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MEMORANDUM\* OPINION OF THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
(SEPTEMBER 15, 2020)

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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BRUCE A. NORVELL,

*Plaintiff-Appellant,*

v.

SECRETARY OF THE TREASURY;  
UNITED STATES INTERNAL  
REVENUE SERVICE,

*Defendants-Appellees.*

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No. 19-35156

D.C. No. 1:18-cv-00251-BLW

Appeal from the United States District Court  
for the District of Idaho B. Lynn Winmill,  
District Judge, Presiding

Submitted September 8, 2020\*\*

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: TASHIMA, SILVERMAN,  
and OWENS, Circuit Judges.

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Bruce A. Norvell appeals pro se from the district court's judgment dismissing for lack of subject matter jurisdiction his action for declaratory and injunctive relief arising from his submissions to the Internal Revenue Service's Whistleblower Office ("IRS"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(1). *Rattlesnake Coal. v. U.S. EPA*, 509 F.3d 1095, 1100 (9th Cir. 2007). We affirm.

The district court properly dismissed Norvell's action arising from 26 U.S.C. § 7623 because Norvell failed to show that the Administrative Procedure Act's ("APA") waiver of sovereign immunity applies to his claims. *See Int'l Bhd. Of Teamsters v. U.S. Dep't of Transp.*, 861 F.3d 944, 952 (9th Cir. 2017) ("Section 704 of the APA provides for judicial review of '[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court.'" (quoting 5 U.S.C. § 704)); 26 U.S.C. § 7623 (b)(4) (IRS's determination regarding an award under § 7623(b)(1), (2), or (3) may be appealed to the Tax Court, which has jurisdiction with respect to such matter). However, a dismissal for lack of subject matter jurisdiction should be without prejudice. *See Kelly v. Fleetwood Enters., Inc.*, 377 F.3d 1034, 1036 (9th Cir. 2004). We affirm the dismissal and instruct the district court to amend the judgment to reflect that the dismissal of the action is without prejudice.

We reject as without merit Norvell's contention that the IRS's disposition of his March 21, 2018 appli-

cation was not a “determination” within the meaning of § 7623(b)(4).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED with instructions to amend the judgment.

**MEMORANDUM DECISION AND ORDER OF  
THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO  
(APRIL 23, 2019)**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

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**BRUCE NORVELL,**

*Plaintiff,*

**v.**

**SECRETARY OF THE TREASURY;  
INTERNAL REVENUE SERVICE,**

*Defendants.*

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Case No. 1:18-cv-251-BLW

Before: B. Lynn WINMILL,  
U.S. District Court Judge.

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**INTRODUCTION**

The Court has before it a motion to alter or amend filed by plaintiff Norvell. The motion is fully briefed and at issue. For the reasons explained below, the Court will deny the motion.

**ANALYSIS**

Norvell filed this action alleging the IRS failed to consider his application for a whistleblower award

as required by 26 U.S.C. § 7623(b). His complaint alleges that the IRS's failure to act violates the requirements of the Administrative Procedures Act (APA). 5 U.S.C. §§ 701 et seq.

The IRS responded with a motion to dismiss arguing that Norvell had a remedy in the Tax Court that precluded suit under the APA. The Court agreed and granted the motion to dismiss. *See Memorandum Decision (Dkt. No. 11)*.

Norvell now argues in his motion to alter or amend that the Tax Court has no jurisdiction to consider his appeal because the IRS has never made a “determination” on the second of two claims he filed to obtain an award for being a whistleblower. Because the Tax Court has no jurisdiction, Norvell argues, this Court erred in finding that an appeal to the Tax Court precluded suit under the APA here.

Norvell's first claim for a whistleblower award—referred to as 211 Claim I—was dated April 10, 2017. The IRS denied that claim on August 16, 2017. *See Final Decision (Dkt. No. 1-6)*. There is no dispute that the IRS denial of 211 Claim I was a determination that could be appealed to the Tax Court.

On February 12, 2018—about six months after the denial of his 211 Claim I Norvell filed a second claim containing new material. This second claim is referred to as 211 Claim II. About a month later—on March 13, 2018—the IRS sent Norvell a letter stating as follows: “We received your request for reconsideration dated February 12, 2018. Your claim was previously rejected. A copy of that decision is enclosed.” *Id*

Norvell responded on March 21, 2018, informing the IRS that his second claim—211 Claim II—was not

a request for reconsideration but a separate claim that contained new material not found in his first claim. He explained to the IRS in detail how the two claims were separate, and asked them to assign a separate claim number to 211 Claim II, and evaluate it separately from 211 Claim I.

