UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION



BARBARA MARTIN
PETITIONER

v.

UNITED STATES OF AMERICA, et al,
RESPONDENTS

CA NO. H-96-2563

**PETITIONER'S MOTION FOR SANCTIONS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE, RULE 11**

**(1)**

**Petitioner seeks the entry of an order awarding cost against federal Respondents under FRCP 11. As Petitioner pointed out in her Second Response to Federal Responsent's Motion to Dismiss, the Attorney General's Office and/or it's attorneys are attempting to mislead the court by painting a picture for this Honorable Court that Petitioner is some kind of (Tax Protester) wherein counsel states "cases such as this" and goes on to cite Lonsdale v. United States and Itz v. United States Tax Court, both of which are Tax Protester cases. (See Exhibit 57)**

Petitioner filed the following proof with this Honorable Court, October 25, 1996, which proves beyond a reasonable doubt, that the United States Attorney General has knowingly, deliberately and intentionally violated Rule 11 of the Federal Rules of Civil Procedure (See Exhibits 92-95) and that the United States Attorney General's Office knew, or should have known, that Petitioner is not a tax protester, (See Petitioner's Exhibits 59a-91) which shows by way of overwhelming government documentation (thirty 30 years worth) from the United States Department of the Treasury and the Internal Revenue Service, that Petitioner from 1965 until 1995 has never been penalized, fined, sanctioned, punished or convicted in any tax court in the United States of America. Petitioner believes that it is not unreasonable to believe that the United States Attorney General's Office would have the power and authority to obtain the same tax documentation to prove to the court that Petitioner, is or is not, in fact a tax protester in "cases such as this". After all, the IRS is defended by the Attorney General. (See Exhibits 96, 97, 98)

(3)

On September 6, 1996, Petitioner called the United States Assistant Attorney General, Gerald L. Meyer. (See Exhibit 58, Certificate of Conference). During this conference it was made perfectly clear to opposing counsel that this case is in fact not a Tax Protester Case. Counsel was informed if he felt this was a tax issue, he would need to take it up with the proper court, at the proper time, with proper jurisdiction and venue, because this court has before it a citizenship issue only, and has no jurisdiction and venue over a tax issue. Opposing counsel was also informed there is overwhelming governmental documentation to prove beyond a reasonable doubt that Petitioner was not, and is not a tax protester. (See Exhibits 59a-91)

(4)

Opposing counsel was informed that Petitioner would submit her memorandum of law and her genealogy to prove beyond a reasonable doubt that her citizenship derives from the Posterity, spoken of in the Preamble to the Constitution of the United States (1787), and not one emanating from or through the Fourteenth Amendment of 1868. Yet, Respondent is determined to try and make this a tax case. (See Exhibit

57, "Cases such as this, seeking declarations of "de jure" citizenship as opposed to "de facto" have been dismissed and the plaintiffs have been sanctioned on a regular basis.")

(5)

Respondent has no license to harass others, clog the judicial machinery with a meritless removal and motion, and abuse already overloaded court dockets. Respondent caused Petitioner to incur added expense, cost Petitioner much lost time and caused much stress. FRCP Rule 11 (b) (See Exhibit 92) By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. "We hold that a violation of only one of the two clauses in rule 11 is sufficient for a district court to impose sanctions. By signing a document, we believe that an attorney certifies that both of the representations contained in rule 11 are satisfied. The two clauses

