

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

THOMAS H. CARROLL, JR. AND)
DAVID E. STONE,)
)
Petitioners,)
)
v.) Docket No. 4569-16W.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER AND DECISION

This whistleblower case, commenced pursuant to section 7623(b)(4), is before the Court on respondent’s Motion for Summary Judgment, filed pursuant to Rule 121 on September 14, 2016. Respondent’s motion is supported by a Declaration and a Supplemental Declaration of Senior Tax Analyst Filipe Castellanoz (STA Castellanoz).¹ Also pending before the Court are petitioners’ two Motions for Partial Summary Judgment, filed October 14, 2016, and November 8, 2016, respectively, each of which is supported by a Declaration.

Background²

On March 24, 2011, petitioners submitted to the Internal Revenue Service (IRS) Whistleblower Office (Whistleblower Office) a joint Form 211, Application for Award for Original Information, providing information about alleged improper tax positions taken by numerous taxpayers. The Whistleblower Office assigned petitioners individual claim numbers and, on June 14, 2011, referred their claims to

¹Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

²The following background facts, which are not in dispute, are drawn from the pleadings, the parties’ motions, supporting declarations, and related documents.

the IRS Large Business and International Division (LB&I). On May 24, 2012, LB&I personnel selected one of the taxpayers that petitioners had identified and referred the matter to IRS examiners who were already engaged in an audit of that taxpayer.

On May 23, 2013, LB&I personnel forwarded Forms 11369, Confidential Evaluation Report on Claim for Award, to STA Castellanoz reporting that it had decided to take no action against the taxpayer in question (and similarly situated taxpayers) and recommending that petitioners' whistleblower claims be denied. In the light of this information, STA Castellanoz concluded that the IRS had taken no action against the taxpayers in question and that no tax proceeds were collected that would justify a whistleblower award. On February 1, 2016, the Whistleblower Office sent separate Final Determination letters to petitioners denying their whistleblower claims and stating in pertinent part that the IRS took no action based on the information that they had provided.

On February 24, 2016, petitioners filed a joint petition with the Court commencing this case. Petitioners alleged in the petition, inter alia, that in reviewing their whistleblower claims the IRS had engaged in negligent conduct, misfeasance, malfeasance, and/or nonfeasance, and discriminative audit policies. They further alleged that the IRS had permitted flawed tax returns to go unaudited, ignored evidence of systemic prohibited transactions, and wrongfully disallowed petitioners' claims. Petitioners requested that the Court conclude that the IRS acted arbitrarily, declare that an implied contract was created between the parties, direct the IRS to enforce Federal income tax laws, and determine that they are entitled to damages equal to the fair market value of their services.

Respondent's motion for summary judgment states that petitioners' information did not lead the IRS to take any action against any taxpayer nor did the IRS collect any tax proceeds from any taxpayer based on petitioners' information.

Petitioners assert in their motion for partial summary judgment filed October 14, 2016, that the Court should conclude that the IRS engaged in an unreasonable delay in denying their whistleblower claims and grant any relief deemed appropriate. In their motion for partial summary judgment filed November 8, 2016, petitioners cite various government reports for the proposition that the IRS has misused and mismanaged its resources and assert that the administrative delay in the disposition of their whistleblower claim constitutes an abuse of discretion.

Discussion

Summary judgment serves to “expedite litigation and avoid unnecessary and expensive trials.” Fla. 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). The moving party bears the burden of proving there is no genuine issue of material fact. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985). The opposing party cannot rest upon mere allegations or denials in his pleadings, however, and must “set forth specific facts showing that there is a genuine dispute for trial.” Rule 121(d).

When appropriate, the Court may grant a motion for summary judgment in a whistleblower case. See Whistleblower 14106-10W v. Commissioner, 137 T.C. 183, 187-189 (2011); Cooper v. Commissioner, 136 T.C. 597, 599-601 (2011). Having reviewed the pleadings, the parties’ motions and responses, and the supporting documents, we conclude that there is no dispute as to a material fact, and this case is ripe for summary adjudication. As discussed below, we will grant respondent’s motion for summary judgment and deny petitioners’ motions for partial summary judgment.

Section 7623(b) provides for whistleblower awards if certain requirements are met. A whistleblower award under section 7623(b)(1) generally is dependent on two prerequisites: (1) the Commissioner commencing an administrative or judicial action, and (2) the collection of tax proceeds. See Cohen v. Commissioner, 139 T.C. 299, 301 (2012), aff’d, 550 F. App’x 10 (D.C. Cir. 2014); Cooper v. Commissioner, 136 T.C. at 600. Upon the filing of a timely petition for review, the Court is vested with jurisdiction under section 7623(b)(4) to review any determination regarding a whistleblower award under subsection (b).

In Cooper v. Commissioner, 136 T.C. at 600, the Court held that its authority to review a whistleblower award determination under section 7623(b) does not contemplate that the Court will review the Commissioner’s determinations of the alleged tax liability to which the claim pertains. Nor does section 7623 authorize the Court to direct the Commissioner to commence an administrative or judicial action. Id.; see Cohen v. Commissioner, 139 T.C. at 302.

Respondent's motion for summary judgment is properly supported. According to the declaration and supplemental declaration submitted in support of respondent's motion, and the Whistleblower Office administrative record, the preconditions for a whistleblower award under section 7623(b) have not been met. The record reflects that, although LB&I reviewed the information that petitioners provided and engaged in an examination of one of the taxpayers that petitioners identified, the IRS did not take action against any taxpayer as a result of petitioners' information, nor were any tax proceeds collected from any taxpayer that would support a whistleblower award.

Petitioners do not dispute these critical facts nor do they state any specific facts showing that there is a genuine dispute for trial. Petitioners' response to respondent's motion for summary judgment and their motions for partial summary judgment rest upon allegations that the IRS has mismanaged and misused its resources, failed to enforce Federal income tax laws, and improperly delayed the final disposition of petitioners' claims. These claims, and the various forms of relief that petitioners seek, simply are not cognizable under the regime for the judicial review of whistleblower awards prescribed by Congress under section 7623(b). See, e.g., Cohen v. Commissioner, 139 T.C. at 303-304.

There being no genuine dispute as to any material fact, and consistent with the foregoing, respondent is entitled to summary judgment.

Upon due consideration and for cause, it is hereby

ORDERED that respondent's motion for summary judgment, filed September 14, 2016, is granted. It is further

ORDERED that petitioners' motion for partial summary judgment, filed October 14, 2016, is denied. It is further

ORDERED that petitioners' motion for partial summary judgment, filed November 8, 2016, is denied. It is further

ORDERED AND DECIDED that respondent's final determinations that petitioners are not entitled to an award under section 7623, dated February 1, 2016, upon which this case are based, are sustained.

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

ENTERED: **JUL 11 2017**