UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MARK ALAN STAPLES, Petitioner - Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent - Appellee.	No. 20-9006 (CIR No. 006560-18) (United States Tax Court)

ORDER AND JUDGMENT*

(Filed Jun. 15, 2021)

Before **MORITZ**, **BALDOCK**, and **KELLY**, Circuit Judges.

Mark Staples appeals pro se from a Tax Court order that upheld the Commissioner's determination of a $1,635 deficiency on his 2015 income taxes.

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Exercising jurisdiction under 26 U.S.C. § 7482(a), we affirm.

BACKGROUND

Staples worked for the federal government until 2012, when he retired due to a disability. That same year, he began receiving disability payments through social security disability insurance (SSDI) and annuity payments through the Federal Employees Retirement System (FERS). The Office of Personnel Management (OPM) reduced his FERS annuity payments by a portion of the SSDI benefit he received. *See 5 U.S.C. §* 8452(a)(2)(A) (mandating a partial or complete reduction to a FERS disability annuity for any month in which the FERS member is also entitled to an SSDI benefit).

On Staples' 2015 federal income tax return, he reported his SSDI and FERS benefits, some retirement benefits, and some taxable interest income. The Commissioner later advised Staples that third parties had reported more in retirement benefits and interest income than he had declared. According to the Commissioner, the additional income resulted in a tax deficiency of $1,635 plus $36 in accrued interest. Staples conceded his receipt of the additional income but disputed his increased tax liability, arguing he was entitled to claim a loss deduction for the amount of money OPM withheld from his FERS annuity.

Staples submitted an amended 2015 tax return, asserting his loss-deduction theory. The Commissioner

did not process the amended return, however, and instead sent him a notice of deficiency for $1,635.

In 2018, Staples filed in the Tax Court a petition to redetermine the deficiency. He claimed he was due a refund for the 2015 tax year based on the reduction of his FERS annuity. In a pretrial memorandum, he explained that "OPM reduced [his] FERS annuity by 60% of [his] Social Security disability payments resulting in an income loss of – $7,939.00." R. at 52. Given the alleged loss, Staples asserted he was due an $808 refund.

Following a bench trial, the Tax Court upheld the Commissioner's deficiency determination and rejected Staples' claim for a refund. The court explained that "a deductible 'loss' simply does not include the failure to realize anticipated income." *Id.* at 245. The court also ruled it lacked jurisdiction to the extent Staples challenged OPM's calculation of his disability annuity.

In response to the Tax Court's opinion, the Commissioner and Staples submitted proposed computations for the amount of his tax liability.[1] The court

[1] Under Tax Court Rule 155, "[w]here the Court has filed or stated its opinion . . . determining the issues in a case, it may withhold entry of its decision for the purpose of permitting the parties to submit computations pursuant to the Court's determination of the issues, showing the correct amount to be included in the decision." T.C. Rule 155(a). Where, as here, the parties' computations "differ as to the amount to be entered as the decision of the Court, . . . the parties may, at the Court's discretion, be afforded an opportunity to be heard in argument thereon and the Court will determine the correct amount and will enter its decision accordingly." *Id.* 155(b).

rejected Staples' computations, which sought to reduce the amount of his SSDI benefits by the amount of his disallowed FERS annuity. The court then ruled there was a $1,635 deficiency on Staples' 2015 income taxes. Further, the court noted it lacked jurisdiction to address Staples' computations for tax years other than 2015.

Staples requested a new trial, which the Tax Court construed as a motion for reconsideration. He argued he was in the process of disputing OPM's reduction of his FERS annuity and that the court had violated his constitutional rights and erroneously determined he was trying to deduct "(non real) income," R. at 258. The court denied reconsideration, concluding that the motion was untimely and replete with "dubious grievances." *Id.* at 333.

