

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

Kenneth William Kasper,)
)
 Petitioner,)
)
 v.) Docket No. 6748-13W.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

This case is before the Court on respondent’s Motion For Summary Judgment, filed July 24, 2015. Respondent contends that he is entitled to summary judgment as a matter of law because petitioner has not met the threshold requirements for a whistleblower award under section 7623(b) of the Internal Revenue Code and is therefore not entitled to an award. On August 16, 2015, petitioner filed a Response to respondent's motion, objecting to its granting.

Respondent, as the moving party, bears the burden of proving that no genuine dispute exists as to any material fact and that respondent is entitled to judgment as a matter of law. See FPL Group, Inc. & Subs. v. Commissioner, 115 T.C. 554 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, 85 T.C. 527, 529 (1985); see also Rule 121, Tax Court Rules of Practice and Procedure. In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party. See FPL Group, Inc. & Subs. v. Commissioner, 115 T.C. 554.

Respondent’s motion includes numbered paragraphs making various factual assertions. These paragraphs include references to various documents identified as exhibits and attached to respondent’s motion. However, the factual assertions in the numbered paragraphs of respondent’s motion are not supported by a declaration of the type described in Rule 121(d), Tax Court Rules of Practice and Procedure. Statements in briefs do not constitute evidence. See Rule 143(c), Tax Court Rules of Practice and Procedure. Similarly, the exhibits attached to

respondent's motion have not been properly authenticated as required by Rule 901 of the Federal Rules of Evidence. In addition, those exhibits would appear to be hearsay under Rule 801, Federal Rules of Evidence, and respondent has failed to show that they qualify as an exception under Rule 803(6) or (8), Federal Rules of Evidence, or any other exception. Therefore, neither the factual assertions in the numbered paragraphs nor the attached exhibits are admissible evidence, and they cannot be relied on by this Court in considering respondent's motion. It follows that respondent's motion is not "supported" as required by Rule 121(d), Tax Court Rules of Practice and Procedure.

Even if the Court were to consider respondent's documents identified as exhibits, the Court would nevertheless deny respondent's motion. Drawing factual inferences against respondent as the moving party, the Court concludes that there are material issues of fact in dispute. In particular, with respect to what respondent's documents refer to as claim numbers 20013-003164, 2013-003165, 2013-003176, 2013-003196, 2013-003197, and 2013-003198, questions remain as to whether respondent undertook an administrative examination of the taxpayers, whether such examination was initiated on the basis of or aided by the information provided by petitioner, and whether any proceeds were collected as a result of the examination. See I.R.C. sec. 7623(b). Further, the attachment to the Form 11369, Confidential Evaluation Report On Claim For Award, is irrelevant. It references claim number 2013-003163; however, no determination appears to have been issued with respect to that claim. As follows from the foregoing, summary adjudication is not appropriate.

Premises considered, it is

ORDERED that respondent's Motion For Summary Judgment, filed July 24, 2015, is denied with prejudice.

(Signed) Robert N. Armen, Jr.
Special Trial Judge

Dated: Washington, D.C.
October 8, 2015