

# United States Tax Court

T.C. Memo. 2026-104

WILLIAM M. SCOTT,  
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent

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Docket No. 5851-23W.

Filed October 1, 2026.

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William M. Scott, pro se.

*Patricia G. Donovan* and *Philip R. Cleary*, for respondent.

## MEMORANDUM OPINION

GUIDER, *Judge*: In this whistleblower award case petitioner seeks review pursuant to section 7623(b)(4)<sup>1</sup> of a final decision by the Internal Revenue Service (IRS or respondent) to deny his claim for an award. Petitioner reported a nonprofit correctional corporation (Correctional Corp.) to the IRS alleging that they had failed to comply with their tax obligations regarding bonds the corporation issued in 2006 (2006 Bonds). The IRS opened an investigation into Correctional Corp. on the basis of the information petitioner provided but ultimately did not grant petitioner a monetary award because it closed the investigation without collecting any proceeds. Petitioner timely petitioned our Court for review. Currently pending before our Court are (1) respondent's Motion for Summary Judgment, Doc. 19, (2) petitioner's

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<sup>1</sup> Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure.

[\*2] Motion to Compel Production of Documents, Doc. 34, and (3) petitioner’s Motion for Partial Summary Judgment, Doc. 39. For the reasons set out below, we find that the record sufficiently justifies the IRS Whistleblower Office’s (WBO) determination to deny an award and that the WBO’s decision therefore does not reflect an abuse of discretion. We therefore will grant respondent’s Motion and deny petitioner’s Motions.

### *Background*

The following facts are derived from the pleadings, the parties’ Motion papers, the Declarations and Exhibits attached thereto, and the Administrative Record filed with the Court. These facts are stated solely for the purpose of ruling on the Motions before us and not as findings of fact in this case. *See Whistleblower 769-16W v. Commissioner*, 152 T.C. 172, 173 (2019).

#### *I. Petitioner’s Whistleblower Claims*

Petitioner states that he has more than 25 years of experience in the tax-exempt bond industry, including “as Director of the IRS Office of Tax Exempt Bonds, as bond liaison for the IRS District Counsel, as an attorney in the IRS Office of Chief Counsel, and as an attorney and accountant in private practice.” In December 2014 the WBO received from petitioner Form 211, Application for Award for Original Information. Petitioner identified Correctional Corp. and submitted five pages of detailed explanation outlining Correctional Corp.’s violations related to the 2006 Bonds, along with multiple exhibits.

In February 2015 the WBO sent petitioner a letter acknowledging receipt of his Form 211 and, after some internal shuffling,<sup>2</sup> assigned Subject Matter Expert Randy Torres (SME Torres) for taint review, analysis, and recommendation, Tax Law Specialist James Held (TLS Held), and Senior Tax Analyst Joel Calandreli (STA Calandreli). On November 17, 2015, SME Torres interviewed petitioner and discussed his Form 211.

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<sup>2</sup> The claim was originally classified as a section 7623(a) claim but was reclassified as a section 7623(b) claim. After reclassification, the claim was assigned to Group Manager Derek Knight (GM Knight) in the IRS Tax-Exempt and Government Entities/Tax-Exempt Bonds group (TEGE–TEB). GM Knight then assigned the claim within TEGE–TEB.

**[\*3]** On December 15, 2015, TLS Held emailed the WBO and recommended that Correctional Corp. be selected for examination on the basis of petitioner's information. On January 27, 2016, TLS Held transmitted the whistleblower claim file for Correctional Corp. to Revenue Agent Abdullah Saleh (RA Saleh) for a field examination. After an examination of the bonds and the corresponding facility, RA Saleh determined that Correctional Corp. had not properly classified the 2006 Bonds on the basis of the percentage of federal inmates at their facility.

During discussions with the representative for the holders of the Correctional Corp. bonds (Bondholders), and in light of Internal Revenue Manual (IRM) 4.81.5.11.1(3) (Jan. 28, 2016) and a memorandum issued by the director of TEGE-TEB (TEGE-04-1016-0020), RA Saleh brought up the possibility of closing the examination if the Bondholders converted 100% of the outstanding principal of the 2006 Bonds into taxable bonds. On November 14, 2016, the representative emailed RA Saleh stating that the Bondholders were willing to convert the 2006 Bonds to taxable bonds provided that no payment of tax on the 2006 Bonds' interest to date would be required. RA Saleh forwarded this email to Group Manager Janae Lemley (GM Lemley) for review. GM Lemley contacted Tax-Exempt Bonds Field Operations Manager Allyson Belsome (FOM Belsome) regarding the conversion, and FOM Belsome approved the plan outlined in the representative's and RA Saleh's communications.

