UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRC

DANIEL E. LARKIN & CHRISTINE L. LARKIN,	)	
Petitioners,	)	
v.	)	Docket No. 6345-14.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

Petitioners Daniel and Christine Larkin have filed a Motion for Reconsideration pursuant to Rule 161 (Doc. 87) asking the Court to reconsider its opinion issued May 28, 2020, in Larkin v. Commissioner, T.C. Memo. 2020-70. The Larkins' motion raises eleven issues. By order (Doc. 88) we directed respondent, the Commissioner, to file a response addressing two of the eleven issues raised in the motion, and he did so (see Doc. 89). We will deny the Larkins' motion for the reasons stated in this Order and in our opinion.

In general, the Larkins' motion attempts to relitigate issues that were determined in our opinion (which was rendered after a trial on the merits and further supplementation of the record). We asked the Commissioner to address issues II and IX, because those issues appear to assert that we overlooked evidence as it relates to Petitioners' tax return for 2008 and, consequently, the computation of foreign tax credits. We now discuss those two issues:

Issue II alleges that our opinion relied on a "computer-generated return" and failed to consider the Larkins' handwritten Form 1040 for 2008 that the parties stipulated into the record. The stipulation that accompanied that handwritten document stated: "Attached hereto and marked as Exhibit 2-J is a copy of a federal income tax return, Form 1040, prepared by petitioner for the 2008 taxable year that

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was submitted to Revenue Agent Stacie Chester case [sic] on August 23, 2012." (Doc. 52). We considered this stipulation and the content of the document that accompanied it when we issued our opinion and concluded that, although Mr. Larkin prepared that document and submitted it to a revenue agent, the document was not properly (or timely) "filed" and the Larkins accordingly did not file a tax return for 2008. See Larkin v. Commissioner, T.C. Memo. 2020-70, at *65-*66. As this conclusion relates to accuracy-related penalties, it inures to the Larkins' benefit. See id. As it relates to the computation of the foreign tax credit (and only a carryover to 2009 was at issue), this conclusion is immaterial, because (as we observed in our opinion) "a detailed computation of the carried FTC was not attached to the form" (i.e., the Form 1116, "Foreign Tax Credit" that was part of the Form 1040 that Mr. Larkin prepared for 2008). Id. at *10-*11.

Issue IX alleges that "[c]arryover foreign tax credits available for 2009 have been properly substantiated in the 2008 return and current period foreign tax credits in the SSD K-1s (line item 16), and accepted by Respondent for 2008." As we have previously concluded, and as we conclude again upon reexamination, the Form 1116, "Foreign Tax Credit", that accompanied the Form 1040 that Mr. Larkin prepared for tax year 2008 contained no information about how any specific amounts of foreign tax credit were computed and cannot serve to substantiate the credit (even if it had been a properly "filed" return). With regard to the Schedules K-1 from SSD, in addition to the analysis in our opinion (at *60-*61) we note that "line item 16" of the Schedule K-1 listed no specific amounts of foreign tax paid but rather only the word "various".

Issue IX also alleges that "[t]he Appeals Court decision reversing claims for 2003-2006 if anything means that these can be carried forward to this cycle," suggesting a new and different theory as to why (and which) foreign tax credits the Larkins' believe they are entitled to claim as a carryover to 2009. To address this claim we quote from the Commissioner's response to the Larkins' motion:

> Tax years 2003 through 2006 were the subject of a tax court case, in which the Tax Court found that petitioners were not entitled to any foreign tax credits for the years at issue. Larkin v. Commissioner ("Larkin I"), T.C. Memo. 2017-54. On October 31, 2017, the Larkins filed notices of appeal in those cases in the U.S. Court of Appeals for the District of Columbia Circuit, Docket No. 17-1252, which issued its unpublished opinion on April 21, 2020, ordering Larkin I affirmed in part and, as to issues the Commissioner had conceded, vacated and remanded in part. Larkin v. Commissioner

("Larkin II"), No. 17-1252, 2020 WL 2301462 (Apr. 21, 2020). The issue of foreign tax credits was affirmed by the Court.

> * * * [T]he Court in Larkin I found that they were not entitled to take any foreign tax credits as they had not shown they were entitled to them. Petitioners failed to prove the amount of any foreign tax credit carryovers in Larkin I. They cannot now claim these same credits for the years at issue in this case, without providing evidence and information (in this case) to show that they are entitled to carryover these credits. [Emphasis added].

The Larkins' motion makes numerous conclusory assertions that items at issue were "fully substantiated" or "accepted by Respondent"--assertions that are at odds with the record before the Court; and for this reason (and those stated in our opinion) we find the remaining issues not addressed specifically herein are entirely without merit. No issues raised in the motion have persuaded us that we overlooked critical facts in the record or otherwise misapprehended any of the issues raised that would change our findings or otherwise alter our opinion.

Therefore it is

ORDERED that petitioners' motion for reconsideration is denied. It is further

ORDERED that the parties shall comply with Rule 155, except that the action required under the rule to be taken "within 90 days of service of the opinion" shall be taken within 90 days of service of this Order.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
July 29, 2020