals facing criminal charges will be incentivized to reveal insider information in exchange for an award.¹³² But these individuals are more likely to file false reports to escape criminal prosecution.¹³³ To mitigate risks of such fraudulent reports, the WO has implemented steps to throw out meritless claims.¹³⁴ The whistleblower statute also explicitly reduces or denies the award to individuals who either initiated the action that resulted in the underpayment of tax or were criminally convicted for planning such action.¹³⁵ Consider, for instance, Bradley Birkenfeld, a former international banker, who was sentenced to 40 months in prison for his role in a tax evasion case even though he earned a \$104 million whistleblower award.¹³⁶ Although Birkenfeld received the largest whistleblower award paid by the IRS, he could not escape charges for fraud.¹³⁷

Despite their personal motives, ex-spouses, former business partners, and alleged criminals may have valuable information for the government. These individuals will reveal such information to the IRS regardless of the size of the monetary reward. It does not matter whether the definition of proceeds is broad or narrow for their purposes. However, the expectation of a larger reward will further incentivize them to snitch on those engaged in fraudulent activities. It is a win-win situation for them.

2. Encourages Companies to Build Internal Compliance Mechanisms

By incentivizing more individuals to reveal tax fraud with a larger payout, the broad definition of proceeds encourages companies to develop internal reporting mechanisms to identify compliance problems. By protecting and rewarding individuals, whistleblower laws present risks that are “too large for all entities, even the smallest, to ignore.”¹³⁸ As a consequence, organizations have established internal reporting mechanisms

130. Ladwig, *infra* note 140, at 90.

131. Rapp, *supra* note 128.

132. Jennifer M. Pacella, *Bounties for Bad Behavior: Rewarding Culpable Whistleblowers Under the Dodd-Frank Act and Internal Revenue Code*, 17 U. PA. J BUS. L. 345, 372 (2015).

133. *Id.* at 372.

134. *See supra* notes 55–61 and accompanying text.

135. *See supra* notes 68–70 and accompanying text.

136. Debra S. Katz, *Emerging Issues in Whistleblower Law and Retaliation*, PRAC. LA. 37, 50 (2017).

137. David Kocieniewski, *Whistle-Blower Awarded \$104 Million by I.R.S.*, NY TIMES (Sept. 11, 2012), <https://www.nytimes.com/2012/09/12/business/whistle-blower-awarded-104-million-by-irs.html>.

138. Patrick S. Coffey, *Managing the Threat of Whistleblower Claims*, WIS. LAW. 30, 30 (2015).

to address workplace concerns.¹³⁹ Because employees who “blow the whistle” are usually motivated by a sense of moral duty, they feel obligated to report internally to preserve the employer-employee relationship.¹⁴⁰ With the recent implementation of retaliatory protection under the Taxpayer First Act, prohibiting employers from discharging, harassing, demoting, suspending, or discriminating against an employee who lawfully discloses information to the government or employer about underpayment of taxes or violations of the internal revenue laws, employees are even more likely to report to the internal compliance program.¹⁴¹ However, employers who still retaliate by seeking revenge or striking back at the employee for complaining about the alleged illegal act might push employees to file claims with the WO.¹⁴² Employees are essentially committing a “career suicide” and forgoing career opportunities¹⁴³ when fraud is spread throughout the corporation and “information is not . . . well received or acted upon.”¹⁴⁴ With the broadened definition of proceeds promising a larger award in exchange for information on illegal acts, the companies fear more disclosures of tax fraud and will feel more pressure to investigate fraudulent misconduct. The threat that misconduct could be revealed to the government will increase compliant behavior. Internal compliance issues might even be rectified without the need for an IRS enforcement action.

3. Facilitating IRS Enforcement Efforts

The broad definition of “proceeds” aids the IRS in enforcing compliance. In the past decade, the IRS funding has been cut by at least twenty-five percent.¹⁴⁵ This has resulted in reduced tax enforcement—the “number of individual audits fell forty-two percent between 2010 and 2017.”¹⁴⁶ With the growing workload and limited resources, the IRS has been unable to “detect and address noncompliance” and “maximize revenue collection.”¹⁴⁷ Regardless of whether proceeds are defined narrowly or

139. *Id.*

140. Christine A. Ladwig, *A Sarbanes-Oxley and Dodd-Frank Triple Win Scenario: The Joint Benefit of an Internal-External Reporting Alliance for Corporations, Whistleblowers and Government*, 27 *MIDWEST L.J.* 79, 87 (2017).

141. Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981, 998–99 (2019). President Trump signed the Taxpayer First Act providing protection from retaliation in July of 2019.

142. Patricia A. Wise, *Understanding and Preventing Workplace Retaliation*, Chapter 1: Defining Retaliation in the Workplace (2004).

143. Pacella, *supra* note 126, at 754.

144. Ladwig, *supra* note 140, at 89.

145. Scott Horsley, *On Tax Day, The IRS is Short of Money*, NPR (April 15, 2019), <https://www.npr.org/2019/04/15/713411490/on-tax-day-the-irs-is-short-of-money>.

146. *Id.*

147. TAXPAYER ADVOCATE SERVICE, at 3 (2011) 2011 ANNUAL REPORT TO CONGRESS, https://www.irs.gov/pub/tas/irs_tas_arc_2011_vol_1.pdf.

broadly, the whistleblower program encourages informants to provide information to the IRS, making it easier for the agency to detect noncompliance and target noncompliant taxpayers. But the incentive of a larger award will attract more whistleblowers, allowing the IRS to discover more noncompliance and investigate more fraudulent activities that would otherwise go undetected. In sum, the broader definition of “proceeds” offers a larger award, which encourages more taxpayers to aid the IRS, thereby providing more assistance for the IRS’s efforts to reduce noncompliance and tax fraud.

4. Closing the Tax Gap and Increasing the Federal Revenue

By doing more to improve the IRS enforcement efforts and encourage increased compliance, the broad definition of proceeds minimizes the gap between tax paid and tax owed,¹⁴⁸ thereby increasing the federal revenue. The IRS has estimated the annual tax gap to be somewhere between \$400–500 billion.¹⁴⁹ By offering a larger monetary prize, the IRS encourages more whistleblowers to come forward with information that the IRS might otherwise not have detected with its limited resources.¹⁵⁰ By pursuing more noncompliant taxpayers and operating as a deterrence for tax fraud, the whistleblower program can close the tax gap even more.¹⁵¹ This reduction in the size of the tax gap results in more revenue collected. The whistleblower program helps the government collect more of the money owed by taxpayers, and when the government collects a larger percentage of the money owed as a result of a broader definition of proceeds that incentivizes more taxpayers to blow the whistle, the government is better able to do whatever it determines is necessary.

Larger money payouts, as a result of the broad definition of proceeds for the purposes of determining the award, do not deplete the collected taxes.¹⁵² Although the whistleblower program may cost government more money in an individual case by offering as much as thirty percent of the total collected proceeds in awards, bigger award payouts encourage more whistleblowers to come forward, resulting in the discovery of more noncompliant taxpayers. This results in more whistleblower cases; therefore, larger awards lead to more tax collections in the aggregate even if each case ends up bringing in slightly less money. The revelation of more information to the IRS will also reduce the agency’s costs of detecting noncompliance.

148. Faiman, *supra* note 129, at 207–08.

149. TAX GAP ESTIMATES FOR TAX YEARS 2011-2013, at 1 (2019), 2019 IRS PUB. 5364, <https://www.irs.gov/pub/irs-pdf/p5364.pdf>.

150. Davis-Nozemack & Webber, *supra* notes 28–31.

151. Carman, *supra* note 26, at 155.

152. *Id.* at 170.

The IRS may have to pay a larger sum to the whistleblower as an award, but it simultaneously saves money spent on the detection of noncompliance. Thus, the broad definition of proceeds allows the IRS to detect more noncompliance, increasing overall revenue collected.

