



U.S. Department of Justice

Tax Division

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September 28, 2016

Mr. Robert A. McNeil
701 N. Highway 281
Suite E 193
Marble Falls, TX 78654

Re: Robert A. McNeil v. IRS Commissioner, et al.
(D.C. Cir. – No. 16-5233)

Dear Mr. McNeil:

Enclosed is an opposition to your motion in limine and motions for judicial notice, which we filed via the D.C. Circuit's CM/ECF system today.

Sincerely yours,

A handwritten signature in cursive script that reads "Curtis C. Pett".

CURTIS C. PETT
Attorney
Appellate Section

Enclosure

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ROBERT A. McNEIL,

Plaintiff- Appellant

v.

**COMMISSIONER OF INTERNAL
REVENUE and UNITED STATES
ATTORNEY GENERAL,**

Defendant - Appellee

No. 16-5233

**APPELLEES' OPPOSITION TO APPELLANT'S
(1) MOTION IN LIMINE, (2) MOTION TO JUDICIALLY
NOTICE IRS'S "INSTITUTIONALIZED RECORD
FALSIFICATION PROGRAM," AND (3) MOTION TO
JUDICIALLY NOTICE ANSWER AND ORIGINAL
CROSS-COUNTERCLAIM**

The Commissioner of Internal Revenue and the United States Attorney General, appellees herein, through their undersigned counsel, hereby oppose the appellant's motion in limine and motions to judicially notice what appellant describes as the IRS's "institutionalized record falsification program" and for judicial notice of an answer and original cross-counterclaim filed in another case, because the motions are patently meritless.

STATEMENT

McNeil brought this suit in the United States District Court for the District of Columbia seeking injunctive relief from the assessment and collection of taxes against him, asserting, *inter alia*, that the IRS lacks authority to file a substitute for return on behalf of a taxpayer who fails to file a return. (Doc. 1.) The District Court dismissed the suit as barred by 26 U.S.C. § 7421(a), the Anti-Injunction Act, which provides that “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person.” McNeil has appealed that dismissal. (Doc. 19.)

On September 12, 2016, McNeil filed three motions. First, he filed a motion in limine, arguing the merits of his suit. Second, he filed a motion to judicially notice IRS’s purported “institutionalized record falsification program,” also arguing the merits of his action. Third, he filed a motion to judicially notice an answer and original cross-counterclaim filed by another individual in a different suit, apparently seeking relief similar to that sought by McNeil here.

ARGUMENT

McNeil's motions have no merit. His attempts to argue the merits of his case through a "motion in limine" and a motion seeking "judicial notice" are misconceived. His arguments should be presented in his opening brief. *See* Fed. R. App. P. 28(a)(9). The fact that another individual may have filed a similar suit is irrelevant and, in any event, could also be noted in his brief.

CONCLUSION

For the reasons stated above, McNeil's motions in limine and for judicial notice should be denied.

Respectfully submitted,

CAROLINE D. CIRAULO

Principal Deputy Assistant Attorney General

/s/ Curtis C. Pett

CURTIS C. PETT

(202) 514-1937

Attorney

Tax Division

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Post Office Box 502

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SEPTEMBER 2016

**CERTIFICATE AS TO PARTIES, RULINGS,
AND RELATED CASES**

Pursuant to Local Rule 27(a)(4), the Commissioner of Internal Revenue, through his counsel, states as follows:

1. Parties and Amici. Robert McNeil, the Commissioner of Internal Revenue, and the United States Attorney General are the parties in this Court and were the parties below.

2. Rulings Under Review. The rulings under review are the order of dismissal dated April 12, 2016 (Doc. 13) and the order denying the motion to alter or amend the judgment dated June 7, 2016 (Doc. 18) entered by the United States District Court for the District of Columbia (Judge Colleen Kollar-Kotelly). Those orders are not officially reported.

3. Related Cases. This case has not previously been before this Court.

CERTIFICATE OF SERVICE

It is hereby certified that, on this 28th day of September, 2016, the foregoing motion was filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. Service of this motion was made on the appellant, appearing *pro se*, on this 28th day of September, 2016, by sending a copy thereof by First-Class Mail, postage prepaid, in an envelope properly addressed as follows:

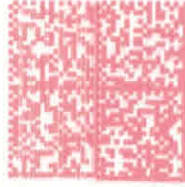
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/s/ Curtis C. Pett
CURTIS C. PETT
Attorney

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