Roberts v. Commissioner, T.C. Memo. 1974-37

The Tax Court expects parties to engage in informal consultation and communication to achieve discovery objectives before resorting to formal discovery procedures outlined in the Tax Court Rules.

Summary

In this Tax Court memorandum opinion, the court granted the Commissioner's motion for a protective order against written interrogatories served by the petitioners. The court emphasized that under Rule 70(a)(1) of the Tax Court Rules of Practice and Procedure, parties are expected to attempt to resolve discovery matters informally before using formal discovery tools. The petitioners had not requested an informal conference prior to serving interrogatories. The court held that utilizing formal discovery at this stage, without prior informal consultation, was an abuse of process and contrary to the spirit of the Tax Court rules, which prioritize stipulation and informal exchange of information.

Facts

The IRS issued statutory notices of deficiency to both corporate and individual petitioners concerning various tax adjustments. The petitioners filed petitions with the Tax Court. Before scheduling any informal conferences with the Commissioner's counsel, petitioners' counsel served detailed written interrogatories on the Commissioner shortly after the new Tax Court Rules of Practice and Procedure became effective. The Commissioner then moved for a protective order, arguing that the petitioners had not attempted informal consultation as expected by Rule 70(a)(1).

Procedural History

1. Statutory notices of deficiency were mailed to petitioners on April 20, 1973.
2. Petitions were filed with the Tax Court on July 2, 1973.
3. Commissioner filed answers on September 26, 1973.
4. Tax Court's new Rules of Practice and Procedure became effective January 1, 1974.
5. Petitioners served written interrogatories on January 2, 1974.
6. Commissioner filed a motion for a protective order on January 11, 1974.
7. The Tax Court heard oral arguments and considered petitioners' written opposition.

Issue(s)

1. Whether the Commissioner should be granted a protective order relieving him from answering petitioners' written interrogatories at this stage of the proceedings.

Holding

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1. Yes, because Rule 70(a)(1) of the Tax Court Rules requires parties to attempt informal consultation to achieve discovery objectives before using formal discovery procedures, and the petitioners failed to do so.

Court's Reasoning

The Tax Court reasoned that Rule 70(a)(1) clearly mandates informal consultation before formal discovery. The court emphasized the long-standing tradition of the stipulation process in Tax Court, now formalized in Rule 91, which relies on the voluntary exchange of information. The court stated, "It is plain that this provision in Rule 70(a)(1) means exactly what it says. The discovery procedures should be used only after the parties have made reasonable informal efforts to obtain needed information voluntarily." The court found that the petitioners' immediate use of interrogatories without attempting informal consultation was an abuse of process and contrary to the intent of the rules. The court quoted the explanatory note to Rule 91, highlighting that "[t]he stipulation process is more flexible, based on conference and negotiation between parties, adaptable to statements on matters in varying degrees of dispute, susceptible of defining and narrowing areas of dispute, and offering an active medium for settlement." The court concluded that granting the protective order and directing the parties to engage in informal conferences for 90 days would align with the rules and allow for efficient case resolution.

Practical Implications

This case underscores the Tax Court's strong preference for informal dispute resolution and information exchange before resorting to formal discovery. Attorneys practicing in Tax Court should prioritize informal consultations and stipulation processes as outlined in Rule 91 before initiating formal discovery under Rule 70. Failure to engage in informal consultation first may result in protective orders against discovery requests, as seen in this case. This decision reinforces the idea that formal discovery in Tax Court is intended to be a secondary measure, used only after good-faith informal efforts have been exhausted. It impacts case strategy by requiring practitioners to build in time for and emphasize informal communication and negotiation with opposing counsel early in Tax Court proceedings. Subsequent cases and Tax Court practice continue to reflect this preference for informal resolution and stipulation.

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