

0:04-cv-02711-JNE-JGL McConnell v. United States of America
 Joan N Ericksen, presiding
Date filed: 05/18/2004 **Date of last filing:** 07/28/2004

Case Summary

Office: DMN	Filed: 05/18/2004
Jury Demand: None	Demand:
Nature of Suit: 870	Cause: 26:7422 IRS: Refund Taxes
Jurisdiction: U.S. Government Defendant	Disposition:
County: Hennepin	Terminated:
Origin: 1	Reopened:
Lead Case: None	
Related Case: None	Other Court Case: None

Plaintiff J Michael McConnell	represented by	Richard John Baker	Phone: 612-822-8920 Fax: 612-822-8920 Email: jmm@tabcat.com
Plaintiff J Michael McConnell	represented by	Larry Burton Leventhal	Phone: (612) 333-5747 Fax: 6123441126 Email: lleven6001@aol.com
Defendant United States of America	represented by	Kari M Larson	Phone: 202-514-0564 Email: Kari.M.Larson@usdoj.gov

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

J. MICHAEL MCCONNELL,

Plaintiff

versus

UNITED STATES OF AMERICA,

Defendant

COMPLAINT

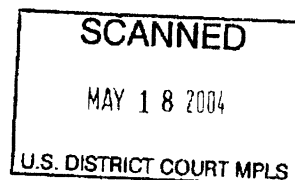
CIVIL ACTION NO. 04-2711

Plaintiff alleges that:

1. This complaint seeks recovery of \$793.28 in taxes illegally assessed and collected by the Internal Revenue Service (herein, "IRS"), as agent for defendant.

JURISDICTION

2. Jurisdiction obtains in the U.S. District Courts:
- a. under 28 U.S.C. §1346(a)(1) to resolve a claim for recovery of an internal-revenue tax illegally assessed and collected, and
 - b. under 28 U.S.C. §2201 to declare the rights and other relations between the parties.
3. Conditions precedent imposed by 26 U.S.C. §7422(a) are met.
4. Limitations of time enumerated in 26 U.S.C. §6532(a)(1) do not bar this action.



VENUE

5. Venue vests in this court under 28 U.S.C. §1402(a)(1).

PARTIES

6. Plaintiff is an adult male who resides in the City of Minneapolis, County of Hennepin, State of Minnesota.

7. Defendant is the party designated by 26 U.S.C §7422(f) to defend actions taken to collect taxes under the internal-revenue laws.

RELEVANT FACTS KNOWN TO THE IRS

8. During August and September 1971, no State or federal statute, no opinion of the Minnesota Attorney General, and no decision of the Minnesota Supreme Court specifically disenfranchised marriages between two persons of the same sex.

9. On August 9, 1971, plaintiff applied to the Clerk of District Court, Blue Earth County, State of Minnesota, for a license to marry an adult male.

10. On August 16, 1971, the Clerk of District Court, Blue Earth County, State of Minnesota, issued plaintiff a license to marry an adult male (EXHIBIT A).

11. On September 3, 1971, plaintiff contracted marriage to an adult male in the presence of two witnesses (herein, "McConnell marriage"). The Rev. Roger Lynn, then a credentialed minister of the United Methodist Church, solemnized the McConnell marriage in Hennepin County and executed a certificate thereof, according to law (EXHIBIT B).

REFUND DUE FOR TAX YEAR 2000

12. The McConnell marriage comports in all respects with the laws of Minnesota in effect at the time it was solemnized. No party or witness to the marriage and no government official has ever taken any action to revoke the license or to dissolve the McConnell marriage, which has endured and grown stronger since the day it was lawfully solemnized.

13. Plaintiff timely filed a federal income tax return for the tax year ending December 31, 2000 and paid the tax shown to be due from an unmarried individual.

14. On December 8, 2003 plaintiff filed a Form 1040X for the tax year 2000. The amended return changed only the status - to *married filing joint return* - and requested a refund of taxes overpaid.

