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June 21, 2010

The Honorable Timothy Geithner
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Secretary Geithner:

It has been almost three and a half years since the whistleblower program revisions I authored were enacted in the *Extension of Tax Relief Act of 2006*. I shepherded this legislation through despite strong opposition from some at the Treasury and the Internal Revenue Service (IRS). Last year the Treasury Inspector General for Tax Administration (TIGTA) published a report (Report No. 2009-30-114) titled "*Deficiencies Exist in the Control and Timely Resolution of Whistleblower Claims*." This report highlights how successful the revisions have been in encouraging whistleblowers to come forward. According to this report, almost 2,000 claims had been filed in calendar years 2007 and 2008 alleging over \$70 billion of underreported income.

However, I am worried that the naysayers at Treasury and the IRS who opposed the provision in 2006 are effectively undermining the whistleblower statute. Soon after the bill was signed into law in 2006, I wrote to then-Treasury Secretary Paulson requesting to be apprised of guidance issued by the Internal Revenue Service (IRS) and the Department of the Treasury regarding the program. I am enclosing a copy of that letter and then- IRS Commissioner Everson's response.

Given this agreement, I am writing to express my concern and disappointment about the lack of notice regarding the changes to the whistleblower provisions in the Internal Revenue Manual (IRM) dated June 18, 2010, as posted on IRS.gov. I am particularly frustrated that this guidance was issued while my staff's requests during the past few weeks for the most recent annual whistleblower report to Congress have gone unanswered.

I was recently provided a copy of a PowerPoint presentation that the Director of the IRS Whistleblower Office used at the April 27, 2010, conference hosted by Taxpayers Against Fraud titled, "IRS Whistleblower Boot Camp." Based upon this presentation, I gather that these IRM changes have been contemplated for some time. Yet, neither I nor my staff, were apprised of the IRM changes nor does it appear that public comment was sought.

After reviewing the new IRM provisions, I have serious concerns that the new IRM provisions will deter whistleblowers from filing claims. I ask that implementation of the new IRM provisions be delayed effective immediately until the following questions are answered and documents provided.

- 1) Provide copies of all Office of Chief Counsel (OCC) memoranda, advice and correspondence regarding these changes.
- 2) Provide copies of minutes, or other documentation, of meetings and discussions, both internal and external, regarding the IRM changes.
- 3) Explain why the IRM changes were not released for public comment.

In addition to the IRS posting the new IRM provisions without public comment, there are many substantive concerns within the IRM. For example, the new definition of “collected proceeds” is particularly troubling because it seems to limit the payment of awards to whistleblowers only in those instances where the IRS receives cash payment from a taxpayer. An IRS spokesperson, in response to an inquiry from the media, stated that the IRS is bound by the written statute. Yet, this was never raised with me or my staff. The denial of a whistleblower award where the whistleblower’s information leads to the denial of a claim for refund seems to create a perverse incentive for the whistleblower to wait until the IRS has paid an improper refund. In addition, the IRM says that satisfaction of a taxpayer’s liabilities by reducing a credit balance is not within the scope of collected proceeds so the whistleblower would receive no award.

- 4) For all years for which data is available, provide the number of whistleblower claims that were denied because the IRS action, resulting from whistleblower information, did not result in actual cash collected.
- 5) If whistleblower awards were previously awarded for refund claims or other action resulting in elimination of the liability without payment, explain why this policy was changed now.
- 6) If whistleblower awards were previously awarded for tax liabilities that were satisfied from a taxpayer’s credit balance, or other action resulting in elimination of the liability without payment, explain why this policy was changed now.
- 7) Compare the standard for collected proceeds to the basis for awards under the False Claims Act.
- 8) Provide documentation of discussions and decisions, including memoranda, advice and correspondence regarding these changes.

Further, section 25.2.2.8 of the new IRM related to the administrative proceeding for whistleblower rewards contains a troubling provision requiring a whistleblower to sign a confidentiality agreement before receiving access to the preliminary award report package. I have long been an advocate for open and transparent government and have questioned the use of confidentiality agreements because of the potential for misuse and abuse of these agreements. As a result, the individual would have no recourse to publicly question the award determination made by the IRS. Absent proper internal controls, this requirement of a confidentiality agreement has the potential to hush whistleblowers and provides the IRS a strong tool to force

whistleblowers to accept a reduced award. This confidentiality appears to be in direct contradiction to the spirit and intent of the whistleblower provision I authored. The goal of this law was to bring information on tax fraud and tax cheats IN from the cold, not to bring it into an agency to be placed under lock and key.

