

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

WILLIAM M. HEFLEY & AIMEE J. HEFLEY,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 17455-16.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

This case is calendared for trial at the trial session commencing November 18, 2019 at Tampa, Florida. The Petition in this case seeks review of both a Notice of Deficiency issued to both petitioners for taxable years 2011, 2012, and 2013 (Notice of Deficiency), and a Notice of Determination Concerning Your Request for Relief from Joint and Several Liability issued to petitioner Aimee J. Hefley (Mrs. Hefley) for those same taxable years (Notice of Determination).

On February 18, 2019, petitioner William M. Hefley (Mr. Hefley) electronically filed a Motion for Leave to File Amended Petition in which he sought leave to amend the petition to withdraw the challenge to the Notice of Determination. He purported to do so as “Counsel for Petitioner”. Attached to the Motion for Leave was an Amended Petition bearing the signatures of each petitioner. On March 12, 2019, the Court granted the Motion for Leave and filed the Amended Petition. The Amended Petition is identical to the Petition except that the references to the Notice of Determination are eliminated and an additional ground for contesting the Notice of Deficiency is added.<sup>1</sup>

Upon further review of the Motion for Leave, the Court concludes, for the reasons that follow, that the Motion for Leave was void ab initio. First, Mr. Hefley lacks authority to act on behalf of Mrs. Hefley with respect to review of the Notice of Determination. Although Mr. Hefley purported to act on behalf of Mrs. Hefley

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<sup>1</sup>The additional ground states: “Objection to method of selection for audit as communicated by agent.”

as her “counsel” in the Motion for Leave, he has not entered an appearance in this case and in any event would be ineligible to do so because he is not a member of the Tax Court bar. More importantly, his purported representation of her is in direct conflict with the Model Rules of Professional Conduct in that Mrs. Hefley’s interests are adverse to his interests with respect to I.R.C. section 6015 relief. See Model Rule 1.7 Cmt. [1] (“Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client.”); see also Gebman v. Commissioner, T.C. Memo. 2017-184. Consequently, Mr. Hefley does not represent Mrs. Hefley and may not act on her behalf with respect to this Court’s review of the Notice of Determination. Second, although the Amended Petition contains what purports to be Mrs. Hefley’s signature, she stated in a telephone conference call between the Court and the parties on November 6, 2019, that she did not sign the Amended Petition. Accordingly, the purported Amended Petition is a nullity; the request for review of the Notice of Determination remains before the Court.

Respondent undertook discovery in this case on the basis of his belief that Mrs. Hefley’s request for review of the Notice of Determination had been abandoned. Moreover, petitioners objected to certain of respondent’s discovery requests on the grounds that the requests were relevant only to the Notice of Determination, the request for review of which had been abandoned. The Court sustained those objections. In these circumstances, conducting a trial with respect to the Notice of Determination at the November 18, 2019 trial session would be prejudicial to respondent. Accordingly, the Court will bifurcate the trial in this case. The trial with respect to the Notice of Deficiency will be conducted as previously scheduled at the November 18, 2019 trial session. Trial with respect to the Notice of Determination will be postponed until a later date.

The foregoing considered, it is

ORDERED that the Court’s Order dated March 12, 2019, granting petitioners’ Motion for Leave to File Amended Petition is hereby vacated and set aside. It is further

ORDERED that petitioners’ Motion for Leave to File Amended Petition filed February 18, 2019, is denied. It is further

ORDERED that the Amended Petition, filed March 12, 2019, is hereby stricken from the Court’s record in this case. It is further

ORDERED that the trial of this case shall be bifurcated into two parts. The first trial shall be limited to the Notice of Deficiency and will be held as scheduled at the Tampa, Florida trial session commencing November 18, 2019. It is further

ORDERED that no evidence relating to petitioner Aimee J. Hefley's eligibility for relief from joint and several liability pursuant to I.R.C. section 6015 shall be introduced during the partial trial of this case at the November 18, 2019, Tampa, Florida trial session. It is further

ORDERED that the second trial shall address the Notice of Determination and will be scheduled pending further direction of the Court. It is further

ORDERED that jurisdiction of this case shall be retained by the undersigned.

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

Dated: Washington, D.C.  
November 14, 2019