B. Broad Definition of Proceeds Promotes Tax Policy Norms

The preceding section establishes how the broad definition of proceeds increases the efficacy of the tax whistleblower program. But how does the broad definition of proceeds affect the goals of the tax system? The primary purpose of the tax system is to “facilitate the collection of revenue” to ensure stability in “the nation’s fiscal health and its social well being.”¹⁵³ To further evaluate whether the broad definition of proceeds is a good public policy that advances the objectives of the tax system, three tax policy norms—neutrality, fairness, and simplicity—are discussed below.¹⁵⁴

1. Deviation from Neutrality is Inevitable

The broad definition of proceeds promotes the goals of the whistleblower program by changing the behavior of taxpayers; hence, non-neutrality is inevitable. The tax system maintains neutrality by ensuring that tax considerations do not drive economic decisions of taxpayers.¹⁵⁵ The objective is to raise revenue for government spending and promote economic growth without distorting the behavior of taxpayers.¹⁵⁶ Yet the whistleblower program, even with a narrow definition of proceeds, incentivizes whistleblowers to report underpayments of tax and violations of the internal revenue code. It promotes the goals of the tax system by facilitating revenue collection and raising federal revenue. However, the expectation of a larger award as a result of a broader definition of proceeds incentivizes taxpayers who were previously not incentivized to disclose noncompliance. Fearing this surge in disclosure of unlawful misconduct, previously noncompliant taxpayers will be more inclined to pay all the taxes owed rather than face a government action or investigation. Such distortions in behavior lessen neutrality in the tax system. However, this deviation from a neutral tax system does promote a good public policy.

Neutrality is a non-issue if the goal of the policymakers is to create positive externalities by changing the behavior of taxpayers. As mentioned

153. Leo P. Martinez, *The Trouble with Taxes: Fairness, Tax Policy, and the Constitution*, 31 HASTINGS CONST. L.Q. 413, 415–16 (2004).

154. STEPHANIE HUNTER MCMAHON, PRINCIPLES OF TAX POLICY 102–03 (2018) (discussing the basic principles of tax policy).

155. David Hasen, *Tax Neutrality and Tax Amenities*, 12 FLA. TAX. REV. 57, 60 (2012).

156. Jason Furman, *The Concept of Neutrality in Tax Policy* (April 15, 2008), https://www.brookings.edu/wp-content/uploads/2016/06/0415_tax-_neutrality_furman-1.pdf; Martinez, *supra* note 153, at 415.

above, the expanded interpretation of proceeds encourages more taxpayers to blow the whistle and reveal fraudulent misconduct to the government, thereby increasing compliance. This distortion in the behavior of taxpayers leaves the government better-off. With the aid of whistleblowers, the government can recover unpaid taxes and raise revenue for its spending. The government will have additional funds to invest in social welfare, advancing a good public policy. Therefore, any additional deviation from neutrality with the expanded definition of proceeds is justified in light of the increased well-being of society.

2. Improvement in Tax Fairness Norms

The new definition of “proceeds collected” is a fair tax policy even if it deviates from a neutral tax system. The tax fairness principle consists of two norms: vertical and horizontal equity.¹⁵⁷ Vertical equity requires tax obligations to be proportional to income.¹⁵⁸ Horizontal equity ascertains that two alike taxpayers in a similar situation have the same tax liabilities.¹⁵⁹ Regardless of the definition of “proceeds collected” for the purposes of determining the whistleblower award, the tax whistleblower program detects underpayments of taxes and ensures that taxpayers bear their share of the tax burden. For example, if an informant discloses the unlawful acts of wealthy individuals who underpay their taxes, then the whistleblower program can require them to pay tax restitution, criminal fines and civil forfeitures. The whistleblower program prevents wealthy individuals from undermining the progressivity of the system. By requiring such taxpayers to carry a larger burden, the program attempts to achieve fairness via vertical equity.¹⁶⁰ Similarly, if a taxpayer who carries the same tax burden as another underpays her taxes, then the program can impose penalties and fines to reach fairness by way of horizontal equity. With the recent change in the definition of proceeds to include criminal fines and civil forfeitures, the whistleblower program can increase fairness in the tax system. By offering a larger financial incentive, the program can attract more whistleblowers and target more taxpayers engaged in illegal conduct. By facilitating the IRS's enforcement efforts, the program can prevent more taxpayers from unfairly paying less than their share of burden and reduce the tax gap, advancing fairness in the tax system.

