

Wyden Asks for Clarity on Barr's Potential Conflict With Tax Case

by Alexis Gravely

The top Democrat on the Senate Finance Committee is asking for clarification on whether Attorney General William Barr may have a conflict of interest if he resumes representing Caterpillar Inc. after his post in the Trump administration ends.

Sen. Ron Wyden of Oregon sent a December 21, 2020, letter to the director of the Justice Department's ethics office asking if Barr would violate federal ethics rules by representing the company during a pending investigation into Caterpillar's alleged tax evasion.

Barr, who began working on the case in 2017, said he stopped doing so on December 7, 2018, when President Trump nominated him for attorney general. No further action has been taken by the Justice Department on the investigation since shortly after Barr's nomination.

"Under such circumstances, I am concerned that if Mr. Barr returned to his representation of Caterpillar after his tenure as Attorney General ends it could create the appearance of a conflict of interest," Wyden wrote.

Wyden asked the department to publicly clarify the matter by January 4.

In 2015 a federal grand jury in Illinois began investigating Caterpillar's tax practices. Three of its offices were raided in 2017 by federal agents, and since 2018 the IRS has sought to recoup \$2.3 billion in unpaid taxes and penalties from the company. ■

IRS Whistleblower Proceeds Decline From Previous Year

by Alexis Gravely

Proceeds from the IRS Whistleblower Office totaled nearly \$145 million less in fiscal 2020 than in fiscal 2019, according to the office's annual report to Congress.

The report, released December 29, 2020, indicated that the office collected \$472.1 million in proceeds during the fiscal year and paid \$86.6 million in awards to 169 whistleblowers.

The amount of collected proceeds and number of whistleblowers have been steadily declining over the last three years. In 2018 the office collected \$1.4 billion in proceeds and paid 217 whistleblowers a total of \$312.2 million.

The lower numbers could be the result of the disruption in IRS operations caused by the COVID-19 pandemic, Dean Zerbe of Zerbe, Miller, Fingeret, Frank and Jadav LLP told *Tax Notes*, adding that increased staffing at the office and fewer restraints caused by the pandemic should boost next year's collection and award numbers.

The office is struggling with a backlog, according to the report. On average, it takes between 8.36 years and 10.79 years for the IRS to process awards, depending on the type of claim, it says. As of 2020, 23,943 claims were still open.

"These numbers are not acceptable," Stephen M. Kohn, a whistleblower attorney at Kohn, Kohn & Colapinto LLP, said in a release. "The backlog cost taxpayers billions in lost revenues. The delay in payments is seriously prejudicing the program. Congress and the Department of Treasury must allocate more resources to its whistleblower program."

The whistleblower program can also be pumped up in the next few years by the incoming Joe Biden administration, which has indicated that part of its focus will be on curbing tax cheats, said Zerbe.

"Any serious effort in going after tax evasion has to include the whistleblower program — easily one of the IRS's most effective tools in going after tax cheats," Zerbe said, which could be accomplished by the administration voicing its support for the program, encouraging whistleblowers to come forward, and directing

IRS examiners and agents to make the review of whistleblower submissions a priority. ■

Kristen A. Parillo contributed to this article.

October Saw Drop in Tax-Related Convictions and Prosecutions

by Frederic Lee

Tax-related prosecutions fell by 37 percent in October compared with the previous month, and convictions dropped by nearly a quarter over the same time frame, according to new data from Syracuse University.

October 2020 brought 51 new prosecutions for tax matters, down 21.4 percent compared with October 2019, while convictions — 38 in October — were down 24 percent versus September 2020 and 57.9 percent compared with a year ago.

Likewise, October convictions were down 73.2 percent and prosecutions were down 57.7 percent compared with five years ago, according to the October 2020 convictions and prosecutions reports from the university's Transactional Records Access Clearinghouse, generated December 4, 2020. Both figures exclude magistrate court proceedings.

The October figures continue a negative downward trend for both tax-related convictions and prosecutions, which started roughly six years ago for convictions and over seven years ago for prosecutions, according to the new reports.

For prosecutions, the top-ranked charges for October were for section 7201 violations for attempting to evade or defeat tax, with 12 counts. There were seven counts for section 7202 violations for willful failure to collect or pay over tax and six counts for section 7206 violations for fraud and false statements.

For convictions, section 7206 violations took the lead with 11 counts in October, while the second-ranked charge was for section 7201 violations, with eight counts. October also saw five counts of 18 U.S.C. section 1956 violations for laundering of monetary instruments, according to the report.

Tax fraud accounted for 71.1 percent of tax-related convictions and 54.9 percent of tax-related prosecutions in October, the reports show. ■