

No. _____

IN THE
Supreme Court of the United States

MANDY MOBLEY LI,
Petitioner,

v.
COMMISSIONER OF THE IRS,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
District of Columbia Circuit

APPENDIX

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June 16, 2022

APPENDIX A – OPINION OF THE U.S. COURT
OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT, FILED JANUARY 11,
2022

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 5, 2021 Decided January 11, 2022

No. 20-1245

MANDY MOBLEY LI,
APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE,
APPELLEE

On Appeal from a Decision and Order
of the United States Tax Court

Mandy Mobley Li, pro se, argued the cause and
filed the briefs for appellant.

Matthew S. Johnshoy, Attorney, U.S. Department
of Justice, argued the cause for appellee. With him on
the briefs was *Bruce R. Ellisen*, Attorney.

Robert Manhas, appointed by the court, argued the
cause as *amicus curiae* to assist the court by
addressing this court's jurisdiction. With him on the
brief was *Robert M. Loeb*, appointed by the court.

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Before: HENDERSON and MILLETT, *Circuit Judges*,
and SENTELLE, *Senior Circuit Judge*.

Opinion for the Court filed by *Senior Circuit Judge*
SENTELLE.

SENTELLE, *Senior Circuit Judge*: Appellant Mandy Mobley Li appeals the United States Tax Court's final decision awarding summary judgment to the IRS Commissioner in her whistleblower case. Specifically, the Tax Court held that the IRS Whistleblower Office ("WBO") did not abuse its discretion in rejecting Li's request for a whistleblower award, since Li provided only vague and speculative information as to purported tax violations. For the reasons explained below, we dismiss this appeal for lack of subject matter jurisdiction and remand to the Tax Court with instructions to do the same.¹

I. Background

On December 12, 2018, Li filed a Form 211 with the WBO alleging four tax violations by a third party (the "target taxpayer"). A Form 211 is an application to receive a monetary whistleblower award for supplying the IRS with actionable tax violation information, pursuant to 26 U.S.C. § 7623(b). A WBO classifier reviewed Li's Form 211, as well as the target

¹ The Court appointed Mr. Robert Manhas to assist in addressing the Court's jurisdiction to hear this appeal. The Court extends its appreciation to Mr. Manhas for his excellent amicus brief on the topic.

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taxpayer's 2016 and 2017 tax returns, and concluded that Li's allegations were "speculative and/or did not provide specific or credible information regarding tax underpayments or violations of internal revenue laws," making Li ineligible for an award. Therefore, the WBO did not forward Li's form to an IRS examiner for any potential action against the target taxpayer. The WBO communicated its decision by letter to Li on February 8, 2019 and informed her that she could appeal to the United States Tax Court if she thought the WBO had erred. Li did so by petition on March 13, 2019. Neither party identified a jurisdictional issue with the Tax Court's review of the case. The Commissioner subsequently filed a motion for summary judgment, which the Tax Court granted. The Tax Court found that the WBO adequately performed its evaluative function in reviewing Li's application and did not abuse its discretion by rejecting it for an award. Li then filed a motion for reconsideration. After the Tax Court denied the motion, Li appealed to this Court.

II. Analysis

Statutory law gives exclusive jurisdiction over Tax Court decisions to the United States Courts of Appeals, which are required to review Tax Court decisions in the same manner as any district court decision. 26 U.S.C. § 7482(a)(1). However, this Court's jurisdiction is predicated upon the Tax Court having had jurisdiction over the case. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). If the Tax

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Court lacks jurisdiction, this Court has “jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit.” *Id.* (quoting *United States v. Corrick*, 298 U.S. 435, 440 (1936)). For the reasons set forth below, such is the case presently. The Tax Court lacked jurisdiction to hear Li’s appeal from the WBO, leaving this Court with jurisdiction only to cure the defect. Even though the parties did not raise the issue, “federal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press.” *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011).

a. *The Whistleblower Statute*

There are three relevant provisions of the whistleblower statute, 26 U.S.C. § 7623. The first, subsection (a), authorizes the IRS to grant monetary awards to persons helping to “detect[] underpayments of tax, or . . . detect[] and bring[] to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same” § 7623(a). The second, subsection (b)(1), requires the IRS to give awards to whistleblowers “[i]f 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” § 7623(b)(1). This provision only applies if certain monetary conditions are met ((b)(5)). The remainder

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of that portion of the statute provides the parameters for such awards, including a floor and ceiling award amount ((b)(1)), a reduction in award amount for information based on public data ((b)(2)), and a reduction or denial of award amount in which the whistleblower participated in the tax violations ((b)(3)).