DISCUSSION

"We review the Tax Court's determination and application of law de novo," and "we review the Tax Court's findings of fact for clear error." *Esgar Corp. v. Comm'r*, 744 F.3d 648, 652 (10th Cir. 2014). Because Staples is pro se, we liberally construe his pleadings but do not "take on the responsibility of serving as [his] attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

Staples contends the Tax Court erred in concluding that OPM's reduction of his FERS annuity is not a deductible loss. But deductions are created by

statute, and Staples identifies no statute authorizing the deduction he seeks. *See INDOPCO, Inc. v. Comm'r*, 503 U.S. 79, 84 (1992) (observing that "an income tax deduction is a matter of legislative grace and that the burden of clearly showing the right to the claimed deduction is on the taxpayer" (internal quotation marks omitted)).

Although Staples equates his proposed deduction to a deduction for a gambling loss, which is statutorily authorized "to the extent of the gains from such transactions," 26 U.S.C. § 165(d), a FERS reduction is not remotely equivalent to a gambling loss. Specifically, Congress has mandated the reduction of a FERS disability annuity where, as here, the FERS participant is also entitled to SSDI benefits. *See 5 U.S.C. §* 8452(a)(2)(A). Under these circumstances, the reduction is equivalent to unrealized income, which is not deductible. *See Hort v. Comm'r*, 313 U.S. 28, 32-33 (1941) (holding that a taxpayer may not "reduce ordinary income actually received and reported by the amount of income he failed to realize"); *Hendricks v. Comm'r*, 406 F.2d 269, 272 (5th Cir. 1969) (citing *Hort* for the "well settled" proposition "that a taxpayer is not allowed to reduce ordinary income actually received by the amount of income he failed to receive"); *see, e.g.*, *Marks v. Comm'r*, 390 F.2d 598, 599 (9th Cir. 1968) (affirming Tax Court's decision disallowing taxpayer's loss deduction for the salary differential between clerk-typist job and teacher position where taxpayer could no longer teach). We conclude that the Tax Court

did not err in rejecting Staples' proposed deduction and his related claim for a refund.

Staples next advances a litany of arguments the Tax Court rejected on jurisdictional grounds. For instance, he maintains the Commissioner defamed him and violated the Americans with Disabilities Act and the Rehabilitation Act. He also complains that OPM purposefully omitted information from a tax form and violated the federal Privacy Act. The Tax Court has only "limited jurisdiction," however, and it "lacks general equitable powers." *Comm'r v. McCoy*, 484 U.S. 3, 7 (1987).

The Tax Court's jurisdiction was framed here by the notice of deficiency. *See Keller Tank Servs. II, Inc. v. Comm'r*, 854 F.3d 1178, 1187 (10th Cir. 2017) (describing a deficiency notice as "the taxpayer's jurisdictional ticket to the Tax Court" (internal quotation marks omitted)). Thus, the Tax Court had jurisdiction to redetermine Staples' 2015 tax deficiency and to consider his related refund claim. But no statute conferred jurisdiction over his other claims. *See Harbold v. Comm'r*, 51 F.3d 618, 621 (6th Cir. 1995) (observing "that the Tax Court may only exercise jurisdiction to the extent expressly permitted by Congress" (internal quotation marks omitted)); *see, e.g.*, *Norris v. Comm'r*, T.C. Memo 2001-152, 81 T.C.M. (CCH) 1816, 2001 WL 715854, at *2 (June 26, 2001) (stating that the Tax "Court does not have jurisdiction to decide employee benefit entitlement issues that fall within the purview of various departments and agencies of the United States Government"), *aff'd*, 46 F. App'x 582 (9th Cir.

2002).[2] And Staples' attempt to apply his loss-deduction theory to prior tax years was, as the Tax Court noted, beyond its jurisdiction. *See* 26 U.S.C. § 6214(b) ("The Tax Court in redetermining a deficiency of income tax for any taxable year . . . shall have no jurisdiction to determine whether or not the tax for any other year or calendar quarter has been overpaid or underpaid.").

Finally, Staples argues that the Tax Court's determination is the result of due-process and equal-protection violations, as well as judicial bias against pro se litigants. But he provides no tangible support for this argument, and we "will not consider issues adverted to in a perfunctory manner." *Armstrong v. Arcanum Grp., Inc.*, 897 F.3d 1283, 1291 (10th Cir. 2018) (ellipsis and internal quotation marks omitted). Moreover, we note that the Tax Court afforded Staples "reasonable notice and a meaningful opportunity to be heard," *Standard Indus., Inc. v. Aquila, Inc. (In re C. W. Mining Co.)*, 625 F.3d 1240, 1245 (10th Cir. 2010), by allowing him to testify and submit supporting documentation. Although the Tax Court ultimately rejected his arguments, that is not evidence of bias. *See Bixler v. Foster*, 596 F.3d 751, 762 (10th Cir. 2010).