On March 24, 2017, the trustee of the 2006 Bonds filed a trust petition in a state district court to obtain approval to cause the 2006 Bonds to be converted to new, taxable bonds (2017 Bonds). Soon thereafter, the state court approved the conversion of the 2006 Bonds to the taxable 2017 Bonds in an order dated May 5, 2017. On June 6, 2017, the representative emailed RA Saleh to inform him that the state court had approved the bond conversion and that the 2006 Bonds had been closed and exchanged for the 2017 Bonds. The representative also told RA Saleh that he would send the new trust indenture for the 2017 Bonds, which RA Saleh received on June 12, 2017.

On June 13, 2017, RA Saleh prepared Form 11369, Confidential Evaluation Report on Claim for Award, recommending that petitioner receive no award. The form recounted the history described above and further stated that the 2006 Bonds were reissued as taxable bonds, that the examination was closed with a No Change Advisory Letter, and that petitioner did not provide specific identifying information on the parties involved in the transaction (i.e., the Bondholders). Also on June 13,

[\*4] 2017, GM Knight emailed the WBO Form 11369 and the exam closing letters stating that his field office was closing the bond examination into Correctional Corp.

On October 13, 2017, STA Calandreli began reviewing the information provided by TEGE–TEB and RA Saleh/GM Knight. STA Calandreli determined that he needed additional information from TEGE–TEB to issue the Award Recommendation Memorandum (ARM) and emailed GM Knight and Technical Advisor Jayne Maxwell requesting additional information, including a narrative summary of the examination.

On October 27, 2017, GM Knight and STA Calandreli held a phone call discussing the claim. GM Knight set out the two problems he saw with petitioner’s argument. First, if TEGE–TEB required Correctional Corp. to pay out the bonds and close them, then TEGE–TEB would not collect any proceeds on the basis of petitioner’s information because the 2006 Bonds would be taken off the market and would no longer exist. Any subsequent bonds issued would not be included in the information petitioner submitted, so petitioner would not receive any reward for taxes collected on the newly issued bonds. Second, GM Knight believed that it would be nearly impossible to know whether any tax would be collected on the newly issued bonds. Even though the 2017 Bonds are now taxable, he claimed that the IRS would have to discover the identity of the Bondholders, monitor all the Bondholders for the next 20–30 years, and estimate the taxes paid because some bonds might be recalled or redeemed, or alternatively, would be owned by tax-exempt entities. GM Knight stated that before 2016 TEGE–TEB would have collected the unpaid taxes from the previous three years and then required the issuer to convert the bonds to taxable bonds moving forward. However, as stated above, TEGE–TEB changed its guidance for these kinds of cases and would not pursue the previous three years. *See supra* p. 3.

After considering the information submitted by GM Knight and supplemental information submitted by petitioner,<sup>3</sup> on August 10, 2018, STA Calandreli sent his revised ARM to Case Development and Oversight Program Manager Steve Mitzel. STA Calandreli ultimately concluded that, although the IRS opened an investigation into

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<sup>3</sup> Petitioner submitted two emails to STA Calandreli on August 2 and 4, 2017, containing his opinions regarding the actions taken by the Bondholders to close the examination.

[\*5] Correctional Corp. on the basis of petitioner's information, the IRS did not collect any proceeds from the Bondholders on the basis of the information petitioner provided. Accordingly, he recommended that the WBO deny petitioner's claim.

On January 21, 2022, petitioner's claim was reassigned to Senior Tax Analyst Van Vo (STA Vo). On June 13, 2022, STA Vo drafted the preliminary denial letter (PDL) and updated the ARM. On September 19, 2022, the WBO issued the PDL to petitioner that proposed to deny petitioner's claims for an award. Petitioner sent a response to STA Vo on October 11, 2022. The response outlined three reasons why petitioner was requesting a settlement conference to discuss the PDL: (1) TEGE-TEB discouraged whistleblowers from submitting claims on tax-exempt bond transactions by implementing a "quid pro quo scheme" where the noncompliant bonds are reissued with no taxes collected, (2) under the scheme, the IRS is actually collecting proceeds which requires payout of an award based on section 7623, and (3) the IRS misinterpreted the statute.