The third relevant segment, subsection (b)(4), gives the Tax Court exclusive jurisdiction over an appeal of “[a]ny determination regarding an award under paragraph (1), (2), or (3)”

When a whistleblower makes a Form 211 filing, the WBO follows several steps. First, it reviews the Form, and any related information, to determine whether the provided information may lead to the discovery of a tax violation. If the information is too vague or speculative, the WBO issues a rejection. *Rogers v. Comm’r*, No. 17985-19W, 2021 WL 3284613, at *5 (T.C. Aug. 2, 2021). “[A] rejection is appropriate when a whistleblower’s claim fails to comply with the threshold requirements as to who may submit a claim or what information the claim must include.” *Id.*; see also 26 C.F.R. § 301.7623-3(c)(7) (defining “rejection”). If the whistleblower’s information signals a potential tax violation, the IRS may initiate a proceeding against the target taxpayer. If the proceeding then yields payments to the IRS, the whistleblower receives an award, subject to 26 U.S.C. § 7623(b)(1)-(3). Any appeal of an award determination under

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subsections (b)(1)-(3) is then directed to the Tax Court. § 7623(b)(4).

As we noted earlier, we have the continuing duty to examine our jurisdiction, regardless of whether the parties raise the issue. The jurisdictional issue in this case asks whether § 7623(b)(4) gives the Tax Court jurisdiction over the threshold first step, the initial rejection of a whistleblower award before the WBO makes an award determination under subsections (b)(1)-(3). This issue is not one of first impression for the court below. In *Cooper v. Comm'r*, the Tax Court held that an initial rejection of a whistleblower award is in fact an award determination under subsection (b)(4), rejecting the argument that “there can be a determination for jurisdictional purposes only if the Whistleblower Office undertakes an administrative or judicial action and thereafter ‘determines’ to make an award.” 135 T.C. 70, 75 (2010). Instead, the Tax Court held that it had jurisdiction even over threshold rejections of whistleblower awards, interpreting the statute to “expressly permit[] an individual to seek judicial review in this Court of the amount or *denial of an award determination*.” *Id.* (emphasis added).

This position was echoed in the Tax Court’s decision in *Lacey v. Comm’r*, 153 T.C. 146 (2019), where the Tax Court found jurisdiction on the grounds that “a denial or rejection is a (negative) ‘determination regarding an award’, so the Tax Court has jurisdiction where, pursuant to the WBO’s

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determination, the individual does not receive an award.” *Lacey*, 153 T.C. at 163 n.19 (emphasis in original) (citing in accompanying text *Cooper*, 135 T.C. 70); *see also id.* at 150 n.5 (citing *Cooper*, 135 T.C. at 75–76).

In the case at bar, the Tax Court relied on its precedent in *Cooper* and *Lacey* to find jurisdiction over Li’s WBO appeal. Neither party identified a problem with the Tax Court’s jurisdiction. However, as we noted above, we have the continuing duty to examine our own jurisdiction.

b. *Lack of Jurisdiction under 26 U.S.C. § 7623(b)(4)*

After review, we conclude that *Cooper* and *Lacey* were wrongly decided. The Tax Court lacks jurisdiction to hear appeals from threshold rejections of whistleblower award requests.

