

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

JEFFREY C. ELLIOTT,)
)
Petitioner,)
)
v.) Docket No. 10341-18.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

Pending before us is Pamela Elliott’s motion for leave to file a notice of intervention. Normally, Ms. Elliott could intervene as a matter of right. See Rule 325(b).¹ But her request to intervene is well beyond the 60-day window during which she can intervene, and as a result, she requests leave to do so. Because no prejudice will result, we will grant her motion.

Background

Jeffrey Elliot and Pamela Elliott filed joint returns for 2012, 2013, and 2014. According to the Commissioner, those returns omitted income relating to retirement income distribution made to Mr. Elliott. The Commissioner determined additional tax for the Elliotts. Mr. Elliott filed a Form 8857, Request for Innocent Spouse Relief. The Commissioner issued a final determination in February 2018, denying Mr. Elliott innocent spouse relief under section 6015. In May 2018, Mr. Elliott filed a petition with our Court challenging the denial. On June 25, 2018, the Commissioner sent Ms. Elliott a Notice of Filing of Petition and Right to Intervene pursuant to Rule 325(a) and section 6015(e)(4)².

¹Unless otherwise indicated, section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

²If a spouse has petitioned the Court for sec. 6015 relief, the nonrequesting spouse has a right to intervene in the case under sec. 6015(e)(4). By doing so, the intervenor becomes a party. Rule 325; Van Arsdalen v. Commissioner, 123 T.C. 135, 141-143 (2004).

This case was set for trial in May 2019 in Dallas, Texas. In April 2019, the parties filed, and we granted, a joint motion for a continuance.

In June 2019, Ms. Elliott filed the Motion for Leave to File a Notice of Intervention. She explained her delay in intervening, stating that “she was not represented by counsel and did not understand her procedural rights”. She further contends that the “interests of justice favor allowing her request”, the “interests of uniformity favor granting this request given that she is timely filing a Petition to Intervene in a related case (Docket No. 2957-19)”, and that there would “be no harm caused by granting this motion”.

Mr. Elliott opposes the motion. He contends that Ms. Elliott failed to comply with Rule 325, that her explanation for her delay is not “an adequate reason to excuse such delay”, and that he “expended time and resources in preparation for presentation of his case” resulting in “actual prejudice” to him. The Commissioner did not file a response to Ms. Elliott’s motion. This case is set for trial on October 15, 2019, in Dallas, Texas.

In addition to this case, in February 2019 Mr. Elliott filed a separate petition in Docket No. 2957-19 for a redetermination of a deficiency for tax year 2016. The source of the deficiency is the same as the liability underlying this case: unreported retirement income. In June 2019, Ms. Elliott filed a timely Notice of Intervention, and in July 2019 we added her to the proceeding as an intervenor.

Discussion

The issue before us is whether we should grant Ms. Elliott’s motion for leave to file a notice of intervention. Rule 325(b) provides that the nonrequesting spouse “shall file a notice of intervention with the Court not later than 60 days after service of the notice by the Commissioner of the filing of the petition”. Rule 325(b) also grants the Court discretion to allow an untimely request to intervene.³

³See Kovitch v. Commissioner, 128 T.C. 108, 110 n.3 (2007) (discussing without holding that a notice of intervention filed after 60 days was permissible when the Commissioner did not object and any delay in filing the notice did not harm the parties).

In addition, the Fifth Circuit, to which an appeal of this case would lie,⁴ evaluates the timeliness of a motion to intervene with a four-factor test.⁵

The first factor considers the length of time the movant knew or should have known of an interest in the case.⁶ Ms. Elliott was aware of her interest in this case since at least June 25, 2018, when she received the Notice of Intervention from the Commissioner. Yet she waited a year to file her motion for leave. Ms. Elliott blames the delay on the fact that she was not initially represented by counsel and did not understand her procedural rights. But the Commissioner's notice to Ms. Elliott spelled out those procedural rights in clear and simple language. This factor weighs against granting Ms. Elliott's motion.

The second factor considers any prejudice the existing parties may suffer from the movant's failure to intervene earlier.⁷ Mr. Elliott claims he will suffer prejudice because of the various fees he accrued while Ms. Elliott remained silent. But he provided no evidence of such fees. And a cursory review of the docket reveals no meaningful activity taking place in this case since it was first docketed. Other than his bare assertion, there is no evidence that Mr. Elliott would incur any additional expense as a result of the delayed intervention. Because there is sufficient time for all parties to adequately prepare for the trial in October 2019, no party will suffer prejudice from Ms. Elliott's failure to intervene earlier. This factor weighs in favor of granting Ms. Elliott's motion.

The third factor considers any prejudice that the movant may suffer from a denied motion for leave to intervene.⁸ Ms. Elliott claims the interest of justice favors allowing her request. Because the granting of innocent spouse relief necessarily affects the rights of the nonrequesting spouse, we believe it is necessary to provide a nonrequesting spouse with an opportunity to be heard in any case in which the requesting spouse is claiming relief under section 6015.⁹ Ms. Elliott will suffer prejudice if she is denied the opportunity to intervene in a proceeding affecting any liabilities resulting from her joint returns. This factor thus weighs in favor of granting Ms. Elliott's motion.

⁴See Golsen v. Commissioner, 54 T.C. 742, 757 (1970), aff'd, 445 F.2d 985 (10th Cir. 1971).

⁵Stallworth v. Monsanto Co., 558 F.2d 257, 263-264 (5th Cir. 1977).

⁶Stallworth, 558 F.2d at 264.

⁷Stallworth, 558 F.2d at 265.

⁸Stallworth, 558 F.2d at 265-266.

⁹King v. Commissioner, 115 T.C. 118, 124 (2000).

Finally, the fourth factor considers any unusual factors that may weigh in favor of finding timeliness.¹⁰ We are not aware of any circumstances affecting timeliness, but we are aware that the same parties are currently involved in another proceeding in our Court and that the other proceeding involves similar issues.

Although we find factors weighing both in favor and against granting, on balance, we find that Ms. Elliott should be granted the relief she seeks. Accordingly, under the discretion granted to us in Rule 325(b), it is

ORDERED that Ms. Elliott's motion for leave to file a notice of intervention filed June 24, 2019, is granted. It is further

ORDERED that the caption of this case is amended to read "Jeffrey C. Elliott, Petitioner and Pamela C. Elliott, Intervenor v. Commissioner of Internal Revenue, Respondent." It is further

ORDERED that the Clerk of the Court shall detach Exhibit B, Notice of Intervention, from the Motion for Leave to File Notice of Intervention, and shall file it as of the date of this Order as a Notice of Intervention. It is further

ORDERED that the Clerk of the Court shall serve Ms. Pamela C. Elliot a copy of the Notice Setting Case for Trial and Standing Pretrial Order dated May 15, 2019, along with this Order.

**(Signed) Ronald L. Buch
Judge**

Dated: Washington, D.C.
August 7, 2019

¹⁰Stallworth, 558 F.2d at 266.