On November 14, 2022, STA Vo revised the ARM to include petitioner's response to the PDL. STA Vo stated that petitioner did not provide any new information and accordingly would not change the outcome of the determination. On December 12, 2022, petitioner sent STA Vo a letter with attached exhibits explaining his disagreement with the PDL in detail. STA Vo reviewed the letter with her supervisor, and they concluded that a final determination letter (FDL) was to be issued.

On February 7, 2023, the WBO issued the FDL denying petitioner's claim for an award. The basis for the denial was that the IRS examination "didn't result in an assessment with respect to the issues [petitioner] raised" and "the information provided didn't result in the collection of any proceeds."

## II. *Tax Court Proceedings*

On February 3, 2025, respondent certified and filed the Administrative Record and filed a Motion for Summary Judgment, Doc. 19, contending that the WBO did not abuse its discretion in denying petitioner's claim for award. In his Motion respondent urges that the way TEGE-TEB concluded the examination into the Bondholders was appropriate and did not result in the collection of any proceeds. Petitioner timely opposed the Motion. He contends that the abuse of discretion standard is inappropriate because the Administrative Record

[\*6] is incomplete, that there are multiple disputed facts, and that the IRS did in fact collect revenue from the Bondholders.

On July 16, 2025, petitioner filed a Motion to Compel Production of Documents. Doc. 34. Petitioner argued (1) that the record was incomplete because it did not contain the Trust Indenture for the 2017 Bonds and (2) that respondent introduced a new reason for denying his claim for award, which entitled petitioner to conduct discovery into the new reason for denial. On August 22, 2025, petitioner filed a Motion for Partial Summary Judgment, Doc. 39, contending that the Administrative Record demonstrates that the WBO abused its discretion in determining that no proceeds were collected and denying petitioner's claim for award.

### *Discussion*

#### I. *Summary Judgment Standard in Whistleblower Cases*

The purpose of summary judgment is to expedite litigation and avoid costly, unnecessary, and time-consuming trials. *See FPL Grp., Inc. & Subs. v. Commissioner*, 116 T.C. 73, 74 (2001). As a general rule, we shall grant summary judgment where the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *See* Rule 121(a)(2); *Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994). But a slightly different standard applies when we review agency action—here, a whistleblower award determination—under the Administrative Procedure Act. *Kasper v. Commissioner*, 150 T.C. 8, 14–15 (2018). In such cases we generally “confine ourselves to the administrative record to decide whether there has been an abuse of discretion.” *See Van Bemmelen v. Commissioner*, 155 T.C. 64, 78 (2020).

Our Rules recognize this distinction, clarifying that, in cases where judicial review is based solely on the administrative record, Rule 121(a)(2) does not apply. Instead, the parties must provide “statement[s] of facts with references to the administrative record.” Rule 121(j). In this context summary judgment serves as a mechanism for deciding, as a matter of law, whether the WBO's determinations are supported by the administrative record or (conversely) are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Van Bemmelen*, 155 T.C. at 72 (quoting *Kasper*, 150 T.C. at 21).

In conducting this analysis, we do not substitute our judgment for that of the agency. Rather, we confine ourselves to ensuring that the

[\*7] WBO’s determination was “within the bounds of reasoned decisionmaking.” *Id.* (quoting *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019)). With respect to factual matters, we accept the WBO’s determinations so long as they are not “clearly erroneous.” *See Kasper*, 150 T.C. at 23 (quoting *Fargo v. Commissioner*, 447 F.3d 706, 709 (9th Cir. 2006), *aff’g* T.C. Memo. 2004-13).

## II. Section 7623

Section 7623 provides for awards to individuals (commonly referred to as whistleblowers) who submit information to the Secretary of the Treasury about third parties who have underpaid their taxes or otherwise violated the internal revenue laws. Section 7623(a) authorizes discretionary payments in certain circumstances, while section 7623(b) provides for nondiscretionary (i.e., mandatory) awards.

Under section 7623(b)(1), a whistleblower generally is entitled to a mandatory award if the Secretary of the Treasury proceeds with an administrative or judicial action on the basis of information provided by the whistleblower and collects proceeds as a result of the action.<sup>4</sup> The amount of the award generally is between 15% and 30% of the collected proceeds, depending on the extent to which the whistleblower substantially contributed to the action. § 7623(b)(1).