Subsection (b)(4) of § 7623 gives the Tax Court exclusive jurisdiction over only a “determination regarding an award” under subsections (b)(1)–(3). The *Cooper* and *Lacey* Courts held that a threshold rejection of a whistleblower award request constituted such an award determination because the rejection of an award was a so-called “negative” award determination. *Lacey*, 153 T.C. 163 n.19 (citing in accompanying text *Cooper*, 135 T.C. 70); *see also id.* at 150 n.5 (“[A] ‘rejection’ is also a ‘determination’ . . .”). We disagree. A threshold rejection of a

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whistleblower's Form 211 for vague and speculative information is not a negative award determination, as there is no determination as to an award under subsections (b)(1)-(3) whatsoever. Per subsection (b)(1), an award determination by the IRS arises only when the IRS "*proceeds* with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by [the whistleblower]...." 26 U.S.C. §7623(b)(1)(emphasis added). A threshold rejection of a Form 211 by nature means the IRS is not *proceeding* with an action against the target taxpayer. See *Cline v. Comm'r*, 119 T.C.M. (CCH) 1199, 2020 WL1249454, at *5(T.C. 2020). Therefore, there is no award determination, negative or otherwise, and no jurisdiction for the Tax Court.²

In this case, the WBO rejected Li's Form 211 for providing vague and speculative information it could not corroborate, even after examining supplemental material Li herself did not provide. The WBO did not forward Li's Form 211 to an IRS examiner for further action, and the IRS did not take any action against the target taxpayer. There was no proceeding and thus no "award determination" by the IRS for Li's

² Li does not argue on appeal that the IRS, in fact, did proceed against the target taxpayer based on information in her Form 211 application. So we need not and do not decide whether the Tax Court would have jurisdiction to hear a whistleblower's claim in a case in which the IRS wrongly denied a Form 211 application but nevertheless proceeded against a target taxpayer based on the provided information.

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whistleblower information. Therefore, the Tax Court had no jurisdiction to review the WBO's threshold rejection of Li's Form 211.

This Court regrets that Li was informed otherwise by letter to her from the WBO. However, "no action of the parties can confer subject-matter jurisdiction upon a federal court." *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).

Finally, the parties have called our attention to our decision in *Myers v. Comm'r* which contains the statement that "written notice informing a claimant that the IRS has considered information that he submitted and has decided whether the information qualifies the claimant for an award' suffices to constitute a 'determination' for the purpose of § 7623(b)(4)." 928 F.3d 1025, 1032 (D.C. Cir. 2019). Upon review, we conclude that this statement is not a holding concerning the issue in the present case. This statement was responding to petitioner's argument that the WBO denial letter in his case did not contain enough information to qualify as a "determination" under the statute. *Id.* We subsequently declined to "craft requirements out of whole cloth" regarding what information a WBO denial letter must contain. *Id.* at 1033. By contrast, the question in this case asks whether § 7623(b)(4) confers jurisdiction only when there is both an IRS action based on whistleblower information *and* proceeds collected from that action. As this issue was not squarely before us in *Myers*, the

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above statement from *Myers* does not bind our decision today.

III. Conclusion

For the reasons set forth above, we dismiss this appeal for lack of subject matter jurisdiction under 26 U.S.C. § 7623(b)(4). We remand to the Tax Court with instructions to do the same.

So ordered.

**APPENDIX B – ORDERS REGARDING
PETITIONER'S MOTION FOR PANEL
REHEARING AND REHEARING EN BANC OF
THE U.S. COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT, FILED
MARCH 18, 2022**

UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 20-1245

September Term, 2021

USTC-5070-19W

Filed On: March 18, 2022

Mandy Mobley Li,

Appellant

v.

Commissioner of Internal Revenue,

Appellee

BEFORE: Henderson and Millett, Circuit
Judges; and Sentelle, Senior
Circuit Judge

ORDER

Upon consideration of appellant's petition for
panel rehearing filed on February 24, 2022, it is

ORDERED that the petition be denied.

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Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Anya Karaman
Deputy Clerk

**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

No. 20-1245

September Term, 2021

USTC-5070-19W

Filed On: March 18, 2022

Mandy Mobley Li,

Appellant

v.

Commissioner of Internal Revenue,

Appellee

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BEFORE: Srinivasan, Chief Judge;
Henderson, Rogers, Tatel, Millett,
Pillard, Wilkins, Katsas, Rao,
Walker, and Jackson*, Circuit
Judges; and Sentelle, Senior
Circuit Judge

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Anya Karaman
Deputy Clerk

* Circuit Judge Jackson did not participate in this matter.

