

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217**

LESLEY A. HUDSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 13526-12S.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

On October 26, 2011, the Internal Revenue Service (IRS) issued a notice of deficiency to Mark H. and Lesley A. Hudson wherein it determined a \$6,525 deficiency in their Federal income tax for 2008. On March 9, 2012, the IRS issued the Hudsons a notice of deficiency for 2009, wherein it determined a \$6,193 deficiency and a \$1,238.60 accuracy-related penalty under section 6662(a).<sup>1</sup> The deficiencies result from the IRS’s disallowance of dependency exemption deductions and child tax credits the Hudsons claimed each year, purportedly with respect to three children of Mark Hudson’s daughter, Tabitha Hudson. See secs. 24, 151, 152.

On May 29, 2012, Lesley Hudson filed the petition in this case seeking review of the IRS’s deficiency determinations for 2008 and 2009. Where the petition asked for the signature of any “ADDITIONAL PETITIONER (e.g., SPOUSE)” she wrote “Mark Hudson is deceased 5/20/09”. The petition was untimely with respect to the deficiency determined for 2008; however, the petition timely invoked our jurisdiction for 2009. See sec. 6213(a).

Any action in this Court must be prosecuted by the person against whom the Commissioner determined the deficiency, or by a fiduciary entitled to institute a case on behalf of such person. Rule 60(a). Spouses are separate taxpayers; even

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<sup>1</sup>Section references are to the Internal Revenue Code of 1986, as in effect for the years at issue. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Court’s website, [www.ustaxcourt.gov](http://www.ustaxcourt.gov).

when they file a joint return they are separately entitled to determinations of their joint tax liability. See Fehrs v. Commissioner, 65 T.C. 346, 350 (1975). Where, as here, a deficiency is determined against more than one person in the notice by the Commissioner, only such of those persons who duly act to bring a case shall be deemed parties. Rule 60(a). However, a case timely brought shall not be dismissed on the ground that it is not properly brought on behalf of a party until a reasonable time has been allowed for ratification by such party of the bringing of the case. Id. In addition, Lesley Hudson has not heretofore been represented by counsel. The pleadings of pro se litigants such as Mrs. Hudson are to be construed liberally in the interests of justice. Rule 31(d); Gray v. Commissioner, 138 T.C. 295, 298 (2012).

We accordingly construe Lesley Hudson as having filed the petition in this case on behalf of herself and Mark Hudson. Because he is deceased, Mark Hudson is not a proper party to these proceedings. The interest of Mark Hudson's estate in this litigation can be represented by any individual with capacity under Rule 60(c), and the Court is authorized by Rule 63 to order substitution of such individual as a party. Local law is applied to determine who has the capacity to be substituted as a party. Rule 60(c); Fehrs v. Commissioner, 65 T.C. at 349.

Under California law, a cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent's successor in interest. Cal. Civ. Proc. Code sec. 377.30 (West 2013). The decedent's successor in interest includes a beneficiary of the decedent's estate. Id. at sec. 377.11. On July 19, 2012, the IRS filed a notice advising the Court of Mark Hudson's death, and further advising that Mark Hudson's ascertainable heirs at law are:

- a. Lesley Hudson  
8916 Gullo Avenue  
Arleta, CA 91331
- b. Elizabeth Tucker  
125 Autumn Creek  
Senora, Georgia 30276
- c. Tabitha Hudson  
137 Laurel Lane  
Carrollton, Georgia 30116

A person who seeks to continue a pending action or proceeding as the decedent's successor in interest must execute and file an affidavit or declaration described in California Civil Procedure Code section 377.32.<sup>2</sup> California law empowers this Court to appoint a successor in interest who properly executes and files such an affidavit or declaration as a special administrator for purposes of this proceeding. Id. at sec. 377.33; see also Estate of Galloway v. Commissioner, 103 T.C. 700 (1994).