Regulations under section 7623 provide guidance in interpreting the statutory standard. As relevant here, the regulations define an “administrative action” as “all or a portion of an [IRS] civil or criminal proceeding against any person that may result in collected proceeds . . . including, for example, an examination, a collection proceeding, a status determination proceeding, or a criminal investigation.” *Treas. Reg.* § 301.7623-2(a)(2). Similarly, a “judicial action” means “all or a portion

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<sup>4</sup> Sec. 7623(b). Awards to whistleblowers.—

(1) In general.—If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary’s attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the proceeds collected as a result of the action (including any related actions) or from any settlement in response to such action (determined without regard to whether such proceeds are available to the Secretary). The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.

[\*8] of a proceeding against any person in any court that may result in collected proceeds.” *Id.* subpara. (3). The regulations further provide that the IRS proceeds based on a whistleblower’s information

when the information provided substantially contributes to an action against a person identified by the whistleblower. For example, the IRS proceeds based on the information provided when the IRS initiates a new action, expands the scope of an ongoing action, or continues to pursue an ongoing action, that the IRS would not have initiated, expanded the scope of, or continued to pursue, but for the information provided. The IRS does not proceed based on information when the IRS analyzes the information provided or investigates a matter raised by the information provided.

*Id.* para. (b)(1).

The U.S. Court of Appeals for the D.C. Circuit recently upheld and clarified this standard in *Lissack v. Commissioner*, 125 F.4th 245 (D.C. Cir. 2025), *aff’g* 157 T.C. 63 (2021). In relevant part the D.C. Circuit held that, for a whistleblower to be entitled to an award under the regulation, the IRS must take “action on the discrete tax issue or issues the whistleblower’s information identifies.” *Id.* at 257. To show that the IRS proceeded with an administrative action on the basis of a whistleblower’s information, therefore, the whistleblower must do more than establish that the IRS opened an examination on the basis of the information. Demonstrating this kind of “but for” cause is insufficient because, in the D.C. Circuit’s words, there is “ample reason to doubt that Congress intended to entitle whistleblowers to substantial awards just for raising plausible but meritless concerns about taxpayers who, on the IRS’s further investigation of separate leads, turn out to be noncompliant in some other, unrelated way.” *Id.* at 258. Instead, whistleblowers must “identify underpayments and provide information that advances to some substantial degree the IRS’s recovery of those underpayments.” *Id.* Put another way, for a whistleblower to be entitled to an award, the whistleblower’s information must substantially contribute to the portion of an examination that results in the collection of proceeds. *See id.*; *see also* Treas. Reg. § 301.7623-2(b)(2) (exs. 2 and 3).

[\*9] III. *Standard for Discovery in Whistleblower Cases*

As stated above, the standard of review for whistleblower award determinations is abuse of discretion, and the scope of our review is limited to the administrative record (the record rule). *Estate of Insinga v. Commissioner*, 149 F.4th 709, 722 (D.C. Cir. 2025); *Berenblatt v. Commissioner*, 160 T.C. 534, 545–46 (2023). Ordinarily, the record before this Court consists of those documents that were before and actually considered by the WBO in making its award determination.

In cases before this Court “whistleblowers may be granted limited discovery if they make a significant showing that there is material in the IRS’s possession indicative of bad faith on the IRS’s part in connection with the case or of an incomplete administrative record compiled by the IRS.” *Berenblatt*, 160 T.C. at 546. *Berenblatt* left open the question of “whether discovery is appropriate to uncover extra-record evidence.” *Whistleblower 14376-16W v. Commissioner*, T.C. Memo. 2024-22, at \*37 (quoting *Berenblatt*, 160 T.C. at 549), *supplementing* T.C. Memo. 2017-181. In *Whistleblower 14376-16W*, we used the discovery standard that the party seeking discovery must make a “significant showing . . . that it will find material in the agency’s possession indicative of bad faith or an incomplete record.” *Id.* at \*37–38 (quoting *Air Transp. Ass’n of Am. v. Nat’l Mediation Bd.*, 663 F.3d 476, 487–88 (D.C. Cir. 2011)). Permitting “discovery beyond these conditions would belie this Court’s limited scope of review in whistleblower cases.” *Berenblatt*, 160 T.C. at 547.

