

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MARSHA GAYE LAMBERT A.K.A. MARSHA)
LAMBERT MAINES D.B.A. MARSHA)
MAINES ALVARADO,)
)
Petitioner(s),)
)
v.) Docket No. 22395-18W.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

DRC

ORDER AND DECISION

This case is calendared for trial at the Court’s Denver, Colorado trial session commencing on March 9, 2020. This case arises under our jurisdiction to review the Commissioner’s determination regarding petitioner’s eligibility for a whistleblower award under section 7623, and is before the Court on respondent’s motion for summary judgment, filed December 27, 2019.¹ On January 31, 2020, petitioner filed a response to respondent’s motion. Petitioner’s response did not raise any coherent argument or contest the administrative record or respondent’s assertions.

Background

The following facts are drawn from the pleadings and motion papers, including declarations and exhibits. They are not in dispute.

On August 22, 2018, petitioner filed a Form 211, Application for Award for Original Information, with the Internal Revenue Service’s (IRS) Whistleblower Office (WBO) alleging that an individual, Taxpayer 1, and a corporate entity, Taxpayer 2, had committed bankruptcy fraud related to stolen identity and theft of funds.

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

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Upon receipt of petitioner's Form 211, the WBO Initial Claims Evaluation (ICE) unit assigned petitioner's Form 211 master claim number 2018-012360 (Taxpayer 1) and related claim number 2018-012361 (Taxpayer 2). On September 5, 2018, the WBO ICE unit sent petitioner a letter acknowledging receipt of her claim and noting the claim numbers assigned to Taxpayers 1 and 2. Meanwhile, the WBO ICE unit assigned petitioner's Form 211 to a classifier in the Small Business/Self-Employed (SBSE) unit (SBSE Classifier). A classifier is an employee of the operating division whose role is "to determine if the information on the Form 211 warrants further review." See Internal Revenue Manual (I.R.M.) pt. 25.2.1.3.1(2) (January 11, 2018).

The SBSE Classifier determined that petitioner's claims were interdependent and needed to be determined together, so he referred the claims to Tsungyin Yeh, a classifier in the Large Business & International (LBI) unit (Classifier Yeh) because Taxpayer 2 is an entity that would be considered by the LBI unit.

Classifier Yeh reviewed petitioner's claims on October 11, 2018, and found that petitioner did not identify any tax issues and that petitioner's allegations were "not specific, credible, or [are] speculative." He recommended that petitioner's claims be rejected and not pursued by the LBI unit so the claims were referred back to the WBO ICE unit.

After reviewing the administrative claim file, the WBO ICE unit rejected petitioner's claim for an award. On October 19, 2018, the WBO sent petitioner a determination letter informing her that her claim for an award was rejected. On November 14, 2018, petitioner timely petitioned this Court in response to the WBO's determination letter.

Discussion

Summary judgment may be granted where the pleadings and other materials show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). The burden is on the moving party to demonstrate that there is no genuine dispute as to any material fact and that he or she is entitled to judgment as a matter of law. FPL Grp., Inc. & Subs. v. Commissioner, 116 T.C. 73, 74-75 (2001).

Under section 7623, the Commissioner may pay awards to whistleblowers who provide information relating to third parties and which result in recovery of unpaid taxes. A mandatory award under section 7623(b) is dependent upon "both

the initiation of an administrative or judicial action and collection of tax proceeds.” Cooper v. Commissioner, 136 T.C. 597 (2011); see also Cohen v. Commissioner, 139 T.C. 299 (2012), aff’d per curiam, 550 F. App’x 10 (D.C. Cir. 2014).

Under section 7623(b)(4), this Court has jurisdiction to review a timely appeal of the WBO’s determination regarding a whistleblower’s entitlement to a mandatory award. See Kasper v. Commissioner, 150 T.C. 8, 13 (2018). In reviewing an appeal of a WBO determination, we are limited to review for an abuse of discretion on the basis of the administrative record at the time. Id. at 20-23. An abuse of discretion exists when a determination is arbitrary, capricious, or without sound basis in fact or law. Murphy v. Commissioner, 125 T.C. 301, 320 (2005), aff’d 469 F.3d 27 (1st Cir. 2006). We cannot substitute our judgment for that of the WBO. Id. Specifically, we are not empowered to “direct the Commissioner to commence an administrative or judicial action”. Cohen v. Commissioner, 139 T.C. at 302.

The administrative record establishes that the WBO forwarded petitioner’s information for review by an IRS operating division, which considered the information neither “specific” nor “credible” and did not initiate an examination of any taxpayer as a result of the information provided by petitioner. Furthermore, respondent did not collect any Federal tax as a result of the information provided by petitioner. Respondent’s determination to reject petitioner’s claim for an award was not an abuse of discretion.

Having no meaningful response from petitioner that specifically addresses the facts set forth in respondent’s summary judgment or the declaration relied upon, we proceed as if there is no genuine dispute to those facts and we conclude that respondent is entitled to judgment as a matter of law. See Rule 121(b). It is therefore,

ORDERED that respondent’s motion for summary judgment, filed December 27, 2019, is granted. It is further

ORDERED and DECIDED that the final determination, dated October 19, 2018, upon which the petition in this case is based, is sustained.

**(Signed) Kathleen Kerrigan
Judge**

ENTERED: **MAR 02 2020**