**LAW OFFICE OF WM. MARK SCOTT PLLC**
SCOTTPLLC.COM

MARK SCOTT, ESQ.
202.256.6295
1870 WYOMING AVE., NW, #704
WASHINGTON, DC 20009
MARK@SCOTTPLLC.COM

VIA Email Only

May 25, 2022

Stephanie A. Servoss
Clerk of the Court
United States Tax Court
400 Second Street, N.W., Room 111
Washington, D.C. 20217

Re: Comment on Proposed Tax Court Rules

Dear Ms. Servoss:

I write to express my opposition to Proposed Tax Court Rules 92 and 121(j), as such will inappropriately restrict judicial review in a manner that will lead to injustice.

The processes employed by the IRS in its whistleblower program result in factually incomplete administrative files being maintained in the IRS Whistleblower Office. The Whistleblower Office includes in its administrative file the *results of* all claim-generated examinations. These *results* are transmitted from IRS examination employees directly to the IRS whistleblower analyst. The bases for these results are not transmitted to the IRS whistleblower analyst, there is no formal legal review of the facts or analysis used by the examination division to reach its conclusions, and the employees in the IRS examination divisions have not received any training on the applicability of the whistleblower statute, IRC § 7623. As such, employees within the IRS examination divisions are reaching IRC § 7623 legal conclusions on their own, without any formal review, often based on incorrect notions of how the whistleblower statute should, in their untrained view, be interpreted and applied to any particular set of facts. These employees are then transmitting only the *results* of their legal determinations to the IRS Whistleblower Office. Critically important facts that could lead to a different result are typically not transmitted to the IRS Whistleblower Office and are, therefore, not incorporated into the administrative file maintained by that office.

As an example, I was involved in a proceeding where an employee within the Tax-Exempt and Government Entities Division determined, based on a narrow, incorrect understanding of the whistleblower statute, that collections from individual bondholders were not "collected proceeds" in the context of a bond examination conducted at the State issuer level.

This employee informed the IRS whistleblower analyst only the *result* of his determination—that there were no collected proceeds from the issuer of the bonds—without advising the analyst about the collections from the holders of the bonds.

As shown by this real-life example, IRS personnel in an examination division had withheld critically important facts from the analyst in the IRS Whistleblower Office. As such, in this instance, without my intervention and insistence that the Whistleblower Office analyst request information about tax collections from bondholders, and the willingness of that particular analyst to challenge the validity and completeness of the record presented by the IRS examination division, the critically important facts about collections from the holders of the bonds would not have been included within the administrative file maintained by the IRS Whistleblower Office.

Although the IRS administrative file could be supplemented with records gathered from the IRS examination divisions through formal discovery, this is only true if the Tax Court is willing to compel discovery over IRS objections prior to ruling on summary judgment. This has not always been the case.

For these reasons, I strongly disagree with Proposed Tax Court Rule 92 and 121(j), as such rules are based on incorrect assumptions regarding the factual completeness of the IRS administrative file.

Very truly yours,

LAW OFFICE OF WM. MARK SCOTT PLLC

Wm. Mark Scott