UNITED STATES TAX COURT
WASHINGTON, DC 20217

SAEID ZOLGHADR & MANDANA ZOLGHADR,	)	
Petitioner(s),	)	
v.	)	Docket No. 19241-14.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

This case was tried in Washington, D.C. on November 5 and 9, 2015. On March 22, 2017, the Court filed its Opinion in this case (T.C. Memo. 2017-49) and directed the parties to file computations for entry of decision under Tax Court Rule 155 on or before June 6, 2017.

On June 6, 2017, petitioners filed a "Motion for Application of IRC 6721(b) to Assess Penalties," which we shall treat as a Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161. In that motion they request that the Court order respondent to demonstrate his compliance with I.R.C. § 6751(b). We interpret petitioners' motion as advancing a new argument--that the accuracy-related penalty determined by respondent in this case should not be sustained because respondent did not meet his burden of production to show written supervisory approval for the penalty, as the Second Circuit in Chai v. Commissioner, 851 F.3d 190 (2d Cir. 2017), interpreted § 6751(b)(1) to require.

We reject petitioners' contention for two reasons. First, they did not make this argument in their pleadings, during trial, or in their post-trial brief, and it is thus untimely. See Rule 34(b)(4) (adjustments to which error is not assigned are deemed conceded); Swain v. Commissioner, 118 T.C. 358, 358 (2012); Mendes v. Commissioner, 121 T.C. 308, 312-313 (2003) (holding that arguments not addressed in post-trial brief may be considered abandoned). Regardless of which party bears the burden of demonstrating compliance with section 6751(b)(1), petitioners "had the responsibility of arguing in the Tax Court that the Commissioner

had not complied with the statute in order to put the Commissioner on notice that the issue was in dispute." Kaufman v. Commissioner, 784 F.3d 56, 71 (1st Cir. 2015) (emphasis in original).

Alternatively, even if petitioners' argument were timely, their reliance on Chai is misplaced because this case is appealable to the U.S. Court of Appeals for the Fourth Circuit, not to the U.S. Court of Appeals for the Second Circuit, which decided the Chai case. For cases in which the appellate venue is a court of appeals other than the Second Circuit, the applicable Tax Court rule is that enunciated in Graev v. Commissioner, 147 T.C. __ (slip. op. at *42 n. 25). Under that case, respondent has no burden of production to demonstrate compliance with section 6751(b).

Rule 161 is intended to permit the correction of substantial errors of fact or law or to allow the introduction of newly discovered evidence that the moving party could not previously have introduced by exercising due diligence. Estate of Quick v. Commissioner, 140 T.C. 440, 441 (1998). Whether to grant a motion for reconsideration is up to the Court's discretion; we will not do so unless the moving party shows unusual circumstances or substantial error. Vaughn v. Commissioner, 87 T.C. 164, 166-167 (1986). "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, 140 T.C. at 441-442.

Petitioners' motion tenders a new legal theory to reach a different result. They do not bring forth any newly discovered evidence that they contend was unavailable to them before now. Their disagreement with the Court's resolution of the issues is not a proper basis for seeking reconsideration.

For cause, it is

ORDERED that petitioners' Motion for Application of IRC 6721(b) to Assess Penalties is recharacterized as a Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161. It is further

ORDERED that petitioners' Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161 is denied.

(Signed) Albert G. Lauber
Judge

Dated: Washington, D.C.
June 12, 2017