15. On March 8, 2004 the IRS rendered its decision. In its letter, the IRS informed plaintiff that a refund of \$793.28 otherwise owing would be "disallowed" solely because "The Federal Government does not recognize same-sex marriages" (EXHIBIT C).

CONCLUSION OF LAW

16. Equal Protection guarantees of the U.S. Constitution forbid defendant and its agents to refuse to recognize the McConnell marriage, solely because both parties are male.

RELIEF

Wherefore, plaintiff seeks relief, as follows:

1. For an order declaring plaintiff to be a full citizen who is lawfully married and, by that fact, entitled to be treated the same as every other married Minnesotan, similarly situated.

2. For a judgment requiring defendant to pay \$793.28 and interest thereon as a refund of tax illegally assessed and collected from plaintiff for the tax year 2000.

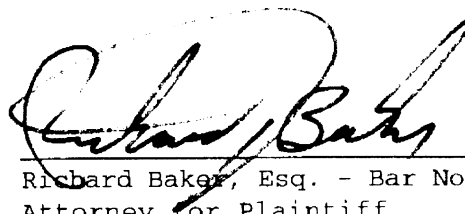
3. For reasonable litigation costs incurred in connection with this court proceeding pursuant to 26 U.S.C. §7430.

4. For such other relief that the court deems proper and equitable.

Dated: *18 MAY 2004*

OF COUNSEL:

Larry B. Leventhal, Esq.
529 South Seventh Street
Minneapolis, MN 55415
Phone: 612-333-5747
Fax: 612-344-1126
Email: LLeven6001@aol.com



Richard Baker, Esq. - Bar No. 408X
Attorney for Plaintiff

BAKER LAW FIRM
3244 First Avenue South
Minneapolis, MN, 55408
Phone/fax: 612-822-8920
Email: jmm@tabcat.com

State of Minnesota MARRIAGE LICENSE

District Court, County of Blue Earth, SS.
TO ANY PERSON LAWFULLY AUTHORIZED TO SOLEMNIZE MARRIAGE WITHIN THE STATE OF MINNESOTA:

Whom It that License is hereby granted to join in the Bonds of Matrimony within a period of six months from the date hereof.

James Michael McConnell
a resident of the County of Hennepin, State of Minnesota

and Pat Lyn McConnell
a resident of the County of Blue Earth, State of Minnesota

I, the undersigned, do hereby certify that I have hereunto set my hand and affixed the seal of said District Court at Mankato *in said County*
this 16th *day of* August, 19 71

Audrey Handahl Connor
CLERK OF THE DISTRICT COURT
BY Christen Asleson
DEPUTY

TO BE KEPT BY PARTY PERFORMING MARRIAGE CEREMONY

State of Minnesota, County of Hennepin, SS.
I, the undersigned, that on the third day of September, in the year of our Lord one thousand nine hundred and seventy one, at Minneapolis, in said County, I, the undersigned, a United Methodist minister, did join in the Bonds of Matrimony:
James Michael McConnell
a resident of the County of Hennepin, State of Minnesota
and Pat Lyn McConnell
a resident of the County of Blue Earth, State of Minnesota
in the presence of
Robert P. Nealis } Witnesses.
Raymond L. ... }
MY CREDENTIALS ARE RECORDED IN Houston COUNTY, MINNESOTA. P.O. ADDRESS: 5324 Spring Ave. So. Minneapolis, Minn.

PARTY PERFORMING MARRIAGE CEREMONY IS TO RETURN TO CLERK OF DISTRICT COURT WITHIN FIVE DAYS.

Audrey Handahl Connor, Clerk of District Court, Blue Earth County, Mankato, Minnesota 56001

State of Minnesota

Public Acknowledgment

STATE OF MINNESOTA, County of Hennepin, SS.

