

The remaining documents that respondent has redacted fall into three categories, all of which respondent maintains are protected from disclosure under section 6103: (1) information concerning a taxpayer other than the taxpayer identified by petitioner and a whistleblower claim not at issue in this case; (2) taxpayer information related to an IRS examination of an issue other than the issue identified by the whistleblower; and (3) taxpayer information related to the issue identified by petitioner, but which is unrelated to the specific information provided by petitioner.

Section 6103(a) provides the general rule that returns and return information shall be confidential. The terms “return” and “return information” are defined in section 6103(b)(1) and (2), respectively. The general rule of section 6103(a) is subject to exceptions, however, including section 6103(h)(4) which provides in relevant part as follows:

(4) Disclosure in judicial and administrative tax proceedings.--A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only--

(A) if the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer’s civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title;

(B) if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding;
[or]

(C) if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding; * * *

Shortly after the petition was filed in this case, the parties filed a joint motion for protective order. In that motion, the parties indicated that pursuant to section 6103(h)(4) respondent may disclose to petitioner certain returns and return information of the taxpayer identified in petitioner’s whistleblower claim. To preserve the protections afforded to returns and return information under section 6103(a), the Court granted the parties’ joint motion in a detailed Order dated March 1, 2018. That Order requires the following: (1) respondent will mark as “CONFIDENTIAL--Section 6103 Information Subject to Protective Order” any documents containing information protected under section 6103 that respondent

provides to petitioner or petitioner's counsel; (2) petitioner or petitioner's counsel may not share that information with any other person except for the sole purpose of preparing for a trial or hearing in this case; (3) before a person receives such confidential information that person must first be provided with a copy of the Court's Order dated March 1, 2018; and (4) all such confidential information must be destroyed shortly after the Court's decision in this case becomes final.

There is tension between the general rule of protection prescribed in section 6103(a) and the parties' obligations to exchange information in a good-faith effort to arrive at basis for settlement in a whistleblower case. In the absence of a settlement, the same tension arises in connection with the Court's obligation to determine the contents of, and review, the administrative record in the course of rendering a decision in a whistleblower case.

Before the Court proceeds with an in camera review of the documents that respondent has redacted in this case, the Court will direct the parties to file separate memoranda providing a comprehensive discussion and analysis of the applicability or nonapplicability (as the case may be) of the provisions of section 6103, and particularly the exceptions prescribed in section 6103(h)(4)(A), (B), and (C), both in the broad context of this whistleblower action and with regard to the specific categories of redacted documents outlined above. The parties are expected to take into account the Court's protective Order described above, and address the plain language of the statute, legislative history, and significant legal precedent in support of their positions.

Upon due consideration and for cause, it is

ORDERED that, on or before June 10, 2019, respondent shall file a memorandum as more fully described in this Order. It is further

ORDERED that, on or before July 25, 2019, petitioner shall file a reply memorandum as more fully described in this Order.

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

Dated: Washington, D.C.
April 25, 2019