Despite his efforts to cast it in a different light, Norvell's letter was a request for reconsideration. The IRS treated it as such. The IRS responded on April 5, 2018, with a letter to Norvell that rejected his request for a reconsideration: "We received your request for reconsideration dated March 21 2018. Your claim was previously rejected. A copy of that decision is enclosed."

This language, Norvell argues, shows that that the IRS never actually considered his second claim but merely referred him back to the rejection of his first claim. He argues that because he has never received a determination of his second claim, he has nothing to appeal to the Tax Court and should be allowed to bring this lawsuit under the APA.

The Court disagrees; Norwell did get a determination from the IRS on his second claim. In the IRS letter of April 5, 2018, the IRS rejects Norvell's argument that the claims are separate and treats both claims the same, rejecting the second claim on the same grounds as the first. That may be a clear error, according to Norvell, hut it is nevertheless a rejection that treats both claims the same. Rejections of whistleblower claims are defined as "determinations" in the implementing regulations. *See* 26 C.F.R. § 301.7623-3(c)(7). The IRS's rejection of Norvell's second claim constitutes the required determination that Norvell needs to appeal to the Tax Court. His motion to alter or amend must be denied.

App.7a

**ORDER**

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the motion to alter or amend (docket no. 15) is DENIED.

/s/ Lynn Winmill  
U.S. District Court Judge

Dated: April 23, 2019

**MEMORANDUM DECISION AND ORDER OF  
THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO  
(JANUARY 3, 2019)**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

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BRUCE NORVELL,

*Plaintiff,*

v.

SECRETARY OF THE TREASURY;  
INTERNAL REVENUE SERVICE,

*Defendants.*

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Case No. 1:18-cv-251-BLW

Before: B. Lynn WINMILL,  
U.S. District Court Judge.

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**INTRODUCTION**

Before the Court is Defendants' Motion to Dismiss for lack of subject matter jurisdiction based on Federal Rule of Civil Procedure 12(b)(1). The motion is fully briefed and at issue. For the reasons set forth below, the Court will grant the motion.

## BACKGROUND

Defendants move for dismissal on the grounds that plaintiff Bruce Norvell's complaint fails to establish the subject matter jurisdiction of this Court. Fed R. Civ. P 12(b)(1). Mr. Norvell filed his Complaint on June 6, 2018, alleging the IRS did not consider his February 2018 Form 211 "Application for Award for Original Information" as required by the IRS whistleblower award statute, 26 U.S.C. § 7623(b). Plaintiff alleges the IRS's failure to act on his Form 211 pursuant to § 7623(b) violates the requirements of the Administrative Procedures Act (APA), 5 U.S.C. §§ 701 *et seq.*

Section 7623 created the Whistleblower Office within the IRS to administer the payment of awards to whistleblowers. 26 U.S.C. § 7623. Under this Section the IRS may proceed with administrative or judicial action based on information brought to light by a whistleblower's Form 211 application. 26 U.S.C. § 7623 (b)(1). If the IRS proceeds with the enforcement action, it may award a claimant at least 15 percent, but not more than 30 percent, of the collected proceeds or from settlement with the taxpayer. *Id.* Upon receiving a Form 211, the Whistleblower Office makes a final decision regarding a claim under § 7623(b) and must either communicate denial of the claim, including the basis for the denial, or follow the procedures for granting an award. *See id.*; Treas. Reg. § 301.7623-3(c)(1)-(6) The claimant may appeal the Whistleblower Office's final administrative decision to the United States Tax Court within thirty days. *See* 26 U.S.C. § 7623(b)(4). A claimant can appeal any Tax Court decision to the applicable United States Circuit Court of Appeals. *See* 26 U.S.C. § 7482(a).

Mr. Norvell filed separate IRS Form 211s in 2017 and 2018, asserting that the San Francisco Company Airbnb, Inc. had failed to accurately report its taxes between 2009 and 2017. Dkt. 1, at 7. First, on April 10, 2017, Mr. Norvell filed a Form 211 claiming Airbnb had failed to report non-employee compensation as required on Form 1099-MISC for the years 2009-2016. Dkt. 1-4, at 1-2. The IRS Whistleblower Office rejected Mr. Norvell's 2017 Form 211 claim on August 16, 2017. Dkt. 1-6, at 1. Mr. Norvell then filed a second Form 211 on February 2, 2018, alleging the same pattern of historical conduct. Dkt. 1, at 7; Dkt. 1-5, at 1-2. The February 2018 Form 211 also added allegations related to Airbnb's 2017 tax filings and its failure to report 2015 and 2016 payments to hosts on either Form 1099-MISC or 1099-K. *Id.* The IRS Whistleblower Office rejected Mr. Norvell's February 2018 Form 211 on March 13, 2018. Dkt. 1, at 7-8; Dkt. 1-6. The Whistleblower Office's 2018 denial noted that "[the 2017 claim] was previously rejected," and attached a copy of the 2017 denial to its notice. Dkt. 1-6.