There is a second aspect of this case that confers additional rights on Mark Hudson's daughters. Generally, when spouses file a joint return, they are jointly and severally liable for any tax due. Sec. 6013(d)(3). However, section 6015 allows individuals who have filed a joint return to be relieved from joint liability in certain circumstances. On September 23, 2011, Lesley Hudson submitted to the IRS a request to be relieved of the joint liability it maintains she owes with Mark Hudson for 2008 and 2009. She has sought review of that request in this case, and the Court has jurisdiction under section 6015(e) to determine the appropriate relief. If Leslie Hudson is relieved of any liability pursuant to section 6015, that liability would be owed by the estate of Mark Hudson alone.

Ordinarily, the IRS would have to notify Mark Hudson of Lesley Hudson's filing of the petition in this case, and he would have the right to intervene if he wished either to support or oppose her request to be relieved of joint liability for 2008 and 2009. See Rule 325. This right to intervene survives the nonpetitioning spouse's death and passes to his heirs. Fain v. Commissioner, 129 T.C. 89 (2007). Therefore, in addition to their right to litigate the deficiency portion of this case on behalf of Mark Hudson's estate, Elizabeth Tucker and Tabitha Hudson can also exercise Mark Hudson's right to intervene in the portion of this case that concerns Lesley Hudson's request for relief from joint liability for 2008 and 2009.

On the basis of the foregoing, it is

ORDERED that any successor in interest who wishes to prosecute this case on behalf of Mark Hudson shall file with this Court a motion for substitution of proper party and an affidavit or declaration compliant with Cal. Civ. Proc. Code sec. 377.32 on or before September 2, 2013. It is further

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<sup>2</sup>A copy of Cal. Civ. Proc. Code sec. 377.32 (West 2013) is attached to this Order for the convenience of Mark Hudson's heirs.

ORDERED that Elizabeth Tucker and Tabitha Hudson may each exercise her right to intervene in this case by filing a notice of intervention with the Court no later than 30 days after service of this Order, and attaching a copy of this Order to any notice of intervention filed with this Court. It is further

ORDERED that the Clerk of the Court, in addition to regular service, shall serve a copy of this Order upon Elizabeth Tucker, 125 Autumn Creek, Senora, Georgia 30276; and Tabitha Hudson, 137 Laurel Lane, Carrollton, Georgia 30116.

**(Signed) Joseph H. Gale**  
**Judge**

Dated: Washington, D.C.  
August 2, 2013

**C****Effective:[See Text Amendments]**

West's Annotated California Codes Currentness

Code of Civil Procedure (Refs &amp; Annos)

Part 2. Of Civil Actions (Refs &amp; Annos)

Title 3. Of the Parties to Civil Actions

☐ Chapter 4. Effect of Death (Refs &amp; Annos)

☐ Article 3. Decedent's Cause of Action (Refs &amp; Annos)

→ → § 377.32. Statement from successor in interest; information required

(a) The person who seeks to commence an action or proceeding or to continue a pending action or proceeding as the decedent's successor in interest under this article, shall execute and file an affidavit or a declaration under penalty of perjury under the laws of this state stating all of the following:

(1) The decedent's name.

(2) The date and place of the decedent's death.

(3) "No proceeding is now pending in California for administration of the decedent's estate."

(4) If the decedent's estate was administered, a copy of the final order showing the distribution of the decedent's cause of action to the successor in interest.

(5) Either of the following, as appropriate, with facts in support thereof:

(A) "The affiant or declarant is the decedent's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) and succeeds to the decedent's interest in the action or proceeding."

(B) "The affiant or declarant is authorized to act on behalf of the decedent's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) with respect to the decedent's interest in the action or proceeding."

(6) "No other person has a superior right to commence the action or proceeding or to be substituted for the decedent in the pending action or proceeding."

(7) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of Califor-

nia that the foregoing is true and correct.”

(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.

CREDIT(S)

(Added by Stats.1992, c. 178 (S.B.1496), § 20.)

Current with urgency legislation through Ch. 70 of 2013 Reg.Sess,

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