

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DANNEZ WESTBROOK HUNTER,)	
)	SR
Petitioner,)	
)	
v.)	Docket No. 11453-19W.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

On June 28, 2019, petitioner filed a petition with the Court pursuant to section 7623¹ seeking review of a notice of determination, dated May 22, 2019, issued by the IRS Whistleblower Office (WBO). On August 12, 2019, respondent filed a motion to dismiss for failure to state a claim upon which relief can be granted. In response, on December 9, 2019, petitioner filed an amended petition. Thereafter, on March 5, 2020, respondent filed a supplement to his motion to dismiss, with a supporting declaration.

By Order dated March 26, 2020, the Court recharacterized respondent's motion to dismiss and its supplement as a motion for summary judgment and a first supplement to motion for summary judgment, respectively. See Rule 40. Petitioner's opposition to respondent's motion, as supplemented, is embodied in the response to motion for summary judgment, filed September 3, 2019; objection to motion for summary judgment, filed June 3, 2020; notice of relevant judicial decisions, filed June 4, 2020; and objection to first supplement to motion for summary judgment, filed July 5, 2020.

Petitioner also has filed the following motions: (1) motion to take judicial notice, filed July 17, 2019; (2) motion for leave to file notice of judicial ruling, filed April 3, 2020; (3) motion for leave to file notice of relevant judicial decisions, notice of supplemental authority, filed April 13, 2020; (4) motion to take judicial notice,

¹ Unless otherwise indicated, section references are to the Internal Revenue Code, as amended, in effect for the relevant years, and Rule references are to the Tax Court Rules of Practice and Procedure.

filed June 1, 2020; and (5) first supplement to motion to take judicial notice, filed June 2, 2020.

Background

The undisputed facts relied upon by respondent in support of his motion for summary judgment, as supplemented, are summarized below.

On January 29, 2019, petitioner submitted seven Forms 211, Application for Award for Original Information, to the WBO. The Forms 211 identified certain taxpayers to whom petitioner's whistleblower information related. Petitioner alleged that one of the taxpayers had "money laundered stolen proceeds of Aunt Jemima royalties that belong to my family" and that the others had failed to pay a certain individual's "\$3,500,000,000.00 UCC lien for [sic] involving theft of Terminator and Matrix franchise copyrights". Petitioner claimed that he was the administrator of the individual's purported UCC lien. Attached to the Forms 211 were various documents, including copies of court filings, taxpayer biographies, news articles, and a letter from petitioner.

The WBO assigned a master claim number to petitioner's whistleblower submission and individual claim numbers to each taxpayer identified by petitioner. On February 25, 2019, the WBO assigned a classifier to review petitioner's submission.² The classifier determined that petitioner's documentation failed to support the allegations set forth in his claim and that the information he provided failed to relate to any understatement of tax or violation of Federal tax laws. The classifier drafted an Award Recommendation Memorandum in which he recommended that each of petitioner's seven whistleblower claims be rejected because "Allegations are not specific, credible, or are speculative – No tax issue stated or identified." Thereafter, by notice of determination dated May 22, 2019, the WBO rejected petitioner's whistleblower claims.

On June 13, 2019, the IRS received from petitioner a U.S. Department of Justice Form 95, Claim for Damage, Injury, or Death, in which petitioner stated that one or more of the taxpayers had bribed FBI officials:

to direct Special Agents to not relinquish copies of the official complaints that were filed with the FBI to the IRS; in order, to retaliate and extort me out of 30% in an overt act of organized

² A classifier's role is "to determine if the information on the Form 211 warrants further review." See Internal Revenue Manual pt. 25.2.1.3.1(2) (May 28, 2020).

extortion and intimidation in violation of Article 20, 14.118.4 including 28 CFR 36.206(a)(b)(c)(2)(3)(4)(5), Minn. Stat. 609.749 Subd 2(1), including Theft Govt. Services 18 USC 641, 1951(b)(2), 1556(7)(A)(ii)(iv).

Petitioner also stated that one or more of the taxpayers had bribed an IRS official to issue the notice of determination rejecting petitioner's whistleblower claims to cover up that a Federal judge and his clerk were on the payroll of two of the taxpayers "in order to rob me * * * of 30% of the Whistleblower claim for a reasonable claim in violation of 8 USSG 3(A)(iii)(iv), 1951(b)(2)".

