

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WHISTLEBLOWER 4891-18W,)
)
 Petitioner,) **CLC**
)
 v.) Docket No. 4891-18W.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

On March 9, 2018, when petitioner filed a petition commencing this whistleblower action, he filed a motion to proceed anonymously and a motion to file a reference list under seal. Petitioner also filed a reference list of redacted information. The Court granted petitioner’s motion to file reference list under seal and sealed petitioner’s reference list of redacted information and temporarily sealed the entire record in this case. The Court ordered the Commissioner to file a response to the petitioner’s motion to proceed anonymously. In the meantime, the parties resolved the case by agreement. But the Court cannot close this case while a motion remains pending, and on February 26, 2019, the Court held a conference call with the parties to address the issue. On that call, the Court learned that petitioner continues to seek the relief sought in his motion and the Commissioner continues to oppose that relief. As a result, we turn to the substance of the motion.

Petitioner’s whistleblower claim relates to a taxpayer with which petitioner had worked, and the whistleblower information was obtained in the course of the positions he held. Petitioner has also brought a False Claims Act case, captioned in his own name, against the target taxpayer. That False Claims Act case is a matter of public record and is not sealed. Petitioner has also made several other whistleblower claims regarding peer entities of the target taxpayer. The Internal Revenue Service is still examining those claims.

To decide if we will grant a motion to proceed anonymously we balance “the public’s interests in open court proceedings against petitioner’s privacy interests as

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a confidential informant.”¹ This Court first stated and applied this test in Whistleblower 14106-10W v. Commissioner in 2011.² In reaching our conclusion, we acknowledged that section 7461(a) provides a general rule that records of Tax Court proceedings are open to the public for inspection, but also that we have the authority to seal such records when we deem it necessary to do so.³ The next year Rule 345(a) was added to our rules, providing that a whistleblower may move to proceed anonymously. The rule formalized the procedure for seeking anonymity.⁴

Since enacting Rule 345 we have both granted and denied whistleblowers motions to proceed anonymously based on this balancing test. In each of Whistleblower 10949-13W⁵ and Whistleblower 11332-13W⁶ we found that the risks of physical force and harm faced by the whistleblowers outweighed society’s interest in knowing their identities and granted their motions to proceed anonymously. In addition to physical harm we have held that whistleblower fears of “retaliation, professional ostracism, and economic duress” could justify granting a motion for anonymity.⁷ For example, the fear of loss of retirement benefits was a sufficient financial harm to justify anonymity in Whistleblower 13412-12W.⁸

In Whistleblower 12568-16W we granted a motion under Rule 345 after finding that “Petitioner has a well-founded concern that disclosure of petitioner’s identity would cause the taxpayer to retaliate against petitioner and petitioner’s family, resulting in professional and personal ostracism, economic loss, and even threats to petitioner’s family’s safety * * *[and] severe damage to petitioner’s standing in petitioner’s professional community, as well as embarrassment both professionally and personally.”⁹ However we noted that we might revisit our determination as the case progressed and the interest of the public presumably increased.¹⁰

¹Whistleblower 14106-10W v. Commissioner, 137 T.C. 183, 189 (2011).

²Whistleblower 14106-10W v. Commissioner, 137 T.C. 183.

³Whistleblower 14106-10W v. Commissioner, 137 T.C. at 190.

⁴See Comments to Rule 345.

⁵Whistleblower 10949-13W v. Commissioner, T.C. Memo. 2014-94.

⁶Whistleblower 11332-13W v. Commissioner, T.C. Memo. 2014-92.

⁷Whistleblower 14106-10W v. Commissioner, 137 T.C. at 204.

⁸Whistleblower 13412-12W v. Commissioner, T.C. Memo. 2014-93.

⁹Whistleblower 12568-16W v. Commissioner, 148 T.C. 103, 104 (2017).

¹⁰Whistleblower 12568-16W v. Commissioner, 148 T.C. at 107-108.

In Whistleblower 14377-16W we denied the whistleblower's motion to proceed anonymously.¹¹ The harms feared by the taxpayers in that case included "a negative impact on my domestic relationship with my spouse", impairment to his ability to earn income from managing and assisting with a business, alienation of business partners, and possible retribution from politicians close to the target.¹² That whistleblower had ten other whistleblower claim cases pending before us and several additional submissions pending with the IRS.¹³ The Commissioner argued the motion should be denied because the whistleblower "failed to set forth a sufficient, fact-specific basis for protecting his confidentiality".¹⁴ After a discussion of the number of claims brought by petitioner and by whistleblowers generally, we concluded that the public has a significant interest in knowing who uses the Court to bring whistleblower actions.

