

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

DRC

JAROSLAW JANUSZ WASZCZUK,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 23105-18W.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	

**ORDER**

On May 15, 2019, respondent filed a Motion For Protective Order Pursuant To Rule 103<sup>1</sup> in this whistleblower case. Such motion is substantively identical to the same motion for protective order that is typically filed by respondent in virtually every whistleblower case in this Court.

In his motion, respondent moves the Court to issue a protective order concerning the return, return information, and taxpayer return information, as those terms are defined by section 6103(b)(1), (2), and (3)<sup>2</sup> of the third-party taxpayer(s) identified in petitioner’s whistleblower claim, that respondent provides to petitioner in connection with the present whistleblower action. (Return, return information, and taxpayer return information as so defined are referred to in respondent’s motion and in this Order as “Section 6103 Information”.) The protective order that respondent seeks from the Court:

<sup>1</sup> All Rule references are to the Tax Court Rules of Practice and Procedure.

<sup>2</sup> All section references are to the Internal Revenue Code of 1986, as amended.

(1) would allow respondent to mark Section 6103 Information as “Confidential - Section 6103 Information Subject to Protective Order” prior to providing such Section 6103 Information to petitioner pursuant to the Court’s Order granting the motion;

(2) would prohibit petitioner from disclosing such Section 6103 Information so marked and so provided by respondent for any purpose other than in connection with the present whistleblower proceeding, and upon such disclosure by petitioner in connection with the present whistleblower proceeding (i.e., disclosure by petitioner for use only in connection with the present whistleblower proceeding) would require petitioner to inform any person receiving the Section 6103 Information that he or she must comply with the terms of the protective order; and

(3) would require petitioner to return to respondent or destroy the Section 6103 Information upon the final resolution of the present whistleblower proceeding.

Section 6103(a) provides as a general rule that Section 6103 Information shall be confidential. Exceptions to the general rule of confidentiality are extremely limited and narrow. Unauthorized disclosure of Section 6103 Information is punishable as a felony. Sec. 7213.

Paragraph 5 of respondent’s May 15, 2019 Motion For Protective Order Pursuant To Rule 103 states that “Petitioner objects to the granting of this motion due to his concerns with other, unrelated litigation involving the third party taxpayers.”

On June 3, 2019, petitioner filed a 136-page Opposition to respondent’s aforementioned motion, alleging such motion to be “frivolous, meritless, and groundless”. Petitioner then goes on to allege that “By granting the Motion for Protective Order to Respondent, the Court would interfere with Petitioner’s litigations in State of California Courts and with Petitioner’s complaints with various state and federal law enforcement agencies.” The scores of pages and exhibits that then follow this allegation suggest to this Court (i.e., to the Tax Court) that petitioner may regard the present whistleblower proceeding as collateral to his other “litigations” and “complaints” and that he may also regard the present whistleblower proceeding useful in unearthing material for his use in such other “litigations” and “complaints”.

Petitioner should understand that respondent's May 15, 2019 Motion For Protective Order Pursuant To Rule 103 is neither frivolous nor meritless nor groundless. Rather, as previously stated, it is substantively identical to the same motion for protective order that is typically filed by the Commissioner in virtually every whistleblower case in this Court. Petitioner should further understand that the Court typically grants such motions for protective order so as to authorize the disclosure of Section 6103 Information by the Commissioner to the whistleblower but for use only in the whistleblower's action in this Court. Thus, respondent's May 15, 2019 motion is fully consistent with practice in this Court when it comes to whistleblower proceedings and the disclosure of Section 6103 Information.

Petitioner should also understand that without the disclosure of Section 6103 Information to a whistleblower, the whistleblower has little, if any, likelihood of success in this Court insofar as the whistleblower's claim for reward under section 7623(b) is concerned. (This is not to say that the disclosure of Section 6103 Information by the Commissioner to the whistleblower assures such success.) Further, petitioner should understand that any disclosure of Section 6103 Information in a whistleblower action in this Court is for use only in such whistleblower action in this Court and may not be used in any other action, proceeding, or matter, or for any other purpose.

In sum, petitioner has a choice to make: He can either:

(1) withdraw his June 3, 2019 Opposition to respondent's May 15, 2019 Motion For Protective Order Pursuant To Rule 103 and certify that he will abide by a Court order granting such motion (which order will, inter alia, prohibit petitioner from using Section 6103 Information that is furnished to him by respondent pursuant to such order for any purpose other than in connection with the present whistleblower proceeding in this Court; or

(2) not so withdraw such Opposition and not so certify, in which case the Court will most likely deny respondent's aforementioned motion.

If petitioner chooses the first option, such option will not preclude him from pursuing his "litigations in State of California Courts and with [his] complaints with various state and federal law enforcement agencies"; however, such first option will preclude him from using Section 6103 Information obtained by him from respondent in the present whistleblower case in this Court in those other "litigations" and "complaints".

Premises considered, it is hereby

ORDERED that petitioner shall, on or before July 29, 2019, file a response to this Order and state either:

(1) that he wishes to withdraw his June 3, 2019 Opposition to respondent's May 15, 2019 Motion For Protective Order Pursuant To Rule 103 **and** that he affirmatively certifies that (a) any Section 6103 Information that he may receive in the present whistleblower case from respondent pursuant to an order of this Court granting such motion will **NOT** be used for any purpose other than in connection with the present whistleblower proceeding in this Court and that (b) he understands that unauthorized disclosure of any Section 6103 Information contrary to the terms of an order granting respondent's aforementioned motion is potentially punishable, criminally, as a felony under Federal law; or

(2) that he is unwilling to withdraw his June 3, 2019 Opposition and will not certify as provided above in option (1) of this ORDERED paragraph.

Petitioner is again advised (see page 3 of this Order) that without the disclosure of Section 6103 Information to a whistleblower by respondent pursuant to an order granting a motion such as respondent's May 15, 2019 Motion For Protective Order Pursuant To Rule 103, the whistleblower has little, if any, likelihood of success in this Court insofar as the whistleblower's claim for reward under section 7623(b) is concerned because respondent will not disclose Section 6103 Information because of the strictures of section 6103.

Petitioner is further advised that a lengthy response to this Order is not required; indeed, a lengthy response would be inappropriate and may be regarded by the Court as tantamount to petitioner choosing option (2) of the above ORDERED paragraph.

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Finally, petitioner is advised that a response in which he seeks to condition, qualify, or otherwise limit what option (1) of the above ORDERED paragraph requires him to do may be treated by the Court as tantamount to petitioner choosing option (2) of such paragraph.

**(Signed) Robert N. Armen**  
**Special Trial Judge**

Dated: Washington, D.C.  
July 9, 2019