

UNITED STATES TAX COURT
WASHINGTON, DC 20217

AMAZON.COM, INC. & SUBSIDIARIES,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 31197-12.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case was tried during November and December 2014 in Seattle, Washington, where petitioner has its principal place of business. The case is currently under advisement. On March 25, 2016, the Court filed a Motion to Intervene by Non-Party Guardian News & Media, LLC (Guardian or Movant). Movant is the U.S. affiliate of the Guardian, a major British newspaper. Guardian sought to intervene in this case for the purpose of urging the Court to unseal certain components of the trial record that had been sealed pursuant to a protective order.

On July 18, 2016, we decided to hold Guardian’s motion in abeyance until the parties had exercised their rights under the protective order with a view to determining which portions of the trial record would have the seal removed and which portions contained Confidential Information (as defined in the protective order) that must be sealed permanently. Amazon.com, Inc. & Subs. v. Commissioner, T.C. Memo. 2016-131. The parties have now finished their review of the record. They agree that certain documents previously sealed may be unsealed or be made available in redacted form. The Court has reviewed the parties’ designations and redactions and finds them to be appropriate.

As a result of this process, most of the documents to which Guardian seeks access have been or will be placed on the public record, in their original or in redacted form, and will be available for inspection and copying by Guardian and other members of the public. The Court agrees with the parties that the balance of the documents to which Guardian seeks access contain “trade secrets or other confidential information” within the meaning of section 7461(b)(1) and are incapable

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of meaningful redaction; these documents will remain permanently sealed. To a large extent, Guardian's motion is now moot; to the extent its motion is not moot, the Court has performed the review function that Guardian sought and intervention would serve no useful purpose. We will accordingly deny the motion to intervene.

The deficiencies at issue, for tax years 2005 and 2006, arise from a cost-sharing arrangement (CSA) that petitioner (Amazon or petitioner) executed with Amazon Europe Holdings Technologies SCS (AEHT), a Luxembourg affiliate. Under the CSA, petitioner transferred preexisting intangible assets to AEHT, and the parties agreed to share future intangible development costs (IDCs).

In order to decide the fact-intensive transfer pricing issues, the Court received into evidence voluminous information concerning Amazon's technology, source code, trademarks, customer information, and non-public financial data. With a view to protecting such sensitive information from public disclosure, petitioner in July 2013 moved for a pre-trial protective order. In November 2013 the parties proposed, and the Court adopted, a protective order implementing procedures to protect Amazon's trade secrets, proprietary technology, and nonpublic financial information (collectively, Confidential Information) during the pre-trial phase of the case. On March 12, 2014, we amended the original protective order to add provisions governing the production of source code and other highly sensitive technical data.

On October 6, 2014, petitioner moved for a protective order covering the trial and post-trial phases of the case. On October 20, 2014, the Court issued a protective order covering the trial and post-trial phases of the case, stating as follows:

It is the goal of this Court to provide as robust a public record as possible while protecting petitioner's Confidential Information. We are satisfied that the terms of the protective order set forth below will enable the largest possible percentage of the trial record to be made available for ultimate public inspection, consistently with the protection of Amazon's proprietary business and technological information.

The parties filed comprehensive pre-trial memoranda. With minor redactions, those memoranda have been placed on the docket for public inspection. Trial testimony that did not elicit Confidential Information was heard in open court; transcripts of that testimony have been placed on the docket for public inspection. Trial testimony that elicited Confidential Information was heard in

closed court; the parties have now completed their review of the sealed transcripts and have lodged with the Court redacted versions of those transcripts. The Court agrees with the parties' redactions, and electronic versions of the redacted transcripts will be placed on the docket for public inspection.

Trial exhibits that Amazon did not designate as containing Confidential Information are currently available for public inspection upon request. These exhibits include redacted versions of all expert witness reports (56 in toto). Trial exhibits that Amazon designated as containing Confidential Information were given exhibit numbers with the prefix "C" and were temporarily sealed.

The parties have now reviewed all "C" documents. They agree that some documents do not contain Confidential Information and that others, which contain only limited Confidential Information, may be meaningfully redacted and placed on the public record. Specifically, the parties agree and the Court finds that the Stipulation for Trial--Tax Reporting Stipulation of Facts, filed November 12, 2014, may be unsealed and that the following documents do not contain any Confidential Information and may be unsealed:

C-133-R, C-300-J, C-301-J, C-303-J, C-304-J, C-305-J, C-307-J, C-308-J, C-309-J, C-310-J, C-311-J, C-313-J, C-411-J, C-429-J, C-4007-J, C-4093-R, C-4609-R, C-4651-R, C-4652-R, RD-551-C, and RD-553-C.

The parties agree and the Court finds that the following documents, with proper redactions, may also be made available to the public:

C-299-J, C-302-J, C-306-J, C-312-J, and C-4095-R.

All other documents that were designated as "C" exhibits shall remain sealed.

The parties filed post-trial briefs that include more than 1,500 pages of proposed findings of fact, objections to proposed findings of fact, and legal argument. Redacted versions of those documents have been placed on the public

record. All in all, the pre-trial memoranda and post-trial briefs total 2,689 pages; 2,480 of these pages (or 92%) contain no redactions at all.

In its motion to intervene, Guardian sought access to 16 specified items. As a result of the review process described above, 11 of those items have been or will be placed on the public record in their original or redacted form. One of the re-

quested items was not received by the Court (and thus not admitted into evidence) and is not part of the record for that reason. The remaining four items--C-4009-R, C-4096-R, C-4097-R, and C-4659-R--have been determined by the Court to contain "trade secrets or other confidential information" within the meaning of section 7461(b)(1). Because confidential information pervades these documents, they are incapable of being redacted in any meaningful fashion and they will remain permanently sealed.

On the basis of the foregoing, it is

ORDERED that Guardian's motion to intervene, filed March 25, 2016, is denied. It is further

ORDERED that the Clerk of the Court shall serve a copy of this Order on Guardian News & Media LLC at c/o Simon Marks, 42 Rue Darwin, Ixelles 1050 Brussels, Belgium.

(Signed) Albert G. Lauber
Judge

Dated: Washington, D.C.
November 29, 2016