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BUSINESS DAY

Whistle-Blower Awarded \$104 Million by I.R.S.

By DAVID KOCIENIEWSKI SEPT. 11, 2012

Sometimes, crime does pay.

Bradley C. Birkenfeld, a former banker at UBS, recently served two and a half years in prison for conspiring with a wealthy California developer to evade United States income taxes.

But Mr. Birkenfeld, 47, has a lot to show for his time and effort: The Internal Revenue Service acknowledged on Tuesday that information he had provided was so helpful that he would receive a \$104 million whistle-blower award for revealing the secrets of the Swiss banking system.

By divulging the schemes that UBS used to encourage American citizens to

godge their taxes, Mr. Birkenfeld led to an investigation that has greatly diminished

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Switzerland's status as a secret haven for American tax cheats and allowed the Treasury to recover billions in unpaid taxes.

In addition to paying \$780 million in 2009 to avoid criminal prosecution, the bank turned over account information regarding more than 4,500 American clients.

The disclosure of Swiss banking information — which caused a fierce political debate in Switzerland before winning approval from the country's Parliament — set off such a panic among wealthy Americans that more than 14,000 of them joined a tax amnesty program. I.R.S. officials say the amnesty program has helped recover more than \$5 billion in unpaid taxes.

Mr. Birkenfeld's award, the largest ever paid by the I.R.S., is also a milestone for the agency's whistle-blower program, which offers informants rewards of up to 30 percent of any fines and unpaid taxes recouped by the government.

The program was revamped in 2006, offering higher rewards and more incentives for citizens to report tax dodges, in an effort to help recover more of the estimated \$100 billion a year in underpaid taxes. But the program has been dogged by bureaucratic delays and institutional resistance within the I.R.S., causing some members of Congress to complain that it was being undermined.

Though Mr. Birkenfeld's \$104 million award is far less than the billions he sought, its sheer size — more than \$4,600 for every hour he spent in prison — could spur a surge in new whistle-blower complaints.

"The I.R.S. sent 104 million messages to whistle-blowers around the world — that there is now a safe and secure way to report tax fraud," said his lawyers, Dean A. Zerbe and Stephen M. Kohn, in a written statement.

Mr. Birkenfeld is an unlikely crusader for tax fairness. A native of Massachusetts who studied banking at the American Graduate School of Business in Switzerland, he spent five years recruiting American clients for UBS — which managed some \$20 billion in assets for Americans — before reporting the bank's schemes to the Treasury Department. Mr. Birkenfeld also admitted in court that he once smuggled

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He said he learned in 2005 that the bank's advice to clients was illegal, and after reporting it to the UBS compliance office to no avail, he decided to become a government informant.

During the investigation Mr. Birkenfeld was charged with fraud for withholding crucial information from federal investigators, including details of his top client, the property developer Igor Olenicoff. Mr. Birkenfeld was sentenced to 40 months in prison, and was released early on Aug. 1.

While the program allows the I.R.S. to grant whistle-blowers as much as 30 percent of the money they recover, some federal officials urged the I.R.S. to invoke a rule that allows them to deny an award to informants who withhold information or engage in illegal activity. But Mr. Birkenfeld, whose exploits landed him on "60 Minutes" and the front pages of newspapers around the world, cut such a high profile that many lawyers worried that the I.R.S. might scare off potential whistle-blowers if he ended up empty-handed, with nothing more to show for his efforts than a criminal record.

Michael A. Sullivan, a partner at Finch McCranie in Atlanta, applauded the agency's decision.

"It heartens those who deal with whistle-blowers daily to see the I.R.S. simply follow the law and reward a whistle-blower who meets the law's requirements," he said.

Since the law was strengthened in 2006, it has spawned a cottage industry of whistle-blower lawyers and private investigators. They have generated hundreds of claims alleging tens of billions of dollars in tax evasion. In a few cases, hedge funds have actually invested in the cases, paying whistle-blowers cash up front in exchange for a percentage of any award they ultimately collect.

Michelle Eldridge, a spokeswoman for the tax department, said the I.R.S. believed that the whistle-blower statute provided a valuable tool to combat noncompliance, and that "this award reflects our commitment to the law."

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But others say that delays are costing taxpayers billions. With lengthy delays in processing cases, the whistle-blower program had a decline in both new cases reported and tax dollars collected in 2011.

Senator Charles E. Grassley, an Iowa Republican who helped write the law, said Mr. Birkenfeld's award was an important step, but urged the I.R.S. to build on the momentum it had generated. "If the I.R.S. is serious about encouraging future whistle-blowers, it needs to continue to honor the spirit and intent of the law and issue awards in a timely manner," Senator Grassley said.

Mr. Birkenfeld's lawyers declined to say how much of the award they would collect. But his \$104 million payout is fully taxable as regular income.

A version of this article appears in print on September 12, 2012, on Page A1 of the New York edition with the headline: Get Out of Jail Free? No, It's Better.

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