UNITED STATES TAX COURT
WASHINGTON, DC 20217

CONTINUING LIFE COMMUNITIES THOUSAND OAKS LLC, SPIEKER CLC, LLC, TAX MATTERS PARTNER,	)	
Petitioner(s),	)	
v.	)	Docket No. 4806-15.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

This case was originally on the Court's February 22, 2016 trial calendar for San Francisco, California but moved onto a summary-judgment track. On February 4, 2020 Continuing Life moved to take judicial notice of what the Commissioner argued in a brief filed in a different case that arises from the same general problem that's at issue here--when can the IRS disallow a taxpayer's accounting method when that method is based on generally accepted accounting principles. The Commissioner objected, and we asked why. Briefing on this collateral topic is now closed.

Tax Court follows the Federal Rules of Evidence. FRE 201 tells us that a court "may take judicial notice of adjudicative facts not subject to reasonable dispute which are either generally known within the jurisdiction of the Court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Petzoldt v. Commissioner*, 92 T.C. 661, 674 (1989). We've taken judicial notice of what day of the week a particular date fell on, and even in a lighthearted spirit that some allowance for snow-removal expenses by a landlord in Buffalo was to be expected.

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The problem is that "adjudicative facts" is a phrase with a settled meaning--it means facts specific to a particular case to which a court applies legal rules. *See* Fed. R. Evid. 201(a) advisory committee's note. We also call looking up court records "taking judicial notice" when we do so to figure out, for example, whether the elements of collateral estoppel or *res judicata* are present.

That, too, is a form of inquiry into adjudicative facts. But we think that the Commissioner is correct here that a motion to take judicial notice of what another of his lawyers argued in another case is not such a fact, but rather a suggestion that the persuasiveness of a particular argument should be reduced because it's insincerely held or more likely to be wrong because of inconsistency.

We don't take judicial notice of prior assertions for the truth of those assertions. *See, e.g.*, *Freeman v. Commissioner*, T.C. Memo. 2007-28, at *1 n. 5. We also gently observe that the Commissioner seems to be involved in a very large percentage of cases tried in our Court, employs a very large number of lawyers, and cannot reasonably be expected to express the nuances of his positions in each case in ways that are entirely consistent across all litigation.

It is therefore

ORDERED that petitioner's February 4, 2020 motion to take judicial notice is denied.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
April 24, 2020