Whistleblower v. Commissioner, 137 T.C. 182 (2011)

Tax whistleblowers can proceed anonymously in Tax Court actions when the need for anonymity outweighs prejudice to the opposing party and the general presumption that parties' identities are public information.

Summary

This case concerns a tax whistleblower's petition to the Tax Court for review of the IRS's denial of an award claim. The whistleblower sought to proceed anonymously due to fears of economic and professional harm. The Tax Court granted the motion for anonymity, balancing the whistleblower's privacy interests against the public interest in open court proceedings. The Court also granted summary judgment for the Commissioner because the IRS had not proceeded with any administrative or judicial action based on the whistleblower's information, a prerequisite for an award.

Facts

The petitioner, while employed as a senior executive at Company X, became aware of a tax code violation that resulted in X underpaying its federal income tax. The petitioner submitted a Form 211 to the IRS Whistleblower Office seeking an award. After leaving Company X, the petitioner obtained new employment and feared economic and professional repercussions if identified as a tax whistleblower.

Procedural History

The IRS Whistleblower Office denied the petitioner's claim for an award. The petitioner then petitioned the Tax Court for review under section 7623(b)(4) of the Internal Revenue Code, simultaneously filing a motion to seal the record or proceed anonymously. The Commissioner filed a motion for summary judgment, arguing the petitioner did not meet the requirements for an award. The Tax Court temporarily sealed the record, held a hearing, and then considered both motions.

Issue(s)

1. Whether the Commissioner is entitled to summary judgment on the whistleblower's claim for an award under section 7623(b)?

2. Whether the petitioner should be allowed to proceed anonymously in the Tax Court action?

Holding

1. Yes, because a whistleblower award is dependent upon both the initiation of an administrative or judicial action and collection of tax proceeds, and in this case, the IRS took no action and collected no proceeds based on the petitioner's information.

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2. Yes, because granting anonymity strikes a reasonable balance between the petitioner's privacy interests as a confidential informant and the relevant social interests, taking into account the nature and severity of the asserted harm from revealing the petitioner's identity and the relatively weak public interest in knowing the petitioner's identity.

Court's Reasoning

The Court granted summary judgment for the Commissioner, citing *Cooper v. Commissioner*, 136 T.C. 597 (2011), which held that a whistleblower award requires both the initiation of an action and the collection of proceeds. The Commissioner's affidavit stated that neither had occurred. Regarding anonymity, the Court weighed factors such as the sensitivity of the information, risk of harm to the petitioner, whether the suit challenges government or private actions, prejudice to the defendant, and the public interest. The Court noted the absence of anti-retaliation provisions in section 7623, making whistleblowers particularly vulnerable. It also emphasized the IRS's policy of treating tax whistleblowers as confidential informants. The court stated, "We conclude that granting petitioner's request for anonymity strikes a reasonable balance between petitioner's privacy interests as a confidential informant and the relevant social interests, taking into account the nature and severity of the asserted harm from revealing petitioner's identity and the relatively weak public interest in knowing petitioner's identity."

Practical Implications

This case clarifies the standard for allowing tax whistleblowers to proceed anonymously in Tax Court. It highlights the importance of balancing privacy interests with the public's right to open court proceedings. The ruling acknowledges the potential for economic and professional harm to whistleblowers, especially given the lack of statutory anti-retaliation protections. Attorneys representing whistleblowers should carefully document the potential harms of disclosure and emphasize the IRS's policy of confidentiality. This case provides a framework for future courts to evaluate anonymity requests in similar tax whistleblower actions and informs legal strategy for protecting whistleblower identities.

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