The WBO treated that submission by petitioner as a request for reconsideration of his whistleblower claims. By letter dated June 27, 2019, the WBO indicated that its decision remained the same concerning petitioner's whistleblower claims.

Respondent's Motion, As Supplemented, and Petitioner's Responses

Respondent asserts that, after giving due consideration to petitioner's claims, the IRS did not commence a judicial or administrative action on the basis of petitioner's information and, therefore, did not collect any proceeds. That being so, according to respondent, he is entitled to decision as a matter of law.

Petitioner's various responses indicate his disagreement with the WBO's decision to reject his claims. However, petitioner has not disputed any of the facts relied upon by respondent.

Discussion

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). A party may move for summary judgment upon all or any part of the legal issues in controversy, but we may grant summary judgment only if the moving party carries its burden of proving that no genuine dispute exists as to any material fact. Rule 121(a); Naftel v. Commissioner, 85 T.C. 527, 528-529 (1985). When the moving party has carried its burden, however, the party opposing the summary judgment motion must do more than simply show that "there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The adverse party must set forth specific facts, by affidavit or otherwise, showing that there is a genuine dispute of material fact. Rule 121(d). See also Naftel v. Commissioner, 85 T.C. at 529.

Under section 7623(a), a whistleblower may provide the IRS with information that assists in “detecting underpayments of tax” or “detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same.” If certain statutory requirements are met, the Commissioner has authority to pay awards to whistleblowers whose information results in the collection of tax proceeds. 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); 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 the WBO’s determination regarding a whistleblower’s entitlement to a mandatory award, see Kasper v. Commissioner, 150 T.C. 8, 13 (2018), including the WBO’s determination to reject a claim for failing to meet certain threshold requirements, see Lacey v. Commissioner, 153 T.C. __ (Nov. 25, 2019). A rejection is a determination that relates solely to the whistleblower and the information on the face of the claim that pertains to the whistleblower. Sec. 301.7623-3(c)(7), Proced. & Admin. Regs. A claim may be rejected because it: (1) does not contain specific information, (2) does not contain credible information, (3) does not provide information that is believed will lead to collected proceeds, (4) does not report a failure to comply with the internal revenue laws, (5) does not identify the person believed to be in violation of the internal revenue laws, (6) does not provide substantive information, including supporting documentation, and (7) contains speculative information. Sec. 301.7623-1(c)(1), (4), Proced. & Admin. Regs.

We review the WBO’s determination for abuse of discretion and limit our review to the administrative record. See Kasper v. Commissioner, 150 T.C. 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. Furthermore, 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 in this case establishes that the WBO received petitioner’s applications for award, evaluated petitioner’s information, which included receiving input from an IRS classifier, and based on that classifier’s recommendation, determined that petitioner’s information did not warrant further investigation by the IRS. In doing so, the WBO performed its evaluative function. See Alber v. Commissioner, T.C. Memo. 2020-20, at *8-*9.

Petitioner is clearly frustrated that information he believes is actionable was not pursued by the IRS. However, as petitioner has failed to show that the WBO's determination in this case was arbitrary, capricious, or without sound basis in fact or law, we find that the WBO did not abuse its discretion in rejecting petitioner's whistleblower claims. Consequently, in the absence of any justiciable dispute as to the actions that the WBO took in response to petitioner's whistleblower claim, it follows that respondent is entitled to decision as a matter of law.

Upon due consideration, it is

ORDERED that respondent's motion for summary judgment, as supplemented, is granted. It is further

ORDERED and DECIDED that the notice of determination, dated May 22, 2019, upon which this case is based, is sustained. It is further

ORDERED that petitioner's motion to take judicial notice, filed July 17, 2019; motion for leave to file notice of judicial ruling, filed April 3, 2020; motion for leave to file notice of relevant judicial decisions, notice of supplemental authority, filed April 13, 2020; motion to take judicial notice, filed June 1, 2020; and first supplement to motion to take judicial notice, filed June 2, 2020, are denied as moot.

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

ENTERED: **JUL 20 2020**