UNITED STATES TAX COURT
WASHINGTON, DC 20217

ROBERT J. RUFUS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 8179-17W.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

O R D E R

We issued an order and decision in this case on July 5, 2018, granting the Commissioner's motion for summary judgment and sustaining his determination to deny Mr. Rufus a whistleblower award. On July 24, 2018, Mr. Rufus filed a motion for reconsideration of findings or opinion pursuant to Rule 161. We will deny Mr. Rufus's motion.

Background

Mr. Rufus petitioned the Court asking us to review the Commissioner's final determination to deny his claim for a whistleblower award under section 7623. Mr. Rufus's claim for a whistleblower award consisted of two distinct claims. His initial Form 211, Application for Award for Original Information (initial claim), was processed by the Commissioner's Whistleblower Office on February 28, 2011. Mr. Rufus also submitted a letter on February 22, 2012, to supplement his initial claim (supplemental claim).

The Commissioner moved for summary judgment as to the initial claim. He argued that his determination to deny an award was not an abuse of discretion because, although the Internal Revenue Service proceeded with an action based on the whistleblower information, it did not collect any proceeds as a result of that action. Because we agreed with the Commissioner, we granted his motion and sustained that determination. Mr. Rufus does not object to our decision as to that claim.

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Mr. Rufus "is only asking the Court to reconsider its decision related to the underlying amended returns." The taxpayer who was the subject of Mr. Rufus's whistleblower claim (the Taxpayer) filed Forms 1040X, Amended U.S. Individual Income Tax Return, for 2005 on April 20, 2011, and for 2003, 2004, and 2006 on March 31, 2011, or April 20, 2011, (the "Amended Returns"). In the supplemental claim, Mr. Rufus states "the subject taxpayer has knowingly filed false amended income tax returns for years 2005 and 2006 claiming 'bad debt' deductions."

The Commissioner moved for summary judgment as to the supplemental claim as well. The Commissioner determined that Mr. Rufus was not entitled to an award because the Internal Revenue Service "had not proceeded with an administrative or judicial action based on petitioner's information." The Commissioner asserted he was entitled to summary judgment because this determination was consistent with the administrative record and not an abuse of discretion. We agreed and granted his motion. It is this decision that Mr. Rufus asks us to reconsider.

Mr. Rufus's motion for reconsideration is based on two grounds: that we made substantial factual error and that he did not have a sufficient opportunity to engage in discovery. As for the alleged factual errors, Mr. Rufus asserts that (1) the revenue agent received, reviewed, and acted on the whistleblower information; (2) the IRS did not commence its audit before receiving the whistleblower information; (3) the information he provided was used to deny the Taxpayer's refund; and (4) the information he provided was not tainted.

Standard of Review

Whistleblower Claims

Mr. Rufus correctly states: "Under I.R.C. § 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 review a determination by the Commissioner under section 7623 for abuse of discretion. Kasper v. Commissioner, 150 T.C. ___, ___ (slip op. at 22) (Jan. 9, 2018).

What it means for the Secretary to *proceed based on* whistleblower information is defined by sec. 301.7623-2(b)(1), Proced. & Admin. Regs.:

> [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 analyzes the information provided or investigates a matter raised by the information provided.

In sum, Mr. Rufus's claim for an award depends on two determinations: first, that the IRS proceeded on the basis of 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 findings or opinion. 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).

Discussion

Substantial Factual Errors

Mr. Rufus suggests that the Court made four substantial factual errors. We address each in turn.

1. The Information Was Received, Reviewed, And Acted On

Mr. Rufus's first argument is that "the revenue agent reviewed the petitioner's whistle blower information and used the information to deny the taxpayer's claim for refund." He further states "the WB information was, in fact, received, reviewed and considered by RA Bernard AND discussed with the fraud technical advisor." He concludes that this receipt, review, and discussion means that the revenue agent "acted on" the information."

The actions Mr. Rufus believes occurred regarding his information are not sufficient actions to show that the Internal Revenue Service *proceeded* based on his information. To show he is entitled to an award, Mr. Rufus must show that his information substantially contributed to the action against the taxpayer. A whistleblower's information is not proceeded on merely because "the IRS analyzes the information provided or investigates a matter raised by the information provided." Sec. 301.7623-2(b)(1), Proced. & Admin. Regs. Mr. Rufus does not present any evidence, or even allege, that the revenue agent's use of the information exceeded review, analysis, and discussion. He does not show that his information shaped the course of the Commissioner's review of the taxpayer's amended returns.

2. The Audit Was Not Commenced Until June 2012

Mr. Rufus states that "[t]he evidence clearly demonstrates that while the claim was 'classified' for audit due to the size of the claimed refund, no action was taken by the IRS until the assignment of the case to RA Bernard in June of 2012. Importantly, her very first action was to review of the Petitioner's whistle blower submissions."

Mr. Rufus does not claim that the IRS would not have audited the refund claim or would not have pursued the audit of the refund claim but for his information. He simply continues to state that the revenue agent reviewed the information and then audited the returns. Even if we assume all his allegations of fact are true, Mr. Rufus provides no connection between review of the information and significant use of the information.

3. The Information Was Used To Deny The Refund

Third, Mr. Rufus alleges that "the IRS considered the Petitioner's Information in Denying the Taxpayers Claimed Refund in Accordance with IRC 7623(B)." This section merely repeats Mr. Rufus's first two arguments.

4. The Information Was Not Tainted And Was Used

Mr. Rufus asserts that the Commissioner erred in concluding that the information he provided was tainted. Whether the information was tainted is irrelevant. Whether the revenue agent believed it was tainted is irrelevant. The relevant issue is whether the agent proceeded based on the information. That question is addressed above. Because the revenue agent believed the information was tainted she did not audit the returns on the basis of that information. Even if the belief that the information was tainted was erroneous, the fact that the information was not used as a result of this (perhaps erroneous) belief strengthens the Commissioner's point, not Mr. Rufus's.

Discovery

Mr. Rufus titles his final argument "The Granting of Summary Judgment is Pre-Mature at this time as the Parties are Actively Engaged in Discovery; and Further Discovery can Bolster the Petitioners Whistle Blower Claim." The proper place for this argument was in Mr. Rufus's response to the Commissioner's Motion for Summary Judgment. In his response to the Commissioner's motion, Mr. Rufus cited extensively to the documents exchanged by the parties explaining how he believes they support his position that summary judgment should be denied. But he did not raise the issue that discovery was ongoing or that additional discovery was needed.

As Mr. Rufus explains in his motion for reconsideration, 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. Rufus does not claim evidence has newly been discovered. He claims that the parties were not finished with discovery when summary judgment was granted. Mr. Rufus did not raise this issue in response to the Commissioner's motion for summary judgment and he may not raise it 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 Findings or Opinion Pursuant to Rule 161 is denied.

(Signed) Ronald L. Buch
Judge

Dated: Washington, D.C.
February 11, 2019