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[2] Insofar as Staples challenges the rejection of his loss-deduction theory via claims not presented to the Tax Court, we do not consider them. *See McCoy*, 484 U.S. at 6 (stating that "the court of appeals lacks jurisdiction to decide an issue that was not the subject of the Tax Court proceeding").

CONCLUSION

We affirm the Tax Court's decision.

Entered for the Court

Nancy L. Moritz
Circuit Judge

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MARK ALAN STAPLES, Petitioner(s), v. COMMISSIONER OF INTERNAL REVENUE, Respondent	)	Docket No. 6560-18.

ORDER AND DECISION

(Filed Jun. 12, 2020)

A Memorandum Findings of Fact and Opinion (T.C. Memo. 2020-34) was filed in this case on March 11, 2020. The opinion specified that a decision would be entered under Rule 155.[1] On May 8, 2020, respondent filed his Computation for Entry of Decision. On May 9, 2020, Mr. Staples filed a Motion for New Trial. On May 11, 2020, this Court filed a Notice requesting that any notice of objection to respondent's Rule 155 computations be filed by June 1, 2020. Mr. Staples filed his Computation for Entry of Decision on May 30, 2020. The computations do not agree.

Before addressing the computational dispute, we will consider Mr. Staples' Motion for New Trial. First,

[1] All rule references are to the Tax Court's Rules of Practice and Procedure, and all section references are to the Internal Revenue Code in effect for the year at issue, unless otherwise indicated.

we note that Mr. Staples' Motion for New Trial is not properly titled because the motion appears to be seeking reconsideration of our findings and opinion under Rule 161. Although his motion is improper, we will recharacterize Mr. Staples' motion as Petitioner's Motion for Reconsideration of Findings or Opinion under Rule 161 and address it as a Rule 161 request.

Our filed opinion held that Mr. Staples was not entitled to a loss deduction on his 2015 Federal tax return and involved only that tax year. Mr. Staples was the recipient of a Federal Employees Retirement System (FERS) disability annuity (FERS disability annuity). He was also the recipient of Social Security Disability Insurance (SSDI) benefits. Because of the dual Federal benefits, the Office of Personal Management (OPM) reduced Mr. Staples' FERS disability annuity by a portion of the SSDI benefits which Mr. Staples received. Mr. Staples sought to take a loss deduction on his Federal income taxes in the amount of the reduction to his FERS disability annuity. We held that Mr. Staples could not take a deduction for unrealized income – that is, income he expected to receive, but in fact never received. "The notion of a deductible 'loss' simply does not include the failure to realize anticipated income." Staples v. Commissioner, T.C. Memo. 2020-34 at *11-*12 (citing Marks v. Commissioner, 390 F.2d 598, 599 (9th Cir. 1968), aff'g T.C. Memo. 1966-62). To the extent Mr. Staples disputed the merits of OPM's reduction of his FERS disability annuity, we unequivocally stated in our opinion, "this Court does not have jurisdiction to decide

employee benefit entitlement issues that fall within the purview of various departments and agencies of the U.S. Government." Staples v. Commissioner, T.C. Memo. 2020-34 at *6-*7 (citing Norris v. Commissioner, T.C. Memo. 2001-152, 2001 WL 715854, at *2, aff'd, 46 F. App'x 582 (9th Cir. 2002)).

In his May 9, 2020, filing Mr. Staples sets forth a litany of dubious grievances. In brief, Mr. Staples main allegations are that the Court made errors of fact relating to realized and unrealized income; violated its jurisdiction regarding employee benefit entitlement issues; violated his 1st, 5th, and 14th Amendment rights; and is prejudiced against him as a pro se petitioner.