state independent obligations, each of which must be satisfied. Finally, we note that rule 11 says that 'if a ... paper is signed in violation, the court ... shall impose ... an appropriate sanction." (See Exhibit 93) "while enthusiasm and innovation in advocacy are to be encouraged, an attorney is under the correlative obligation to conduct himself in a manner consistent with the proper functioning of the judicial system. See Sanctions at 184. A person cannot proceed with impunity when his argument has no merit." (See Exhibit 94) Robinson v. National Cash Register Co., 808 F.2d 1119, 1130, 1131 (C.A.5 (Tex.) 1987; "Discussing the inherent power of a court, the Supreme Court has stated: The power of a court over members of its bar is at least as great as its authority over litigants. If a court may tax counsel fees against a party who has litigated in bad faith, it certainly may assess those expenses against counsel who willfully abuse judicial processes... Like other sanctions, attorney's fees certainly should not be assessed lightly or without fair notice and an opportunity for a hearing on the record. But in a proper case, such sanctions are within a court's powers." (See Exhibit 95) CJC Holdings, inc. v. Wright & Lato, Inc., 142 F.R.D. 648, 653 (W.D.Tex.1992);

(6)

**"Government lawyers have no special license that exempts them from the strictures of the procedural rules, professional behavior, and individual responsibility." (See Exhibit 99a-99d, page 2) Juan R. Enriquez v. W. J. Estelle, et al, Cause H-73-900, 837 F.Supp. 830, 832 (S.D.Tex.1993)**

## PRAYER

**THEREFORE, Petitioner prays this Court grant this Motion for Sanctions and for such other and further relief, both general and special, at law and in equity to which Petitioner shows herself justly entitled.**

**Respectfully submitted,**

Barbara Martin

**Barbara Ann Martin**
**23rd Judicial District**
**12906 West Bellfort**
**Houston, Fort Bend County,**
**Texas U.S.A.**
**Phone: 1-713-495-4539**
**Fax: 1-713-495-0334**

## CERTIFICATE OF CONFERENCE

**Petitioner certifies that she has conferred with all the Respondent parties to this lawsuit, in an attempt to resolve this issue wherein Petitioner seeks from Respondents formal recognition of her De Jure Citizenship.**

Barbara Martin

**Barbara Ann Martin**
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**12906 West Bellfort**
**Houston, Fort Bend County,**
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**Phone: 1-713-495-4530**
**Fax: 1-713-495-0334**

## CERTIFICATE OF SERVICE

**The undersigned hereby certifies that on the 28th day of October, 1996, a true and correct courtesy copy of the forgoing document was personally delivered to Mr. Meyer's Office and on the 29th day of October, 1996, a true and correct copy was served upon the following counsel via Certified Mail, Return Receipt Requested: # P 501 314 693**

**Respondent United States of America, et al, represented by:**

**Gerald L. Meyer**
**Assistant United States Attorney**
**910 Travis, Suite 1500**
**P. O. Box 61129**
**Houston, Texas 77208**

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**Fax: 1-281-495-0334**

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 25, 1996, a true and correct copy of the forgoing document was served upon the following counsel via Certified Mail, Return Receipt Requested:

Respondent United States of America, et al, represented by:

Gerald L. Meyer
Assistant United States Attorney
910 Travis, Suite 1500
P. O. Box 61129
Houston, Texas 77208

Respondent Office of Fort Bend County Clerk, represented by:

Randall W. Morse
Assistant County Attorney
301 Jackson, Suite 621
Richmond, Texas 77469

Respondent Governor of the State of Texas and Texas Department of Public Safety:

Matthew L. Rienstra
Assistant Attorney General
P. O. Box 12548, Capitol Station
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BARBARA MARTIN<br>PETITIONER | {}<br>{} | |
| v. | {} | CA NO. H-96-2563 |
| UNITED STATES OF AMERICA, et al,<br>RESPONDENTS | {}<br>{}<br>{} | |

## ORDER FOR SANCTIONS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE, RULE 11

This cause coming on to be heard on the Petitioner's Motion for Sanctions pursuant to Rule 11, it is hereby ordered: that santions be imposed against Federal Respondents.

Entered:

United States District

Judge:_____

Dated:_____, 1996

Citation
FRCP Rule 11, Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions



UNITED STATES CODE ANNOTATED
RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS
III. PLEADINGS AND MOTIONS

Amendments received to 3-10-95

## Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.