- 9) What is the purpose of the confidentiality provision required in section 25.2.2.8 of the new IRM?
- 10) Provide the names of all individuals at the IRS that proposed and drafted this provision.
- 11) Provide copies of all memorandums, legal research, and legal analysis related to this provision.
- 12) Provide a detailed explanation outlining the IRS's past, present, and proposed use of confidentiality agreements in whistleblower cases. This response should include a list of all whistleblower cases where the IRS required the whistleblower to sign a confidentiality agreement, what the terms of that confidentiality agreement were, and how often whistleblowers have objected to signing that confidentiality agreement.
- 13) In the opinion of the IRS, would the confidentiality agreement preclude a whistleblower from providing information about the preliminary award package to Congress?
- 14) Would the IRS consider it a "negative factor in determining the specific award percentage" if a whistleblower provided information on the preliminary award package to Congress, even if they signed the confidentiality agreement?

I am also troubled by the facts laid forth in the attached letter that was forwarded to my office in March of this year. The IRM clearly states that the authority to determine the amount of whistleblower awards rests with the Director of the IRS Whistleblower Office. Yet, the letter indicates that the then Deputy Commissioner for Services and Enforcement overruled the decisions of both the whistleblower Director and ad hoc committee comprised of other senior executives with respect to the amount to be awarded to Mr. XYZ.

I have learned from my almost three decades of experience with whistleblowers that government agencies will often seek to undermine or undercut the whistleblower. Prior to the 2006 changes, there was a culture of hostility towards and intimidation of whistleblowers at the IRS. That is why I created an independent Whistleblower Office at the IRS and delegated authority for reviewing claims and determining awards with that office. The actions of the then Deputy Commissioner for Services and Enforcement, and the existence of the ad hoc committee, are contrary to law.

- 15) Explain how and why the Deputy Commissioner for Services and Enforcement was permitted to override both the Director of the IRS Whistleblower Office and the ad hoc Governance Board.
- 16) Provide copies of any memos and reports prepared by the Whistleblower Office regarding Mr. XYZ's claim.

- 17) Indicate when the ad hoc committee was created, how many claims it has reviewed and the result of each review.
- 18) Provide documentation for any claim where the ad hoc committee overruled the Director of the Whistleblower Office.

The statement made by the Director of the IRS Whistleblower Office, in his May interview with The Washington Post, that the IRS has yet to issue an award under the 7623(b) of the Internal Revenue Code, is also worrisome.. The TIGTA report, referenced above, revealed that as of March 30, 2009, 700 of 1,973 claims, over 35 percent of the claims processed by the Whistleblower office, were still awaiting action. The Report also noted that only 69 of the 1,973 claims, around 3 percent, had been sent to an examination office for action by an agent. See Report, Figure 1, page 3.

I understand the Fiscal Year 2009 Whistleblower Office Annual Report to Congress has been provided to Treasury for review and is expected to be released shortly. Given that no awards have been issued under the new law, when this report is provided to Congress, please also provide the following.

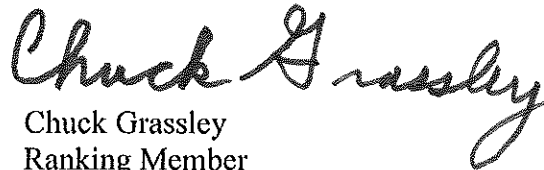
- 19) Provide an update of the information contained in the chart at Figure 1 of the 2009 TIGTA Report (attached).
- 20) Provide the highest, lowest and average number of days whistleblower claims sit in each of the offices listed in that chart.
- 21) Indicate whether any whistleblower claims have been or will be denied because of the statute of limitations and explain what IRS is doing to prevent the statute of limitations interfering with recovery of taxpayer dollars.

Finally, I would like to remind you that I asked for a response to my June 8, 2010, letter (attached) regarding the IRS's use of whistleblower information in the UBS case. I ask that you immediately contact me or my staff regarding that response as well as my request above to delay the effective date of the IRM changes released June 18.

The Treasury and IRS moved very quickly to appoint the Director of the Whistleblower Office – within two months of when the statute was enacted. Despite this early commitment to the Whistleblower Office, I am very worried that this office is not getting the support it needs and that the program is being undermined by the old guard who would like to see it fail. The potential success of the whistleblower program is indisputable. The question is whether the program will thrive and succeed, or, because of the lack of leadership at the highest levels at Treasury and the IRS, if it will fail. Failure, of course, comes at the expense of the honest taxpayer.

I look forward to your prompt attention to this matter, including a quick decision on my request to delay implementation of the IRM changes until my questions have been answered. Further, I also request that your staff provide a briefing to my staff as soon as possible to discuss your responses and many other concerns and reservations about the IRM that were not raised in this letter that I continue to have. Please contact me or my staff at (202) 224-4515 with any questions.

Sincerely,

Handwritten signature of Chuck Grassley in black ink.

Chuck Grassley
Ranking Member

Enclosures

cc: The Honorable Douglas H. Shulman
The Honorable William J. Wilkins