Barger v. Commissioner, 65 T. C. 925 (1976)

Taxpayers may obtain discovery of documents in Tax Court proceedings, subject to certain exceptions such as materials used for impeachment or protected by governmental privilege.

Summary

In Barger v. Commissioner, the Tax Court addressed the scope of discovery in tax litigation, specifically regarding the production of statements, third-party documents, and agent reports. The court ruled that the Commissioner must produce documents requested by the petitioner, except where they fall under exceptions for impeachment or governmental privilege. This decision underscores the importance of discovery in tax cases while recognizing limits to protect certain governmental interests and trial strategy.

Facts

Petitioner Ralph H. Barger, Jr. , sought discovery from the Commissioner of Internal Revenue, requesting statements made by him and third parties, business records, and agent reports related to his tax case. The Commissioner objected to producing most of these documents, citing reasons such as anticipation of litigation, governmental privilege, and use for impeachment at trial. The investigation into Barger's finances began after a newspaper article, leading to a joint investigation by a special agent and a revenue agent.

Procedural History

Petitioner filed a motion to compel discovery under Rule 72 of the Tax Court Rules of Practice and Procedure. The Commissioner responded by producing some statements but objecting to the production of others. After a hearing and subsequent filings of memorandums, the Tax Court issued its opinion on the scope of discovery.

Issue(s)

1. Whether the Commissioner must produce third-party statements and business records requested by the petitioner.
2. