INTERVENTION IN TAX COURT PROCEEDINGS*

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INTERVENTION AS A PARTY may be sought in litigation before the Tax Court. While not provided for either by statute or court rule,[1] it has been found by the court to come within its sound discretion.[2] Opinions and advice can be conveyed to the court through briefs amicus curiae, and, where a proceeding is already pending, the parties thereto may achieve participation in a second case through consolidation of the two.[3] Intervention is usually pressed where consolidation is not available, and where a more active role in the litigation is desired than amicus briefs permit.

The typical proceeding in the Tax Court is brought by a taxpayer who files a petition against the Commissioner of Internal Revenue to review a determination of tax deficiency. Mailing of such a determination by the Commissioner to the taxpayer is an indispensable condition to jurisdiction in the court; disapproval of the deficiency is the relief sought; and the tax liability of no taxpayer other than the petitioner to whom the notice of deficiency is directed can be ruled on by the court.[4]

The main burden on the prospective intervenor, therefore, is to convince the court that, as an outsider whose tax liability is not visibly at

* Unless otherwise indicated, the views expressed herein are represented only as those of the author, and not of the Tax Court of the United States or of any other agency or official of the federal government.

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[1] Section 1111 of the Internal Revenue Code authorizes the court to conduct its proceedings in accordance with such rules of practice and procedure as it may prescribe, and the court has issued a set of rules of practice. As to intervention in the federal district courts, see Fed. Rules Civ. Proc. 24; 4 Moore's Federal Practice, c. 24 (1950); Intervention of Private Parties under Federal Rule 24, 52 Col. L. Rev. 922 (1952).

Reference to the Tax Court includes its predecessor in name, the Board of Tax Appeals.

[2] See Central Union Trust Co., 18 B.T.A. 300, 303 (1929).

[3] Cf., e.g., Jane C. Grant and Estate of Harold W. Ross, 18 T.C. 1013 (1952); Clarence B. Ford, 19 T.C. 200 (1952); Carol F. Hall, CCH Tax Ct. Rep. ¶19,346, 19 T.C. No. 57 (1952); Elise Avery Johnson, CCH Tax Ct. Rep. ¶19,350, 19 T.C. No. 59 (1952). Cf. recommendation of Section of Taxation, Amer. Bar Ass'n, that several parties be allowed to join in a single petition to the Tax Court if the same issues of fact and of law are involved in the situations of all the joined parties. See Program and Committee Reports for Meeting of September 1952 at San Francisco, California 120 (1952).

[4] Int. Rev. Code § 272; Rules of Practice Before The Tax Court of the U.S., Rule 6; Mary M. Shea, 31 B.T.A. 513 (1934); M.A. Nicholson, 22 B.T.A. 744 (1931); Hamilton Web Co., 19 B.T.A. 199 (1930); cf. Bond Crown & Cork Co., 19 T.C. 73 (1952).

stake in the proceeding, he ought nevertheless to be allowed a hand in its conduct. Discharge of that burden has been attempted by showing that intervention was required to protect interests of the one seeking it, or that its grant was in the best interests of the functions of the court.

Protection of Parties' Interests. Perhaps the most common situation in which the interests of the aspiring intervenor have been advanced to justify his interjection into a pending proceeding has involved a claim that he was bound to pay such tax as might be adjudged to be owing by the petitioner. Thus, in *Central Union Trust Company*,[5] the intervenor's obligation was asserted to be contractual, based on an agreement to pay the death tax assessed against an estate as a result of a specified transaction. Alleging existence of the obligation, the Commissioner included it among the estate's assets; both the intervenor and the estate's executors denied the obligation, although the latter apparently were taking a contrary position in state probate proceedings. The court noted that "the issue to be determined is one which arises between the Commissioner and the executors of the estate and may be fully settled without the presence of" the intervenor.[6] Yet it granted intervention, indicating as a reason that "the intervenor has an interest in the controversy which is contrary to that of either of the parties and which otherwise might not be protected in such proceeding."[7]

