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November 12, 2021

Kinna Brewington  
Internal Revenue Service  
Room 6526  
1111 Constitution Avenue N.W.  
Washington, D.C. 20224

Re: *Comments on IRS Form 3949-A*

Dear Ms. Brewington:

We respectfully submit this letter in response to the Internal Revenue Service's *Comment Request for Form 3949-A*, 86 Fed. Reg. 51725, to provide comments on ways to enhance the quality, utility, and clarity of the information to be collected by the IRS.

As attorneys that represent individuals who submit claims under the IRS Whistleblower Program, we are well aware of the valuable role that whistleblowers play in facilitating the enforcement of the nation's internal revenue laws and the recovery of tax underpayments. Since 2007, whistleblowers have submitted information that has led to the IRS's collection of over \$6 billion from noncompliant taxpayers. We believe the IRS should take every opportunity to raise awareness of its Whistleblower Program so that individuals with valuable information regarding unpaid taxes will be knowledgeable and incentivized to provide that information to the IRS in the most appropriate manner.

Form 3949-A (Information Referral) is one manner by which individuals can report tax fraud to the IRS. Use of Form 3949-A is prevalent – the IRS has received hundreds of thousands of Forms 3949-A in recent years. The purpose of Form 3949-A overlaps with that of Form 211 (Application for Award for Original Information), which is the form that individuals must submit to be eligible for a whistleblower award under Section 7623(b) of the Code. Both forms direct individuals to provide information regarding potential tax fraud, but while Form 3949-A requests only a brief description of the alleged violation and a checkbox to indicate whether supporting documents are available, Form 211 requests a “detailed explanation” of “all pertinent facts,” an explanation of “why you believe the act described constitutes a violation of the tax laws,” and submission of “all supporting documentation” to substantiate the claim.

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The overlap in purpose between Form 3949-A and Form 211, combined with the different information requested by each, raises the possibility that an individual may use Form 3949-A (or decline to submit any form at all) in a situation in which Form 211 is more appropriate. For example, an individual who is unaware of the IRS Whistleblower Program may only provide the brief summary of a tax fraud requested by Form 3949-A, which may be insufficient to allow the IRS to fully understand and prosecute a large or complex tax fraud. If that individual instead was aware of the IRS Whistleblower Program and the financial awards that it offers, she or he may be more likely to invest the time and resources necessary (perhaps including the retention of counsel) to prepare a comprehensive factual and legal analysis of the tax fraud along with an explanation of enclosed supporting documentation that will enable the IRS to enforce the relevant laws and recover underpaid taxes.

We acknowledge that the instructions to Form 3949-A contain a statement that individuals with information who want to claim a reward should use Form 211.<sup>1</sup> We are nonetheless concerned that this brief, wholly inconspicuous statement, in which the reference to Form 211 is not set in bold type or hyperlinked to the Form itself, unlike other references to Forms appearing on Form 3949-A, may be insufficient to inform individuals of the procedures and incentives of the IRS Whistleblower Program. Therefore, we recommend that the IRS enhance Form 3949-A and its instructions to place the reference to Form 211 in a higher, more conspicuous position on the Form, refer to Form 211 in bold type with a hyperlink to the Form, and more fully communicate that:

- The IRS has a Whistleblower Program to handle submissions from individuals who wish to provide information regarding violations of the federal tax laws and obtain a financial award;
- Individuals who satisfy the requirements of the IRS Whistleblower Program and Section 7623(b) of the Code will be eligible for financial awards of 15-30% of the proceeds from enforcement actions in which the proceeds in dispute exceed \$2 million; and

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<sup>1</sup> A similarly brief statement is contained on the IRS webpage regarding the use of Form 3949-A and we would recommend that this webpage also be updated to more fully communicate information regarding the IRS Whistleblower Program. See “How Do You Report Suspected Tax Fraud Activity,” IRS Website, available at <https://www.irs.gov/individuals/how-do-you-report-suspected-tax-fraud-activity>.

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- To participate in the IRS Whistleblower Program and be eligible for an award under Section 7623(b) of the Code, individuals must submit Form 211 and need not submit Form 3949-A.<sup>2</sup>

The IRS is presently engaged in a variety of outreach efforts to publicize and raise awareness of its Whistleblower Program. We believe that our recommended enhancements to Form 3949-A will support these efforts by communicating important information regarding the IRS Whistleblower Program to the many individuals without knowledge of the Program who report potential tax fraud on Form 3949-A. In addition, such enhancements will also improve the quality, utility, and clarity of the information collected through Form 3949-A, and reduce the administrative burden associated with such collection, by redirecting certain individuals who should more appropriately utilize Form 211 to provide information to the IRS Whistleblower Office using that form.

Thank you in advance for your consideration of the comments expressed in this letter. Should you have any questions regarding these comments or any other issues related to the Form 3949-A information referral process or the IRS Whistleblower Program, please contact our Whistleblower Practice Group through its co-chairs, Gary L. Azorsky or Jeanne A. Markey, or attorney Raymond M. Sarola, at (267) 479-5700.

Sincerely,

**Cohen Milstein Sellers & Toll PLLC**

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<sup>2</sup> In particular, we recommend that the IRS add reference to the Whistleblower Program and Form 211 to the first header on Form 3949-A immediately beneath the statement that cautions, "There may be other more appropriate forms specific to your complaint."