157. Richard J. Wood, *Supreme Court Jurisprudence of Tax Fairness*, 36 SETON HALL L. REV. 421, 422 (2006).

158. Ira K. Lindsay, *Tax Fairness by Convention: A Defense of Horizontal Equity*, 19 FLA. TAX REV. 79, 81 (2016).

159. Cara Griffith, *Tax Policy in an Age of Cynicism*, 45 OHIO N.U. L. REV. 577, 582 (2019).

160. Martinez, *supra* note 153, at 422.

3. Simplification Adds More Complexity

The IRC section 7623(c) clarifies the definition of proceeds for the purposes of determining the whistleblower award, but it also adds to the complexity of the law. Tax policy should be simple.¹⁶¹ Along with being easily enforceable, it should “avoid excessive complexity.”¹⁶² A clear definition of proceeds, regardless of whether it is narrow or broad, simplifies the application of the whistleblower statute. Congress put an end to the differing interpretations of the term with the explicit inclusion of criminal fines, civil forfeitures and penalties for the violations of reporting requirements in the total proceeds collected. Nevertheless, the inclusion of both Title 26 and non-Title 26 fines and penalties adds a layer of complexity.

Leaving the WO to figure out how to calculate the awards with both Title 26 and non-Title 26 claims, the new definition of proceeds causes complexity in the whistleblower program. Before 2018, the IRS simply closed claims with no “Title 26 Collected Proceeds.”¹⁶³ After the 2018 amendments, the IRS had to keep such claims open in the event non-Title 26 amounts were collected, resulting in the issuance of a whistleblower award. For example, in 2018, the WO undertook the review of “29,198 open claims for potential non-Title 26 proceeds.”¹⁶⁴ Reviewing Title 26 and non-Title 26 claims individually delayed the claims process, as proceeds were probably collected at different times. Therefore, in 2019, as a response to the BBA of 2018, the WO modified Form 11369.¹⁶⁵ Each taxpayer involved in the investigation of the whistleblower’s claim was required to submit Form 11369, along with a narrative, to assist the WO in determining the extent of the contributions made by the whistleblower’s information.¹⁶⁶ The narrative specifically provides details on “how the whistleblower’s information was used in any IRS investigation; regardless of whether the laws administered, enforced, or investigated are outside of Title 26.”¹⁶⁷ Because the WO makes

161. See generally Edward J. McCaffery, *The Holy Grail of Tax Simplification*, 1990 Wis. L. REV. 1267 (1990).

162. *Id.*

163. IRS, WHISTLEBLOWER PROGRAM FY 2016 ANNUAL REPORT TO THE CONGRESS 17 (2016), <https://www.irs.gov/pub/irs-prior/p5241--2018.pdf>.

164. IRS, WHISTLEBLOWER PROGRAM FY 2018 ANNUAL REPORT TO THE CONGRESS 6 (2018), <https://www.irs.gov/pub/irs-prior/p5241--2019.pdf>.

165. IRS, WHISTLEBLOWER PROGRAM FY 2019 ANNUAL REPORT TO THE CONGRESS 6 (2020), <https://www.irs.gov/pub/irs-prior/p5241--2020.pdf>.

166. I.R.M. 25.2.1.5.5 (April 29, 2019), https://www.irs.gov/irm/part25/irm_25-002-001#idm140291679327216. Taxpayers affected by the IRS investigation “are relevant to a whistleblower submission when: (a) the whistleblower identifies the taxpayers in the claim; or (b) the whistleblower information is considered in a civil, criminal, or judicial proceeding involving a taxpayer other than the taxpayer(s) identified in the claim(s).”

167. *Id.*

an award determination upon the receipt of Form 11369,¹⁶⁸ it can potentially review both Title 26 and non-Title 26 claims simultaneously. Examining whether the modifications in Form 11369 have reduced the complexity of the new procedure (requiring the WO to evaluate both Title 26 and non-Title 26 claims) is beyond the scope of this note. But these updates in the whistleblower claims process demonstrate the impact of the broader definition of proceeds. Amending its procedures to reflect the changes in the law, the WO is attempting to maintain a simple tax system. Since this is a new practice, there is not enough data to determine whether the WO has been successful in evaluating both Title 26 and non-Title 26 claims for award determinations.