An obligation to pay another's tax may be imposed by law rather than agreement. Where a tax is due from a transferor of property and it remains unpaid, the transferee is liable for its payment to the extent of the value of the property transferred without a "full, fair and adequate" consideration, if the transfer was made while the transferor was insolvent and after liability for the tax accrued.[8] There is authority that a decision on the transferor's tax, made in a proceeding to which the transferee is not a party, is nonetheless binding on him in a later proceeding to enforce transferee liability.[9] The transferee therefore has an incentive to intervene

[5] 18 B.T.A. 300 (1929). Cf. Indian Refining Co. v. Dallman, 31 F. Supp. 455 (S.D. Ill., 1940), aff'd on other grounds, 119 F. 2d 417 (C.A. 7th, 1941); United States v. Inorganics, Inc., 109 F. Supp. 576 (E.D. Tenn., 1952) (government sought to enforce purported assumption of tax liability on theory of third party beneficiary).

[6] Ibid., at 302.

[7] Ibid., at 302–3.

[8] Int. Rev. Code § 311(a); Phillips v. Comm'r, 283 U.S. 589 (1931); J. P. Quirk, 15 T.C. 709 (1950), aff'd, 196 F. 2d 1022 (C.A. 5th, 1952); Powers Photo Engraving Co., 17 T.C. 393 (1951), remanded on another ground, 197 F. 2d 704 (C.A. 2d, 1952); Ruth Halle Rowen, 18 T.C. 874 (1952), Stewart Title Guaranty Co., 15 T.C. 566, 573 (1950); Mertens, Federal Taxation § 53.10 et seq. (1943).

[9] Cf. F. L. Bateman, 34 B.T.A. 351, 363–64 (1936); Isaac Michael Green, 26 B.T.A. 719, 725–26 (1932), appeal dismissed on stipulation, 75 F. 2d 1014 (C.A. 9th, 1935); Nora M.

when suit is brought to adjudicate the transferor's tax, and the question is whether there is here a sufficient interest to support intervention. In *Frederic W. Procter*,[10] trustee-donees attempted to intervene in a proceeding determining the gift tax liability of their settlor-donor. The trustees asserted that the settlor was not contesting his liability in good faith; that, if decision went against him, he would be unable to pay the tax; that the trustees, as donees of his property, then would have to pay it; and that this would result in the trust being voided. Intervention, opposed by both the settlor and the Commissioner, was denied by the court, which concluded that none of the trustees' "substantial rights" would be prejudiced thereby.

The court expressed the belief that its decision of the pending proceeding could "not be pleaded as res adjudicata against the trustees in any action, even one before this Court involving their liabilities for such a tax."[11] In view of the authority to the contrary in respect of transferees, this statement, taken at its face, is difficult to understand; indeed, the Internal Revenue Code provides that "If the [gift] tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift."[12] Yet the court may have had good reason to refuse intervention. The trustees' motion to intervene was not made until the case had already been tried and was awaiting decision. While the court expressed reluctance to deny intervention on the ground of lack of diligence alone, it was able, with a little hindsight, to test whether the settlor actually was remiss or acting in bad faith in prosecuting the case and whether the trustees, in the evidence they proposed to offer if allowed to intervene, had anything of significance to contribute. It found the trustees' position unsubstantiated on both counts, and in fact thereafter rendered a decision for the settlor on the merits.[13] This case indicates that an

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Carney, 22 B.T.A. 721, 724 (1931); J. E. Duval, 21 B.T.A. 1357, 1359 (1931), aff'd, 57 F. 2d 496 (C.A. 5th, 1932); Jahncke Service, Inc., 20 B.T.A. 837, 846–49 (1930), appeal dismissed, 112 F. 2d 169 (C.A. 5th, 1933); First Nat. Bank v. Comm'r, 112 F. 2d 260, 262–63 (C.A. 7th, 1940), cert. denied, 311 U.S. 691 (1940); United States v. Fisher, 57 F. Supp. 410, 414 (E.D. Mich., 1944); Nebel v. Nebel, 223 N.C. 676, 686, 28 S.E. 2d 207, 214 (1943). See Developments in the Law of Res Judicata, 65 Harv. L. Rev. 818, 860 (1952).

