Perrin v. Commissioner, 63 T.C. 55 (1974)

A party in Tax Court cannot be compelled to produce documents under Rule 72 if those documents are not within their possession, custody, or control, even if the documents are related to government agencies.

Summary

In this Tax Court case, the petitioner sought to compel the Commissioner of Internal Revenue to produce documents from various other government agencies through a Request to Produce under Tax Court Rule 72. The Commissioner objected, arguing that the requested documents were not in the IRS's possession, custody, or control. The Tax Court agreed with the Commissioner, holding that Rule 72, mirroring Federal Rule of Civil Procedure 34, only compels the production of documents that are actually within the responding party's control. The court emphasized that the petitioner should seek these documents directly from the agencies that possess them.

Facts

The petitioner, Rose M. Perrin, filed a petition in Tax Court contesting income tax deficiencies for 1966-1969.

Perrin served a Request to Produce on the Commissioner, seeking eight categories of documents.

These documents included records related to Perrin's exits from and entries into the United States, visa applications, immigration records, and U.S. Air Force and Department of Justice regulations.

The Commissioner agreed to produce documents in category 1 but objected to the rest, asserting they were not in the IRS's possession, custody, or control.

Perrin filed a Motion for Order to Produce, arguing the documents were official U.S. government records and essential to her case.

Procedural History

Petitioner filed a Request to Produce, which was initially denied without prejudice before the new Tax Court Rules took effect.

Petitioner renewed the Request to Produce under new Rule 72.

Respondent objected to most of the requests.

Petitioner filed a Motion for Order to Produce to compel document production.

The Tax Court held a hearing and subsequently denied the petitioner's motion.

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Issue(s)

1. Whether the Commissioner of Internal Revenue can be compelled under Tax Court Rule 72 to produce documents held by other federal government agencies, but not in the IRS's possession, custody, or control?

Holding

1. No, because Tax Court Rule 72, similar to Federal Rule of Civil Procedure 34, only requires a party to produce documents that are in their possession, custody, or control.

Court's Reasoning

The court relied on the plain language of Rule 72(a)(1), which explicitly limits the scope of document production to items in the "possession, custody or control of the party on whom the request is served."

The court noted that Rule 72 is derived from Federal Rule of Civil Procedure 34, and interpretations of Rule 34 are instructive.

The documents requested by Perrin were held by other government agencies like the Department of Justice, Immigration and Naturalization Service, Department of State, and the Air Force, not the IRS.

The court observed that these documents appeared to be public records or obtainable by Perrin directly from the relevant agencies through established procedures (citing 8 C.F.R. sec. 103.8(b), 28 C.F.R. section 16.3, and 22 C.F.R. sec. 6.2 (a)).

The court stated, "It is clear that the records are not in the possession, custody, or control of the Commissioner of Internal Revenue, the respondent herein."

The court suggested that Perrin should first attempt to obtain the documents directly from the relevant agencies. If unsuccessful, the court implied it could consider further action to protect her interests, but at this stage, compelling the IRS to produce documents it does not control is not warranted.

Practical Implications

This case clarifies the scope of discovery under Tax Court Rule 72, emphasizing the "possession, custody, or control" limitation. It establishes that the IRS, as a party in Tax Court, is not required to obtain and produce documents from other government agencies in response to a Rule 72 request if those documents are not already within the IRS's control.

Legal practitioners in Tax Court should understand that Rule 72 discovery is not a

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mechanism to compel the IRS to act as a central document repository for all government records related to a taxpayer. Taxpayers seeking documents held by other government agencies must typically request them directly from those agencies.

This decision encourages parties to utilize direct requests to agencies under FOIA or other access mechanisms before seeking to compel production from an opposing party who lacks control over the documents.

Later cases applying Rule 72 in Tax Court continue to adhere to this principle, focusing on whether the requested party genuinely has the legal right and practical ability to obtain the documents in question.

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