

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

MELVYN DUANE SALTER,) **SR**
)
Petitioner,)
)
v.) Docket No. 553-18 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

On January 9, 2018, petitioner filed a petition to commence the above-docketed case. Petitioner also included on the petition and attachments notations stating that the materials should not be made public. However, no Motion for Protective Order pursuant to section 7461(b)(1) was received, and the petition materials did not specify the particular portion(s) of the record to be sealed or set forth in detail the grounds to justify the requested protection.¹

Given the foregoing, the Court ordered that the petition and attachments thereto were to be temporarily sealed and not made a part of the public record pending resolution by the Court of an opportunity for petitioner to file a Motion for Protective Order. The Court further directed petitioner to file a Motion for Protective Order in accordance with Rule 103 and to address therein: (1) The particular portion(s) of the record as to which protection is sought and (2) the reasons justifying the sealing requested.

Petitioner then filed a Motion for Protective Order on February 9, 2018, and in that document requested that “any and all documents of any and all records regarding any and all prior, current or hereafter portion, records, documents, mailings or anything that has to do with me be sealed permanently”. Nearly all

¹Unless otherwise indicated, section references are to sections of the Internal Revenue Code of 1986, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

SERVED Mar 23 2018

submissions by petitioner to date have also been marked “not to be published to the public”, “not for public use”, or variations thereof. The basis for the relief requested was “malicious intent and prosecution” by the Internal Revenue Service (IRS) and the Court. Respondent rejoined on March 7, 2018, with a response maintaining that petitioner’s position failed to meet the legal standard for sealing, insofar as he had shown neither that the material was confidential nor that there was good cause for protection.

The principles governing the sealing of records before this Court under Rule 103 are set forth in Willie Nelson Music Co. v. Commissioner, 85 T.C. 914 (1985), and its progeny. As a general rule, the official records of all courts are to be open and available for public inspection. Id. at 917. Nonetheless, the public right to judicial records is not absolute and is subject to the discretion of the presiding court to control and seal upon an appropriate demonstration of good cause. Id. at 917-918. In exercising such discretion, the court “must weigh the interests of the public, which are presumptively paramount against those advanced by the parties.” Id. at 919. The burden rests on the party seeking protection to “come forth with appropriate testimony and factual data to support claims of harm that would occur as a consequence of disclosure.” Id. at 920. Conversely, conclusory or unsupported statements that harm could or would result from disclosure are insufficient. Id. at 920, 925.

For example, as summarized by the Court in Anonymous v. Commissioner, 127 T.C. 89, 92 (2006):

Good cause has been demonstrated and records sealed where patents, trade secrets, or confidential information are involved or where an individual’s business reputation will be hurt. * * * Merely asserting annoyance, embarrassment, or harm to a person’s personal reputation, however, is generally insufficient to demonstrate good cause and overcome the strong common law presumption in favor of access to court records. * * *

The Court then went on to hold that the showing of an objective and substantial risk of actual physical harm will likewise meet the requisite standard. Id. at 92-93.

Turning to and applying the foregoing principles to the instant case, the Court is sympathetic to petitioner’s desire for privacy. The generalized concerns he cites, however, fall short of demonstrating the necessary cause. Rather than an actual and imminent risk of a known and specific harm, petitioner alludes only to

general “harm to me and my family, as well as defamation of character” and possible revealing of “my confidential information”. Such concerns are widespread, affecting many in today’s society, and thus cannot outweigh the strong policy of sunshine in court proceedings. Moreover, with respect to the concern regarding confidential information, Rule 27 affords petitioner the opportunity to redact specified personal identifying information from filings made with the Court.

Accordingly, upon due consideration, it is

ORDERED that the temporary sealing imposed in this case is hereby lifted, and this case is no longer sealed. It is further

ORDERED that petitioner’s Motion for Protective Order is denied.

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

Dated: Washington, D.C.
March 23, 2018