[10] 2 T.C.M. 13 (1943).

[11] Ibid., at 15. Cf. John Hancock Mutual Life Ins. Co., 42 B.T.A. 808, 820 (1940), rev'd, 128 F. 2d 745 (App. D.C., 1942).

[12] Int. Rev. Code § 1009. Cf. Baur v. Comm'r, 145 F. 2d 338 (C.A. 3d, 1944); Fidelity Trust Co. v. Comm'r, 141 F. 2d 54 (C.A. 3d, 1944); Alma M. Myer, 2 T.C. 291 (1943), aff'd, 149 F. 2d 642 (C.A. 8th, 1945); Evelyn N. Moore, 1 T.C. 14 (1942), aff'd, 146 F. 2d 824 (C.A. 2d, 1945).

[13] Frederic W. Proctor, 2 T.C.M. 429 (1943), rev'd, 142 F. 2d 824 (C.A. 4th, 1944), cert. denied, 323 U.S. 756 (1944), on remand, 4 T.C.M. 359 (1945), aff'd, 151 F. 2d 603 (C.A. 4th, 1945), cert. denied, 327 U.S. 785 (1946).

obligation to pay another's tax, together with other circumstances such as the taxpayer's failure reasonably to oppose liability,[14] may support intervention, but in itself apparently is insufficient.

In *Estate of Arthur Curtiss James*,[15] it was state rather than federal law which shifted tax incidence to the intervenor. A New York statute provided that the federal estate tax was to be prorated between the beneficiaries who succeeded to the estate assets responsible for the tax.[16] The decedent, alone or together with his wife, created an inter vivos trust for the latter's sister, and, because of retention of a power of revocation, the corpus was included in the decedent's estate; it was estimated that about $53,000 of the estate tax asserted by the Commissioner was attributable to such inclusion of the corpus. In a proceeding brought by the estate to review the asserted tax liability, intervention was sought in behalf of the sister-beneficiary on the ground that she, rather than the estate, was the party really interested in this portion of the tax because its payment ultimately would be borne by her if the Commissioner prevailed. Neither the estate nor the Commisioner objected to intervention. Leave was granted "to intervene herein as a party petitioner solely as to the assignments of error"[17] dealing with inclusion of the corpus in the estate. Thereafter, the litigation was carried on between the sister-beneficiary and the Commissioner; the estate, although nominally still a party, neither called witnesses, introduced other evidence, nor filed briefs.

Where the taxpayer held property not owned by him, it was ruled in *Gladys T. Pitts*[18] that the owner, in no way responsible for the tax involved, would not be permitted to intervene merely because of a considerable danger that the tax might be satisfied out of that property. The owner alleged that the property had been embezzled by the taxpayer; that the Commissioner was taxing the loot to the latter as income; that the taxpayer would not testify to his misdeeds, which represented the real defense to the tax; that the property would be seized to satisfy the tax; and that the case was about to be settled to the owner's irreparable damage. In denying intervention, the court said that the owner's fears related, not to the validity of the tax deficiencies in issue, but to matters of tax collec-

[14] Rather than such failure being a fact already transpired, as where the motion to intervene is made after the proceeding has been under way, it may be a matter of inference drawn at the outset of the litigation, and on this basis the Central Union case supports the conclusion reached here.

[15] CCH Tax Ct. Rep. ¶19,498, 19 T.C. No. 113 (1953). The motion for intervention was heard on July 11, 1951.

