UNITED STATES TAX COURT
WASHINGTON, DC 20217

DANIEL R. DOYLE & LYNN A. DOYLE,	)	
	)	
Petitioner(s),	)	**CT**
	)	
v.	)	Docket No. 26734-14.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
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O R D E R

We issued the opinion in this case in February of this year. *Doyle v. Commissioner*, T.C. Memo. 2019-8. It was a mixed result, and we ordered the parties under Rule 155 to do the computations needed for us to enter a decision. The Doyles instead moved for reconsideration of the part of the opinion that disposed of their claim to deduct legal expenses in their 2010 and 2011 tax years. *Id.* at *16–20. They now argue that they paid these expenses in connection with a "discrimination suit," as the Code defines that term under I.R.C. § 62(a)(20). If they are right, those fees would be subtracted from the gross settlement amount. The problem is that this argument is new -- at and after trial they argued that they should be able to deduct legal fees paid in both years as expenses of Mr. Doyle's consulting business. We found instead that the Doyles' claim for a legal-fees deduction for 2010 failed because those fees were for Mr. Doyle's suit against his former employer and not his consulting business; and found that the Doyles' claim for a legal-fees deduction for 2011 failed because there wasn't any proof that they even paid any such expenses in 2011, much less that they paid them in connection with Mr. Doyle's consulting business.

Rule 161 does not provide a standard for vacating or revising a decision. We have traditionally looked to the Federal Rules of Civil Procedure for guidance

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when our own rules are silent. Rule 1(b); *Estate of Miller v. Commissioner*, 67 T.C.M. (CCH) 1994, 1994 (1994). This means that for Rule 161 motions we apply the standards of the district courts under Federal Rule of Civil Procedure 60(b). *See e.g., Mountanos v. Commissioner*, 107 T.C.M. (CCH) 1211, 1212 (2014) (citing *Cinema '84 v. Commissioner*, 122 T.C. 264, 267–68 (2004), *affd*, 412 F.3d 336 (2d Cir. 2005)). Those standards and the accompanying caselaw tell us to look for such things as mistake, newly discovered evidence, fraud, or newly voided judgments. *See e.g.*, Fed. R. Civ. P. 60(b). We generally deny such motions without a showing of unusual circumstances or substantial error, *see e.g.*, *Vaughn v. Commissioner*, 87 T.C. 164, 167 (1986), and we do not consider new legal theories if the moving party could have raised them earlier in the litigation, *Koana Enters v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); *Knudsen v. Commissioner*, 131 T.C. 185, 186 (2008) (citing *Estate of Quick v. Commissioner*, 110 T.C. 440, 441–42 (1998)).

The Doyles didn't allege newly discovered evidence, fraud, etc., but only a new legal theory -- that they paid these legal fees in connection with a discrimination suit under Federal law. And, as the Commissioner points out, there is nothing in the record that even hints that Mr. Doyle sued under any Federal law other than the antitrust statutes. (And there is still no evidence that the Doyles even paid legal fees in 2011 at all.)

The Doyles have failed to show substantial error or unusual circumstances, so it is

ORDERED that petitioners' March 8, 2019 motion for reconsideration is denied.

(Signed) Mark V. Holmes
Judge

Judge

Dated: Washington, D.C.
August 26, 2019