

UNITED STATES TAX COURT
WASHINGTON, DC 20217

EUNICE L. SHERWOOD,)	
)	
Petitioner,)	
)	
v.)	Docket No. 25111-17.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case is calendared for trial at the Chicago, Illinois, trial session commencing October 29, 2018. On September 5, 2018, petitioner’s counsel, Michael C. Whelan, filed a Motion to Withdraw As Counsel seeking leave to withdraw as counsel for petitioner in this case. Among other things, in his motion Mr. Whelan states that: (1) petitioner (hereafter, decedent) died on February 10, 2018, after the petition in this case was filed; and (2) on March 8, 2018, Anthony Sherwood (decedent’s surviving son), was appointed as Independent Administrator of the Estate of Eunice Sherwood (estate). Attached to Mr. Whelan’s motion is a copy of the Letters of Office--Decedent’s Estate, issued by the Circuit Court of Cook County, Illinois, County Department, Probate Division, reflecting Mr. Sherwood’s appointment as independent administrator for decedent’s estate.

In his motion Mr. Whelan further indicates he has advised Anthony Sherwood and Mr. Sherwood’s probate counsel by letter of his intention to withdraw as counsel in this case. Mr. Whelan further represents that: (1) he has not been retained to continue representing the estate; and (2) he has not received any communication from Mr. Sherwood or his probate counsel objecting to his withdrawal as counsel. In his motion Mr. Whelan also states that respondent does not object to the granting of the motion to withdraw.

Pursuant to Rule 63(a),¹ when a petitioner dies, “the Court, on motion of a party or the decedent’s successor or representative or on its own initiative, may

¹Rule references are to the Tax Court Rules of Practice and Procedure, which are available on the Court’s website, www.ustaxcourt.gov.

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order substitution of the proper parties.” Local law is applied to determine who has the capacity to be substituted as a party. Rule 60(c); Fehrs v. Commissioner, 65 T.C. 346, 349 (1975). It is well settled that the Court’s jurisdiction over a case continues unimpaired by the death of the petitioner. Nordstrom v. Commissioner, 50 T.C. 30 (1968).

In the circumstances, we conclude that Mr. Whelan lacks authority to act on behalf of decedent’s estate and must withdraw from the case. In view of Mr. Sherwood’s appointment as administrator of decedent’s estate, we will order that he be substituted as a party. In the event Mr. Sherwood does not wish to prosecute this case, he should consent to a motion by the Commissioner (respondent) to dismiss for failure to properly prosecute. Mr. Sherman is advised, however, that--barring any concession by respondent--a dismissal of the case for failure to properly prosecute will result in a decision in respondent’s favor for the entire amount of the deficiency.

The foregoing considered and for cause, it is

ORDERED that Michael C. Whelan’s Motion to Withdraw As Counsel is granted, and Mr. Whelan is hereby withdrawn as counsel of record for petitioner in this case. It is further

ORDERED that the caption of this case is changed to read “Estate of Eunice Sherwood, Deceased, Anthony Sherwood, Independent Administrator, Petitioner, v. Commissioner of Internal Revenue, Respondent”. It is further

ORDERED that petitioner’s address in the Court’s records is changed to: Anthony Sherwood, Independent Administrator, at the address listed on the Certificate of Service attached to Counsel’s Motion to Withdraw. It is further

ORDERED that in addition to regular service, the Clerk of the Court shall serve a copy of this Order on petitioner in care of Jeffrey M. Heller, Levun Goodman & Cohen LLP, 500 Skokie Blvd., Suite 650, Northbrook, IL 60062. It is further

ORDERED that the Clerk of the Court shall attach to the copies of this Order served on petitioner, copies of (1) the Notice Setting Case For Trial, dated May 30, 2018, (2) the Standing Pretrial Order that originally was served with that Notice, (3) the Notice Reminding the Parties of Trial, served September 17, 2018, and (4) the tax clinic information. It is further

ORDERED that petitioner shall, on or before October 15, 2018, file a status report advising the Court whether he wishes to continue the proceedings in this case.

Petitioner is hereby warned that failure to respond to this Order may result in a dismissal of this case and entry of a decision in favor of respondent. Petitioner should review the Standing Pretrial Order and its terms.

Petitioner's attention is also directed to the above-described list of tax clinics provided to petitioner with this Order.² The Tax Court sends information about tax clinics when a petition is filed and when the notice of trial and reminder notice are mailed. Although the Tax Court does not endorse or recommend any particular tax clinic, petitioner may be able to obtain useful assistance in prosecuting this case from one of the clinics. In the alternative, petitioner may retain his own counsel to represent him.

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(Signed) Joseph H. Gale
Judge

Dated: Washington, D.C.
September 25, 2018

²A list of tax clinics participating in the Tax Court's Clinical Program may be found on the Court's website at www.ustaxcourt.gov/clinics/clinics.pdf. Additional clinics may be found on the Internal Revenue Service (IRS) website at <https://taxpayeradvocate.irs.gov/about/litc>. These tax clinics are not part of the IRS or the Tax Court.