As previously stated, the May 9, 2020 filing is most properly characterized as a motion for reconsideration under Rule 161, which rule serves the limited purpose of correcting substantial errors of fact or law and allows for the introduction of newly discovered evidence that could not have been introduced in the prior proceeding by the exercise of due diligence. See Estate of Quick v. Commissioner, 110 T.C. 440, 441 (1998); Westbrook v. Commissioner, 68 F.3d 868, 879-880 (5th Cir. 1995), aff'g per curiam T.C. Memo. 1993-634. The granting of a motion for reconsideration rests within the discretion of the Court, and we usually do not exercise our discretion absent a showing of unusual circumstances or substantial error. See Estate of Quick v. Commissioner, 110 T.C. at 441 (citing CWT Farms, Inc. v. Commissioner, 79 T.C. 1054, 1057 (1982) aff'd, 755 F.2d 790 (11th Cir. 1985)). 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 v. Commissioner, 110 T.C. at 441-442. Unless the Court otherwise permits, a motion for reconsideration must be filed within 30 days after service of the written opinion or of the pages of the trial transcript containing the findings of fact or opinion recited orally in the record under Rule 152. See Rule 161.

Mr. Staples filed his motion 59 days after service of our opinion, and we will not permit the untimely motion.

Furthermore, even if Mr. Staples alleged errors of fact were true, they would have no impact on the outcome of his case. He argues we had an improper date in 2012 for when his SSDI benefits were approved. Inaccurately paraphrasing our opinion language in Staples v. Commissioner, T.C. Memo. 2020-34 at *2-*3, he states that his SSDI benefits were approved in early June 2012 rather than in November of 2012. That date has no impact on the 2015 income at issue here. Next Mr. Staples argues that OPM rescinded its final decision regarding the reduction to his FERS disability annuity, and that the reduction remains an active controversy with OPM. The status of that OPM dispute has no impact on the actual taxable FERS disability annuity payments that Mr. Staples received in 2015. The actual taxable FERS disability annuity payments from SSDI and FERS were properly reported by him on his timely filed 2015

return. The novel loss issue presented here is based on an unprocessed amended return that Mr. Staples filed with the Internal Revenue Service in connection with the examination of his 2015 return. We rejected that novel argument.

As to his curt references to Constitutional free speech and due process violations, they are belied by the protections set forth in our Rules 155 and 161, allowing Mr. Staples an avenue for contesting our findings of facts and opinion and allowing him to present his computations of the proper tax deficiency to this Court. The remainder of Mr. Staple's motion discusses a mathematical formula for calculating the previously disallowed loss and rehashes previously rejected legal arguments. As such, we will not revisit this. See Estate of Quick v. Commissioner, 110 T.C. at 441-442. For the foregoing reasons, we deny Mr. Staples untimely Motion for Reconsideration of Findings of Fact and Opinion Under Rule 161 (filed as a Motion for New Trial).

Next, turning to the parties' 155 computations, we note that Rule 155 provides as follows:

> **RULE 155. COMPUTATION BY PARTIES FOR ENTRY OF DECISION**
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> * * * * * * *
>
> **(b) Procedure in Absence of Agreement:** If the parties are not in agreement as to the amount to be included in the decision in accordance with the findings and conclusions of the Court, then each party shall file with

> the Court a computation of the amount believed by such party to be in accordance with the Court's findings and conclusions. In the case of an overpayment, the computation shall also include the amount and date of each payment made by the petitioner. A party shall file such party's computation within 90 days of service of the opinion or order, unless otherwise directed by the Court. * * * If in accordance with this Rule computations are submitted by the parties which differ as to the amount to be entered as the decision of the Court, then the parties may, at the Court's discretion, be afforded an opportunity to be heard in argument thereon, and the Court will determine the correct amount and will enter its decision accordingly.

Mr. Staples' computations rework his taxable SSDI benefits by reducing the actual amount of SSDI payments he received in 2015 by the amount of disallowed disability payments he expected to receive from FERS; this a direct contradiction to our Opinion. He likewise takes issue with a computational reduction to his itemized medical and dental expenses based on the increased adjusted gross income resulting from his unreported income concessions. Under Section 213(a), a deduction is allowed for unreimbursed medical and dental expenses that exceed 10% of adjusted gross income; so, as adjusted gross income increases, the deduction for itemized medical and dental expenses decreases. Finally, on the same loss theory he advanced for the 2015 tax year, for the first time, he alleges that he is entitled to refunds for his

2012, 2013, and 2014 taxable years, which are not currently before the Court.