PETITIONER'S EXHIBIT
92

Citation
808 F.2d 1119, Robinson v. National Cash Register Co., (C.A.5 (Tex.) 1987)



of Ewart. As we have indicated, Ewart was present only at a pretrial conference, which was not transcribed. In order to effectively review this sanction order as to Ewart, the district court would have to hold an on the record hearing which would make clear the extent of Ewart's involvement in the suit. We believe that requiring such a proceeding would be contrary to the intent of the drafters of rule 11. Thus, we hold that rule 11 sanctions can be imposed only on the attorneys who sign a document, or on the clients that the signing attorneys represent. *(FN19)*

An additional issue concerning rule 11 must be discussed. Rule 11 is addressed to two separate problems: first, the problem of frivolous filings; and second, the problem of misusing judicial procedures as a weapon for personal or economic harassment. In its opinion the district court rested its sanctions on the ground that the Robinsons' argument "was not well grounded in fact and ... warranted by existing law or a good faith argument for an extension of that law." The terms of rule 11 state that the signature of an attorney acts as a certificate that the motion "is warranted by existing law or a good faith argument for the extension ... of existing law and that it is not interposed for any improper purpose." Fed.R.Civ.P. 11 (emphasis added). In *Veslan Enterprises* we specifically reserved the question of whether violation of one of these two clauses is sufficient for a district court to impose sanctions. *Veslan Enterprises, 765 F.2d at 500 n. 10.* Since the district court specifically rested its sanctions on only the first clause--that the Robinsons' argument was not warranted by existing law or a good faith argument for its extension--we must resolve this question.

*[8]* We hold that violation of only one of the two clauses in rule 11 is sufficient for a district court to impose sanctions. By signing a document, we believe that an attorney certifies that both of the representations contained in rule 11 are satisfied. The two clauses state independent obligations, each of which must be satisfied. While we recognize that there is overlap between the two parts of rule 11, our approach also allows the unique purposes behind each clause to be implemented. For example, it is entirely plausible that the filing of successive motions, each of which is individually well founded in fact and law, could under various circumstances constitute an improper purpose under rule 11 such as harassment or delay. Furthermore, our approach is consistent with the cases and commentary on the revised rule 11. *See, e.g., Eastway, 762 F.2d at 254; WSB Electric Co. v. Rank & File Committee to Stop the 2-Gate System, 103 F.R.D. 417, 420* (N.D.Cal.1984) (Schwarzer, J.); Sanctions at 185-96 (noting the different purposes behind the two clauses). *(FN20)*

Finally, we note that rule 11 says that "[i]f a ... paper is signed in violation, the court ... shall impose ... an appropriate sanction." Fed.R.Civ.P. 11 (emphasis added). By employing the word "shall" the drafters intended to stress the mandatory imposition of sanctions when the requirements of rule 11 have been violated. Thus, where a district court finds that a party's or signing attorney's conduct is improper or unreasonable under rule 11, the court is required to fashion an appropriate sanction.

Citation
808 F.2d 1119, Robinson v. National Cash Register Co., (C.A.5 (Tex.) 1987)



Accord Unioil v. E.F. Hutton & Co., Inc., 802 F.2d 1080, 1091 (9th Cir.1986); *Albright v. Upjohn Co., 788 F.2d 1217, 1221-22* (6th Cir.1986); *Zaldivar, 780 F.2d at 831*; *Westmoreland v. CBS Inc., 770 F.2d 1168, 1174-75* (D.C.Cir.1985); *Eastway, 762 F.2d at 254 n. 7*; *Advo System, Inc. v. Walters, 110 F.R.D. 426, 430* (E.D.Mich.1986).

We acknowledge that sanctions should not be lightly imposed given the impact that they may have on both the attorney's and party's reputations. *Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d 1531, 1540* (9th Cir.1986); *Gilmer v. City of Cleveland, 617 F.Supp. 985, 988* (N.D.Ohio 1985). Rule 11 is "not intended to chill an attorney's enthusiasm or creativity." 97 F.R.D. at 199. Nor is it meant to make lawyers strictly liable if a court rules against them on the merits. However, while enthusiasm and innovation in advocacy are to be encouraged, an attorney is under the correlative obligation to conduct himself in a manner consistent with the proper functioning of the judicial system. See Sanctions at 184. A person cannot proceed with impunity when his argument has no merit.

