

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

PA

WADE H. HORSEY, )  
)  
Petitioner(s), )  
)  
v. ) Docket No. 10662-19W.  
)  
COMMISSIONER OF INTERNAL REVENUE, )  
)  
Respondent )

**ORDER**

We issued an Order and Decision in this case on March 5, 2020, granting the Commissioner’s Motion for Summary Judgment and sustaining his determination to reject Mr. Wade H. Horsey’s whistleblower award request. On March 6, 2020, Mr. Horsey filed a document that this Court recharacterized as a Motion for Reconsideration of our Order and Decision. In his Motion, Mr. Horsey requests that the Commissioner be compelled to investigate fraud on the part of certain identified financial institutions and a Real Estate Mortgage Investment Conduit (REMIC) Trust (the “Target Taxpayers”) for their alleged violations of rules allowing for the creation and maintenance of tax advantaged REMICs. According to Mr. Horsey, the alleged violations should have resulted in tax under section 860G(d)(1)<sup>1</sup> to the Target Taxpayers in an amount up to \$1.791 billion. Mr. Horsey’s motion for reconsideration is governed by our Rule 161. We will deny the Motion for Reconsideration.

Background

Mr. Horsey petitioned the Court asking us to review the Commissioner's final determination to reject his request for a whistleblower award under section 7623. Mr. Horsey’s request for a whistleblower award was a one page document with no attachments received by the Commissioner on November 19, 2018. His whistleblower request alleged certain violations of the REMIC Trust’s prospectus

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<sup>1</sup>All section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure, unless otherwise indicated.

**SERVED May 15 2020**

and stated as follows: “ANY NOTES DEPOSITED AFTER THE TRUST CLOSES OWE TAX OF 100%.” The request did not mention section 860G(d)(1) as the source of the 100% tax. The Commissioner’s Whistleblower Office (WBO) rejected Mr. Horsey’s request on May 24, 2019. Mr. Horsey timely petitioned this Court for review of that rejection. The Commissioner then moved for summary judgment on the ground that the WBO’s determination to reject Mr. Horsey’s claim for an award was not an abuse of discretion because Mr. Horsey failed to provide any detailed substantiation for his claim. Because of that lack of specificity and lack of documentation, the Internal Revenue Service (IRS) declined to proceed with any administrative or judicial action against any of the Target Taxpayers and, based on that decision, the WBO rejected Mr. Horsey’s claim for an award. We agreed with the Commissioner, granted his motion, and sustained the determination to reject the claim for an award. Mr. Horsey asks that we reconsider our decision.

Mr. Horsey asks the Court to reconsider its decision by reasserting previously unsuccessful arguments and asserting some new arguments based on a 2011 news article not previously presented to the Court. In addition, he attached to the Motion the following documents that had not previously been presented to the WBO in connection with his whistleblower claim: (1) an adjustable rate note signed by him in 2005 and (2) an assignment of his mortgage, filed as a public record in 2008. The Commissioner continues to assert that he is entitled to summary judgment because this Court’s determination was consistent with the administrative record and not an abuse of discretion.

### Standard of Review

#### Whistleblower Claims

If the WBO rejects a whistleblower’s claim for an award, we review that determination for abuse of discretion. Lacey v. Commissioner, 153 T.C. \_\_\_\_ (Nov. 25, 2019). Under section 7623(b)(1), if the Secretary proceeds with an administrative or judicial action based on information provided by a whistleblower, the whistleblower shall receive an award. We also review such an award determination by the WBO for abuse of discretion. Kasper v. Commissioner, 150 T.C. 8, 22 (2018).

To proceed based on whistleblower information means as follows:

[T]he IRS proceeds based on information provided by a whistleblower when the information provided substantially contributes to an action against a person identified by the whistleblower. For example, the IRS proceeds based on the information provided when the IRS initiates a new action, expands the scope of an ongoing action, or continues to pursue an ongoing action, that the IRS would not have initiated, expanded the scope of, or continued to pursue, but for the information provided. The IRS does not proceed based on information when the IRS [simply] analyzes the information provided \* \* \*

Sec. 301.7623-2(b)(1), Proced. & Admin. Regs.

Proceeding however is not enough, Mr. Horsey's claim for an award depends on two determinations: first, that the IRS proceeded based on the whistleblower information; and, second, that proceeds were collected. Awad v. Commissioner, T.C. Memo. 2017-108, at \*13 (citing Whistleblower One 10683-13W v. Commissioner, 145 T.C. 204, 206 (2015)).

#### Motion for Reconsideration

Rule 161 allows motions for reconsideration of our orders and decisions. The Court has the discretion to grant a motion for reconsideration. Vaughn v. Commissioner, 87 T.C. 164, 166 (1986). But, we typically exercise this discretion only if the requesting party shows substantial error or unusual circumstances. Estate of Bailly v. Commissioner, 81 T.C. 949, 951 (1983). A motion for reconsideration is not an appropriate forum to present new legal theories or reassert previously unsuccessful arguments. Stoody v. Commissioner, 67 T.C. 643, 644 (1977). Reconsideration "allows the introduction of newly discovered evidence that the moving party could not have introduced, by the exercise of due diligence, in the prior proceeding." Estate of Quick v. Commissioner, 110 T.C. 440, 441 (1998).

In addition, in considering whether to grant a motion for reconsideration, the Court may look to Rule 60(b) of the Federal Rules of Civil Procedure, which allows for relief from a judgment or order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason that justifies relief. Bedrosian v. Commissioner, 144 T.C. 152, 156 (2015).

### Discussion

Mr. Horsey's Motion for Reconsideration introduces several arguments and allegations that were not presented to the Court previously nor as a part of his 2018 application for award. Mr. Horsey's reliance on a 2011 news article is not newly discovered information. In addition, the documents attached to Mr. Horsey's Motion were clearly available to him prior to filing his whistleblower claim since the documents were signed by him in 2005 and/or filed in public records in 2008, yet he did not provide them to the WBO when making his request for an award.

Reconsideration could be appropriate to "allow[] the introduction of newly discovered evidence that the moving party could not have introduced, by the exercise of due diligence, in the prior proceeding." Estate of Quick v. Commissioner, 110 T.C. 440, 441 (1998). Mr. Horsey does not claim that evidence has newly been discovered, and he does not claim mistake, inadvertence, surprise or excusable neglect. He certainly did not exercise due diligence in locating the documents. Further, his Motion for Reconsideration reasserts previously unsuccessful arguments and presents arguments based on a article published in 2011, which arguments could have been made previously. Mr. Horsey did not raise these issues in his objection to the Commissioner's motion for summary judgment and he may not raise them now.

### Conclusion

Because we did not err in granting the Commissioner's motion for summary judgment, it is

ORDERED that Petitioner's Motion for Reconsideration of our Order and Decision entered on March 5, 2020, is denied.

**(Signed) Elizabeth A. Copeland  
Judge**

Dated: Washington, D.C.  
May 15, 2020