

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

WHISTLEBLOWER 6121-16W,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 6121-16W.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL

On March 10, 2016, petitioner filed with this Court a redacted Petition for Whistleblower Action Under Code Section 7623(b)(4). On March 10, 2016, petitioner also filed a Motion to Proceed Anonymously and a separate Motion to Permanently Seal Case, accompanied by a memorandum of points and authorities and a declaration in support of the motion. On March 22, 2016, this Court issued an Order requiring, among other things, on or before April 13, 2016, respondent to file responses to petitioner's Motion to Proceed Anonymously and Motion to Permanently Seal Case. On April 12, 2016, respondent filed responses to petitioner's motions, notifying the Court that he had no objection to petitioner proceeding anonymously but that he did object to permanently sealing the case. On May 20, 2016, respondent filed his answer to the petition, requesting that the relief sought therein be denied.

On July 20, 2016, this case was assigned to the undersigned for trial or other disposition. On August 17, 2016, the parties made a joint Motion for Protective Order, which the Court granted on August 23, 2016, in an Order setting forth procedures governing the pretrial disclosure and use of third party taxpayer information given by respondent to petitioner.

On December 19, 2016, pursuant to the Court's Order issued October 6, 2016, the Court received a joint status report from the parties to this case, in which the parties notified the Court that they were in the process of discovery.

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Docket No.: 6121-16W

On January 24, 2017, the Court issued an Order granting petitioner's Motion to Proceed Anonymously filed March 10, 2016, and denying petitioner's Motion to Permanently Seal Case filed March 10, 2016. In our Order, among other provisions, we established procedures for protecting petitioner's identifying information, which included the submission on or before February 27, 2017, of redacted copies of any unredacted documents in the Court's record in this case. We also acknowledged petitioner's request that, were the Court to deny petitioner's motions, we allow petitioner to withdraw nunc pro tunc all filings that might reveal petitioner's identity, even though such withdrawal would destroy any right to appeal. While we considered our granting of the Motion to Proceed Anonymously a sufficient guard of petitioner's identity, we noted that should petitioner nonetheless believe petitioner's interests better served by withdrawing the case, we would consider such request upon an appropriate motion.

Petitioner's Motion to Dismiss

On February 27, 2017, petitioner filed a Motion to Withdraw Whistleblower Petition, arguing that no amount of redaction would be sufficient to hide petitioner's identity if the case were to proceed unsealed. Petitioner maintained that respondent would suffer no prejudice were the case to be withdrawn. Petitioner's motion was accompanied by a declaration and a memorandum of points and authorities, each filed as a separate document.

Petitioner's Memorandum of Points and Authorities in Support of Motion to Dismiss filed February 27, 2017, pointed to this Court's recent decision in Jacobson v. Commissioner, 148 T.C. ___ (2017), wherein the Court granted the whistleblower's motion to dismiss. Further, in view of the potentially severe professional and economic consequences to petitioner were petitioner's identity compromised, petitioner requested that the Court enter an order permanently sealing the Motion to Dismiss and accompanying filings.

In our Order dated March 2, 2017, we recharacterized petitioner's Motion to Withdraw Whistleblower Petition as petitioner's Motion to Dismiss and recharacterized the accompanying Declaration and Memorandum of Points and Authorities correspondingly. We also ordered that the entire record in this case remain temporarily sealed until further direction of the Court and instructed respondent to file on or before March 10, 2017, a response to petitioner's Motion

Docket No.: 6121-16W

to Dismiss. Respondent filed his Response to Motion to Dismiss on March 9, 2017, notifying the Court that he has no objection to petitioner's motion.

In Jacobson v. Commissioner, 148 T.C. at ____ (slip op. at 5-6) (quoting Wagner v. Commissioner, 118 T.C. 330, 334 (2002)), the Court held that a whistleblower's motion to dismiss ought to be granted "in the exercise of the Court's discretion, and after weighing the relevant equities including the lack of a clear legal prejudice to respondent". Here, we have petitioner's unopposed Motion to Dismiss, and, as in Jacobson, there is no prejudice to respondent. As petitioner has pointed out, an order of dismissal in this case would be final. Petitioner would be unable to re-file the petition, since the 30-day section 7623(b)(4) deadline for appealing the whistleblower award determination dated February 9, 2016, to this Court has long since passed. And petitioner would have no right to file a claim in any other court. Cf. sec. 7623(b)(4). In weighing the facts attendant to petitioner's Motion to Dismiss--a volitional request to withdraw a petition and no opposition from or prejudice to respondent--we find that all the relevant equities weigh in favor of granting the motion, which we shall do.

