

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MN

ROY J. MEIDINGER,)	
)	
Petitioner,)	
)	
v.)	Docket No. 16513-12W.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This whistleblower case is before the Court on (1) respondent’s Motion for Summary Judgment, filed January 4, 2013, (2) petitioner’s Motion for Leave To File Amended Petition, filed January 16, 2013, (3) petitioner’s Motion for Summary Judgment, filed February 7, 2013, as supplemented, July 1, 2013, and (4) respondent’s Motion for a Protective Order, filed March 29, 2013. All section references are to the Internal Revenue Code of 1986, as amended (Code), and all Rule references are to the Tax Court Rules of Practice and Procedure.

Summary judgment serves to “expedite litigation and avoid unnecessary and expensive trials.” Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or any part of the legal issues in controversy, but we may grant summary judgment only if there is no genuine dispute as to any material fact. Rule 121(a); Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Having reviewed the pleadings, the parties’ cross-motions for summary judgment, and supporting documents, we conclude that there is no dispute as to a material fact, and this case is ripe for summary adjudication.

I. Background

On October 17, 2009, petitioner submitted to the Commissioner a Form 211, Application for Award for Original Information, providing information about alleged improper tax practices at an exempt organization. Petitioner later expanded his whistleblower claim to include information related to additional taxpayers.

The Whistleblower Office forwarded petitioner's information to the IRS Exempt Organizations Division and the Large Business and International Division. After reviewing petitioner's original information and supplemental information, the Commissioner prepared Form 11369, Confidential Evaluation Report on Claim for Award, explaining his decision not to proceed with an administrative or judicial action against the taxpayers in question. On June 11, 2012, Robert Gardner, the Program Manager for the Whistleblower Office, sent a letter to petitioner stating that the information he provided did not result in the collection of any proceeds, and, therefore, he was not eligible for an award under section 7623.

On June 29, 2012, petitioner filed a petition to commence this case. The petition includes allegations that the Commissioner abused his discretion in denying petitioner an award and that the Commissioner failed to adequately explain why he did not conduct investigations or audits based on the information provided.

On January 4, 2013, respondent filed a Motion for Summary Judgment. Relying on Cooper v. Commissioner, 136 T.C. 597 (2011), respondent asserts that petitioner is not entitled to an award under section 7623(b) because the Commissioner did not initiate an administrative or judicial action or collect any taxes in this case.

On January 16, 2013, petitioner filed a Motion for Leave To File Amended Petition and lodged an amended petition with the Court. The amended petition includes allegations that section 7623(b) mandates the payment of an award, that petitioner entered into a contract with the Commissioner (as evidenced by the Commissioner's confirmation of receipt of Form 211), that the Commissioner is obliged to investigate the taxpayers he identified, and that he is entitled to an award because he fulfilled his contractual obligations. In his prayer for relief, petitioner asks the Court, inter alia, to issue an Order for specific performance and to direct binding arbitration to determine his damages.

On February 7, 2013, and July 1, 2013, petitioner filed a Motion for Summary Judgment, and a supplement thereto, respectively.

In the interim, on March 29, 2013, respondent filed a Motion for Protective Order. Respondent requests that the Court issue an Order directing that respondent need not respond to petitioner's request for "taxpayer information" within the meaning of section 6103.

II. Discussion

A whistleblower award under section 7623 generally is dependent on two prerequisites: (1) the Commissioner commencing an administrative or judicial action; and (2) the collection of tax proceeds. Cohen v. Commissioner, 139 T.C. 299, 302 (2012); Cooper v. Commissioner, 136 T.C. 597, 600 (2011). We recently decided that we may not order the Commissioner to proceed with a whistleblower investigation. Cooper v. Commissioner, 136 T.C. at 600-601. If the Commissioner does not proceed with an administrative or judicial action, there can be no whistleblower award. Id. at 601.

Although petitioner acknowledges that the Commissioner did not commence an administrative or judicial action in this case, he maintains that the Court may direct the Commissioner to do so pursuant to the Tucker Act, 28 U.S.C. sec. 1491(a)(1) (2000 & Supp. 2005). We disagree. The Court's jurisdiction in this proceeding arises exclusively under section 7623(b)(4), see Whistleblower 14106-10W v. Commissioner, 137 T.C. 183, 187 n.6 (2011), and not from the Tucker Act.

It is well settled that the threshold for a whistleblower award is the Commissioner's collection of proceeds upon which an award can be based. That threshold not having been crossed here, petitioner is entitled to no award. There is no genuine issue as to any material fact, and we will dispose of this case in respondent's favor on the basis of Cooper v. Commissioner, 136 T.C. at 601.¹

To reflect the foregoing, it is

ORDERED that petitioner's Motion for Leave To File Amended Petition is denied. It is further

ORDERED that respondent's Motion for a Protective Order is denied as moot. It is further

¹ In accordance with our decision to grant respondent's Motion for Summary Judgment, it follows that we will deny petitioner's Motion for Summary Judgment, as supplemented, as well as petitioner's Motion for Leave to File Amended Petition. The amended petition that petitioner lodged with the Court requests relief (e.g., specific performance and binding arbitration) that is outside of the scope of the Court's authority under sec. 7623(b). We will deny respondent's Motion for a Protective Order as moot.

ORDERED that petitioner's Motion for Summary Judgment, as supplemented, is denied. It is further

ORDERED that respondent's Motion for Summary Judgment is granted. It is further

ORDERED AND DECIDED that respondent's determination in the notice dated June 11, 2012, is sustained.

**(Signed) Daniel A. Guy, Jr.
Special Trial Judge**

ENTERED: **AUG 30 2013**