Marsh v. Commissioner, 62 T. C. 256, 1974 U. S. Tax Ct. LEXIS 103, 62 T. C. No. 29 (T. C. May 21, 1974)

The Tax Court will not order document production from a party lacking possession, custody, or control of the requested documents, especially when those documents are accessible to the requesting party from other sources.

Summary

In Marsh v. Commissioner, the petitioner sought various documents related to her immigration and military housing status, which she believed were essential to her tax case. The Tax Court denied her request under Rule 72, as the documents were not in the Commissioner's possession, custody, or control and were obtainable by the petitioner directly from other government agencies. The court emphasized that a party cannot be compelled to produce documents it does not control, and the petitioner must first seek them from the agencies that maintain them.

Facts

Kazuko S. Marsh filed a petition in the United States Tax Court seeking a redetermination of her federal income taxes for the years 1966-1969. She requested production of documents from the Commissioner, including records related to her exit from the country, immigration records, visa applications, military housing regulations, and records of intent to become a U. S. citizen. The Commissioner responded that he did not have possession, custody, or control of most of these documents, except those related to her exit, which he was attempting to locate.

Procedural History

Marsh initially filed her request for document production on July 5, 1973, which was denied without prejudice. Following the implementation of new Tax Court Rules effective January 1, 1974, she renewed her request on January 31, 1974. After the Commissioner's objection, Marsh moved for an order compelling production on April 1, 1974. The Tax Court heard arguments on May 1, 1974, and issued its opinion on May 21, 1974.

Issue(s)

1. Whether the Tax Court should order the Commissioner to produce documents not in his possession, custody, or control?

Holding

1. No, because the documents sought were not in the Commissioner's possession, custody, or control, and were accessible to the petitioner from other government agencies.

© 2025 SCOTUSreports.com. All rights reserved.

Court’s Reasoning

The Tax Court’s decision was based on Rule 72 of the Tax Court Rules of Practice and Procedure, which requires that the documents requested must be in the possession, custody, or control of the party served. The court noted that the documents Marsh requested were maintained by other agencies like the Department of Justice, Immigration and Naturalization Service, Department of State, and the U. S. Air Force, and were available to her upon request. The court referenced Federal Rule of Civil Procedure 34, from which Rule 72 was derived, and case law indicating that a party cannot be compelled to produce non-existent documents or documents not under its control. The court emphasized that Marsh could obtain the documents through established agency procedures, and if unsuccessful, she could seek further court assistance.

Practical Implications

This decision clarifies that parties in Tax Court proceedings cannot compel document production from opponents who lack possession, custody, or control of those documents. It reinforces the principle that litigants must first seek documents from the agencies that maintain them, using established procedures. This ruling may affect how attorneys approach discovery in Tax Court cases, emphasizing the need to identify and directly contact the correct agency for document retrieval. It also underscores the importance of understanding the scope of Rule 72 and its limitations on compelling document production. Later cases may reference this decision when addressing similar issues of document control and accessibility.

© 2025 SCOTUSreports.com. All rights reserved.