UNITED STATES TAX COURT
WASHINGTON, DC 20217

WHISTLEBLOWER 23711-15W,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 23711-15W.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

O R D E R

In this section 7623(b)(4) case, the Internal Revenue Service (IRS or respondent) denied petitioner's claim for an award. He timely petitioned for review and we granted his request to proceed anonymously. On November 30, 2016, respondent filed a Motion for Summary Judgment, to which petitioner responded on January 27, 2017. Because there exist genuine disputes of material fact, we will deny respondent's motion.

Respondent, as the moving party, bears the burden of proving that no genuine dispute exists as to any material fact and that he is entitled to judgment as a matter of law. When determining whether to grant summary judgment, the Court must view factual materials and the inferences drawn from them in the light most favorable to the nonmoving party. See FPL Group, Inc. & Subs. v. Commissioner, 115 T.C. 554 (2000). The facts set forth below are based upon the parties' pleadings, motions, and attached exhibits and affidavits. See Rule 121. They are stated solely for the purpose of deciding this motion for summary judgment and not as findings of fact in this case. See generally G-5 Investment Partnership v. Commissioner, 128 T.C. 186, 187 (2007).

In April 2009 petitioner filed Form 211, Application for Award for Original Information, with the IRS Whistleblower Office (Office). His Form 211 set forth extensive information about a primary taxpayer (Target) and several related taxpayers who had allegedly engaged in tax evasion by use of off-shore entities. Petitioner avers that the Office, in late April 2009, scanned into the IRS computer

system the written material he had submitted and forwarded a copy of the scanned material to the IRS Criminal Investigations Division (CID).

In January 2010 CID officers and law enforcement colleagues met with petitioner and (as he avers) "extensively and rigorously interviewed" him. During that meeting, petitioner avers that he described in great detail the operational structure that Target used to effectuate his alleged tax evasion. Petitioner avers that the interviewers told him that "they were moving against Target"; at their request, he allegedly outlined what documents they should request from Target. Petitioner avers that, "at various dates through 2013, [he] supplied a substantial amount of updated information." Petitioners avers, without contradiction by respondent, that the IRS commenced "criminal and civil investigations of Target that resulted, ultimately, in the IRS collecting substantial revenue."

On June 26, 2014, the Office denied petitioner's claim for an award. The apparent basis for this denial was a document prepared by CID in April 2010 which determined that the information petitioner supplied was "tainted" and thus "cannot be used to further develop this investigation." Upon review of that document four years later, the Office decided that petitioner was not eligible for an award because the IRS "had not taken any administrative or judicial action against [Target] or collected any proceeds based on petitioner's information."

For a variety of reasons, we conclude that respondent's motion for summary judgment must be denied. Respondent does not dispute petitioner's averment that the IRS proceeded against Target with an administrative or judicial action described in section 7623(a). Assuming satisfaction of the statute's other requirements, petitioner would thus be entitled to an award if the IRS action against Target was "based on information brought to the Secretary's attention" by petitioner. Sec. 7623(b)(1). We find that there exist material disputes of fact on this point.

Respondent asserts that, after April 2010, the IRS did not use petitioner's information to "further develop" its investigation of Target because it determined that his information was "tainted." This assertion raises a number of questions, both legal and factual. Petitioner avers that his information was not in fact "tainted"; he presents two distinct arguments in support of that averment, neither of which respondent has addressed. Petitioner also avers that he continued to supply the IRS with updated information "at various dates through 2013"; this appears to create a factual dispute in light of respondent's assertion that the IRS did not use petitioner's information after April 2010. And even if the IRS did not use peti-

tioner's information to "further develop" its investigation after April 2010, there is a material dispute of fact as to whether any IRS action against Target was nevertheless "based on information" that petitioner "brought to the Secretary's attention" between April 2009 and April 2010, including the information he supplied to CID in January 2010. Sec. 7623(b)(1).

Nowhere in his summary judgment papers does respondent cite any legal authority supporting the proposition that a whistleblower who provides valuable information is disqualified from an award if the IRS, after thoroughly digesting his information, later decides that it is "tainted." Section 7623(b)(3) provides that the Secretary may reduce or deny an award in certain circumstances, i.e., if the whistleblower "planned or initiated the actions" that led to the tax underpayment or "is convicted of criminal conduct arising from" such activity. The statute does not list the provision of privileged or "tainted" information as a basis for denying an award, and respondent has cited no other authority for denying an award on this basis. It is entirely possible that information which would not constitute admissible evidence at trial--hearsay, for example--may nevertheless be "used" by the Secretary in the course of conducting an investigation. Without a clearer understanding of the legal theory upon which respondent is relying, and the authority for and scope of that theory, we could not find that respondent is entitled to judgment "as a matter of law." Rule 121(b).

Viewing the facts and drawing inferences therefrom in the light most favorable to petitioner as the non-moving party, we conclude that respondent's motion for summary judgment must be denied. The IRS has not disputed that it took action against and collected proceeds from Target, and we find that there exist material disputes of fact as to whether such action was "based on information brought to the Secretary's attention" by petitioner. Sec. 7623(b)(1). Given that the very facts that petitioner may need to prove his case are in the sole possession of respondent, petitioner will be entitled to discovery that will aid in resolving these factual disputes. See W.L. Gore & Associates, Inc. v. Commissioner, T.C. Memo. 1995-96; Rule 121(e).

In consideration of the foregoing, it is

ORDERED that respondent's Motion for Summary Judgment, filed November 30, 2016, is denied.

(Signed) Albert G. Lauber
Judge

Dated: Washington, D.C.
February 22, 2017