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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 United States of America,
9
10 Plaintiff,

No. CV-10-2358-PHX-DGC

ORDER

11 v.

12 Robert F. Smith,
13 Defendant.

14
15 Defendant Robert F. Smith filed a request for a certificate of appealability of the
16 Court's order of June 18, 2012, which granted summary judgment to the United States on
17 its action to reduce Mr. Smith's federal tax assessments to judgment. Doc. 80; *see*
18 Doc. 77. Rule 22(b) of the Federal Rules of Appellate Procedure requires that a
19 petitioner in a *habeas corpus* proceeding receive a certificate of appealability before
20 appealing (Fed. R. App. P. 22(b)), but Mr. Smith appeals from a civil judgment. Federal
21 Rule of Appellate Procedure 4(a) governs the filing of his appeal. Fed. R. App. P. 4(a);
22 *see U.S. v. Plechner*, 577 F.2d 596 (9th Cir. 1978) (finding that Rule 4(a) governing the
23 filing of appeals in civil cases applied to enforcement of a bond even when appealed from
24 as part of a criminal proceeding).

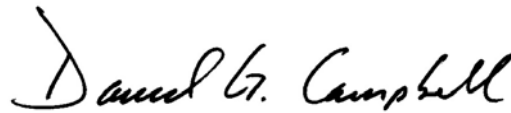
25 Under Rule 4(a)(1)(A), a notice of appeal must be filed with the district clerk
26 within 30 days after the judgment or the order appealed from is entered. Fed. R. App. P.
27 4(a)(1)(A). When, as here, the United States is a party, the notice of appeal may be filed
28 within 60 days. Fed. R. App. P. 4(a)(1)(B). Mr. Smith filed his request on August 15,

1 2012, less than 60 after the order he appeals from was entered, and the Clerk's Office and
2 the Ninth Circuit Court of Appeals have construed Mr. Smith's request as a notice of
3 appeal. Docs. 81, 82. The Court need take no further action. *See United Nat'l Ins. Co. v.*
4 *R&D Latex Corp.*, 242 F.3d 1102, 1109 (9th Cir. 2001) ("Once a notice of appeal takes
5 effect, the district court loses jurisdiction over the matter placed before the appellate
6 court.").

7 **IT IS ORDERED:**

8 1. Plaintiff Robert F. Smith's request for a Certificate of Appealability is
9 moot.

10 Dated this 7th day of September, 2012.

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15 David G. Campbell
16 United States District Judge
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