We also denied the whistleblower's motion for anonymous proceedings in Whistleblower 7208-17W.¹⁵ The petitioner in that case made unsupported allegations of physical harm and concerns about future employment.¹⁶ We did not find his concerns about economic or physical harm credible.¹⁷ We held that the petitioner's weak interest in anonymity did not overcome the presumption of open proceedings.¹⁸

Petitioner provides the following in support of his motion: "Revealing Petitioner's identity in this proceeding would very likely jeopardize his confidentiality in the other whistleblower claims.¹⁹ * * * And Petitioner likewise has a strong personal interest in preventing the targets of his claims from identifying him as a tax whistleblower." Petitioner also states that the case is "at

¹¹Whistleblower 14377-16W v. Commissioner, 148 T.C. 510, 511 (2017), appeal filed, No. 17-1212 (D.C. Cir. Sept. 27, 2017).

¹²Whistleblower 14377-16W v. Commissioner, 148 T.C. at 513.

¹³Whistleblower 14377-16W v. Commissioner, 148 T.C. at 511.

¹⁴ Whistleblower 14377-16W v. Commissioner, 148 T.C. at 512.

¹⁵Whistleblower 7208-17W v. Commissioner, T.C. Memo. 2018-118.

¹⁶Whistleblower 7208-17W v. Commissioner, at *16-*17.

¹⁷Whistleblower 7208-17W v. Commissioner, at *24-*30.

¹⁸Whistleblower 7208-17W v. Commissioner, at *32-*33.

¹⁹We acknowledge the Commissioner's disagreement with this stated fact but find that we do not have to address this question of fact to dispose of this motion and therefore this case. The Commissioner alleges that, given Mr. Pervez's other suits, his identity is already known to the taxpayer and other relevant parties.

its nadir at the beginning of a proceeding” evidently implying that the value to the public of knowing the petitioner’s identity is low because the case did not progress.

The Commissioner objects to our granting of the motion, arguing that the whistleblower has not alleged a sufficient fact specific basis for protection. Further that petitioner has filed other whistleblower claims against other similarly situated taxpayers as targets and a False Claims Act claim against the target taxpayer, which increases the public’s interest in this case. He also states that the identity of the petitioner as a whistleblower is already known as a result of the False Claims Act case.

We must weigh the possible harms to the whistleblower against society’s interest in knowing his identity. As we have previously stated

petitioner must provide some factual basis sufficient and specific enough to allow the Court to determine whether the severity of the asserted risk of harm amounts to more than mere embarrassment or annoyance and outweighs the societal interest of the public’s right to know who is using the Court. Otherwise the grant of anonymity would be automatic in every whistleblower case.²⁰

The possible harm to the whistleblower here is somewhere between low and nonexistent. The petitioner has not alleged a fear of physical harm. He has not alleged a fear of financial harm. He has not alleged a fear of unemployment based on the connection of his identity with the whistleblower action. The petitioner’s only concerns are that his identity would be revealed in other whistleblower actions and that he has a strong interest in not being identified. We have never found that revelation of a whistleblower’s identity in a comparable action to be a reason to grant a motion to proceed anonymously and petitioner gives us no explanation of why we should do so now. The conclusory recitation that he has a strong interest in not being identified is belied by the public record of the False Claims Act case. He has not convinced us he will suffer a harm other than potential annoyance or embarrassment.

When we balance the interest of society knowing who is bringing whistleblower actions against the bare pleading that the whistleblower has a strong personal interest in not being identified, we find that the interest of society is stronger. Accordingly, we will deny petitioner’s motion. Nevertheless, the Court

²⁰Whistleblower 7208-17W v. Commissioner, at *26.

has changed the caption of the case to accord petitioner anonymity in the event he wishes to appeal the Court's denial of the motion. If within 30 days of this order petitioner does not file with the Clerk of the Court a notice of appeal, the Court will change the caption back to reflect the petition as filed. Accordingly, it is

ORDERED that petitioner's motion to proceed anonymously filed March 9, 2018, is denied. It is further

ORDERED that, if petitioner wishes to appeal this order denying the motion and to maintain anonymity during the appeal, petitioner shall file a notice of appeal on or before June 3, 2019.

(Signed) Ronald L. Buch
Judge

Dated: Washington, D.C.
May 2, 2019