[16] N.Y. Decedent Estate Law § 124. The purpose of the statute was to put the burden of the tax on those persons or other beneficiaries who received the property responsible for it.

[17] See order by Judge Rice granting intervention in this proceeding, dated July 13, 1951.

[18] 26 B.T.A. 312 (1932). See note 25 infra.

tion, over which the Tax Court had no jurisdiction and as to which other protective measures might be taken.

The circumstances of one taxpayer often are similar or related to those of another, and, when the tax liability of one is being litigated, participation in the proceeding may be desired by another in an effort to prevent a decision which, although not res judicata, may yet loom as an adverse precedent.[19] In the most recent instance of attempted intervention before the Tax Court, *Gulfstream Park Racing Association, Inc.*,[20] the taxpayer, an operator of a horse racing track, was organized in 1944, when its entire common stock was issued for racing plant assets and a franchise. In question was the basis of the property paid in for the stock, first in determining the taxpayer's invested capital, and secondly for purposes of depreciation. The taxpayer contended that it had acquired the property in a taxable exchange, and that its basis was the fair market value of the property at the date of transfer. The Commissioner took the position that the exchange was nontaxable; but he was contending, in other pending proceedings involving stockholders of the taxpayer, that it was a taxable exchange. Arguing that it was nontaxable, an ex-shareholder applied for intervention in the *Gulfstream Park* case. The applicant had sold the common stock acquired in 1944, the basis for which was then being disputed by the Commissioner in the course of administrative review. There was not complete identity of interest between the applicant and the continuing stockholders, in that the latter, still concerned in the corporation, might make concessions in an over-all settlement based on some benefit to it. In these circumstances, the court denied intervention,[21] stressing that it could not make a decision in that case which would be determinative of the tax liability of the ex-stockholder.

And yet a taxpayer, proximately affected in his own liability by the consequences of a disposition in a closely related case, has some legitimate concern over the decision of that case.[22] The link between the related situ-

[19] In addition to strictures of established principle relating to the force of precedent, there are those of judicial mechanics and mentality. Cf. Wyzanski, A Trial Judge's Freedom and Responsibility, 65 Harv. L. Rev. 1281, 1299 (1952). Its own decisions become of special weight in the Tax Court because of the extent to which the individual judge there speaks, not just for himself, but for the court as a tribunal. See Int. Rev. Code § 1118.

[20] T.C. Docket No. 35, 693 (this case has not yet come on for trial).

[21] Intervention was denied by an order of Judge Tietjens dated June 25, 1952.

[22] See note 19 supra. As further illustration compare the recent decisions in Gazette Telegraph Co., CCH Tax Ct. Rep. ¶19,419, 19 T.C. No. 86 (1953) and Clarence Clark Hamlin Trust, CCH Tax Ct. Rep. ¶19,421, 19 T.C. No. 88 (1953). The two cases grew out of a sale of stock in a newspaper business, the sellers, incident to the sale, executing a covenant not to compete. In the first case the court found that the covenant was severable and the consideration paid therefor was ascertainable, and it held that the cost of the covenant could be amortized by the purchasers over its life. The second case involved tax liability of the

ations may lie only in a common question of law, or, if there are also common questions of fact, the affected taxpayer may be satisfied with the management of the litigation on its factual side by the taxpayer already in court; in either event, it should suffice for the affected taxpayer to place his views, either on the question of law or on the decision of fact to be made, before the court through a brief amicus curiae. However, where the issue before the court is one of fact or of mixed law and fact, and the affected taxpayer can establish to the court's satisfaction existence of a substantial hazard—actual or reasonably anticipated—to his interests due to some material inadequacy in the presentation of the evidence or in the development of the record on trial, participation of the affected taxpayer in the proceeding would seem to be warranted as a measure for his protection. This can be achieved, if he already has pending or can commence a proceeding reviewing his own tax liability, through a consolidation of the proceedings. But where a notice of deficiency has not yet been issued to the affected taxpayer, as was true in the *Gulfstream Park* case, intervention becomes his remaining recourse. In such a situation, so far as impelling reason exists for permitting intervention in response to the needs of the affected taxpayer, it is not clear that intervention ought to be uniformly denied for the reason stressed in the *Gulfstream Park* case or because of other considerations pertaining to the functioning of the court. If, on intervention, the court's action can be made binding for the intervenor's tax liability, intervention may yet be appropriate. Such binding effect may be attainable, as is suggested in later discussion of the bearing on intervention of interests of the court, by requiring, as a condition to the grant of intervention, that the party seeking it consent that his tax liability be governed by the results of the litigation into which he is thus admitted.

