Whistleblower 12568-16W v. Commissioner of Internal Revenue, 148 T. C. No. 7, 2017 U. S. Tax Ct. LEXIS 8 (U. S. Tax Ct. 2017)

In a significant ruling on whistleblower anonymity, the U. S. Tax Court allowed a whistleblower to proceed anonymously in an action concerning a taxpayer's alleged $3 billion tax fraud. The court weighed the whistleblower's risks of retaliation and harm against the public's right to know who uses the courts, granting anonymity at this stage but leaving open the possibility of future disclosure if circumstances change. This decision underscores the delicate balance between protecting whistleblowers and maintaining transparency in judicial proceedings.

Parties

Whistleblower 12568-16W, the Petitioner, sought review of the Commissioner of Internal Revenue's denial of a whistleblower award. The Commissioner of Internal Revenue was the Respondent in this action before the United States Tax Court.

Facts

The Petitioner, previously employed by an entity related to the taxpayer, filed a whistleblower action claiming the taxpayer had engaged in tax fraud resulting in an unpaid tax liability exceeding $3 billion. The Petitioner sought to proceed anonymously, asserting that disclosure of their identity would expose them to retaliation, physical harm, social and professional stigma, and economic distress. The Petitioner supported their motion with a declaration detailing their employment history, the nature of the taxpayer's violations, and the potential consequences of identity disclosure.

Procedural History

The Petitioner filed a motion to proceed anonymously under Rule 345(a) of the U. S. Tax Court Rules of Practice and Procedure, concurrent with the filing of the petition. The Respondent did not object to the motion. The court held a telephone conference to discuss the motion and subsequently considered the Petitioner's supplemental declaration and exhibits. The court granted the motion to proceed anonymously, subject to potential future review.

Issue(s)

Whether the Petitioner's interest in anonymity outweighs the public's interest in knowing the identity of persons using the courts, given the risks of retaliation, harm, and stigma asserted by the Petitioner?

Rule(s) of Law

The U. S. Tax Court's Rule 345(a) allows petitioners in whistleblower actions to move for permission to proceed anonymously. A whistleblower may proceed

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anonymously if they present a sufficient showing of harm that outweighs counterbalancing societal interests in knowing the whistleblower's identity. The court's discretion includes the ability to condition anonymity on appropriate conditions and to reconsider the balance as the case progresses.

Holding

The court held that, at this early stage of the action, the Petitioner's interest in anonymity outweighed the public's interest in knowing the Petitioner's identity. The court granted the Petitioner's motion to proceed anonymously, subject to potential future reconsideration as the case develops.

Reasoning

The court's reasoning focused on balancing the Petitioner's asserted risks of harm against the public's interest in judicial transparency. The court accepted the Petitioner's claims of potential retaliation, physical harm, and professional and personal consequences as credible for the purposes of the motion. The court cited prior cases, such as *Whistleblower 14106-10W v. Commissioner*, to establish the legal framework for assessing anonymity requests. The court noted that the balance between anonymity and public interest may shift as the case progresses, particularly given the significant tax liability and potential whistleblower award involved. The court drew parallels to other federal courts' approaches to pseudonymity in civil complaints, emphasizing the need for flexibility in balancing these interests. The court's decision to grant anonymity was provisional, acknowledging that future developments in the case could necessitate reconsideration.

Disposition

The court granted the Petitioner's motion to proceed anonymously, with the caveat that the court may revisit this decision as the case progresses.

Significance/Impact

This case underscores the U. S. Tax Court's approach to balancing the competing interests of whistleblower protection and public access to judicial proceedings. The decision reaffirms the court's authority to grant anonymity in whistleblower actions while maintaining the flexibility to reassess this balance as cases evolve. The case also highlights the potential for significant whistleblower awards to influence the court's consideration of anonymity, particularly in cases involving substantial tax fraud allegations. The decision may encourage whistleblowers to come forward in tax fraud cases, knowing that their identities can be protected at least initially, while also serving as a reminder that such protection is not absolute and may be subject to future review based on changing circumstances.

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