***Nordstrom v. Commissioner, 50 T. C. 30 (1968)***

The U. S. Tax Court retains jurisdiction over a case despite the death of a petitioner before trial, and may proceed to dismiss for lack of prosecution after notifying potential heirs.

**Summary**

In Nordstrom v. Commissioner, the U. S. Tax Court addressed procedural issues arising from the death of a petitioner, Harry Nordstrom, before trial. The court clarified that it retains jurisdiction over a case despite a petitioner's death, even if no personal representative is appointed. The court outlined a procedure where, upon a motion to dismiss for lack of prosecution, it would require the respondent and surviving parties to identify the decedent's heirs, allowing them an opportunity to protect their interests before proceeding with the dismissal. This ruling ensures that tax cases can be resolved efficiently while protecting the rights of potential heirs.

**Facts**

Harry B. Nordstrom and Dorothy K. Nordstrom filed a joint petition with the U. S. Tax Court challenging a deficiency notice for income tax and fraud additions for the years 1956 through 1961. After the case was calendared for trial twice and continued, Harry Nordstrom died on October 27, 1966. No administration of his estate was pursued, and no special representative was appointed. The Commissioner moved to dismiss the case as to Harry for lack of prosecution, while settling with Dorothy on the same terms as the motion against Harry.

**Procedural History**

The petition was filed on June 11, 1964, and became at issue. The case was calendared for trial twice but continued each time. After Harry's death, the Commissioner filed a motion to dismiss the case as to Harry on January 24, 1968. The motion was heard on February 28, 1968, with no appearance by or on behalf of either petitioner. The court took the motion under advisement to determine the proper procedure in such cases.

**Issue(s)**

1. Whether the U. S. Tax Court retains jurisdiction over a case when a petitioner dies before trial and no personal representative is appointed.
2. Whether the court may proceed to dismiss the case for lack of prosecution under these circumstances.

**Holding**

1. Yes, because the court's jurisdiction continues unimpaired by the death of a

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petitioner, even without a personal representative appointed, as established in prior cases like James Duggan and Roy R. Yeoman.
2. Yes, because the court can dismiss for lack of prosecution after notifying potential heirs, as provided by section 7459(d) of the Internal Revenue Code, to protect their interests.

**Court's Reasoning**

The court reasoned that its jurisdiction over a case continues despite a petitioner's death, based on precedents like James Duggan and Roy R. Yeoman. The court emphasized that there is no abatement of an appeal upon the death of the appellant, and the absence of a personal representative does not divest the court of jurisdiction. The court proposed using a motion to dismiss for lack of prosecution as a procedural means to close the case, as per section 7459(d) of the IRC, which allows the court to determine the deficiency as the amount stated by the Commissioner upon dismissal. The court also recognized the potential impact on the decedent's heirs and outlined a process for notifying them, giving them an opportunity to protect their interests. This approach balances the need for efficient case resolution with the protection of potential heirs' rights.

**Practical Implications**

This decision provides a clear procedure for handling tax court cases when a petitioner dies before trial. Practitioners should note that the court retains jurisdiction and can proceed to dismiss for lack of prosecution if no personal representative is appointed. The requirement to notify potential heirs ensures their interests are considered, which may affect how attorneys advise clients on estate administration in such situations. This ruling may influence how similar cases are managed in other jurisdictions and highlights the importance of timely communication with the court regarding a petitioner's death. Subsequent cases have followed this procedure, reinforcing its application in tax litigation.

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