

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WHISTLEBLOWER 6388-17W,)	
)	
Petitioner,)	
)	
v.)	Docket No. 6388-17W.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This whistleblower action is before the Court on petitioner’s Motion for Leave to File Petitioner’s Motion to Compel Production of Documents with Exhibits under Seal. The Court will grant petitioner’s motion for leave, direct the filing of petitioner’s motion to compel production of documents with exhibits under seal, and grant that motion in part as described below.

Background

Earlier in these proceedings the Court directed the parties to confer and attempt to stipulate to the administrative record. When that effort failed, the Court directed respondent to file the administrative record as compiled by the Whistleblower Office and directed the parties to continue to confer in an effort to stipulate to the administrative record. Respondent subsequently filed the administrative record as compiled by the Whistleblower Office, but redacted all or part of many documents and asserted that the redacted material is privileged or contains taxpayer information that is protected from disclosure under I.R.C. section 6103.

It now appears that respondent has provided petitioner with unredacted copies of some of the formerly redacted documents contained in the administrative record as compiled by the Whistleblower Office. Otherwise, the parties are at an impasse.

SERVED Dec 21 2018

Petitioner seeks an Order from the Court directing respondent to produce (1) a complete, unredacted copy of the administrative record as compiled by the Whistleblower Office and (2) various audit records, including a complete copy of the taxpayer's administrative audit files for the taxable years 2004 through 2011.

Discussion

In Kasper v. Commissioner, 150 T.C. No. 2 (2018), the Court held that the scope of review of a whistleblower action normally will be limited to the administrative record. The Court also explained, however, that respondent cannot unilaterally determine the contents of the administrative record and that the administrative record may be supplemented in certain circumstances. Kasper v. Commissioner, slip op. at 20-21.

Upon due consideration and for cause, it is

ORDERED that petitioner's motion for leave to file petitioner's motion to compel production of documents with exhibits under seal is granted and the Clerk of the Court is directed to file petitioner's motion to compel production of documents, under seal. It is further

ORDERED that petitioner's motion to compel production of documents is granted in that, on or before February 15, 2019, respondent shall (1) file with the Court (under seal) an index that identifies each document in the administrative record as compiled by the Whistleblower Office including (a) a general description of the document and (b) corresponding Bates number(s), and (2) file with the Court (under seal) a report identifying, and providing a copy of, any formerly redacted document that respondent has provided to petitioner in unredacted form.

Should respondent continue to assert that all or any part of any document contained in the administrative record as compiled by the Whistleblower Office must be redacted to preserve a privilege or protect taxpayer information under I.R.C. section 6103, respondent shall submit those documents to the Court in unredacted form in a separate, double-sealed envelope, marked "CONFIDENTIAL--CHAMBERS OF SPECIAL TRIAL JUDGE DANIEL A. GUY, JR.", for in camera review, including therewith a log that identifies each document including (a) a general description of the document, (b) corresponding Bates number(s), and (c) sets forth the specific privilege or other ground for protection that respondent relies upon for redacting the document in whole or in

part. Any document so submitted to the Court shall remain under seal until further Order of the Court. It is further

ORDERED that so much of petitioner's motion to compel production of documents as seeks production of the taxpayer's administrative audit files for the taxable years 2004 through 2011 shall be held in abeyance.

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

Dated: Washington, D.C.
December 19, 2018