IV. *Analysis*

A. *Petitioner’s Motion to Compel*

In his Motion petitioner seeks discovery of a copy of the trust indenture for the 2017 Bonds (Indenture) and responses to interrogatories sent to respondent on March 10, 2025 (Interrogatories), regarding “new” reasons respondent makes for denying petitioner’s claim for award. With respect to the Indenture, petitioner contends that this document was directly or indirectly considered by the WBO in reviewing petitioner’s claim, as it was referenced within the Form 11369. With respect to the Interrogatories, petitioner claims that, by relying on a “new” reason for denying his claim, respondent (1) failed to examine all relevant factors, (2) failed to adequately explain its grounds for decision, (3) acted in bad faith, and (4) engaged in improper behavior.

**[\*10]**            1.        *Incomplete Record Due to Indenture*

Contrary to petitioner’s contentions, an agency is “not obligated to include [in the administrative record] every potentially relevant document existing within [it].” *Whistleblower 14376-16W*, T.C. Memo. 2024-22, at \*33 (first alteration in original) (quoting *Pac. Shores Subdiv. Cal. Water Dist. v. U.S. Army Corps of Eng’rs*, 448 F. Supp. 2d 1, 7 (D.D.C. 2006)); accord *Berenblatt*, 160 T.C. at 546–47. Instead, the administrative record is complete when it contains all information that the WBO “considered directly or indirectly” in making its determination. *Van Bemmelen*, 155 T.C. at 74 (quoting *Cape Hatteras Access Pres. All. v. U.S. Dep’t of Interior*, 667 F. Supp. 2d 111, 114 (D.D.C. 2009)). Consequently, discovery is only permitted where the whistleblower makes a significant showing that there are documents missing which (1) fall under a category listed in Treasury Regulation § 301.7623-3(e), or (2) were directly or indirectly considered by the WBO. *Berenblatt*, 160 T.C. at 546–51; *Whistleblower 14376-16W*, T.C. Memo. 2024-22, at \*37–38.

Treasury Regulation § 301.7623-3(e) provides a list of materials that the IRS has determined will always be included in the administrative claim file (which in turn is included in the administrative record). Specifically, the materials listed in Treasury Regulation § 301.7623-3(e)(2) include:

(iii) Form(s) 11369, “Confidential Evaluation Report on Claim for Award,” including narratives prepared by the relevant IRS office(s), explaining the whistleblower’s contributions to the actions and documenting the actions taken by the IRS in the case(s). The Form 11369 will refer to and incorporate additional documents relating to the issues raised by the claim, as appropriate, including, for example, relevant portions of revenue agent reports, copies of agreements entered into with the taxpayer(s), tax returns, and activity records.

Petitioner does not address the regulation’s inclusion of the incorporated documents from Form 11369, but we will. As easy as it would be to conclude that any document referenced within Form 11369 should be included in the administrative record, *Berenblatt*, 160 T.C. at 552 & n.8, clarifies that “we cannot accept (and the regulation does not indicate) that just *any* external document that a Form 11369 ‘refer[s] to’—however glancingly—is per se part of the record.” *Whistleblower*

[\*11] *14376-16W* confirms this idea and expands the analysis: “Only those documents that were directly or indirectly considered by the [agency’s] decisionmaker(s) should be included in the administrative record.” *Whistleblower 14376-16W*, T.C. Memo. 2024-22, at \*33 (alteration in original) (quoting *Pac. Shores Subdiv. Cal. Water Dist. v. U.S. Army Corps of Eng’rs*, 448 F. Supp. 2d 1, 7 (D.D.C. 2006)). “[A]bsent clear evidence to the contrary, an agency is entitled to a strong presumption of regularity, that it properly designated the administrative record.” *Id.* (alteration in original) (quoting *Pac. Shores Subdiv. Cal. Water Dist.*, 448 F. Supp. 2d at 5). “[F]or a Court to order completion of the designated record, ‘the [whistleblower] must overcome this strong presumption of regularity by putting forth concrete evidence that the documents it seeks to ‘add’ to the record were actually before the decisionmakers.” *Berenblatt*, 160 T.C. at 548 (quoting *Van Bemmelen*, 155 T.C. at 74–75).

