

UNITED STATES TAX COURT

WASHINGTON, DC 20217

ZANE W. PENLEY & MONIKA J.)
PENLEY,)

Petitioners)

v.)

COMMISSIONER OF INTERNAL REVENUE,)

Respondent)

Docket No. 13243-15.

ORDER

On April 17, 2017, the Court released its Memorandum Opinion (T.C. Memo. 2017-65) in this case. By Order dated October 19, 2017, the Court denied the Motion For Reconsideration filed by petitioners.

Petitioners, now seeking to seal the entire case record on October 31, 2017, filed a Motion to Seal Case, which was objected to by respondent on November 15, 2017. According to petitioners, due to respondent's failure to take appropriate steps, see Rule 27(a),¹ to redact personal information contained in the documents he filed with this Court, the "social security numbers and other personal/sensitive information" of petitioners and one of their witnesses in this case "have been transmitted and publicized for months and months." As a likely result, petitioners assert that they and/or the witness fell victim to identity theft and a telephone scam. Other than the motion itself, petitioners have not provided any factual support or affidavit to meet their burden under Rule 103(a), which is partially derived from Fed R. Civ. P. 26(c). Ash v. Commissioner, 96 T.C. 459, 469 (1991). Rule 103(a) requires petitioners to prove that the information they are seeking to seal is of the type of information that courts will protect and show good cause for protecting it. See Publicker Indus., Inc. v. Cohen, 733 F.2d. 1059, 1071 (3d Cir. 1984); see also Amazon.Com, Inc. & Subsidiaries v. Commissioner, T.C.

¹Unless otherwise indicated, Rule references are to the Tax Court Rules of Practice and Procedure in effect for the trial of this case.

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Memo. 2016-131. For a full discussion of these issues, see In re Iowa Freedom of Info. Council, 724 F.2d. 658 (8th Cir. 1983).

To the extent that the filed documents contain personal financial information contemplated by Rule 27, that information is subject to redaction. Rule 27(a). While respondent initially failed to redact petitioners' taxpayer identification numbers (Social Security Numbers) in accordance with Rule 27(a) in one exhibit filed with the Court. Respondent redressed this mistake by filing a Motion to Substitute Trial Exhibit(s) on August 31, 2016, in which he sought to substitute the unredacted exhibit with a redacted copy. We granted his motion on September 8, 2016. The exhibit containing petitioners' Social Security Numbers was then removed from the public record and sealed.

We note that some of the unredacted personal information referenced in petitioner's motion to seal, such as financial account numbers, was submitted by petitioners themselves.² A person is deemed to waive the protection of the privacy rules as to the person's own information by filing it without redaction and not under seal. Rule 27(g).

For public policy reasons, as a general rule, the official records of all courts, including this Court, shall be open and available to the public for inspection and copying. See Sec. 7461(a); Publiker Indus., Inc. v. Cohen, 733 F.2d at 1070; Willie Nelson Music Co. v. Commissioner, 85 T.C. 914, 917 (1985). The underlying reason is that "[o]pen trials and public access to court records promote fairness and the search for truth, help enlighten public opinion, and assure confidence in the judicial process." See Whistleblower 14106-10W v. Commissioner, 137 T.C. 183, 190 (2011); see also Whistleblower 14377-16W v. Commissioner, 148 T.C. __, __ (slip op. at 4), 2017 WL 2805875 at *4 (June 28, 2017). However, "[u]pon motion by a party or any other affected person, and for good cause shown, the Court may make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense". Rule 103(a); see also sec. 7461(b)(2).

²For example, the witness's financial account number was submitted to us as part of petitioners' simultaneous answering brief filed on August 24, 2016.

Petitioners have requested that we seal the record of this case. However, before granting a request to seal the record, this Court should consider less drastic alternatives to sealing. Whistleblower 14106-10W v. Commissioner, 137 T.C. at 191-192 (citing Stone v. Univ. of Md. Med. Sys. Corp., 855 F.2d 178, 181 (4th Cir.1988)). In their motion, petitioners claim that they and the witness were subject to identity theft and/or suffered from a telephone scam due to the disclosure of their personal information such as social security numbers and financial account numbers. Notably, these concerns were not due to the public's access to the entire record of this case. Considering that petitioners themselves have failed to redact certain personal information in their documents submitted to this Court, the remedy provided in Rule 27(h), is more appropriate than petitioners' request to seal the entire record of this case. That remedy permits petitioners to correct an inadvertent disclosure of identifying information in a prior filing by submitting a properly redacted substitute filing.

Therefore, the Court will provide petitioners the opportunity to submit copies of their properly redacted documents in accordance with Rule 27(a). If any additional documents, filed by respondent, were not properly redacted in accordance with Rule 27(a), the Court will provide petitioners the opportunity to notify respondent of the existence of such documents, and respondent shall substitute them with redacted copies. The Court will then substitute the redacted copies for the unredacted documents in the public record and place the unredacted documents under seal. Accordingly, it is

ORDERED that petitioners shall, provide to the Court the copies of their previously unredacted documents corrected by redaction to the extent, and only to the extent, permitted and specified by Rule 27(a) on or before December 4, 2017. It is further

ORDERED that petitioners shall notify respondent of the existence of any specific unredacted documents that were filed by him on or before December 4, 2017; it is further

ORDERED that petitioners' Motion to Seal Case is denied.

(Signed) Robert A. Wherry
Judge

Dated: Washington, D.C.

November 21, 2017