Respondent's computations have as their starting point the concessions by petitioner that he received $10 in taxable interest and $4,648 from an IRA distribution. The remaining computations are mathematical, based on the increased taxable income conceded. Respondent's computations calculate a deficiency of $1,635; they highlight underreported withholding of $929 and an advance payment of $742 (treated as a deposit), which amounts will offset the deficiency amount and any interest due on the deficiency. According to respondent, the offsets leave Mr. Staples owing 28 cents after application of interest. We find respondent's 2015 deficiency computations to be consistent with our Memorandum Findings of Fact and Opinion.

We do not have jurisdiction over tax years 2012, 2013, and 2014 and thus do not address the refund computations submitted by Mr. Staples as to those years here. See secs. 6214(b) and 6512(b)(1); Martin v. Commissioner, T.C. Memo. 2009-234, 2009 WL 3270500, at *3 n.3.

To reflect the foregoing, it is

ORDERED that the Clerk of Court shall retitle "Petitioner's Motion for a New Trial" as "Petitioner's Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161" filed May 9, 2020. It is further

ORDERED that petitioner's motion for reconsideration of findings or opinion pursuant to Rule 161 is denied. It is further

ORDERED AND DECIDED: That there is a deficiency in income tax to be assessed for the taxable year 2015 in the amount of $1,635.00.

(Signed) Elizabeth A. Copeland
Judge

ENTERED: **JUN 12 2020**

IN THE UNITED STATES TAX COURT

In the Matter of: MARK ALAN STAPLES, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	Docket No. 6560-18

Pages: 1 through 7

Place: Albuquerque, New Mexico

Date: December 3, 2018

[1] Sandia Courtroom, 13th floor
Government Services Administration
Federal Building & U.S. Courthouse
500 Gold Avenue, S.W.
Albuquerque, New Mexico

December 3, 2018

The above-entitled matter came on for calendar call, pursuant to notice at 10:31 a.m.

BEFORE: HONORABLE L. PAIGE MARTEL
Judge

APPEARANCES:

For the Petitioner:
MARK ALAN STAPLES, PRO SE

For the Respondent:
MICHAEL T. GARRETT, ESQ.
INTERNAL REVENUE SERVICE
Office of Chief Counsel
600 17th Street
Suite 300N
Denver, CO 80202

[2] PROCEEDINGS

(10:31 a.m.)

THE CLERK: Docket number 6560-18, Mark Alan Staples. Please come forward and state your appearances.

MR. GARRETT: Good morning again, Your Honor. Michael Garrett for Respondent.

MR. STAPLES: Hi, Your Honor. Mark Staples.

THE COURT: Good morning to both of you. What do we have here, folks?

MR. GARRETT: Your Honor, I believe this will be – case will be set for trial. I did provide Mr. Staples – we have been discussing a proposed stipulation of facts. Late last week, Mr. Staples and I spoke further. He had an additional proposed exhibit. I just provided him with a notebook with the updated stipulation of facts and an updated Exhibit 8-P. I've not had a chance to talk to Mr. Staples since the calendar call to see whether or not he approves that and whether or not we can lodge the stipulation with you at this point.

THE COURT: All right. Mr. Staples, where are we in terms of your review of the stipulation of facts?

MR. STAPLES: I do believe – I did have the chance to look at it just now, and I do believe it's acceptable, Your Honor.

THE COURT: All right. Then why don't you get [3] it signed so you can present it to me? And I actually have a fighting chance of reviewing it before I schedule this for trial.

MR. GARRETT: We do have a table, at least, to read it at; yes, Your Honor?

THE COURT: Yes. All right. In terms of the date and time for trial, what's your preference?

MR. STAPLES: I'm retired, so I'm quite flexible. Thursday this week does not –

THE COURT: No, it's going to be Monday or Tuesday.

