

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JULIA CASTANEDA,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 7697-17 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

On July 30, 2018, Ms. Castaneda, filed Petitioner’s First Supplemental Notice of Objection to Motion for Summary Judgment that contained personally identifying information. We sealed that document by an Order dated February 6, 2019, and directed Ms. Castaneda to re-file redacted copies. We did so because Ms. Castaneda’s July 30, 2018, filing contained personally identifying information relating to Ms. Castaneda and Rudy Castaneda (see Exhibit C, pages 20, 22, 24, and 26).

Ms. Castaneda filed a motion to vacate said order and unseal the July 30, 2018 filing, which motion was dated February 18, 2019, postmarked February 16, 2019, and received by the Court on February 27, 2019. In that motion, she argues that Rule 27(a)¹ is permissive in that Rule 27(a) states that a party or nonparty “should” redact instead of a prescriptive “shall” redact. Ms. Castaneda further argues that Rule 27(g) grants her the right to waive the protection of her own personally identifying information. She additionally cites Rule 5.2 of the Federal Rules of Civil Procedure (Rule 5.2 FRCP) as further evidence in support of both of her positions. We give particular weight to the Federal Rules of Civil Procedure when we have no applicable rule. Rule 1(b).

Rule 27(a) states that the party “making the filing should refrain from including or should take appropriate steps to redact” Social Security numbers, birth

¹ All section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure, unless otherwise indicated.

dates, names of minor children, and financial account numbers. Rule 27(g) states that a person “waives the protections of this Rule as to the person’s own information by filing it without redaction and not under seal.” Rule 27(d) provides that, for good cause, we may by order in a case “require redaction of additional information.”

Rule 5.2(a) FRCP states that a filing “may include only” the last four digits of the Social Security number, the year of the individual’s birth, the minor’s initials, and the last four digits of a financial account number. Rule 5.2(d) FRCP allows the court to order that a filing be made under seal without redaction. Rule 5.2(e) FRCP states that, “[f]or good cause, the court may” require redaction of additional information.

We agree with Ms. Castaneda that Rule 27 is drafted in such a manner as to prevent a disclosure from automatically becoming a per se violation of the Rule. Furthermore, we agree with Ms. Castaneda that she may waive the protection of her own personally identifying information. However, we do not agree with Ms. Castaneda that we lack the discretion to override her waiver. Ms. Castaneda also lacks the ability to waive protection of the personally identifying information of a nonparty to this matter.

Section 7461(a) provides the general rule that “all reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public.” 26 U.S.C. § 7461.

Section 7461(b)(1) provides an exception to the general rule: “The Tax Court *may make any provision* which is necessary to prevent the disclosure of trade secrets or *other confidential information*, including a provision that any document or information be placed under seal to be opened only as directed by the court.” 26 U.S.C. § 7461 (emphasis added).

Rule 27 and section 7461 reflect two general principles. The first is that “the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.” Nixon v. Warner Communications, Inc., et al, 435 U.S. 589 at 597 (1978). The second is that:

It is uncontested [] that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and

access has been denied where court files might have become a vehicle for improper purposes.

Nixon, 435 U.S. at 598.

Rule 5.2 FRCP reflects those principles and was adopted in compliance with the E-Government Act of 2002. Pub. L. No. 107-347, § 205(a)(6), (c)(1); 1 Moore's Federal Practice – Civil § 5.2.02 (2019). That Act required federal courts to make electronic records available online. The increased ease of access to mass amounts of information highlighted the need to balance the protection of privacy rights with electronic access to filings. 1 Moore's Federal Practice – Civil § 5.2.02 (2019).

Here, Ms. Castaneda desires to waive her right to having her personally identifying information protected. In this instance, we will respect Ms. Castaneda's desire. However, we find no basis for allowing Ms. Castaneda to waive the protection of a nonparty's personally identifying information. While Rudy Castaneda was initially a party to this action, we dismissed him from this action for lack of jurisdiction by order dated July 13, 2017. While Ms. Castaneda and Rudy Castaneda are or were married, the petition that originated this action itself notes that Ms. Castaneda and Rudy Castaneda were then separated. Moreover, for each of the years which we ordered redaction, the filing status of Ms. Castaneda and Rudy Castaneda was married filing separate.

Upon due consideration and for cause, it is hereby

ORDERED that on or before March 22, 2019, nonparty Rudy Castaneda shall serve on petitioner Julia Castaneda and respondent and file with the Court a response to petitioner's Motion to Vacate the Court's Order dated February 6, 2019 and Motion to Unseal filed February 27, 2019. It is further

ORDERED that in addition to regular service, the Clerk of the Court shall serve on nonparty Rudy Castaneda at the address provided in the petition filed April 6, 2017, 1) a copy of this Order; 2) a copy of the Order dated February 6, 2019; and 3) a copy of petitioner's Motion to Vacate the Court's Order dated February 6, 2019 and Motion to Unseal filed February 27, 2019.

**(Signed) Elizabeth A. Copeland
Judge**

Dated: Washington, D.C.
March 8, 2019