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Always Be Nice to Whistleblowers (And Other Changes Made by the Taxpayer First Act)

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The Taxpayer First Act became law on July 1, 2019, and contains a variety of changes to IRS procedures and related matters. The Act grants important new protections to employee "whistleblowers," including a Federal right of action to recover damages for retaliatory action by an employer. This update highlights major changes made by the Act. The provisions of the Act come into effect on a variety of dates, and each should be reviewed to ascertain its effective date.

Whistleblower Reforms

The Act protects employees who provide information regarding their employers to the IRS from retaliatory action by those employers. Prohibited retaliatory action includes discharge, demotion, suspension, threats, harassment, or other discrimination.

A whistleblower who alleges retaliatory action by an employer may file a complaint with the Secretary of Labor. If the Secretary does not issue a final decision within 180 days of the filing of the complaint, the whistleblower may bring an action in the appropriate United States District Court for reinstatement, 200% of back pay (with interest), other special damages, and reasonable attorney's fees.

If the Secretary of Labor determines that a whistleblower's rights were not violated, it appears that the whistleblower may seek review of that determination in the United States Court of Appeals.¹

If the Secretary of Labor determines that the whistleblower's rights were violated, the Secretary can order the employer to reinstate the whistleblower to the whistleblower's former position (with back pay) and to pay other compensatory damages.²

Other Changes

- Taxpayers are granted additional rights at the IRS Office of Appeals, including statutory recognition of Appeals' function to resolve Federal tax controversies without litigation and of the need for that resolution process to be generally available to all taxpayers.³
- The ability of the Government to seize taxpayers' property for alleged violations of the Bank Secrecy Act is limited.
- The Tax Court is granted broader authority to grant "equitable relief" in "innocent spouse" cases.

- Restrictions are placed on the ability of the IRS to issue certain "John Doe summonses," and higher-level review within the IRS will be required for the issuance of "designated summonses."
- Taxpayers are granted expanded rights to notice before the IRS contacts third parties regarding the taxpayers' tax liabilities.
- Taxpayers have long had the ability to permit the IRS to disclose their tax return information to third parties. Restrictions have now been placed on the uses to which those third parties may put the information and on their ability to re-disclose the information to others.
- The Act broadens the authority of the IRS to mandate electronic filing of tax returns other than individual income tax returns. Additionally, tax-exempt organizations are generally required to file their tax returns electronically, and such returns will be made available in machine-readable format for inspection by the public.
- In order to "restore trust in the integrity of IRS employees, and [to] hold IRS official accountable for their hiring practices," the Act prohibits the rehiring of IRS employees terminated for certain proven violations committed in connection with performance of their official duties.

Please contact any of our attorneys if you have questions about changes made by the Act.

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- ¹ Similarly, an employer aggrieved by the Secretary of Labor's determination that a violation did occur may seek review of that determination in the United States Court of Appeals.
- ² In an oddity of statutory drafting, a whistleblower appears to be entitled to 100% back pay if the Secretary of Labor determines that a violation occurred, but to 200% back pay if the whistleblower successfully litigates in District Court following the Secretary of Labor's failure to make a determination on the whistleblower's claim.
- ³ Neither the new statute nor its legislative history makes clear whether a taxpayer will have an effective remedy if it is denied this "right of appeal" (or the other Appeals rights granted by the new statute).