Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided. CLC

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MARK ALAN STAPLES,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 6560-18.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER AND DECISION

A Memorandum Findings of Fact and Opinion (T.C. Memo. 2020-34) was filed in this case on March 11, 2020. The opinion specified that a decision would be entered under Rule 155.[1] On May 8, 2020, respondent filed his Computation for Entry of Decision. On May 9, 2020, Mr. Staples filed a Motion for New Trial. On May 11, 2020, this Court filed a Notice requesting that any notice of objection to respondent's Rule 155 computations be filed by June 1, 2020. Mr. Staples filed his Computation for Entry of Decision on May 30, 2020. The computations do not agree.

Before addressing the computational dispute, we will consider Mr. Staples' Motion for New Trial. First, we note that Mr. Staples' Motion for New Trial is not properly titled because the motion appears to be seeking reconsideration of our findings and opinion under Rule 161. Although his motion is improper, we will recharacterize Mr. Staples' motion as Petitioner's Motion for Reconsideration of Findings or Opinion under Rule 161 and address it as a Rule 161 request.

Our filed opinion held that Mr. Staples was not entitled to a loss deduction on his 2015 Federal tax return and involved only that tax year. Mr. Staples was the recipient of a Federal Employees Retirement System (FERS) disability annuity (FERS disability annuity). He was also the recipient of Social Security Disability Insurance (SSDI) benefits. Because of the dual Federal benefits, the Office of

[1] All rule references are to the Tax Court's Rules of Practice and Procedure, and all section references are to the Internal Revenue Code in effect for the year at issue, unless otherwise indicated.

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Personal Management (OPM) reduced Mr. Staples' FERS disability annuity by a portion of the SSDI benefits which Mr. Staples received. Mr. Staples sought to take a loss deduction on his Federal income taxes in the amount of the reduction to his FERS disability annuity. We held that Mr. Staples could not take a deduction for unrealized income—that is, income he expected to receive, but in fact never received. "The notion of a deductible 'loss' simply does not include the failure to realize anticipated income." Staples v. Commissioner, T.C. Memo. 2020-34 at *11-*12 (citing Marks v. Commissioner, 390 F.2d 598, 599 (9th Cir. 1968), aff'g T.C. Memo. 1966-62). To the extent Mr. Staples disputed the merits of OPM's reduction of his FERS disability annuity, we unequivocally stated in our opinion, "this Court does not have jurisdiction to decide employee benefit entitlement issues that fall within the purview of various departments and agencies of the U.S. Government." Staples v. Commissioner, T.C. Memo. 2020-34 at *6-*7 (citing Norris v. Commissioner, T.C. Memo. 2001-152, 2001 WL 715854, at *2, aff'd, 46 F. App'x 582 (9th Cir. 2002)).

In his May 9, 2020, filing Mr. Staples sets forth a litany of dubious grievances. In brief, Mr. Staples main allegations are that the Court made errors of fact relating to realized and unrealized income; violated its jurisdiction regarding employee benefit entitlement issues; violated his 1st, 5th, and 14th Amendment rights; and is prejudiced against him as a pro se petitioner.

As previously stated, the May 9, 2020 filing is most properly characterized as a motion for reconsideration under Rule 161, which rule serves the limited purpose of correcting substantial errors of fact or law and allows for the introduction of newly discovered evidence that could not have been introduced in the prior proceeding by the exercise of due diligence. See Estate of Quick v. Commissioner, 110 T.C. 440, 441 (1998); Westbrook v. Commissioner, 68 F.3d 868, 879-880 (5th Cir. 1995), aff'g per curiam T.C. Memo. 1993-634. The granting of a motion for reconsideration rests within the discretion of the Court, and we usually do not exercise our discretion absent a showing of unusual circumstances or substantial error. See Estate of Quick v. Commissioner, 110 T.C. at 441 (citing CWT Farms, Inc. v. Commissioner, 79 T.C. 1054, 1057 (1982) aff'd, 755 F.2d 790 (11th Cir. 1985)). Reconsideration is not the appropriate forum for rehashing previously rejected legal arguments or tendering new legal theories to reach the end result desired by the moving party. Estate of Quick v. Commissioner, 110 T.C. at 441-442. Unless the Court otherwise permits, a motion for reconsideration must be filed within 30 days after service of the written opinion or of the pages of the trial transcript containing the findings of fact or opinion recited orally in the record under Rule 152. See Rule 161.

Mr. Staples filed his motion 59 days after service of our opinion, and we will not permit the untimely motion.

