UNITED STATES TAX COURT
WASHINGTON, DC 20217

DAVID T. MYERS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 2181-15W.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
	)	
Respondent.	)	

O R D E R

This case is before the Court to decide on petitioner's Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161, filed June 25, 2017. Petitioner requests that we reconsider our Opinion, 148 T.C. No. 20, issued June 5, 2017, in which we held that petitioner's case (a whistleblower action) should be dismissed for lack of jurisdiction because he failed to timely file his petition with the Court within the 30-day period specified by I.R.C. section 7623(b)(4). On June 7, 2017, pursuant to that determination, we entered an Order of Dismissal for Lack of Jurisdiction, granting respondent's Motion to Dismiss, as Supplemented, and dismissed petitioner's case for lack of jurisdiction.

The decision to grant a motion for reconsideration of findings or an opinion under Rule 161 lies within the discretion of the Court. Estate of Quick v. Commissioner, 110 T.C. 440, 441 (1998). The Court generally will grant a motion for reconsideration only to correct substantial errors of fact or law or to allow the introduction of newly discovered evidence that was not available to the moving party in the prior proceeding. Id. at 441; CWT Farms, Inc. v. Commissioner, 79 T.C. 1054, 1057 (1982). A motion for reconsideration is not the appropriate vehicle for rehashing previously rejected legal arguments or advancing new legal theories to reach the end result desired by the movant. Estate of Quick, 110 T.C. at 441-442.

SERVED Jul 13 2017

In his motion petitioner seems to contend that we committed two substantial errors in our Opinion: (1) of law, in misinterpreting and misapplying Kasper v. Commissioner, 137 T.C. 37 (2011), and (2) of fact, by disregarding the fact that during a telephone conference the Court held with the parties before the October 6, 2015, hearing on respondent's motion to dismiss and at the hearing, the Court suggested to respondent that he reissue to petitioner a determination letter by certified mail.

We addressed Kasper at length in our Opinion (see pp. 14-18 of our Opinion). As we stated therein, Kasper stands for the principle that the 30-day period under I.R.C. section 7623(b)(4) commences on the date of mailing or personal delivery of the determination to the claimant and that the Commissioner must prove by direct evidence the date and fact of mailing or personal delivery. We further observed however that we had no occasion in Kasper (or any other whistleblower case for that matter) to address whether that 30-day period would begin when a claimant has received (and admitted to receiving) actual notice without prejudicial delay and with sufficient time to file a Tax Court petition. Petitioner's case afforded us that opportunity and we went on to find there was direct evidence in the record that petitioner received actual notice of the Internal Revenue Service Whistleblower Office's determination letters, yet he filed his petition with the Tax Court significantly more than 30 days after receiving actual notice of those letters. Thus, our dismissal of this case for lack of jurisdiction is entirely consistent with our whistleblower jurisdiction, including, in particular, our opinion in Kasper.

As for his contention that the Court committed a substantial error of fact, petitioner places undue import on what transpired during a telephone conference the Court held with the parties before the hearing on respondent's motion to dismiss and at the hearing. What the Court suggested to respondent was just that--a suggestion (to potentially resolve a previously unaddressed legal question). Indeed, as a court of limited jurisdiction, sec. 7442, we lack the authority to order respondent to take such a specific action as reissuing a determination letter. Cf. Cooper v. Commissioner, 136 T.C. 597, 600 (2011) (no authority under sec. 7623 to order Commissioner to initiate examination on basis of whistleblower information). The suggestion in any event (and respondent's apparent disinclination to take up the Court's suggestion) does not cause us to question the direct evidence that petitioner received actual notice of the Whistleblower Office's determination letters significantly more than 30 days before he filed his petition with the Court.

We have considered petitioner's remaining contentions in his motion for reconsideration and, to the extent they are not addressed by this Order, we find them to be moot, irrelevant, or without merit. Accordingly, we conclude that we properly dismissed petitioner's petition because the petition was untimely. Because petitioner has not shown that the Court has committed a substantial error of fact or law and that we should reconsider our Opinion, we will deny petitioner's motion.

Upon due consideration, it is hereby

ORDERED that petitioner's Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161, filed June 25, 2017, is denied.

(Signed) Tamara W. Ashford
Judge

Dated: Washington, D.C.
July 13, 2017