Where the taxpayer is a nonpersonal entity, such as a trust or estate or corporation, there may be some question as to the persons entitled to represent it and to act for it in tax matters. Ambiguity or dispute in this

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sellers; it was held that they realized ordinary income and not capital gain from the consideration received for the covenant. It is difficult to believe that disposition of the first case did not narrowly restrict the outcome of the second, in the absence of drastically new evidence; indeed the court said in conclusion in the second case that "[w]e see nothing in the record before us which would require a result inconsistent with our decision in Gazette Telegraph Co., supra." For another pair of cases involving the same substantive problem, see Toledo Newspaper Co., 2 T.C. 794 (1943) and Toledo Blade Co., 11 T.C. 1079 (1948).

Further example, of a similar decisional pattern in another substantive area, is provided by Carol F. Hall, CCH Tax Ct. Rep. ¶19,346, 19 T.C. No. 57 (1952) (payments made to retired partners of a firm of accountants held a distribution of firm income and not a purchase of the interests of the retired partners, and therefore deductible from firm income by the continuing partners); Charles R. Whitworth, 11 T.C.M. 1199 (1952) and Francis J. Clowes, 11 T.C.M. 1205 (1952) (same payments held ordinary income rather than capital gain to the retired partners).

regard may prompt applications for intervention by competing claimants. In *Agnes McCue*,[23] the Commissioner mailed three notices of deficiency to the petitioner: one for estate tax as transferee of the estate of John J. Nolan; another for estate tax as "statutory executrix"[24] of that estate; and one for income tax and fraud penalty due from petitioner herself. All three notices were founded on substantially the same facts. Nolan, a bootlegger, was petitioner's brother, and at or prior to his death she received certain property alleged by the Commissioner to have been owned by him. The two estate tax notices proceeded on the theory that Nolan still had an interest in these assets at his death, so that they were taxable as part of his estate. The income tax notice treated those assets as income to petitioner, apparently on the supposition that they had been appropriated by her. She then brought three proceedings, one based on each of these notices. A motion to intervene was made in the two estate tax cases by a daughter of Nolan, who alleged that she had been appointed administratrix of his estate in 1937; that she had no knowledge at that time of the assets in question; that she had been discharged in 1940 as administratrix, prior to the mailing of the foregoing notices of deficiency; that on learning of these assets as a result of this tax dispute, she was, on her application, reinstated as administratrix; and that, unless as administratrix she were permitted to intervene, excessive tax liability might be determined against the estate. The court denied intervention in the case involving petitioner's transferee liability,[25] on the ground that the estate had no interest in that liability and would not be bound by determinations in that proceeding.[26] But intervention was granted in the "statutory executrix" case,[27] because here the tax liability of the estate itself was in issue[28] and the duly ap-

[23] 5 T.C.M. 141 (1946).

[24] By statute a person may be treated as an executor who is "in actual or constructive possession of any property of the decedent." Int. Rev. Code § 930(a); Estate of Henry Wilson, 2 T.C. 1059, 1083–84 (1943).

[25] See order of Judge Murdock dated March 8, 1944, in Agnes McCue, T.C. Docket No. 233.