Mere reference to material in documents submitted to the WBO, such as those included in a Form 11369, does not necessarily make it a part of the record. *Whistleblower 14376-16W*, T.C. Memo. 2024-22, at \*35–36. “There is a difference between an agency’s citing a document for a substantive proposition, which may indicate that the agency actually considered the document in making its decision, and merely referencing a document’s existence, which is insufficient, on its own, to show consideration.” *Id.* at \*36 (citing *Oceana, Inc. v. Ross*, 290 F. Supp. 3d 73, 80 (D.D.C. 2018)). To allow discovery of any document “potentially available . . . in the IRS’s possession at the time the WBO made its decision . . . would render the record rule all but meaningless.” *Berenblatt*, 160 T.C. at 552.

Petitioner has not made a significant showing with concrete evidence that the WBO, directly or indirectly, relied on the Indenture to reach its decision to deny his claim. Petitioner argued that the simple fact that it was referenced in the Form 11369 means it must be included in the Administrative Record. As explained above, that is not the standard. We find that RA Saleh did not reference the Indenture for any meaningful, substantive proposition. Instead, he referenced the Indenture a single time for the principal amount of the 2017 Bonds. The principal amount of the 2017 bonds has no bearing on whether (1) petitioner is owed an award through section 7623(b) or (2) whether the WBO abused its discretion in denying that award. And the terms of the Indenture have no impact on whether proceeds were collected; whether proceeds were collected is a factual question distinct from the terms of any document. Accordingly, we find that petitioner has failed

[\*12] to make a significant showing that there are any documents missing from the record which the WBO directly or indirectly considered.

## 2. *Incomplete Record Due to “New” Reason for Denial*

Petitioner argues that paragraph 71 of respondent’s Motion for Summary Judgment, Doc. 19, introduces a new argument to support the WBO’s denial of petitioner’s claim not included in the Final Decision. The paragraph states that TEGE–TEB explained to the WBO that it was “nearly impossible to know” whether any of the 2017 Bondholders will pay taxes on the interest through the life of the bond, as they could be tax-exempt entities or entities with offsetting NOLs. Paragraph 72 states that the IRS did not pursue identifying the 2006 Bondholders or the 2017 Bondholders after determining that monitoring each bondholder’s tax liability would be unrealistic. Paragraph 73 states that respondent is not aware of the identity of the Bondholders, and consequently, the WBO did not initiate an examination into any of the Bondholders. Accordingly, the IRS did not collect proceeds from an action or related action against any of the Bondholders.

Respondent argues that he was “simply mak[ing] plain how one cannot assume the issuance of the [2017 Bonds] will result in income inclusions for the unidentified bondholders, let alone collect proceeds,” and *not* presenting a new argument for his denial. We agree. The surrounding paragraphs explain that TEGE–TEB did not collect taxes from Correctional Corp. nor identify or even pursue the identity of the Bondholders. That context demonstrates that respondent was not presenting a new argument but simply reiterating that the WBO did not know the identity of the Bondholders. Because respondent did not present a new reason for denial, petitioner’s arguments that respondent acted in bad faith, failed to examine all relevant factors, failed to adequately explain his grounds for decision, and engaged in improper behavior in relying on a new reason for denial are without merit.

Accordingly, we will not allow additional discovery or compel production of the Indenture.<sup>5</sup> We will deny petitioner’s Motion to Compel Production of Documents. Doc. 34.

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<sup>5</sup> The Court’s conclusion should not be understood to imply that discovery would be warranted if petitioner were correct that respondent’s Motion asserts a new ground for denial. Rule 70(b)(1) permits discovery only as to matters relevant to the subject matter of the pending case. Further, in reviewing whistleblower award

**[\*13]** B. *Motions for Summary Judgment*

Also before the Court are respondent's Motion for Summary Judgment, Doc. 19, and petitioner's Motion for Partial Summary Judgment, Doc. 39. Respondent's Motion argues that the WBO did not abuse its discretion in denying petitioner's claim for award because the IRS did not collect any proceeds from the target that petitioner identified. Petitioner's Motion argues that the WBO did abuse its discretion in denying an award because the IRS did collect proceeds as a result of the administrative action.