Given the foregoing discussion, the broad definition of proceeds contributes to the goals of the whistleblower program and attempts to advance the tax policy norms to a certain degree. However, the broad definition of proceeds purely on its own is not enough to reach the full potential of the whistleblower program.

IV. EXPANDING DEFINITION OF PROCEEDS IS PROGRESS BUT NOT ENOUGH

The new definition of proceeds increases the impact of the whistleblower program; however, it also reveals certain issues that cannot be resolved with a mere financial incentive. To comprehensively advance the goals of the whistleblower program, additional steps must be taken to create appropriate incentives for whistleblowers influenced by non-monetary motivations and companies with ineffective internal compliance mechanisms.

A. More Should be Done to Incentivize Whistleblowers and Encourage Compliance

1. Addressing Heterogeneous Motivations

The expanded definition of proceeds does not respond to heterogeneous motivations. It incentivizes informants who are entirely, or at least partly motivated by money. Such individuals may be employees, ex-spouses, former business partners, or alleged criminals.¹⁶⁹ These same individuals might still have other motivations—sense of duty, moral outrage, revenge, or higher likelihood of escaping criminal prosecution.¹⁷⁰ Therefore, prospective whistleblowers, especially employees who feel obligated to

168. I.R.M. 22.2.2.5.1. (April 26, 2019), https://www.irs.gov/irm/part25/irm_25-002-002.

169. *Supra* note 128–130 and accompanying text.

170. *See supra* notes 129, 130, 132 and accompanying text.

disclose noncompliance out of a sense of duty, need more than just a financial incentive. They are certainly swayed by the monetary award,¹⁷¹ even if just slightly, but another non-monetary benefit might give them the final push to reach out to the IRS whistleblower program. Rather than reporting to potentially inadequate internal compliance programs, these informants will reach out to the external whistleblower program. Thus, tax policymakers need to implement additional incentives to attract whistleblowers with heterogeneous motivations in order to detect more noncompliance.

2. Improving Internal Compliance Mechanisms

The threat of whistleblower programs has prompted companies to establish internal compliance mechanisms,¹⁷² however, their effectiveness is questionable. Companies with widespread fraud might retaliate against employees and not act upon the reported information.¹⁷³ Internal reporting might be entirely ineffective if the corporate authorities conduct no investigation whatsoever.¹⁷⁴ Admittedly, whistleblowers can report to an external reporting program when internal reporting fails or is “not an option.”¹⁷⁵ But this will deplete the IRS’s limited resources and funding.¹⁷⁶ Therefore, the tax whistleblower program needs to enact a policy that forces these companies to implement an effective internal compliance program. If internal reporting compliance programs are reliable, the whistleblower program will no longer need to expend its resources on corporate non-compliance. With companies rectifying internal problems, the whistleblower programs can reduce the tax gap even more and raise revenue. As of right now, the tax whistleblower program prompts companies to establish an internal reporting mechanism, but it needs to push these companies to conduct investigations and actually mitigate fraud.

B. Recommendations to Further Goals of the Tax Whistleblower Program

1. Responding to Heterogeneous Motivations: Education and Praise

Education can incentivize taxpayers with heterogeneous motivations to reveal tax fraud. The notion of tax morale, also known as “internal motivations,” is often used to depict how “tax compliance is affected by (social and personal) norms such as those regarding procedural justice, trust,

171. Pacella, *supra* note 132.

172. *See supra* notes 138, 140.

173. Ladwig, *supra* note 140.

174. *Id.* at 89–90.

175. *Id.* at 89.

