

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CLC

LOYS VALLEE,)	
)	
Petitioner,)	
)	
v.)	Docket No. 13513-16W.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	

ORDER

On May 16, 2017, petitioner filed a motion to seal this case and proceed anonymously. We will deny the motion.

Background

Petitioner filed his petition for this whistleblower case under section 7623(b)(4) on June 9, 2016. Attached to this petition was a final determination letter from the IRS denying petitioner’s request for a whistleblower award. This petition--and petitioner’s identity reflected therein--was open to the public pursuant to section 7461.

On September 26, 2016, the parties jointly filed a motion for a protective order concerning the return, return information, and taxpayer return information of the third party taxpayers identified in petitioner’s whistleblower claim, a motion we granted on September 30, 2016. Our order directed the protection of information of the taxpayer target (i.e., not protection of information of the whistleblower petitioner). Thus, this case’s docket entries and filings and petitioner’s identity remained open to the public.

Petitioner alleges (and we assume) that on April 6 and 7, 2017, respondent sent two letters to petitioner in connection with informal discovery, on which petitioner’s mailing address was stated incorrectly (with numbers transposed),

thereby causing the letters to be delivered to an address near to petitioner that was not petitioner's address. Petitioner alleges that the letters were subsequently forwarded to him after they had been opened and re-sealed with tape.

On May 16, 2017, more than eleven months after filing the petition, petitioner filed a motion to seal this case and proceed anonymously.

Petitioner's motion

According to the motion, good cause exists to seal the record in this case because of petitioner's concerns regarding "potential harmful or economic retaliation" against him, and "neither [party] can measure with exactitude the risk of being identified as a whistleblower and its potential retaliatory effect." The motion further asserts that "evidences [sic] of threat received by an individual is always a good precursor in assessing the potential danger of physical retaliation any individuals may suffer. However, physical retaliation also occurs without this precursor or any other indication." The motion provides no reason why petitioner might believe that he is under danger of "physical retaliation".

Discussion

Privacy protections for filings in whistleblower actions are addressed in Rule 345(a), which allows a petitioner to move the Court for permission to proceed anonymously. One of the factors considered by the courts in ruling on requests for protection of a litigant's identity is whether the litigant's identity has "thus far been kept confidential". Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 190 (2d Cir. 2008). See also Va. Dep't of State Police v. Wash. Post, 386 F.3d 567, 579 (4th Cir. 2004) ("[O]nce announced to the world, the information lost its secret characteristic" (quoting In re Charlotte Observer, 921 F.2d 47, 50 (4th Cir. 1990) (vacating injunction prohibiting reporters from disclosing information revealed in open courtroom))). By his public filing of his petition and his maintenance of this public suit for 11 months, petitioner has not kept his identity confidential. Petitioner's motion in effect asks the Court to protect petitioner more than petitioner has attempted to protect himself. We decline to do so.

Moreover, under Rule 345(a), the movant must set forth a sufficient, fact-specific basis for anonymity. We will permit a whistleblower to proceed anonymously if the whistleblower presents a sufficient showing of potential harm that outweighs counterbalancing societal interests in knowing the whistleblower's identity. Whistleblower 12568-16W v. Commissioner, 148 T.C. No. 7, slip op. at

5 (Mar. 22, 2017). Petitioner's motion does not present potential harm in any concrete, "fact-specific" way. The motion points to two categories of concern-- letters sent to a nearby wrong address, and nebulous, theoretical concerns of economic or physical harm. Even if we were to grant the motion, our action could not un-send the two letters respondent already incorrectly mailed. And in his motion, "Petitioner has not identified a taxpayer who, upon learning petitioner's identity, would have the power to, and might be expected to, act against him." Whistleblower 14377-16W v. Commissioner, 148 T.C. No. 25, slip op. at 37 (June 28, 2017).

(If we later determine it appropriate to seal the proceedings when we conduct the trial of this case, in order to protect the identity of a target, we will issue an appropriate order.)

Because petitioner has caused his own identity to be revealed by his maintaining this suit non-confidentially so far, and has provided no fact-specific basis for proceeding anonymously, it is

ORDERED that petitioner's motion to seal the record in this case is denied. It is further

ORDERED that respondent shall take care to assure that his mail to petitioner is correctly addressed in the future. It is further

ORDERED that the unredacted Reference List of Redacted information filed May 16, 2017, is sealed. It is further

ORDERED that the Clerk of the Court shall remove from the Court's public record (a) the unredacted motion to seal and proceed anonymously (Index #0008), (b) petitioner's unsworn declaration of Loys Vallee (Index #0010), and (c) Reference List of Redacted information filed May 16, 2017 (Index #0011), and they shall be retained by the Court in a sealed file which shall not be subject to inspection by any person or entity except by an order of the Court.

**(Signed) David Gustafson
Judge**

ENTERED: **JUL 07 2017**