

UNITED STATES TAX COURT
WASHINGTON, DC 20217

KENNETH WILLIAM KASPER,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 6748-13W.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This is a whistleblower action under section 7623(b)(4).¹ The case is calendared for trial at the Court’s December 5, 2016, Phoenix, Arizona, trial session.

It is the goal of this Court to provide a public record and an open court, and to serve the legitimate interests of the public in respondent’s administration of whistleblower proceedings. But in doing so, we must be mindful to preserve the broad statutory protections afforded by Congress to all taxpayers.

Section 7458 provides that “[h]earings before the Tax Court and its divisions shall be open to the public”. Section 7461(a) similarly provides that “all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public.” Section 6103, however, provides that returns and return information are confidential and not subject to disclosure, except in limited circumstances (including judicial proceedings, see section 6103(h)(4)). Because the taxpayer(s) to whom the claims relate is not a party to this proceeding, the nonparty taxpayer(s) has no control over what information has been and will be included in the public record of this case. Rule 345(b) extends confidentiality in whistleblower actions to the identifying information of the nonparty taxpayer to

¹Section references are to the Internal Revenue Code of 1986, as amended, and all Rule references are to the Tax Court Rules of Practice and Procedure.

whom the claim relates and instructs parties to redact any identifying information, which will be sealed in a reference list.

On April 7, 2015, the Court granted the Motion for Protective Order Pursuant to Rule 103 imposing certain restrictions on disclosures of returns, return information, and taxpayer return information (as defined in section 6103(b)(1), (2), and (3)) of the nonparty taxpayer(s) identified in petitioner's whistleblower claim(s). The Court's protective order dated April 7, 2015, however, concerned only the pretrial disclosure and use of nonparty taxpayer information that respondent has given to petitioner.

This Order addresses protections for any Section 6103 Information for the trial and post-trial phases of this case. In exercising its discretion on whether to seal all or a portion of the proceedings, the Court continues to be mindful of section 7458, affording the general public access to hearings before the Tax Court, and the statutory and procedural protections afforded to the identifying return information of the nonparty taxpayer(s). Upon due consideration and for cause, it is

ORDERED that the following terms and conditions shall govern the treatment of Section 6103 Information of the nonparty taxpayer(s) during the trial in this case and during post-trial proceedings:

1. For purposes of this Order, "Section 6103 Information" means returns, return information, and taxpayer information as defined in section 6103(b)(1), (2), and (3).
2. Trial
 - a. The parties shall file a status report informing the Court no later than November 18, 2016, whether any portion of the proceeding may need to be conducted only in the presence of the Court and its employees and agents, and the parties. See Rule 143(a).
 - b. Upon receipt of the parties' status reports, the Court, in its discretion, will issue an appropriate order determining whether all or a portion of the proceedings will be sealed to the general public.

- c. By November 28, 2016, the parties shall file a joint reference list. In that reference list, the parties shall adopt a standard set of identifiers that will be used to replace various items of Section 6103 Information. Appropriate identifiers shall not be numerals since numerals will make testimony difficult to follow and cannot be used by the Court in drafting an intelligible order or opinion. Rather, the identifiers shall be more descriptive terms (such as “Company X”, “Subsidiary Alpha”, “\$n dollars”, and the like). The parties shall use the agreed-upon identifiers at trial, in briefs, and, if a reference list accompanies exhibits, see infra, in those exhibits. The parties shall provide the relevant portions of the reference list to each witness.

3. Trial Evidence - Exhibits

- a. Material previously designated as “CONFIDENTIAL-Section 6103 Information Subject to Protective Order” that respondent provided petitioner may be included in, or attached to filings with the Court before, during, or after trial, and to the stipulations of facts, but only in accordance with this Order.
- b. If the parties’ stipulation of facts contains Section 6103 Information of the nonparty taxpayer(s), such stipulation of facts shall be submitted (1) in redacted form, with an accompanying reference list, see Rule 345(b), or (2) in a redacted version and an unredacted version with no reference list.
- c. Exhibits (including joint exhibits accompanying the stipulation of facts) shall be submitted (1) in redacted form, with a reference list, see Rule 345(b), or (2) in a redacted version and an unredacted version with no reference list. The redacted and unredacted versions shall be physically segregated. Exhibits that do not contain Section 6103 Information shall be included in both versions. If an exhibit contains Section 6103 Information and the exhibit may be redacted without losing its practicality, the parties shall redact such exhibit and include the redacted version in the redacted group and the unredacted version in the unredacted group. If the extent of redactions would render the use of the redacted version impractical, the parties need not redact that exhibit, and such exhibit shall only be included in unredacted form in the unredacted group.

- d. The redacted group shall be in all respects a duplicate of the unredacted group, subject to the exceptions described above. The unredacted group shall be retained by the Court in a sealed file, to be used solely for consideration by this Court for the purposes of this proceeding, and shall not be opened for inspection by any person or entity except by an order of the Court.

(Signed) Joseph W. Nega
Judge

Dated: Washington, D.C.
October 28, 2016