176. *See supra* note 145–147.

belief in the legitimacy of the government, reciprocity, altruism, and identification with the group.”¹⁷⁷ Making taxpayers feel more in “control of their tax situation,” education heightens tax morale by “strengthening feelings of identity, reciprocity, fairness, [and] procedural justice.”¹⁷⁸ Educating taxpayers about the impact of the tax whistleblower program on the tax gap and federal revenue is one way to encourage them to disclose tax violations. The IRS can work with tax experts to spread knowledge, create teaching programs via educational institutions, or publish articles on its website.¹⁷⁹ Through communication, the IRS can inform the public about the contributions of the whistleblower program to social welfare. It can emphasize on the role of whistleblowers in raising revenue, which ultimately helps the country and its citizens. With the collection of more taxes, the government can use funds where they are deemed necessary, and even eventually lower tax rates. Understanding that there is more to the whistleblower program than just a monetary award, taxpayers will be more inclined to snitch on others to strengthen fairness and procedural justice.

Prospective whistleblowers, with knowledge of the program, will feel obliged to report to the IRS. Prompting taxpayers to disclose tax violations has been a challenge for the whistleblower program. Merely having knowledge about the social impact of the whistleblower program might not be sufficient to encourage individuals to disclose information about their personal or professional connections. But higher education correlates with higher tax morale.¹⁸⁰ Therefore, education heightens internal motivation of prospective whistleblowers to aid the government in improving the country. All in all, education is a significant tool that urges individuals with heterogeneous motivations to reveal tax violations.

Praise is another method that can mitigate the impact of heterogeneous motivations on the behavior of prospective whistleblowers. Praise is an indication of approval.¹⁸¹ Tax policymakers use praise by providing a positive incentive,¹⁸² in the form of a financial award, to whistleblowers. This incentive is given out to encourage more taxpayers to file whistleblower claims with the IRS. It “increases a certain kind of behavior.”¹⁸³ It is distinguishable from a reward that is also given out as a result of certain behavior, but only if the recipient “deserves to receive it.”¹⁸⁴

177. Marjorie E. Kornhauser, *A Tax Morale Approach to Compliance: Recommendations for the IRS*, 8 FLA. TAX REV. 599, 601–02 (2007).

178. *Id.* at 629.

179. *Id.* at 629–30.

180. *Id.* at 629–31.

181. Ezra Goldschlager, *Praise and the Law*, 49 CREIGHTON L. REV. 353, 357 (2016).

182. *Id.* at 357.

183. *Id.* at 359.

184. *Id.* at 357.

The IRS should use incentive and reward payouts congruently. In addition to offering the money payment, it should distribute rewards to whistleblowers in the form of a “praise” to show that they are deserving recipients. Legal praise is valuable.¹⁸⁵ In military, medals are given to soldiers for acts of valor.¹⁸⁶ This form of praise has substantial effect on soldiers because it encourages them to act gallantly in future.¹⁸⁷ Similarly, the IRS can single out whistleblowers for contributing to social welfare and treat them as heroes. Openly praising whistleblowers on the IRS website, in published articles and even in news media, the IRS can turn the spotlight on the contributions made by these individuals in minimizing tax gap and raising revenue for the betterment of society. Because society respects heroes for having a good moral character,¹⁸⁸ public will be more accepting of whistleblowers if they are considered heroes. Given this public acceptance, prospective whistleblowers will feel more inclined to report tax fraud to the IRS without being treated as “snitches.”

The whistleblower award might cheapen the notion of heroism.¹⁸⁹ Money payments are external incentives that can certainly diminish internal motivation of taxpayers to behave a certain way.¹⁹⁰ It changes the behavior of individuals who are entirely or partly motivated by money. But it does compensate those who jeopardize their career by disclosing fraud.¹⁹¹ Employees who lose their jobs might still be able to maintain financial stability with this award. On the other hand, in cases where individuals have heterogeneous motivations, it might not be enough to convince them to disclose tax violations to the IRS. These individuals might want money, but are probably afraid to jeopardize their career or incite public backlash.¹⁹² Or they are simply more motivated by sense of duty and moral outrage.¹⁹³ In these situations, praise is a tool that can encourage individuals to reach out to the IRS. Praise is more “likely to imply an acknowledgement of intrinsic motivation” with its recognition of good behavior.¹⁹⁴ Whistleblowers will overlook the concerns mentioned above if they are treated as heroes. Therefore, money is as important as praise when it comes to incentivizing and rewarding whistleblowers. Similar to how Good Samaritan laws inject financial incentive (lower risk of tort liability) and promote voluntary

185. *Id.* at 365.

