

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

PETER ALEXANDER GOODWIN,)
)
 Petitioner,)
)
 v.) Docket No. 23146-15W.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

This case is before the Court on respondent’s Motion for Summary Judgment, filed January 15, 2016. 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 January 26, 2016, petitioner filed a Notice of Objection to respondent’s motion, and on February 22, 2016, petitioner filed (1) a First Amended Notice of Objection, (2) a First Supplement to First Amended Notice of Objection, and (3) a Second Supplement to First Amended Notice of Objection.

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 Grp., Inc. & Subs. v. Commissioner, 115 T.C. 554, 559 (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 Grp., Inc. & Subs. v. Commissioner, 115 T.C. at 559. Factual assertions may be supported by affidavits or declarations made on personal knowledge. Factual assertions may also be supported by documents. As a general rule, documents that are not part of the record must be introduced to the Court, in support of a motion for summary judgment, by way of an authenticating affidavit or declaration made on

personal knowledge. See 11 James Wm. Moore, Moore's Federal Practice, para. 56.92[3], at 56-209 (3d ed. 2014.); Rule 121(d), Tax Court Rules of Practice and Procedure.

Respondent's motion includes numbered paragraphs making various factual assertions. These paragraphs include references to various documents identified as exhibits attached to respondent's motion. Attached to respondent's motion are copies of the following documents: Form 211, Application for Award for Original Information, dated March 23, 2011; Form 11369, Confidential Evaluation Report on Claim for Award, dated October 18, 2013; the first page of what appears to be a two-page undated Memorandum to Stephen Whitlock from Felipe Castellanoz (Senior Tax Analyst); an Internal Revenue Service Directive to the Large Business and International Division, dated March 15, 2012; and a Final Determination Letter, dated August 7, 2015.

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. In addition, the exhibits attached to respondent's motion, and to which the motion refers, have not been properly authenticated. See Fed. R. Evid. 901 and 902.¹ Without a proper affidavit or declaration, neither the factual assertions in the numbered paragraphs nor the attached exhibits are admissible evidence, and they cannot be properly relied on by this Court in considering respondent's motion. See, e.g., Martz v. Union Labor Life, 757 F.2d 135, 138 (7th Cir. 1985).

¹ Fed. R. of Evid. 901(a) and (b)(7) states that a proponent of evidence must produce evidence sufficient to support a finding that the item is what the proponent claims it is (including public documents). Fed. R. of Evid. 902 describes certain evidence that is self-authenticating and requires no extrinsic evidence of authenticity.

Upon due consideration and for cause, it is

ORDERED that, on or before May 16, 2016, respondent shall file a Supplement to his motion for summary judgment and attach thereto an affidavit or declaration in support of respondent's motion as more fully described in this Order.

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

Dated: Washington, D.C.
April 27, 2016