Plaintiff alleges that he was injured by the IRS "refusing to consider my 2/2/2018 claim." Dkt. 1, at 8. Specifically, Plaintiff asserts the IRS failed to consider the February 2018 Form 211 at all, and instead treated it as a request for reconsideration of his 2017 Form 211. *Id.* The Parties agree that IRS regulations require the Whistleblower Office to respond to each Form 211 in the event of a denial. *See* Dkt. 1, at 8-9; Dkt. 5, at 5; *see also* 26 U.S.C. § 7623(b). Mr. Norvell asserts the alleged "refusal to consider" his 2018 Form 211 amounts to either "unlawfully withheld or unreasonably delayed" agency action, or, in the alternative, an "arbitrary, capricious, [] abuse of discretion, not in

accordance with law, or without observation of procedures as required by law” in violation of the APA, 5 U.S.C. §§ 706(1), (2)(A-D). Dkt. 1, at 9-10. At issue in the instant motion to dismiss is whether this Court has jurisdiction to hear Plaintiff’s APA challenge to the IRS Whistleblower Office’s alleged inaction under 26 U.S.C. § 7623(b).

### LEGAL STANDARD

A defendant may move to dismiss a complaint for lack of subject matter jurisdiction under Rule 12(b)(1) in one of two ways. *See Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). The first is known as a “facial” attack, and it accepts the truth of the plaintiffs allegations but asserts that they are insufficient on their face to invoke federal jurisdiction. *Id.* The second method is known as a “factual” attack, and it does not assume the truth of plaintiffs allegations but instead challenges them by introducing extrinsic evidence, requiring the plaintiff to support his jurisdictional allegations with “competent proof.” *Id.* Here, Defendants bring a “facial” attack against Plaintiffs Complaint for lack of subject matter jurisdiction. *See* Dkt. 5. As such, the Court must consider the factual allegations of the complaint to be true and determine whether they establish subject matter jurisdiction. *Leite*, 749 F.3d at 1121. In the case of a facial attack, the motion to dismiss is granted only if the nonmoving party fails to allege an element necessary for subject matter jurisdiction. *Id.*

When bringing a claim against a federal government agency, a Plaintiff must show the government has waived sovereign immunity with respect to that agency’s action or inaction to establish subject matter

jurisdiction. *See Lane v. Pena*, 518 U.S. 187, 192, (1996). The United States is “immune from suit in state or federal court except to the extent that Congress has expressly waived such sovereign immunity.” *Tritz v. U.S. Postal Serv.*, 721 F.3d 1133, 1136 (9th Cir. 2013). Any waiver of sovereign immunity “will be strictly construed, in terms of scope, in favor of the sovereign.” *Lane*, 518 at 192. The waiver must be “clearly discernable from the statutory text in light of traditional interpretive tools. If it is not, then we take the interpretation most favorable to the Government.” *F.A.A. v. Cooper*, 566 U.S. 284, 291 (2012). “A court lacks subject matter jurisdiction over a claim against the United States if it has not consented to be sued on that claim,” and when the United States has consented to suit, “the terms of its waiver of sovereign immunity define the extent of the court’s jurisdiction.” *Balser v. Dep’t of Justice, Office of U.S. Tr.*, 327 F.3d 903, 907 (9th Cir. 2003) (internal citation and quotation marks omitted). The burden of demonstrating a waiver of sovereign immunity lies with the plaintiffs. *Holloman v. Watt*, 708 F.2d 1399, 1401 (9th Cir. 1983).

## ANALYSIS

Plaintiff alleges this Court has jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1346(a)(2) and 5 U.S.C. §§ 701 *et seq.* Dkt. 1, at 2. As the Ninth Circuit has held, § 1331 “cannot by itself be construed as constituting a waiver of the government’s defense of sovereign immunity,” and therefore does not independently grant the Court jurisdiction to hear Plaintiff’s claim against the federal government. *Dunn & Black, P.S. v. United States*, 492 F.3d 1084, 1088 n.3 (9th Cir. 2007); *Black Dog Outfitters, Inc. v. Idaho*, No. 4:09-CV-00663-JI,

2010 WL 11469219, at \*3 (D. Idaho 2010). Likewise, since Plaintiff seeks “declaratory and injunctive relief” (Dkt. 1, at 9-10), and not monetary damages, his citation of 28 U.S.C. § 1346(a)(2) is misguided. *United States v. Park Place Assocs., Ltd.*, 563 F.3d 907, 927 (9th Cir. 2009) (noting “[§ 1346(a)(2)]’s “jurisdictional grant is limited to claims for money damages not exceeding \$10,000 in amount.”). The Court therefore must find the United States has waived sovereign immunity under the APA, 5 U.S.C. § 701 *et seq.*, to exercise subject matter jurisdiction over Plaintiff’s claim regarding IRS inaction under 26 U.S.C. § 7623(b).