Petitioner's argument centers on the conclusion that *but for* the action that was initiated because of petitioner's information, the IRS would not have collected any additional tax. He argues that once the Bondholders caused the 2006 Bonds to be converted to the taxable 2017 Bonds, *some* amount of tax would be collected from the Bondholders, and it was respondent's responsibility to discover the identity of the Bondholders and calculate the amount of tax they will pay throughout the remaining life of the bonds. Alternatively, the IRS could estimate the amount of tax collected from the bonds and issue an award to petitioner based on the estimate.

On the basis of the Administrative Record, petitioner is correct that (1) the administrative action into Correctional Corp. would not have been initiated but for his information, (2) the conversion of the 2006 Bonds to the 2017 Bonds might result in *some* taxes being paid by the Bondholders between 2017 and the end of the life of the bonds, and (3) those taxes, whatever they may be, would not have been collected but for petitioner's information. But these facts do not necessitate the conclusion that petitioner is due an award under section 7623(b).

As established above, the IRS must take "action on the discrete tax issue or issues the whistleblower's information identifies." *Lissack v. Commissioner*, 125 F.4th at 257. For a whistleblower to be entitled an award, the whistleblower's information must substantially contribute to the portion of an examination that results in the collection of proceeds. *See id.*; *see also* Treas. Reg. § 301.7623-2(b)(2) (exs. 2 and 3).

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determinations, we follow the *Chenery* doctrine and judge the propriety of the WBO's determination solely on the ground upon which the WBO actually relied. *See Kasper*, 150 T.C. at 23–24; *see also SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947); *SEC v. Chenery Corp.*, 318 U.S. 80, 93–94 (1943). Accordingly, a ground for denial not relied upon by the WBO would not be properly before the Court, and discovery regarding such a ground would be irrelevant.

**[\*14]** Demonstrating “but for” cause alone is insufficient to be entitled an award under section 7623(b). *See supra* p. 8. Petitioner’s argument that but for cause is sufficient is incorrect.

According to the FDL, the WBO denied petitioner’s claim because “[t]he information [petitioner] provided didn’t result in the collection of any proceeds.” We must determine whether the Administrative Record supports a finding that there were no proceeds collected as a result of the information petitioner provided. If so, then the WBO did not abuse its discretion or act arbitrarily, capriciously, or not in accordance with the law when it denied petitioner’s claim.

TEGE–TEB concluded the examination into Correctional Corp. after the Bondholders caused the 2006 Bonds to be converted to taxable 2017 Bonds. Because of the conversion of 100% of the outstanding bonds to taxable bonds, TEGE–TEB concluded that there was no change for their previous tax years.<sup>6</sup> So, the result of the audit was that there were no proceeds collected from Correctional Corp. or the Bondholders for the 2006–17 time period.<sup>7</sup> There may be taxes collected in the future, but TEGE–TEB did not investigate the identity of the Bondholders nor calculate the amount of taxes the Bondholders may owe.

Petitioner contends that it was improper for TEGE–TEB to close the examination the way it did. However, section 7623 does not confer on us jurisdiction to review the audit decisions of IRS operating divisions. “The decision to commence an action . . . rests in the Secretary’s unfettered discretion.” *See Kennedy v. Commissioner*, 142 F.4th 769, 779 (D.C. Cir. 2025), *aff’g in part* T.C. Memo. 2021-3. “The Tax Court has no practical means for evaluating the IRS’s audit priorities, its allocation of its audit resources, or its judgments about the likelihood of collecting particular liabilities. . . . Congress has given the

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<sup>6</sup> This method—requiring the issuer to reissue the bonds to the bondholders as taxable bonds and close the examination with “no change”—is an approved method within the IRM. *See* TEGE-04-1016-0020; IRM 4.70.14.2.1.5.9.4(3) (Nov. 24, 2023).

<sup>7</sup> Although we do not conclude that Correctional Corp. or the Bondholders acted voluntarily or altered amounts they had reported, any voluntary changes in subsequent years would not give rise to collected proceeds. *See Shands v. Commissioner*, 160 T.C. 388, 396 (2023) (finding that amounts resulting from voluntary actions by a taxpayer are not collected proceeds because those amounts did not result from an administrative or judicial proceeding against the taxpayer), *aff’d*, 111 F.4th 1 (D.C. Cir. 2024); *see also Whistleblower 16158-14W v. Commissioner*, 148 T.C. 300, 308 (2017) (“Collected proceeds do not include self-reported amounts collected when a taxpayer changes its reporting for years that are not part of the action.”).

