IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-11648-DD

TIMOTHY J. ELMES,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Petition for Review from a Decision of
the United States Tax Court

Before: WILLIAM PRYOR, JORDAN and ROSENBAUM, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. Timothy Elmes has filed a petition to review the tax court's February 3, 2017 order denying his motion to recuse the tax court judge, and the entire tax court judiciary, based on an alleged constitutional defect.

The denial of a motion for recusal is not final or immediately appealable, either as a final order or under the collateral order doctrine. *See Steering Comm. v. Mead Corp. (In re Corrugated Container Antitrust Litig.)*, 614 F.2d 958, 960-62 (5th Cir. 1980); *see also* 26 U.S.C. § 7482(a)(1) (noting that this Court has jurisdiction to review decisions of the Tax Court "in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury."); *Pugh v. Comm'r of Internal Revenue*, 213 F.3d 1324, 1325 (11th Cir. 2000). Moreover, the denial of Elmes's motion to recuse the entire tax court judiciary is not appealable as the denial of an injunction, as the motion did not explicitly request an injunction or cite to the

law or test regarding whether an injunction would be appropriate, the tax court did not explicitly deny an injunction, and there is no threat of a serious or irreparable consequence if an appeal is taken later from the final judgment. *See Edwards v. Prime, Inc.*, 602 F.3d 1276, 1290 (11th Cir. 2010); *Steering Comm.*, 614 F.2d at 960-62. Finally, the marginal-finality exception to the final judgment rule does not apply because the denial of a motion to recuse is inherently non-final and tentative, not marginally final. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 477 n.30 (1978).

All pending motions are denied as MOOT.