**APPENDIX C – OPINION AND ORDER
REGARDING RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT OF THE U.S. TAX
COURT, FILED APRIL 6, 2020**

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

CLC

MANDY MOBLEY LI,)
)
 Petitioner,)
)
 v.) Docket No. 5070-19W.
)
 COMMISSIONER OF)
 INTERNAL REVENUE,)
)
 Respondent)

ORDER AND DECISION

On March 13, 2019, petitioner filed the petition to commence this whistleblower case, pursuant to Internal Revenue Code section 7623,¹ seeking review of a whistleblower determination letter issued to her by respondent.

This case is now before the Court on respondent's motion for summary judgment, filed

¹Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times. All Rule references are to the Tax Court Rules of Practice and Procedure.

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December 5, 2019. In support, respondent filed a declaration of Layne Carver and exhibits from the Internal Revenue Service (IRS) Whistleblower Office (WBO) administrative file. Petitioner objects to the motion for summary judgment.

Background

On December 12, 2018, the WBO received petitioner's Form 211, Application for Award for Original Information. Petitioner alleged that the target taxpayer had filed false claims of rental income, dependent children, alimony paid, and mortgage interest paid for its 2016 and 2017 tax years. The WBO assigned claim number 2019-003513 to petitioner's application.²

Petitioner's claim was forwarded to a classifier³ working under the direction of the WBO.⁴ The classifier considered the claim by reviewing the target taxpayer's income tax returns for the tax years 2016 and 2017. After comparing the allegations in the claim to the returns, the classifier concluded that the target taxpayer did not violate the tax laws as alleged and that the claim was speculative. The classifier

²The years at issue are discussed in further detail below.

³A classifier is an IRS employee whose role is "to determine if the information on the Form 211 warrants further review." See Internal Revenue Manual pt. 25.2.1.3.1(2) (Jan. 11, 2018).

⁴See Internal Revenue Manual, pt. 1.1.26.1.3.5 (Jan. 11, 2018); Cline v. Commissioner, T.C. Memo. 2020-35, fn. 3.

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documented her findings and conclusions on a classification checklist, including her recommendation that the WBO reject petitioner's claim.

The classification checklist was forwarded to the WBO, which accepted the classifier's recommendation and documented the same in an Award Recommendation Memorandum (ARM). The ARM recommended to the supervisory tax examining technician that petitioner's claim be rejected for the same reasons that the initial classifier identified. As a result, the WBO rejected petitioner's claim in a letter entitled "Final Decision Under Section 7623" (Final Determination Letter). The Final Determination Letter informed petitioner that her claim had been rejected because "the information provided was speculative and/or did not provide specific or credible information regarding tax underpayments or violations of internal revenue laws."⁵ The WBO formally rejected petitioner's claim with the issuance

⁵The WBO's form letter contained the same "and/or" conjunction that led to a lack of clarity in Lacey v. Commissioner, 153 T.C. ___, __ (slip op. at 33) (Nov. 25, 2019). In this case, the record establishes that all of the reasons stated in the letter are justified. So the general lack of clarity attendant to the "and/or" conjunction is inconsequential here. But the Court continues to be concerned that, in a closer case, this form text may create confusion when we review a summary rejection of a whistleblower claim. See Alber v. Commissioner, T.C. Memo.

2020-20, at *8-9 n.5.

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of the Final Determination Letter on February 8, 2019.

In her objection to the motion for summary judgment, petitioner argues that respondent, among other things, did not give adequate consideration to her allegations regarding the 2015 tax year. The Court ordered respondent to reply to petitioner's objection. Petitioner filed a response opposing respondent's reply. The Court has reviewed both parties' filings and the record, and has concluded that petitioner did not provide information that adequately substantiated a violation of the internal revenue laws for the 2015 tax year. Accordingly, the Court concludes that the WBO properly performed its evaluative function regarding the 2015 tax year.

Discussion

I. Summary Judgment

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988).⁶ In deciding whether to grant summary

⁶Under its current Rules and jurisprudence, the Court may grant summary judgment when there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

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judgment, we draw factual inferences in the light most favorable to the nonmoving party. Id. at 520.

II. Standard and Scope of Review

The Secretary is obligated to pay whistleblower awards if certain statutory requirements are met. See sec. 7623(b); 26 C.F.R. sec. 301.7623-1(c)(4), *Proced. & Admin. Regs.* Under section 7623(b)(4), the Court has jurisdiction to review any determination regarding an award under paragraph (1), (2), or (3). See Cooper v. Commissioner, 135 T.C. 70 (2010).