Disposition of the Temporary Seal of the Record in the Case

Still before us, however, is the question of the extent to which we ought to seal the proceedings in this case. As we observed in our March 2, 2017, Order, we have only such power as is conferred upon us by the Internal Revenue Code. See sec. 7442; David Dung Le, M.D., Inc. v. Commissioner, 114 T.C. 268, 269 (2000). And our proceedings are conducted in accordance with the Federal Rules of Evidence and rules of practice and procedure (other than rules of evidence) prescribed by us under our congressionally-mandated authority. Sec. 7453. Nowhere--neither in any statute nor in our rules--do we find authority to allow petitioner to withdraw filings with retroactive effect. Under section 7461 and Rule 12, the Court must maintain public records, although we are authorized under section 7461(b)(1) to seal documents containing confidential information, as indeed we do in many whistleblower actions.

For the reasons discussed at greater length in our January 24, 2017, Order, we determined that this case satisfied the standard set forth in Whistleblower 14106-10W v. Commissioner, 137 T.C. 183 (2011), to justify the granting of a motion to proceed anonymously. However, on that same precedent, in our Order we found that proceeding anonymously was sufficient to protect petitioner's

Docket No.: 6121-16W

interests and declined to seal the record. We observed that permanently sealing the entire record was too strong a medicine and impaired too severely the “tradition of open trials and public access to court records.” See id. at 189; see also sec. 7458 (“Hearings before the Tax Court and its divisions shall be open to the public [.]”); sec. 7461(a) (“[A]ll reports of the Tax Court and all evidence received by the Tax Court and its divisions * * * shall be public records open to the inspection of the public.”). Proceeding anonymously, as outlined in Rule 345, was a more narrowly tailored and suitable remedy. Cf. sec. 7461(b)(1) (“The Tax Court may make any provision which is necessary to prevent the disclosure of trade secrets or other confidential information [.]”). Petitioners have failed to establish any change in circumstance that would justify our revisiting our decision to unseal the record in this case. Accordingly, we shall lift the seal on this case.

While we lift the temporary seal on the entire record here, we note the parties’ noncompliance with our Order dated January 24, 2017, wherein the parties were directed to submit jointly on or before February 27, 2017, redacted copies of any unredacted documents in the Court’s record. In our March 2, 2017, Order we vacated this instruction as moot. Were we to lift the seal on this case and not take any further action, we agree with petitioner that petitioner’s identity could indeed be compromised by the parties’ failure to redact the documents in the Court’s record. Moreover, we note that this case is still at an early stage and that little of substance has transpired to implicate the public’s interest in open proceedings. Cf. Whistleblower 14106-10W v. Commissioner, 137 T.C. at 205 (“Because we have held that respondent is entitled to summary judgment on a threshold legal issue which does not depend to any appreciable extent on petitioner’s identity, we believe that the public’s interest in knowing petitioner’s identity is relatively weak.”).

Since petitioner filed the Motion to Dismiss before any substantive proceedings could begin, we shall seal all the documents in the Court’s record of this case, with the exception of this Order of Dismissal. By doing so, we protect petitioner’s identity alongside the public’s interest in open records: this Order adequately summarizes the relevant proceedings in the matter while omitting any information that could lead to the identification of petitioner.

Docket No.: 6121-16W

Given due consideration of the foregoing and for cause, it is hereby

ORDERED that all documents in the Court's record in this case, with the exception of this Order of Dismissal, are sealed. It is further

ORDERED that the Clerk of the Court shall remove from the Court's public record all documents in the Court's record in this case, with the exception of this Order of Dismissal, and the documents shall be retained by the Court in a sealed file which shall not be opened for inspection by any person or entity, except by an Order of the Court. It is further

ORDERED that the temporary seal of the record in this case is lifted. It is further

ORDERED that petitioner's Motion to Dismiss filed February 27, 2017, is granted, and this case is dismissed.

**(Signed) David Laro
Judge**

ENTERED: **MAR 22 2017**