I, Martha Gately, Mayor of the Third day of September, in the

year of our Lord one thousand nine hundred and twenty one, do hereby certify that on the 11th day of September, 1921, at St. Louis, Missouri, did sign the Bonds of Marion

John McConnell Mayor of the County of Hennepin, State of Minnesota, and

James Michael McConnell, Mayor of the County of Hennepin, State of Minnesota,

in the presence of

Robert P. Neale
Witnesses

John J. Ryan
P.O. ADDRESS: 5324 Grand Ave. S.
Minneapolis, 55419

KANSAS CITY MO 64999-0025

In reply refer to: 0935020975
Mar. 08, 2004 LTR 105C
442-40-7283 200012 30 000
Input Op: 0935020975 01471
BODC: SB

J MICHAEL MCCONNELL
3244 FIRST AVE S
MINNEAPOLIS MN 55408-4406446

CERTIFIED MAIL

Taxpayer Identification Number: 442-40-7283
Kind of Tax: Individual Income Tax
Amount of Claim(s): \$ 793.28

Date Claim(s) Received: Dec. 10, 2003
Tax Period(s): Dec. 31, 2000

Dear Taxpayer:

This letter is your legal notice that we have disallowed your claim(s). We can't allow your claim(s) for refund or credit for the period(s) shown above for the reason(s) listed below.

The Federal Government does not recognize same-sex marriages.

If you want to appeal our decision to disallow your claim, you must provide a brief written statement of the issues you don't agree with. The facts contained in the written statement should be detailed and complete, including names, amounts, locations, etc.

You should include the following:

1. A statement that you want to appeal the disallowance.
2. Your name, address, and a telephone number where you can be contacted during the day.
3. A statement of facts supporting your reasons for disputing the disallowance.
4. A statement outlining the law or other authority that supports your claim.

You must declare that the statement of facts is true under penalties of perjury. You may do this by adding the following statement and signing it:

"Under penalties of perjury, I declare that the facts present on my written appeal are, to the best of my

J MICHAEL MCCONNELL
3244 FIRST AVE S
MINNEAPOLIS MN 55408-4406446

knowledge and belief, true, correct, and complete."

An attorney, certified public accountant, or person enrolled to practice before the Internal Revenue Service may represent you. To have someone represent you, attach Form 2848, Power of Attorney and Declaration of Representative, (or similar written authorization) to your written statement.

If your authorized representative prepares the written statement, he or she should include a declaration stating that he or she prepared the written statement and accompanying documents and whether he or she knows personally that the protest and accompanying documents are true and correct.

Please mail your request for an appeal to the address shown on this letter.

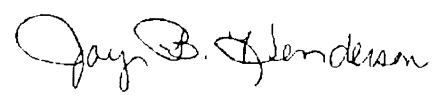
If you have any questions, please call us toll free at 1-800-829-0922.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Also, you may want to keep a copy of this letter for your records.

Telephone Number () _____ Hours _____

Sincerely yours,



Joy B. Henderson
Manager, AM OP 1, Dept. 4

Enclosure(s):
Publication 1
Envelope

CIVIL COVER SHEET

Case # 5815

The JS-44 civil cover sheet and information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

1. (a) PLAINTIFFS

J. Michael McConnell

DEFENDANTS

United States of America

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Hennepin
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Richard Baker
Baker Law Firm, 3244 1st Ave. S.,
Minneapolis, MN 55408 612-822-8920

ATTORNEYS (IF KNOWN)
Thomas B. Heffelfinger,
United States Attorney

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 810 Agriculture <input type="checkbox"/> 820 Other Food & Drug <input type="checkbox"/> 825 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 830 Liquor Laws <input type="checkbox"/> 840 R.R. & Truck <input type="checkbox"/> 850 Airline Regs. <input type="checkbox"/> 860 Occupational Safety/Health <input type="checkbox"/> 890 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW(405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (CITE THE U. S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSL. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

26 USC 7422(a) - tax refund for individual married to a person of the same sex pursuant to a license issued by the State of Minnesota.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P 23

DEMAND \$ \$793

CHECK YES only if demanded in Complaint
JURY DEMAND: YES NO

VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE n/a DOCKET NUMBER _____

DATE 18 May 2004 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____