Furthermore, even if Mr. Staples alleged errors of fact were true, they would have no impact on the outcome of his case. He argues we had an improper date in 2012 for when his SSDI benefits were approved. Inaccurately paraphrasing our opinion language in Staples v. Commissioner, T.C. Memo. 2020-34 at *2-*3, he states that his SSDI benefits were approved in early June 2012 rather than in November of 2012. That date has no impact on the 2015 income at issue here. Next Mr. Staples argues that OPM rescinded its final decision regarding the reduction to his FERS disability annuity, and that the reduction remains an active controversy with OPM. The status of that OPM dispute has no impact on the actual taxable FERS disability annuity payments that Mr. Staples received in 2015. The actual taxable FERS disability annuity payments from SSDI and FERS were properly reported by him on his timely filed 2015 return. The novel loss issue presented here is based on an unprocessed amended return that Mr. Staples filed with the Internal Revenue Service in connection with the examination of his 2015 return. We rejected that novel argument.

As to his curt references to Constitutional free speech and due process violations, they are belied by the protections set forth in our Rules 155 and 161, allowing Mr. Staples an avenue for contesting our findings of facts and opinion and allowing him to present his computations of the proper tax deficiency to this Court. The remainder of Mr. Staple's motion discusses a mathematical formula for calculating the previously disallowed loss and rehashes previously rejected legal arguments. As such, we will not revisit this. See Estate of Quick v. Commissioner, 110 T.C. at 441-442. For the foregoing reasons, we deny Mr. Staples untimely Motion for Reconsideration of Findings of Fact and Opinion Under Rule 161 (filed as a Motion for New Trial).

Next, turning to the parties' 155 computations, we note that Rule 155 provides as follows:

> **RULE 155. COMPUTATION BY PARTIES FOR ENTRY OF DECISION**
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> **(b) Procedure in Absence of Agreement:** If the parties are not in agreement as to the amount to be included in the decision in accordance with the findings and conclusions of the Court, then each party shall file with the

> Court a computation of the amount believed by such party to be in accordance with the Court's findings and conclusions. In the case of an overpayment, the computation shall also include the amount and date of each payment made by the petitioner. A party shall file such party's computation within 90 days of service of the opinion or order, unless otherwise directed by the Court. * * * If in accordance with this Rule computations are submitted by the parties which differ as to the amount to be entered as the decision of the Court, then the parties may, at the Court's discretion, be afforded an opportunity to be heard in argument thereon, and the Court will determine the correct amount and will enter its decision accordingly.

Mr. Staples' computations rework his taxable SSDI benefits by reducing the actual amount of SSDI payments he received in 2015 by the amount of disallowed disability payments he expected to receive from FERS; this a direct contradiction to our Opinion. He likewise takes issue with a computational reduction to his itemized medical and dental expenses based on the increased adjusted gross income resulting from his unreported income concessions. Under Section 213(a), a deduction is allowed for unreimbursed medical and dental expenses that exceed 10% of adjusted gross income; so, as adjusted gross income increases, the deduction for itemized medical and dental expenses decreases. Finally, on the same loss theory he advanced for the 2015 tax year, for the first time, he alleges that he is entitled to refunds for his 2012, 2013, and 2014 taxable years, which are not currently before the Court.

Respondent's computations have as their starting point the concessions by petitioner that he received $10 in taxable interest and $4,648 from an IRA distribution. The remaining computations are mathematical, based on the increased taxable income conceded. Respondent's computations calculate a deficiency of $1,635; they highlight underreported withholding of $929 and an advance payment of $742 (treated as a deposit), which amounts will offset the deficiency amount and any interest due on the deficiency. According to respondent, the offsets leave Mr. Staples owing 28 cents after application of interest. We find respondent's 2015 deficiency computations to be consistent with our Memorandum Findings of Fact and Opinion.

We do not have jurisdiction over tax years 2012, 2013, and 2014 and thus do not address the refund computations submitted by Mr. Staples as to those years here. See secs. 6214(b) and 6512(b)(1); Martin v. Commissioner, T.C. Memo. 2009-234, 2009 WL 3270500, at *3 n.3.

To reflect the foregoing, it is

ORDERED that the Clerk of Court shall retitle "Petitioner's Motion for a New Trial" as "Petitioner's Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161" filed May 9, 2020. It is further

ORDERED that petitioner's motion for reconsideration of findings or opinion pursuant to Rule 161 is denied. It is further

ORDERED AND DECIDED: That there is a deficiency in income tax to be assessed for the taxable year 2015 in the amount of $1,635.00.

(Signed) Elizabeth A. Copeland
Judge

ENTERED: **JUN 12 2020**