Pursuant to its jurisdiction, the Court reviews the decision of the WBO with respect to an award, including the denial of a whistleblower claim. Cooper v. Commissioner, 135 T.C. at 75. We review the WBO's determination for abuse of discretion, and the scope of our review is generally limited to the administrative record. Kasper v. Commissioner, 150 T.C. 8, 20-23 (2018). The Court will decide if the WBO's actions were arbitrary, capricious, or without sound basis in fact or law. Murphy v. Commissioner, 125 T.C. 301, 320 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006). However, "Congress has not conferred on the Tax Court authority to direct the IRS to commence or continue an audit * * * nor authority to direct collection." See Lacey v. Commissioner, 153 T.C. at __ (slip op. at 33). If the IRS decides not to proceed with an action with respect to the taxpayer(s) to whom the whistleblower claim relates, the Tax Court does not review that decision. Id. at __ (slip op. at 35).

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III. Analysis

Pursuant to section 7623, the WBO is charged with performing the initial evaluation of whistleblower claims to determine whether they meet the minimum standards for an award. See 26 C.F.R. sec. 301.7623-1(c)(4). The threshold criteria by which the WBO evaluates a claim's potential eligibility for an award include that the claim:

- "contain[s] specific * * * information";
- "contain[s] * * * credible information";
- provides "information that the whistleblower believes will lead to collected [tax] proceeds";
- reports "fail[ure] to comply with the internal revenue laws";
- "identif[ies] the person(s) believed to have failed to comply with the internal revenue laws";
- "provide[s] substantive information, including all available documentation"; and
- does not "provide speculative information".

Lacey v. Commissioner, 153 T.C. at 1 (slip op. at 24) (quoting 26 C.F.R. sec. 301.7623-1(c)(1),(4)).

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The administrative record shows that the WBO received petitioner's claim, evaluated its contents, and considered its allegations. The classification checklist completed by the classifier shows that she reviewed petitioner's information, performed research, and concluded that no violation of tax laws occurred as alleged by petitioner.⁷ The classifier also concluded that the claim was speculative. Accordingly, the classifier recommended rejection of the claim on these grounds.⁸

The administrative record also shows that the WBO received the classifier's recommendation and concurred with it. The WBO, in turn, prepared an ARM which recommended rejection of petitioner's claim. Pursuant to the initial classifier's recommendation and the ARM, the WBO rejected the claim on the basis stated in the Final Determination Letter that "the information provided was speculative and/or did not provide specific or credible information regarding tax underpayments or violations of internal revenue laws."⁹

The record in this case establishes that the WBO evaluated the information provided by petitioner and decided it did not warrant further investigation by an IRS operating division. In deciding

⁷See 26 C.F.R. sec. 301.7623-1(c).

⁸See 26 C.F.R. sec. 301.7623-3(b)(3).

⁹See 26 C.F.R. sec. 301.7623-3(b)(3).

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not to forward the claim for any further investigation by an IRS operating division, the WBO evidently performed its evaluative function. Alber v. Commissioner, T.C. Memo. 2020-20. The grounds articulated by the WBO in support of its determination to reject petitioner's claim do not appear to lack a sound basis in fact and law, and the rejection is reasonably supported by the administrative record. Id. Accordingly, the Court holds that the WBO did not abuse its discretion when it rejected petitioner's claim.¹⁰

As there is no genuine issue as to any material fact, the Court will grant respondent's motion for summary judgment.

Upon due consideration, it is

ORDERED that respondent's Motion For Summary Judgment is granted. It is further

ORDERED AND DECIDED that respondent's final determination rejecting petitioner's

¹⁰Respondent also argues that it is entitled to summary judgment because the IRS did not proceed with an administrative or judicial action against the target taxpayer and, as a natural consequence, collected no proceeds. The Court need not address that argument because, as stated above, the Court concludes that the WBO rejected petitioner's claim and did not abuse its discretion in doing so. Lacey v. Commissioner, 153 T.C. at __ (slip op. at 25-26, 33-34).

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whistleblower claim with respect to claim number
2019-003513, dated February 8, 2019, is sustained.

