

## ***Estate of Gudie v. Commissioner, T.C. Memo. 2012-288***

A person in actual or constructive possession of a decedent's property who files an estate tax return can be considered a statutory executor for the purpose of receiving a notice of deficiency, even without formal appointment as executor.

### **Summary**

The Tax Court addressed the question of subject matter jurisdiction in an estate tax case. Jane Gudie died, and her niece, Mary Helen Norberg, filed an estate tax return as executor, despite not being formally appointed. The IRS issued a notice of deficiency to "Estate of Jane H. Gudie, c/o Mary Helen Norberg, Executor." Norberg moved to dismiss, arguing the notice was invalid because she was not a formally appointed fiduciary. The Tax Court held it had jurisdiction, finding that Ms. Norberg qualified as a "statutory executor" under Internal Revenue Code § 2203 because she was in actual or constructive possession of the decedent's property and filed the estate tax return. The court reasoned that filing the estate tax return constituted sufficient notice of her fiduciary status, making the notice of deficiency properly addressed and valid.

### **Facts**

Jane H. Gudie died a resident of California. She was survived by two nieces, Mary Helen Norberg and Patricia Ann Lane. Gudie had created the "Jane Henger Gudie Living Trust," naming her nieces as beneficiaries. Norberg was appointed co-trustee. Gudie and her nieces engaged in a transaction involving annuities and notes secured by trust assets. After Gudie's death, Norberg filed a Form 706, United States Estate Tax Return, as executor, reporting zero estate tax due, largely due to claimed debts to the nieces. The IRS audited the return and issued a notice of deficiency to "Estate of Jane H. Gudie, c/o Mary Helen Norberg, Executor." Norberg, who was not formally appointed executrix by a probate court, filed a petition in Tax Court and subsequently moved to dismiss for lack of subject matter jurisdiction.

### **Procedural History**

The Internal Revenue Service issued a notice of deficiency to "Estate of Jane H. Gudie, c/o Mary Helen Norberg, Executor." Mary Helen Norberg, signing as executor, filed a petition in the Tax Court contesting the deficiency. Subsequently, Norberg filed a motion to dismiss for lack of subject matter jurisdiction, arguing the notice of deficiency was invalid. The Tax Court denied Norberg's motion to dismiss.

### **Issue(s)**

1. Whether the Tax Court has subject matter jurisdiction over the petition filed on behalf of the Estate of Jane H. Gudie.
2. Whether the notice of deficiency issued by the IRS was valid when addressed to

“Estate of Jane H. Gudie, c/o Mary Helen Norberg, Executor,” given that Ms. Norberg was not formally appointed executrix.

3. Whether Ms. Norberg, in her capacity as someone in possession of the decedent’s property who filed the estate tax return, is considered a statutory executor under IRC § 2203 for the purpose of receiving a notice of deficiency and petitioning the Tax Court.

### **Holding**

1. Yes, the Tax Court held that it does have subject matter jurisdiction because a valid notice of deficiency was issued and a timely petition was filed by a proper party.

2. Yes, the notice of deficiency was validly issued because Ms. Norberg qualified as a statutory executor under IRC § 2203.

3. Yes, Ms. Norberg was a statutory executor because she was in actual or constructive possession of the decedent’s property and filed the estate tax return, thus making her a proper party to receive the notice and petition the Tax Court.

### **Court’s Reasoning**

The Tax Court’s jurisdiction is limited to cases where a valid notice of deficiency has been issued and a timely petition has been filed. Section 6212(a) authorizes the Commissioner to send a notice of deficiency to the taxpayer, and § 6212(b)(3) specifies that for estate tax, the notice should be sent to the fiduciary. The critical definition is found in § 2203, which defines “executor” as “the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent.”

The court found that Ms. Norberg was in actual or constructive possession of the decedent’s trust property, which is considered property of the decedent for estate tax purposes. The court emphasized that whether the property was probate or non-probate is immaterial to the definition of statutory executor, citing *Estate of Guida v. Commissioner*. By filing the estate tax return as executor, Ms. Norberg provided notice of her fiduciary capacity, satisfying the requirements of §§ 6036 and 6903. Treasury Regulation § 20.6036-2 explicitly states, “The requirement of section 6036 for notification of qualification as executor of an estate shall be satisfied by the filing of the estate tax return required by section 6018.”

The court also addressed and rejected Ms. Norberg’s evidentiary objections, noting that in jurisdictional inquiries, the court is not bound by the rules of evidence applicable to summary judgment motions and can consider affidavits and other evidence to determine the facts relevant to jurisdiction, citing *Gibbs v. Buck and Land v. Dollar*.

## **Practical Implications**

This case provides crucial clarification on the definition of a “statutory executor” under federal estate tax law, particularly in situations where no formal executor is appointed through probate. It underscores that individuals in actual or constructive possession of a decedent’s property, especially those who undertake the responsibility of filing the estate tax return as executor, will likely be deemed statutory executors by the IRS and the Tax Court. This has significant implications for estate administration, especially when dealing with trusts and other non-probate assets. Legal practitioners should advise clients who find themselves in possession of a decedent’s assets about the potential fiduciary duties and liabilities that may arise, even if they are not formally appointed as executor. The case highlights that filing an estate tax return as executor is a consequential act that establishes a fiduciary relationship with the IRS for purposes of deficiency notices and Tax Court jurisdiction. It reinforces the IRS’s ability to effectively pursue estate tax matters by directing notices to those who control the decedent’s assets, ensuring accountability even in the absence of formal probate proceedings.