

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ESTATE OF MICHAEL J. JACKSON,)	CLC
DECEASED, JOHN G. BRANCA, CO-)	
EXECUTOR AND JOHN MCCLAIN, CO-)	
EXECUTOR,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 17152-13.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
)	

ORDER

This case was tried at a special session beginning on February 6, 2017. During the trial the Commissioner called an expert witness to testify about the value of some of the Estate’s assets. During cross-examination he lied about working on similar issues for the IRS in a case brought by the Whitney Houston Estate and then admitted to the lie when confronted by further questions and documentary evidence. The IRS moved on March 24, 2017 to strike this challenging testimony or at least to seal it. (The Jackson Estate has also moved to strike the testimony -- but only if *all* the witness’s testimony is stricken as tainted by perjury. Briefing on that motion is still under way.)

The Commissioner’s motion is framed as one to protect the Houston Estate’s confidential tax return information under I.R.C. § 6103. He argues that the fact that his witness in this case is also an expert in the Houston Estate case is protected information because it shows that the Houston Estate’s tax return was examined by the IRS, and that the report itself contains data received by the IRS “with respect to the existence, or possible existence, of liability” the Houston Estate might owe.

The second point -- about data from the witness’s report in the Houston Estate case fitting the definition of return information is plausible, but the Court

SERVED Apr 28 2017

worked around it by allowing the introduction of only the first and last pages of the witness's report for the IRS in the Houston Estate case. These pages proved the impeachment but contain no "data" as that term is commonly understood, and the cross-examination carefully elicited only the fact -- and not the results -- of his work on that case.

It's the first point -- that being hired by the IRS to value assets of a taxpayer is protected information -- that is the more serious objection. The problem for the Commissioner here is that it is a matter of public record that the Houston Estate is also in Tax Court to challenge the Commissioner's determination of a deficiency, and that part of that challenge includes a dispute about the value of Ms. Houston's intellectual-property rights at the time of her death. *See Estate of Whitney Houston v. Commissioner*, docket no. 12098-16. This means that the fact that the Houston Estate is being audited is no longer information protected by I.R.C. § 6103: "[O]nce information is lawfully disclosed in court proceedings, '§ 6103(a)'s directive to keep return information confidential is moot.'" *Lampert v. United States*, 854 F.2d 335, 338 (9th Cir. 1988) (quoting *Figur v. United States*, 662 F. Supp. 515, 517 (N.D. Cal. 1987)).

The cases on which the Commissioner relies both arose from disclosure of information *in addition to* the disclosure that he had determined a deficiency or was investigating another taxpayer. *See Tanoue v. IRS*, 904 F. Supp. 1161, 1167-68 (D. Haw. 1995) (agent's interview notes and recordings not disclosed by public record of criminal tax investigation); *Husby v. United States*, 672 F. Supp. 442, 444 (N.D. Cal. 1987) (assessment of tax not disclosed by petition).

It is therefore

ORDERED that respondent's March 24, 2017 motion to strike portions of trial transcript is denied. It is also

ORDERED that respondent's March 24, 2017 motion for protective order pursuant to Rule 103 to seal portions of the trial transcript is denied.

**(Signed) Mark V. Holmes
Judge**

Dated: Washington, D.C.
April 28, 2017