***Bohrer v. Commissioner, 88 T. C. 930 (1987)***

A taxpayer's failure to prosecute their case in Tax Court can lead to the dismissal of their case and the entry of a default judgment against them, even when the burden of proof is on the Commissioner.

**Summary**

In Bohrer v. Commissioner, the Tax Court dismissed the case due to the petitioner's failure to prosecute, resulting in a default judgment against her for tax deficiencies and additions for 1978 and 1979. The petitioner did not respond to the Commissioner's attempts to prepare for trial or appear at the scheduled trial date. The court applied the precedent from Bosurgi, which allows for default judgments when taxpayers abandon their cases, even if the burden of proof lies with the Commissioner. This ruling underscores the importance of active participation in legal proceedings and the potential consequences of failing to do so.

**Facts**

The Commissioner determined tax deficiencies for the petitioner for the years 1977, 1978, and 1979, along with additions to tax for negligence and delinquency. The petitioner filed delinquent returns and pleaded guilty to failure to file timely returns for those years. Despite multiple attempts by the Commissioner to prepare for trial, the petitioner did not respond or appear at the scheduled trial date.

**Procedural History**

The case was set for trial on April 20, 1987. The petitioner was notified of the trial date and warned of the consequences of non-compliance. The Commissioner moved to dismiss the case for failure to prosecute, which the court granted for the underlying deficiencies for 1978 and 1979. The court reserved decision on the additions to tax but later granted the motion to dismiss for those as well.

**Issue(s)**

1. Whether the court should dismiss the case and enter a default judgment against the petitioner for failing to prosecute, despite the burden of proof on the Commissioner for the additions to tax.

**Holding**

1. Yes, because the petitioner's failure to respond to the Commissioner's attempts to prepare for trial and her absence at the scheduled trial date constituted a failure to prosecute, justifying the dismissal of the case and the entry of a default judgment.

**Court's Reasoning**

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The court relied on the precedent set in Bosurgi v. Commissioner, which allows for default judgments when taxpayers abandon their cases. The court emphasized that the petitioner's failure to appear or respond to communications indicated a lack of interest in defending the case. The court noted that even though the burden of proof for the additions to tax was on the Commissioner, the petitioner's non-participation justified the dismissal. The court quoted Bosurgi, stating that holding a trial in an abandoned case is an unnecessary use of court resources. The court also affirmed that a default judgment admits all well-pleaded facts in the Commissioner's answer.

**Practical Implications**

This decision highlights the critical importance of active participation in legal proceedings, particularly in Tax Court. Taxpayers must respond to court notices and engage in the preparation process, or risk having their cases dismissed and default judgments entered against them. For legal practitioners, this case serves as a reminder to diligently represent their clients and ensure their compliance with court procedures. The ruling also affects how similar cases should be analyzed, emphasizing that the burden of proof on the Commissioner does not preclude a default judgment if the taxpayer fails to prosecute. This case may influence future cases where taxpayers neglect their legal obligations, potentially leading to more stringent enforcement of court procedures.

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