The Court will grant Defendant’s Motion to Dismiss for Lack of Jurisdiction because Plaintiff has not established that the APA’s sovereign immunity waiver applies in this case. The Court lacks jurisdiction under the APA because there is another appropriate review proceeding under federal law. *See* 5 U.S.C. § 704. Although Plaintiff correctly notes that the APA waives sovereign immunity, granting “a broad spectrum of judicial review of agency action,” his complaint does not show how the APA’s waiver of sovereign immunity applies to his claims. *See* Dkt. 8, at 13 (*citing Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988)). Because § 7623 provides another review proceeding and the APA excepts those claims from federal court jurisdiction, the Court has no jurisdiction to hear this case.

# **1. The Court Lacks Subject Matter Jurisdiction Because another Review Proceeding is Appropriate**

To challenge federal agency action or inaction under the APA, a Plaintiff must show a lack of another adequate judicial remedy. Actions reviewable

under the APA must either be made reviewable by statute or be “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704 (emphasis added). The statute at issue in this case, 26 U.S.C. § 7623 does not contain language about APA review. Instead, § 7623 provides that: “[a]ny determination regarding an award under paragraph (1), (2), or (3) may, within 30 days of such determination, be appealed to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).” 26 U.S.C. § 7623(b)(4). Plaintiff’s claim concerning the IRS’s failure to consider his Form 211, therefore, fails to qualify as a “reviewable action” under § 704 of the APA. Section 7623 provides a review mechanism in a court of competent jurisdiction, and Plaintiff should turn there. Because the challenged agency action does not fall under the APA, Plaintiff has failed to show the United States has waived its sovereign immunity over this type of claim. Therefore, the Court has no jurisdiction to hear his claims.

As the Supreme Court has noted, “Congress did not intend the general grant of review in the APA to duplicate existing procedures for review of agency action.” *Bowen*, 487 U.S. at 903. Furthermore, the Ninth Circuit has instructed that dismissal under Rule 12(b)(1) is appropriate if the underlying statute giving rise to the APA challenge provides for another adequate judicial remedy. *See, e.g., City of Oakland v. Lynch*, 798 F.3d 1159, 1162 (9th Cir. 2015) (upholding dismissal under 12(b)(1)); *see also S. California All. of Publicly Owned Treatment Works v. United States Env’tl. Prot. Agency*, 297 F. Supp. 3d 1060, 1071 (E.D. Cal. 2018) (finding lack of jurisdiction over an APA challenge because there was another adequate judicial remedy

provided by the statute); *Chun v. Dep't of Treasury Internal Revenue Serv.*, 2013 WL 12323966, at \*3 (C.D. Cal. June 4, 2013) (same). Outside the Ninth Circuit, other federal courts have consistently dismissed attempts to challenge IRS inaction under § 7623 for lack of jurisdiction. *See, e.g., Medinger v. Comm'r of Internal Revenue*, 662 F. App'x 774, 776 (11th Cir. 2016); *Amsinger v. United States*, 99 Fed.Cl. 254, 258 (Fed. Cl. 2011); *Dacosta v. United States*, 82 Fed. Cl. 549, 555 (2008). Plaintiff has not identified for the Court any federal district court that has entertained a challenge to IRS inaction under § 7623. The Court finds it has no jurisdiction to hear Plaintiff's claims, and grants Defendants' Motion to Dismiss.

### ORDER

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the motion to dismiss (docket no. 5) is GRANTED.

/s/ B. Lynn Winmill  
U.S. District Court Judge

Dated: January 3, 2019

## REGULATORY PROVISIONS INVOLVED

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Public Law 109-432, Division A, Title IV, § 406 provides as follows:

### SEC. 406. WHISTLEBLOWER REFORMS.

#### (a) AWARDS TO WHISTLEBLOWERS.—

(1) IN GENERAL.—Section 7623 (relating to expenses of detection of underpayments and fraud, etc.) is amended—

(A) by striking “The Secretary” and inserting “(a) IN GENERAL.—The Secretary”,

(B) by striking “and” at the end of paragraph (1) and inserting “or”,

(C) by striking “(other than interest)”, and

(D) by adding at the end the following new subsection:

#### “(b) AWARDS TO WHISTLEBLOWERS.—

“(1) IN GENERAL.—If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary’s attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent

to which the individual substantially contributed to such action.