B.

*[9]* Now that we have set out the appropriate standards to be used in reviewing rule 11 sanctions, we review the sanctions imposed on the Robinsons, Black and Ewart in this case.

1.

We affirm the sanctions imposed upon the Robinsons and Black. Black signed all the pleadings and papers filed on behalf of the Robinsons. As our discussion above makes clear, the attorney who signs the pleading and/or the client he represents are the appropriate people to sanction if rule 11 is violated. The district court noted in its opinion that Black was fully aware of the 1981 suit that the Robinsons had filed against NCR. Furthermore, NCR's counsel made several attempts to inform Black of the substance of the 1981 suit. Black was also given an opportunity to withdraw the suit but did not do so. We accept these findings of fact as they are not clearly erroneous. As we have noted, the district court imposed sanctions because it felt that Black's argument was not well grounded in fact and law. We agree with the district court that Black's conduct violated rule 11. The law is clear that res judicata bars all claims that were or might have been asserted by the parties to the prior action. In the 1981 suit the Robinsons sued NCR and lost. In the instant suit the Robinsons sued NCR again on the basis of the identical factual situation despite their defeat in the earlier suit.

A "reasonable inquiry" by Black would have made it obvious that res judicata barred the instant suit against NCR by the Robinsons. The fact that HDC was named as an additional defendant and BTS was named as an additional plaintiff in the instant suit is irrelevant; res judicata clearly precluded the Robinsons' second suit against NCR. Black's persistence in litigating the Robinsons' claim against NCR when res judicata clearly barred the suit violated rule 11. *See also McLaughlin v. Bradlee, 602 F.Supp. 1412, 1417* (D.D.C.1985) (noting that sanctions are "especially appropriate" in these situations). Furthermore, the district court acted within its discretion in holding the Robinsons jointly liable for the sanctions imposed under rule 11.

2.

The sanctions against Ewart, however, must be reversed. As our discussion above indicates, an attorney must sign a document in the case before rule 11 sanctions can be imposed against him. Ewart did not sign any document involved in the suit. His only role in the course of the proceedings was that he was present at a pretrial conference. See n. 11 supra. Nevertheless, NCR argues that the sanctions against Ewart should be upheld because Ewart's name was on the original petition filed in state court, though he did not sign it, and also because Ewart was actively

was concerned with its own affairs when it imposed the sanctions.[5]

In the present situation, the plaintiff requests this Court to sanction conduct that occurred in and before another United States district court in another circuit. Those matters did not in any way delay or interfere with the proceedings of this Court. The only interference of those proceedings with this Court resulted from the plaintiff's own motion for sanctions. This court is not the proper court nor is this the proper case for sanctions for the conduct that occurred in New Jersey.[6]

[8] Discussing the inherent power of a court, the Supreme Court has stated:

> The power of a court over members of its bar is at least as great as its authority over litigants. If a court may tax counsel fees against a party who has litigated in bad faith, it certainly may assess those expenses against counsel who willfully abuse judicial processes.... Like other sanctions, attorney's fees certainly should not be assessed lightly or without fair notice and an opportunity for a hearing on the record. But in a proper case, such sanctions are within a court's powers.

*Roadway Express, Inc. v. Piper*, 447 U.S. 752, 754, 100 S.Ct. 2455, 2458, 65 L.Ed.2d 488 (1980). Under 28 U.S.C. § 1927 and the court's inherent powers, the district court has discretion to conclude that sanctions are unwarranted. *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866, 877 (5th Cir.1988) (en banc).