[26] See Transcript of Hearing at 6, Agnes McCue, T.C. Docket Nos. 233 and 234 (Mar. 8, 1944).

[27] See order of Judge Murdock dated March 8, 1944, in Agnes McCue, T.C. Docket No. 234.

[28] The court said that a determination of estate tax liability in this proceeding would be binding on the estate and could not be litigated again in the future. See Transcript of Hearing, op. cit. supra note 26, at 22–23. In the disposition of this question there was, moreover, a conflict of interest between the petitioner and the daughter: the former primarily wanted to prove that the assets in question did not belong to the estate, while the latter contended the contrary so that, as a beneficiary, she might share in them. If the daughter's position prevailed, she was interested, further, in the value placed on the assets; this appeared to be of little concern to the petitioner.

pointed representative of the estate was entitled to participate in the litigation of that liability.[29]

In *Louisiana Naval Stores, Inc.*,[30] the applicant for intervention sought dismissal of a proceeding allegedly brought in conflict with his rights and powers as liquidator of a corporate taxpayer. He claimed to be the duly authorized liquidator, and contended that the petition, instituting the proceeding, had been filed by an individual without authority to act in the corporation's behalf. Intervention was allowed, and, on evidence presented by the intervenor, the proceeding was dismissed for lack of jurisdiction.

The liquidator may well have intervened for the taxpayer-corporation's sake besides his own.[31] Usually intervention, if opposed by the parties to the proceeding, can be assumed to be of little benefit to them, although *Louisiana Naval Stores, Inc.*, indicates there are exceptions. Even where there is no such opposition, intervention should be unnecessary for the parties' benefit where, through the applicant for intervention, they can obtain and present the information or evidence on which he relies.

[29] Petitioner's counsel argued that the Pitts case stood against intervention by the daughter. The reply of Judge Murdock, who wrote the opinion in the Pitts case, is informative in defining the ruling there and its distinction here (see Transcript of Hearing, op. cit. supra note 26, at 17–18):

"[I]t seems to me that there is a very marked difference between that [Pitts] case and this case, because what the F. H. Smith Company [seeking to intervene] wanted to do was to prevent assets which they said belonged to the F. H. Smith Company from being taken by the Government to pay a liability which the Government was asserting not against the F. H. Smith Company but against Bryan Pitts [one of the taxpayers].

"The difference, to me, is that here the Government in this proceeding is asserting a liability against the estate of John J. Nolan, and the estate of John J. Nolan wants to come in here and protect itself. I said the F.H. Smith Company could not come in here in the Bryan Pitts case because nobody was asserting any claim against them or anything that belonged to them, and that if anything was taken, it would be taken because it was the property of Pitts, and if the Government ever tried to take the property of Pitts and it actually was taking the property of the F. H. Smith Company, there was some other tribunal in which that could be tried out.

"But here I see a big difference, because the taxpayer whose liability is being determined here is the very person who wants to intervene. In other words, the question here is, who is the proper representative of the estate which is being held for these taxes?

"It has been asserted against the person [Agnes McCue] whom you represent as if she were the proper representative of that estate. Mr. Savoy [the daughter's counsel] comes in here and says, 'I represent the person who really is the proper fiduciary representative of this estate, and that person has an interest in it.'

"It may be that for some other reason he should not intervene, but I do not think the Pitts case is going to help you."

[30] 18 B.T.A. 533 (1929). Cf. Falls City Pontiac Co., 15 T.C. 977 (1950), aff'd, 194 F 2d 536 (C.A. 6th, 1952).

[31] Cf. Gladys T. Pitts, 26 B.T.A. 312, 313 (1932), in which intervention was asked in part because the court "will not be able to determine the correct tax liability of the petitioners without the facts to be presented by the intervenor."