(Signed) Courtney D. Jones
Judge

ENTERED: APR 06 2020

APPENDIX D - STATUTORY AND REGULATORY PROVISIONS INVOLVED

5 U.S.C. § 704 provides in relevant part:

Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

26 U.S.C. § 7623 provides in relevant part:

Expenses of detection of underpayments and fraud, etc.

(a) In general.—

The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for—

- (1) detecting underpayments of tax, or
- (2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same,

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in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts collected by reason of the information provided, and any amount so collected shall be available for such payments.

(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 proceeds collected as a result of the action (including any related actions) or from any settlement in response to such action (determined without regard to whether such proceeds are available to the Secretary). 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

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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 proceeds collected as a result of the action (including any related actions) or from any settlement in response to such action (determined without regard to whether such proceeds are available to the Secretary), 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) Nonapplication 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 Whistleblower 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

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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 proceeds 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.

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(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.

(c) Proceeds.—

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 Service is authorized to administer, enforce, or investigate, including—

(A) criminal fines and civil forfeitures, and

(B) violations of reporting requirements.

(d) Civil action to protect against retaliation cases.—

(1) Anti-retaliation whistleblower protection for employees.—

No employer, or any officer, employee, contractor, subcontractor, or agent of such employer, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment (including through an act in the ordinary course of such employee's duties) in reprisal for any lawful act done by the employee—

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(A) to provide information, cause information to be provided, or otherwise assist in an investigation regarding underpayment of tax or any conduct which the employee reasonably believes constitutes a violation of the internal revenue laws or any provision of Federal law relating to tax fraud, when the information or assistance is provided to the Internal Revenue Service, the Secretary of the Treasury, the Treasury Inspector General for Tax Administration, the Comptroller General of the United States, the Department of Justice, the United States Congress, a person with supervisory authority over the employee, or any other person working for the employer who has the authority to investigate, discover, or terminate misconduct, or

(B) to testify, participate in, or otherwise assist in any administrative or judicial action taken by the Internal Revenue Service relating to an alleged underpayment of tax or any violation of the internal revenue laws or any provision of Federal law relating to tax fraud.

(2) Enforcement action.—

(A) In general.—

A person who alleges discharge or other reprisal by any person in violation of

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paragraph (1) may seek relief under paragraph (3) by—

(i) filing a complaint with the Secretary of Labor, or

(ii) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(B) Procedure.—

(i) In general.—

An action under subparagraph (A)(i) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(ii) Exception.—

Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

(iii) Burdens of proof.—

An action brought under subparagraph (A)(ii) shall be governed by the legal burdens of proof set forth in section

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42121(b) of title 49, United States Code,
except that in applying such section—

(I) "behavior described in paragraph (1)" shall be substituted for "behavior described in paragraphs (1) through (4) of subsection (a)" each place it appears in paragraph (2)(B) thereof, and

(II) "a violation of paragraph (1)" shall be substituted for "a violation of subsection (a)" each place it appears.

(iv) Statute of limitations.—

A complaint under subparagraph (A)(i) shall be filed not later than 180 days after the date on which the violation occurs.

(v) Jury trial.—

A party to an action brought under subparagraph (A)(ii) shall be entitled to trial by jury.

(3) Remedies.—

(A) In general.—

An employee prevailing in any action under paragraph (2)(A) shall be entitled to all relief necessary to make the employee whole.

(B) Compensatory damages.—

Relief for any action under subparagraph (A) shall include—

(i) reinstatement with the same seniority status that the employee would have had, but for the reprisal,

(ii) the sum of 200 percent of the amount of back pay and 100 percent of all lost benefits, with interest, and

(iii) compensation for any special damages sustained as a result of the reprisal, including litigation costs, expert witness fees, and reasonable attorney fees.

(4) Rights retained by employee.—

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.

(5) Nonenforceability of certain provisions waiving rights and remedies or requiring arbitration of disputes.—

(A) Waiver of rights and remedies.—

The rights and remedies provided for in this subsection may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(B) Predispute arbitration agreements.—

No predispute arbitration agreement shall be valid or enforceable, if the

Appendix D

agreement requires arbitration of a
dispute arising under this subsection.