186. *Id.*

187. Goldschlager, *supra* note 181, at 365.

188. *Id.* at 377.

189. *Id.* at 379.

190. *Id.* at 370.

191. *See supra* note 142–144.

192. *See supra* note 142–144.

193. *See supra* note 129.

194. Goldschlager, *supra* note 181, at 373, 375.

heroism,¹⁹⁵ the whistleblower award can compensate whistleblowers for jeopardizing their career and praise them for reporting tax fraud. Prospective whistleblowers are putting a lot at stake and risking personal and professional relationships; thus, these individuals should be praised for their courage regardless of the monetary award.

2. Improving Internal Compliance Mechanisms: Penalties

Penalties force taxpayers to comply with tax law,¹⁹⁶ so the IRS should impose penalties on companies with ineffective internal reporting programs. Taxpayers abide by the law when legal sanctions cost more than compliance.¹⁹⁷ Legal sanctions, by way of civil and criminal penalties, promote compliance.¹⁹⁸ Reviewing the impact of different forms of penalties is beyond the scope of this note. But the possibility of a penalty that is costlier than compliance will drive these companies to establish an effective internal reporting mechanism. Since most whistleblowers are intrinsically motivated by a sense of duty, they will choose the effective internal reporting mechanism (if available) over an external whistleblower program.¹⁹⁹ Therefore, to ensure that employee complaints are effectively investigated and rectified, the whistleblower program should specifically impose penalties on companies with unreliable internal reporting structures.

If an internal risk management structure is more costly than compliance, then companies might prefer to pay tax penalties. But this strategy can jeopardize a company's public image. Legal action for noncompliance comes with negative publicity.²⁰⁰ Putting company's reputation at stake, legal penalties can cause more than just monetary damage. Therefore, penalties are a valuable tool. The IRS should consider imposing penalties on companies with inadequate internal reporting mechanisms.

V. CONCLUSION

The new definition of proceeds, including criminal fines and civil forfeitures, advances the goals of the tax whistleblower program. By incentivizing whistleblowers to disclose unlawful activities committed by taxpayers in exchange for a substantial financial gain, the whistleblower program is aiding the IRS with its enforcement actions, thereby helping to

195. *Id.* at 377–78.

196. Michael Doran, *Tax Penalties and Tax Compliance*, 46 HARV. J. ON LEGIS. 111, 111 (2009).

197. *Id.* at 111–12.

198. *Id.* at 114, 122.

199. Ladwig, *supra* note 140.

200. Ladwig, *supra* note 140.

close the tax gap and raise federal revenue. After the Bipartisan Budget Act of 2018, the whistleblower award is determined based on total proceeds collected (i.e., including criminal fines and civil forfeitures), increasing the amount of award. The prospect of a significant monetary payment has incentivized more taxpayers to reveal tax violations to the IRS. Fearing increased disclosures, companies have built internal compliance mechanisms even if the effectiveness of these internal risk management structures is questionable. With more taxpayers partaking in the whistleblower program, the IRS can detect and address more non-compliance, raising more revenue.

The expanded definition of proceeds affects tax policy norms. The new definition of proceeds changes the behavior of taxpayer by incentivizing them to disclose tax fraud in exchange for a larger sum of money. This deviation from tax neutrality is justified given the contributions of the whistleblower program in advancing social good. Having more whistleblowers aid the IRS in ensuring that taxpayers carry their share of tax burden, the new definition of proceeds attempts to promote tax fairness. It, however, does add complexity to the whistleblower program by requiring the WO to review both Title 26 and non-Title 26 claims.

Because the definition of proceeds on its own cannot address certain problems, the whistleblower program needs to take additional steps to increase its effectiveness. This note raises two issues that cannot be rectified with a change in the definition of proceeds: incentivizing prospective whistleblowers with heterogeneous motivations and encouraging companies to maintain an effective internal reporting mechanism. This note provides some direction for the whistleblower program to devise strategies that can continue to develop and expand its efficacy. However, additional research and analysis is necessary for the development of these proposals.