Branerton Corp. v. Commissioner, 61 T. C. 691 (1974)

Parties must attempt informal consultation before utilizing formal discovery procedures in Tax Court.

Summary

In Branerton Corp. v. Commissioner, the U. S. Tax Court addressed the timing and necessity of informal consultation before formal discovery in tax cases. The court granted the Commissioner's motion for a protective order, emphasizing that the new Tax Court Rules of Practice and Procedure require parties to first attempt informal consultation to exchange information voluntarily. The case involved Branerton Corp. and individual petitioners challenging tax deficiencies. The court's decision reinforces the importance of the stipulation process in Tax Court, aiming to streamline trials and encourage settlements.

Facts

Branerton Corp. and individual petitioners received notices of tax deficiencies in April 1973. They filed petitions in July 1973, and the Commissioner responded in September 1973. New Tax Court Rules of Practice and Procedure became effective January 1, 1974. The next day, petitioners served written interrogatories on the Commissioner. The Commissioner then filed a motion for a protective order, arguing that petitioners had not first attempted informal consultation as required by Rule 70(a)(1).

Procedural History

The U. S. Tax Court heard oral arguments on the Commissioner's motion for a protective order on February 20, 1974. The court granted the motion, directing the parties to engage in informal consultation for 90 days before proceeding with formal discovery.

Issue(s)

1. Whether the petitioners' use of written interrogatories without first attempting informal consultation violated Tax Court Rule 70(a)(1).

Holding

1. Yes, because the petitioners' immediate resort to written interrogatories contravened the requirement of Rule 70(a)(1) for informal consultation before formal discovery.

Court's Reasoning

The court emphasized that Rule 70(a)(1) explicitly requires parties to attempt

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informal consultation before using formal discovery procedures. The court noted that the stipulation process, embodied in Rule 91, is fundamental to Tax Court practice, facilitating voluntary information exchange to expedite trials and encourage settlements. The court found that petitioners' immediate use of written interrogatories without informal consultation violated the spirit and letter of the discovery rules. The court cited the explanatory note to Rule 91, highlighting the flexibility and benefits of the stipulation process. The court granted the protective order, directing the parties to engage in informal consultation for 90 days, emphasizing the sufficiency of time before the trial to resolve discovery issues informally.

Practical Implications

This decision underscores the importance of informal consultation in Tax Court proceedings before resorting to formal discovery methods. Attorneys should prioritize informal exchanges to streamline cases and foster settlements. The ruling reinforces the stipulation process's role in Tax Court practice, potentially reducing the need for formal discovery and associated costs. Practitioners should be aware that failure to attempt informal consultation may result in protective orders, delaying formal discovery. Subsequent cases have continued to emphasize the importance of informal consultation, shaping the approach to discovery in tax litigation.

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