MR. GARRETT: Your Honor, may I propose that we just have this after the calendar call if we already have the stipulation of facts; give the Court some time to take a look at the stipulation of facts; and go from there?

THE COURT: What's your current estimate of trial time?

MR. GARRETT: I would say, at most, a couple hours. Respondent is not intending to call witnesses.

That time is to allow Mr. Staples time to explain to the Court his position.

THE COURT: Mr. Staples, what about you?

MR. STAPLES: Yes, Your Honor, I agree with Attorney Garrett, basically.

THE COURT: All right.

[4] MR. STAPLES: I'm a little confused. Are we talking about today or next week?

THE COURT: We're talking about either today or tomorrow for trial.

MR. STAPLES: I, if I may, I would prefer tomorrow.

THE COURT: Well, you may prefer it; you may need to do it today.

MR. STAPLES: Okay. That's fine.

THE COURT: Again, because of the – and I don't mean to be inconsiderate –

MR. STAPLES: No.

THE COURT: – but we really have warzone conditions back there.

MR. STAPLES: Yes, I understand, Your Honor. I –

THE COURT: So the happier the judge is, the better the trial goes. Okay?

MR. STAPLES: Well, I just want to offer that I am disabled, and I will need a nap if we're going to do it this afternoon.

THE COURT: Well, let me point out a couple of things. I have read both of your – well, first of all, I want to warn both of you that it will not necessarily be me presiding over the trial. It may be Judge Copeland [5] who's sitting back there. Between the two of us, we have read the pre-trial memoranda; we understand what the issue is. I do not see any reason why this case should go beyond an hour. As a practical matter, if you've done a good job on the stipulation of facts, Mr. Staples, we both understand the theory behind your position. I think you've got a real uphill battle on that one.

But the trial itself is for evidence to be submitted, and not argument. So you know, what we are talking about here is the opportunity for you to give us additional testimony on facts, on what happened. I don't want to hear legal argument until after the record – the evidentiary record – is closed.

And then, we may well give you an opportunity to make your legal argument on why you think you're right. And I'll give Mr. Garrett, or Judge Copeland will give Mr. Garrett, an opportunity to tell us why he thinks you are wrong. And then we'll sort it all out. Do you understand?

MR. STAPLES: Yes, I will be happy to work with Mr. Garrett to meet your expectations.

THE COURT: Good, I'm so pleased. All right. Let me see how the calendar gets put together when I put the pieces, but it will be sometime either today or tomorrow, and hopefully will not inconvenience either of [6] you very much. Okay?

MR. STAPLES: Thank you.

MR. GARRETT: Very good. Thank you, Your Honor.

THE COURT: All right. Thanks. Get that stipulation in shape, okay?

MR. STAPLES: Yes, Your Honor.

(Whereupon, at 10:36 a.m., the above-entitled matter was concluded.)

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[7] CERTIFICATE OF TRANSCRIBER AND PROOFREADER

CASE NAME: Mark Alan Staples v. Commissioner

DOCKET NO.: 6560-18

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 7 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Roger Meyers on December 3, 2018, before the United States Tax Court at its session in Albuquerque, NM, in accordance with the applicable provisions of the current verbatim reporting contract of the Court

and have verified the accuracy of the transcript by comparing the typewritten transcript against the verbal recording.

/s/ Catherine Gonzalez	
Catherine Gonzalez, CDLT-145	12/7/18
Transcriber	Date
/s/ Alison Smith	
Alison Smith	12/7/18
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No. _____

MARK A. STAPLES,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the PETITION FOR WRIT OF CERTIORARI in the above entitled case complies with the typeface requirement of Supreme Court Rule 33.1(b), being prepared in New Century Schoolbook 12 point for the text and 10 point for the footnotes, and this brief contains 5733 words, excluding the parts that are exempted by Supreme Court Rule 33.1(d), as needed.

Subscribed and sworn to before me this 12th day of November, 2021.
I am duly authorized under the laws of the State of Nebraska to administer oaths.

GENERAL NOTARY-State of Nebraska
RENEE J. GOSS
My Comm. Exp. September 5, 2023

Renee J. Goss
Notary Public

Andrew H. Cockle
Affiant

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