[9] Federal district courts should be very cautious in the use of any inherent power to sanction. "Because of their very potency, inherent powers must be exercised with great restraint." *Chambers v. NASCO*, 111 S.Ct. at 2132 (citation omitted). Any sanction under a court's inherent power should be proportionate to the level of improper conduct. *Id.*, 111 S.Ct. at 2132–2133.[7]

Based upon the above discussed precedent, this Court lacks jurisdiction to sanction any parties or attorneys for the conduct that occurred in and before the federal district court in New Jersey. That federal district court which heard and ruled upon the collateral attack, a case in and of itself, is the proper forum for any sanctions to be imposed for any allegedly improper conduct in that case. The federal district court in New Jersey has an ample array of means by which it may sanction a party or the party's attorneys for improper conduct. That court has the appropriate ability to determine whether any conduct in that action is sanctionable under § 1927 or the court's inherent power.

5. In its post-submission brief, the plaintiff argues that *Matter of Case* "must be read in the context of *Chambers*." *See Plaintiff's Post–Submission Brief*, at 3, filed June 2, 1992 (footnote omitted). This Court agrees with that general proposition. The plaintiff emphasizes *Chambers* for the proposition that the Supreme Court held that the district court did have jurisdiction to sanction a party's bad faith conduct before other tribunals. *See id.* at 3 n. 2. This argument must be limited by the facts of that case to similar situations. This is not such a situation. In *Chambers*, the Supreme Court did state that a "party may be sanctioned for conduct occurring beyond the courtroom." *See Chambers*, — U.S. at —, 111 S.Ct. at 2139. The Court did uphold the sanction the party for proceeding before the FCC "*in direct contravention*" of the district court's own orders. Also, the conduct concerning the frivolous appeals concerned the case before the district court that caused delay in that same district court. *See generally NASCO, Inc. v. Calcasieu Television and Radio*, 124 F.R.D. 120, 128–138 (W.D.La.1989). Additionally, it is worth noting that the Court of Appeals specifically imposed liability upon the sanctioned party for attorney's fees for the appeal and merely remanded the issue to the district court for a calculation of the amount. *See id.*, — U.S. at —, 111 S.Ct. at 2130; *see also, NASCO*, 124 F.R.D. at 137 (after the Court of Appeals sanctioned the main appeal, the sanctioned party withdrew the other pending appeals).

6. As a side matter, without addressing the merits of the issue, this Court also questions whether it would even have jurisdiction to sanction the conduct of the attorneys who represented the defendant in New Jersey because those attorneys are not admitted to practice before this Court.

7. Although this Court did award the full amount of reasonable attorney's fees to the plaintiff for the litigation that occurred in the main proceeding before this Court, this Court did not find any bad faith or misconduct by the defendant or its attorneys relating to those proceedings.

PETITIONER'S EXHIBIT 95

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Barbara Ann Martin
23rd Judicial District
12906 W. Bellfort
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P 883 240 693

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

| | |
|---|---|
| Sent to Office of the District Director Disclosure Officer ~~Internal Revenue Service~~ Center | |
| Street and No. 1919 Smith | |
| P.O., State and ZIP Code Houston, Texas 77002 | |
| Postage | $ .32 |
| Certified Fee | 1.10 |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt showing to whom and Date Delivered | 1.10 |
| Return Receipt showing to whom, Date, and Address of Delivery | |
| TOTAL Postage and Fees | $ 2.52 |
| Postmark or Date | MAR 1 1995 USPS |

PS Form 3800, June 1985

PETITIONER'S EXHIBIT 59a

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Office of The District Director
Disclosure officer
Internal Revenue Service Center
1919 Smith St
Houston, Texas 77002

4a. Article Number

P 883 240 653

4b. Service Type

☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

3-2-95

5. Signature (Addressee)

J Hoffman

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1991 *U.S. GPO: 1993—352-714

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STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE, CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (See front)

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make inquiry.

U.S.G.P.O. 1987-197-722

PETITIONER'S EXHIBIT

59b