**[\*15]** Tax Court jurisdiction to review the determinations of the WBO.” See *Cline v. Commissioner*, T.C. Memo. 2020-35, at \*15.

In sum, the Tax Court does not review, comment on, or direct the actions of the IRS Operating Division during its audit. Rather, the Court’s review is limited to the WBO’s conduct after it receives information from the Operating Division. Additionally, we do not substitute our judgment for the WBO’s but rather decide “whether the agency’s decision was ‘based on an erroneous view of the law or a clearly erroneous assessment of the facts.’” *Kasper*, 150 T.C. at 23 (quoting *Fargo v. Commissioner*, 447 F.3d at 709).

In view of the facts, we see no abuse of discretion because the record supports the WBO’s determination that there were no proceeds collected as a result of the administrative action and the WBO’s determination was within the bounds of reasoned decisionmaking. The information the WBO received from TEGE–TEB stated that it closed the audit with “no change” and that it did not discover or investigate the identities of the Bondholders. The WBO reviewed this information, requested additional information, and concluded that no proceeds were collected and petitioner was not entitled to an award. Accordingly, we will grant respondent’s Motion for Summary Judgment and deny petitioner’s Motion for Partial Summary Judgment.

Assuming *arguendo* that the IRS did collect proceeds from the administrative action, petitioner would still not be entitled an award. The only party or person that petitioner identified in his Form 211 was Correctional Corp. Any proceeds that could have been collected or potential future proceeds that might be collected will be from the Bondholders, *not* Correctional Corp. To be entitled an award with respect to the proceeds collected from a target, the whistleblower must establish that the WBO was “proceed[ing] . . . based on information” that he supplied. See § 7623(b)(1). “[T]he IRS *proceeds based on* information provided by a whistleblower when the information provided substantially contributes to an action against a *person identified by the whistleblower*.” Treas. Reg. § 301.7623-2(b)(1) (second emphasis added). Petitioner has not provided any information in his Form 211 that identifies the parties that could be paying additional taxes. Accordingly, the only possible avenue for petitioner to obtain an award<sup>8</sup> would be if

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<sup>8</sup> Again, assuming *arguendo* that we conclude the administrative action collected proceeds.

[\*16] we found that the IRS collected proceeds as a result of a “related action” as explained in Treasury Regulation § 301.7623-2(c)(1).

Section 7623(b)(1) provides that a whistleblower is entitled to an award if proceeds are “collected as a result of the action (*including any related actions*).” (Emphasis added.) Treasury Regulation § 301.7623-2(c)(1) provides that

the term *related action* means an action against a person other than the person(s) identified in the information provided and subject to the original action(s), when—

(i) The facts relating to the underpayment of tax or violations of the internal revenue laws by the other person are substantially the same as the facts described and documented in the information provided (with respect to the person(s) subject to the original action);

(ii) The IRS proceeds with the action against the other person based on the specific facts described and documented in the information provided; and

(iii) The other, unidentified person is related to the person identified in the information provided. For purposes of this paragraph, an unidentified person is related to the person identified in the information provided if the IRS can identify the unidentified person using the information provided (without first having to use the information provided to identify any other person or having to independently obtain additional information).

Any action taken against the Bondholders would not constitute a “related action.” It would be incorrect to say that TEGE–TEB proceeded with an administrative action against the Bondholders with petitioner’s information because petitioner provided no information about their identities or any information that could lead to their identification. Any Bondholders that were identified would have been identified from information independently obtained by the IRS. Even assuming an IRS Operating Division were to investigate and discover the identity of the Bondholders and determine the taxes they have paid or will pay, the identities of the Bondholders would not be found without the Operating Division’s having to independently obtain additional information beyond that provided by petitioner. *See* Treas. Reg. § 301.7623-2(c)(1)(ii)

[\*17] and (iii). Accordingly, petitioner cannot avail himself of the “related action” provision in section 7623(b)(1).

V. *Conclusion*

To summarize, petitioner has not shown that the Administrative Record is insufficient or incomplete. After reviewing the Administrative Record, we conclude that the WBO’s determination to deny petitioner’s claim for an award was not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *See Van Bemmelen*, 155 T.C. at 72 (quoting *Kasper*, 150 T.C. at 21). We therefore will grant respondent’s Motion for Summary Judgment and deny petitioner’s Motions.

To reflect the foregoing,

*An appropriate order and decision will be entered.*