***Russo v. Commissioner*, 24 T.C. 538 (1955)**

A deceased partner's heirs do not automatically become partners in the business; the intent of the surviving partners and the heirs to continue the business as a partnership must be established to determine partnership status, especially for tax purposes.

Summary

The case concerns whether the deceased husband's children became partners in two businesses upon his death, entitling them to a share of the partnership income, or whether the surviving partner and the wife (acting as the children's guardian) continued the business. The court ruled that the children were not partners. The court emphasized that the intent of all parties is paramount in determining partnership status. Without evidence of an agreement and intent to include the children as partners, despite their inheritance of the deceased partner's share, they were not considered partners for tax purposes. The court considered the actions of the parties, including their treatment of the children, and found no intent to include them as partners.

Facts

John Russo held partnership interests in North Pole Distributing Company and North Pole Ice Company. Upon Russo's death in 1941, his wife, as guardian of their children, inherited a portion of his partnership interests. The surviving partners continued the businesses. The wife reported all partnership income on her individual tax returns. The Commissioner of Internal Revenue determined that the children did not possess partnership interests in these businesses. The wife argued that the children's inherited shares entitled them to a portion of the income, which should have been reported separately.

Procedural History

The case was brought before the United States Tax Court. The Commissioner of Internal Revenue initially determined that the children did not possess any partnership interests. The wife contested this determination, leading to the Tax Court's review of the facts and legal principles governing partnership formation and taxation. The Tax Court ruled in favor of the Commissioner.

Issue(s)

1. Whether the children of the deceased partner automatically became partners in the business upon their father's death by inheritance of his partnership interests?

2. Whether the absence of an agreement and intent to include the children as partners in the continued operation of the business precluded them from being considered partners for tax purposes?

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Holding

1. No, because the mere inheritance of a partnership interest does not automatically confer partnership status.

2. Yes, because the intent of the surviving partners and the heirs to act as partners is a determining factor.

Court’s Reasoning

The Tax Court relied on the principle that the intent to form a partnership is crucial. The court cited *Commissioner v. Culbertson*, which clarified that the existence of a partnership depends on whether the parties

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