Advancement of the Court's Functions. The aim of the court is to do justice. Within the scope of that objective comes prevention of injustice to the applicant for intervention, and to that extent the interests of the applicant and the court overlap. The court's concern, however, extends further. It has to consider the litigants already before it, whose claim to just treatment procedurally and substantively is no less than that of the prospective intervenor. And as to all these parties, it must think of the impact of intervention on the efficiency and effectiveness with which it executes its functions. Intervention has therefore been urged on the court for the following reasons:[32] (1) Multiplicity of proceedings will be avoided by intervention. (2) Intervention will raise no new issues; and the proceeding will be simplified by evidence which the intervenor will introduce. (3) The court will not be able "to completely administer justice" unless intervention is allowed.

If multiplicity of proceedings really could be avoided through its allowance, intervention would appear to be desirable, other things being equal.[33] It is not likely, however, that this advantage will follow unless decision of the proceeding on its merits is binding on the intervenor. Where there is doubt that the decision will have this effect, the court, as a condition to the exercise of its discretion in favor of intervention, should require the applicant to agree that, at least in all future federal tax litigation and perhaps in all suits involving the federal government or its agencies or representatives, the decision will be binding on him as to issues actually raised or necessarily determined in the proceeding. So, too, in the case of a related taxpayer to whom a notice of deficiency has not yet been issued, intervention may be granted on condition that he assent to be bound in the future by the court's determinations in the present proceeding which are pertinent to his own tax liability. To assure minimum litigation in the future, it may be advisable to require, where it is not unfair to do so, agreement by the prospective intervenor even as to matters not in question in the proceeding. Thus, one seeking intervention on the ground that he will be liable as transferee might be required to consent to existence of conditions to such liability other than presence of a deficiency in the transferor's tax.[34]

[32] See, e.g., ibid.

[33] Cf. Scott v. Gearner, 197 F. 2d 93 (C.A. 5th, 1952).

[34] For these conditions, see authorities cited note 8 supra. There may well be situations in which existence of these conditions may be open to reasonable dispute; in which it would be unfair to compel the potential transferee to surrender the opportunity for judicial consideration of questions concerning their existence; and in which potential transferee liability still is great enough to constitute a strong interest for intervention. Perhaps here the court, in allow-

The assertion that intervention will simplify the proceeding should not be accepted unless clearly established. Ordinarily the opposite would be expected. Addition of parties, opening the door to additional pleadings, evidence, examination of witnesses and pretrial and trial maneuver, can readily make the proceeding cumbersome and protracted, enhance the opportunity for confusion, and impede disposition of the case through settlement. That intervention will raise no new issues seems to be of little importance in an affirmative sense; but that the contrary is true deserves considerable weight as a factor negating its allowance, although intervention may be feasible even in the presence of some diversity of issues.[35] If intervention is requested in order to introduce evidence, a showing should be required that the evidence cannot be made available to the litigants and, through them, to the court. A situation in which "simplicity" is promoted through intervention exists where it results in dismissal or decision, without the need for trial, of one or more of the controversies in a case.

Where intervention is asked to enable "complete administration of justice," particulars again are in order. Considerations already discussed are likely to be among those largely relevant here.

Conclusion. Whether intervention will be permitted in Tax Court proceedings appears to depend on a weighing in the particular case of the interests affected, of the parties and of the court. Generally, intervention seems undesirable in light of its adverse effects on the conduct and disposition of the proceeding. Only where such consequences are not present or are overcome by other legitimate demands should intervention be allowed.

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ing intervention, might compel submission for decision of the question of transferee liability in the event it finds for the Commissioner on the initial question of tax deficiency.

[35] Compare the arrangement suggested by James Ruston, 19 T.C. 284 (1952), in which, on grant of consolidation, an issue common to all the parties was tried separately from an issue which concerned only some of them. And compare the technique of confining intervention as to certain issues only, suggested by Estate of Arthur Curtis James, CCH Tax Ct. Rep. ¶19,498, 19 T.C. No. 113 (1953), note 17 supra.