



U.S. Department of Justice

Tax Division

*Please reply to: Appellate Section
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CCPett

5-16-4859

CMN 2015101973

October 5, 2016

Mr. Robert A. McNeil
729 Grapevine Hwy.
#148
Hurst, TX 76054
FEDEX

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

Dear Mr. McNeil:

Enclosed is a motion for an extension of time within which to respond to your motion for summary reversal in the above-captioned case, which we filed via the D.C. Circuit's CM/ECF system today.

Sincerely yours,

A handwritten signature in blue ink 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,**

Defendants - Appellees

No. 16-5233

**APPELLEES' MOTION FOR EXTENSION OF TIME
FOR FILING RESPONSE TO APPELLANT'S
MOTION FOR SUMMARY REVERSAL**

The Commissioner of Internal Revenue and the United States Attorney General, appellees herein, through their counsel, respectfully move this Court for a 28-day extension of time, from October 6, 2016, to and including November 3, 2016, for filing their response to appellant Robert McNeil's motion for summary reversal. In support of this motion, counsel states as follows:

1. On October 4, 2016, I called McNeil, appearing *pro se*, and left a message soliciting his position concerning this motion. He called back and left a message indicating that he wanted to see the motion

before taking a position. As indicated in the certificate of service, we are serving this motion on him via FEDEX.

2. On September 23, 2016, McNeil filed a motion for summary reversal in the above-captioned case.

3. Our response to the motion is due to be filed on October 6, 2016.

4. Before turning my attention to the instant case, I am required to complete work on the Government's brief in *Banister v. United States* (9th Cir. No. 16-15813), which is due to be filed (on extension) on October 11, 2016.

5. 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.)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

¹ “Doc.” references are to the documents in the original record on appeal as numbered by the Clerk of the District Court.

assessment or collection of any tax shall be maintained in any court by any person.” (Doc. 13.) McNeil filed a motion to alter or amend the decision (Doc. 15), which the District Court denied (Doc. 18). McNeil has appealed the dismissal of his suit. (Doc. 19.)

6. On September 12, 2016, McNeil filed three motions arguing the merits of his suit and requesting judicial notice of an answer and original cross-counterclaim filed by another individual in a different suit, apparently seeking relief similar to that sought by McNeil here. We opposed the motions, asserting that McNeil’s arguments should be presented in an appellate brief, not in motions for judicial notice.

7. I was not involved in the proceedings below.

8. Although this suit appears straightforward, McNeil’s motion includes 20 pages of argument. To prepare a proper response after completing work on the *Banister* brief, I must first review the record and research the issues raised by McNeil.

9. In addition, we are considering filing a motion for summary affirmance with our response to McNeil’s motion for summary reversal. We will reach that decision after fully reviewing the record and Neil’s motion for summary reversal.

10. A 28-day extension, to and including November 3, 2016, is essential to allow me time to complete work on the *Banister* brief, and then to fully review the record in the instant case, properly research the issues involved, prepare a draft of the Government's response that will be of maximum assistance to the Court, and then have that draft reviewed by a supervisory attorney.

Wherefore, the Commissioner and United States Attorney General respectfully pray that the time for filing their response to the appellant's motion for summary reversal be extended for 28 days, to and including November 3, 2016.

Respectfully submitted,

/s/ Curtis C. Pett
CURTIS C. PETT
Attorney
Tax Division
Department of Justice
Post Office Box 502
Washington, D.C. 20044
(202) 514-1937
Counsel for the Appellees

Dated: This 5th day of October, 2016.

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

ROBERT A. McNEIL,)	
)	
Plaintiff- Appellant)	
)	
v.)	No. 16-5233
)	
COMMISSIONER OF INTERNAL REVENUE and UNITED STATES ATTORNEY GENERAL,)	
)	
Defendants - Appellees)	

DECLARATION

Curtis Pett of the Department of Justice, Washington, D.C., states as follows:

1. I am an attorney employed in the United States Department of Justice, Tax Division, Appellate Section, who is assigned primary responsibility for handling the appeal in this case.

2. The facts stated in the foregoing motion are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed this 5th day of October, 2016, in Washington, D.C.

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

CERTIFICATE OF SERVICE

It is hereby certified that, on this 5th day of October, 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 5th day of October, 2016, by sending a copy thereof by FEDEX properly addressed as follows:

Mr. Robert A. McNeil
729 Grapevine Hwy.
#148
Hurst, TX 76054

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

Extremely

ORIGIN ID:RDVA (202) 305-8289
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#148

HURST TX 76054

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