**“(2) AWARD IN CASE OF LESS SUBSTANTIAL CONTRIBUTION.—**

**“(A) IN GENERAL.—**In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action, taking into account the significance of the individual’s information and the role of such individual and any legal representative of such individual in contributing to such action.

**(B) NON-APPLICATION OF PARAGRAPH WHERE INDIVIDUAL IS ORIGINAL SOURCE OF INFORMATION.—**Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in paragraph (1) was originally provided by the individual described in paragraph (1).

“(3) REDUCTION IN OR DENIAL OF AWARD.—If the Whistle-blower Office determines that the claim for an award under paragraph (1) or (2) is brought by an individual who planned and initiated the actions that led to the underpayment of tax or actions described in subsection (a)(2), then the Whistleblower Office may appropriately reduce such award. If such individual is convicted of criminal conduct arising from the role described in the preceding sentence, the Whistleblower Office shall deny any award.

“(4) APPEAL OF AWARD DETERMINATION.—Any determination regarding an award under paragraph (1), (2), or (3) may, within 30 days of such determination, be appealed to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).

“(5) APPLICATION OF THIS SUBSECTION.—This subsection shall apply with respect to any action—

“(A) against any taxpayer, but in the case of any individual, only if such individual’s gross income exceeds \$200,000 for any taxable year subject to such action, and

“(B) if the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed \$2,000,000.

“(6) ADDITIONAL RULES.—

“(A) NO CONTRACT NECESSARY.—No contract with the Internal Revenue Service is necessary for any individual to receive an award under this subsection.

“(B) REPRESENTATION.—Any individual described in paragraph (1) or (2) may be represented by counsel.

“(C) SUBMISSION OF INFORMATION.—No award may be made under this subsection based on information submitted to the Secretary unless such information is submitted under penalty of perjury.”.

(2) ASSIGNMENT TO SPECIAL TRIAL JUDGES.—

(A) IN GENERAL.—Section 7443A(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking “and” at the end of paragraph (5), by redesignating paragraph (6) as paragraph (7), and by inserting after paragraph (5) the following new paragraph:

“(6) any proceeding under section 7623(b)(4), and”.

(B) CONFORMING AMENDMENT.—Section 7443A(c) is amended by striking “or (5)” and inserting “(5), or (6)”.

(3) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES.—Subsection (a) of section 62 (relating to general rule defining adjusted gross income) is amended by inserting after paragraph (20) the following new paragraph:

“(21) ATTORNEYS FEES RELATING TO AWARDS TO WHISTLE BLOWERS.—Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any award under section 7623(b) (relating to awards to whistleblow-

ers). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of such award.”.

(b) WHISTLEBLOWER OFFICE.—

(1) IN GENERAL.—Not later than the date which is 12 months after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance for the operation of a whistleblower program to be administered in the Internal Revenue Service by an office to be known as the “Whistleblower Office” which—

(A) shall at all times operate at the direction of the Commissioner of Internal Revenue and coordinate and consult with other divisions in the Internal Revenue Service as directed by the Commissioner of Internal Revenue,

(B) shall analyze information received from any individual described in section 7623(b) of the Internal Revenue Code of 1986 and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office, and

(C) in its sole discretion, may ask for additional assistance from such individual or any legal representative of such individual.

(2) REQUEST FOR ASSISTANCE.—The guidance issued under paragraph (1) shall specify that any assistance requested under paragraph (1)(C) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under paragraph (1)(A). No individual or legal representative whose assistance is so requested may by

reason of such request represent himself or herself as an employee of the Federal Government.

(c) **REPORT BY SECRETARY.**—The Secretary of the Treasury shall each year conduct a study and report to Congress on the use of section 7623 of the Internal Revenue Code of 1986, including—

(1) an analysis of the use of such section during the preceding year and the results of such use, and

(2) any legislative or administrative recommendations regarding the provisions of such section and its application.

(d) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to information provided on or after the date of the enactment of this Act.

[Observations re Public Law 109-432. Division A. Title IV, § 406—The subsection 406(a) reforms are encoded as indicated at subsection 406(a), the subsection 406(b) reforms are included in the “notes” section of 26 U.S.C. § 7623, and the subsection 406(c) reforms are apparently not encoded.]