

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ANONYMOUS 1 AND ANONYMOUS 2,)
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Petitioners,)
))
v.) Docket No. 12472-11W.
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COMMISSIONER OF INTERNAL REVENUE,)
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Respondent)
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ORDER AND ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On July 22, 2009, petitioners filed Forms 211, Application for Award for Original Information, with respondent’s Whistleblower Office relating to their former employer (hereinafter referred to as Company X). On April 26, 2011, respondent issued determinations to petitioners and they subsequently petitioned the Court. Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, and all rule references are to the Tax Court Rules of Practice and Procedure.

On September 16, 2011, the Court filed respondent’s Motion for Summary Judgment which states that after the Whistleblower Office “reviewed the information provided by petitioners, respondent concluded that no administrative or judicial action would be taken against” Company X. Respondent further stated that he “did not use the information petitioners provided, did not proceed with an administrative or judicial action against the taxpayers based on petitioners’ information, and did not collect tax proceeds based on petitioners’ information.”

On August 17, 2012, the Court filed respondent’s Status Report which informed the Court that, on March 8, 2012, the Small Business Self-Employed division of the Internal Revenue Service (IRS) opened an investigation into Company X (SB/SE investigation). Respondent assured the Court that the information provided by petitioners had not been used to “initiate or proceed with an administrative proceeding” relating to Company X. Respondent did not inform the Court that he was considering reopening petitioners’ original award claims.

On November 2, 2012, the Court entered an Order and Decision granting respondent’s Motion for Summary Judgment. In the Order and Decision, the Court stated:

Furthermore, after the Whistleblower Office denied petitioners’ claims, a separate division of the IRS opened what respondent asserts is an independent

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investigation into Company X. While we question whether the information provided by petitioners was used in the subsequent investigation, section 7623 does not provide a mechanism for petitioners to challenge respondent's assertion.

On February 4, 2013, respondent sent each petitioner a letter which provided:

On July 22, 2009, you filed a Form 211, Application for Award for Original Information, with the Whistleblower Office. By letter dated April 26, 2011, this office informed you that with respect to your application for an award 'the information that you provided did not result in the collection of any proceeds,' and, therefore, you were not eligible for an award.

We are sending this letter to inform you that this office is reopening the above referenced claim number. Please understand that the reopening of this claim does not mean that you will receive an award. We will continue to monitor the Service's use, if any, of the information you provided until all Service action in the matter ceases. At that time, we will notify you of this office's decision with regard to your claim for an award.

On November 26, 2012, the Court filed petitioners' Motion to Vacate Order and Decision Under Rule 162. On January 24, 2013, the Court filed respondent's Objection to Petitioners' Motion to Vacate Order and Decision Under Rule 162. On March 5, 2013, the Court filed petitioners' Response to Respondent's Objection to Petitioners' Motion to Vacate Order and Decision Under Rule 162. On March 22, 2013, the Court filed respondent's Response to Petitioners' Response to Respondent's Objection to Petitioners' Motion to Vacate Order and Decision Under Rule 162.

Respondent reopened petitioners' original award claims, yet requests that the Court deny petitioners' motion. Furthermore, respondent states that "The Court's Order and Decision specifically made reference to the petitioners' information and respondent's subsequent investigation; the Court granted respondent's Motion for Summary Judgment, aware of that possibility." Respondent's statement is misleading. The Court was aware that respondent opened a subsequent investigation, however, respondent assured the Court that the SB/SE investigation was independent and that the information petitioners provided in their original Forms 211 was not being used. Moreover, respondent did not inform the Court that he was considering subsequent action relating to petitioners' original award claims. Taking into account the assertions in respondent's August 17, 2012, Status Report, and, following Cohen v. Commissioner, 139 T.C. __, __ (slip op. at 8) (Oct. 9, 2012), the Court granted respondent's Motion for Summary Judgment.

It appears, despite respondent's assertions to the contrary, that the information provided by petitioners in their original Forms 211 has been used by respondent in the SB/SE investigation. Furthermore, respondent has repeatedly failed to provide the Court with relevant information: respondent failed to timely inform the Court about the SB/SE investigation, failed to inform the Court that respondent was considering reopening petitioners' original award claims, and, most egregiously, failed to inform the Court that respondent did, in fact, reopen

petitioners' original award claims. We do not know whether these failures were the result of bureaucratic confusion or ineptitude. We do know, however, that the obfuscation surrounding this matter has either been caused or exacerbated by respondent.

Rule 162 provides that "Any motion to vacate or revise a decision, with or without a new or further trial shall be filed within 30 days after the decision has been entered". The decision to grant a motion to vacate lies within the discretion of the Court. See Intermountain Ins. Serv. of Vail, LLC v. Commissioner, 134 T.C. 211, 215-216 (2010), rev'd on other grounds, 650 F.3d 691 (D.C. Cir. 2011), vacated and remanded, ___ U.S. ___, 132 S. Ct. 2120 (2012). Motions to vacate are generally not granted absent a showing of unusual circumstances or substantial error (e.g., mistake, inadvertence, surprise, newly discovered evidence, fraud, or other reason justifying relief). See id. at 216.

The Whistleblower Office's reopening of petitioners' original award claim is an unusual circumstance. See id. at 216. Furthermore, respondent provided the Court with incomplete, misleading, and possibly inaccurate information. See id. Accordingly, we vacate our Order and Decision dated November 2, 2012, and conclude that respondent's April 26, 2011, determinations were not valid. See sec. 7623(b)(4); Cooper v. Commissioner, 135 T.C. 70, 75-76 (2010); Intermountain Ins. Serv. of Vail, LLC v. Commissioner, 134 T.C. at 215-216. Therefore, this matter is dismissed for lack of jurisdiction. See Rule 340(b); Normac, Inc. v. Commissioner, 90 T.C. 142, 146 (1988) (holding that this Court has jurisdiction to determine jurisdiction and may, sua sponte, dismiss a case for lack of jurisdiction).

In the February 4, 2013, letters, respondent explained that, once the investigation is complete, he will notify petitioners of his "decision with regard to [their] claim for an award." When the SB/SE investigation is concluded and respondent issues final determinations relating to petitioners' Forms 211, filed July 22, 2009, petitioners will have an opportunity to petition the Court. Upon due consideration of the foregoing, it is

ORDERED that petitioners' Motion to Vacate Order and Decision Under Rule 162, filed November 26, 2012, is granted. It is further

ORDERED that the Court's Order and Decision filed November 2, 2012, is hereby vacated and set aside. It is further

ORDERED that, on the Court's own motion, this case is dismissed for lack of jurisdiction. It is further

ORDERED that respondent's Motion for Summary Judgment filed September 16, 2011, is denied as moot. It is further

ORDERED that the Motion to Intervene filed June 20, 2012, is denied.

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(Signed) Maurice B. Foley
Judge

Entered: **MAY 10 2013**