*1 T.C. 8 (1942)*

When a state banking superintendent takes possession of a bank's assets under state law, it is considered equivalent to a receivership proceeding in state court, thus precluding the Tax Court from hearing a petition for redetermination of tax deficiencies filed after that date.

**Summary**

Banco di Napoli Agency faced determined tax deficiencies. The Superintendent of Banks of the State of New York took possession of the bank's New York assets under state law. The Commissioner of Internal Revenue moved to dismiss the bank's petition for lack of jurisdiction, arguing that the state's action was equivalent to a receivership. The Tax Court agreed, holding that the Superintendent's action was akin to a state court receivership, thus barring the Tax Court from hearing the petition under Section 274(a) of the Revenue Act of 1936.

**Facts**

The Commissioner determined deficiencies against Banco di Napoli Direzione Generale Napoli and sent notice. The Superintendent of Banks of the State of New York took possession of the business and property of Banco di Napoli in New York on December 11, 1941, pursuant to Section 606 of the Banking Law of the State of New York.

**Procedural History**

The Superintendent of Banks filed a petition with the Tax Court in 1942 seeking a redetermination of the deficiencies. The Commissioner moved to dismiss the petition for lack of jurisdiction, arguing that the Superintendent's takeover was equivalent to a receivership proceeding, which would preclude the Tax Court from hearing the case.

**Issue(s)**

Whether the action of the Superintendent of Banks of the State of New York in taking possession of the assets of Banco di Napoli under Section 606 of the Banking Law of New York constitutes a receivership proceeding before a state court within the meaning of Section 274(a) of the Revenue Act of 1936, thus precluding the Tax Court from hearing a petition for redetermination of deficiencies filed after that date.

**Holding**

Yes, because the Superintendent's action is the equivalent of the appointment of a receiver in a receivership proceeding before a state court, as contemplated by Section 274(a) of the Revenue Act of 1936.

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## Court’s Reasoning

The court reasoned that while the Superintendent took possession without a specific court order, similar statutory provisions have been interpreted to mean that a state officer taking possession of assets under legal authority is equivalent to the appointment of a receiver. The court cited precedent supporting this interpretation. The court emphasized that Section 274(a) of the Revenue Act of 1936 explicitly states that no petition may be filed with the Tax Court after the appointment of a receiver in any receivership proceeding before a state court. The court concluded that the Superintendent’s actions fell within the scope of a receivership proceeding, thus depriving the Tax Court of jurisdiction.

## Practical Implications

This case clarifies the jurisdictional limits of the Tax Court when a state banking regulator takes control of a bank’s assets. It establishes that such actions are treated as state receivership proceedings for the purpose of determining Tax Court jurisdiction. Attorneys must be aware that any petition to the Tax Court filed after the state regulator takes possession will be dismissed for lack of jurisdiction. This decision impacts how tax matters are handled when financial institutions are subject to state regulatory oversight and receivership-like actions. Later cases would likely cite this to determine if other state actions are equivalent to receivership for jurisdictional purposes.

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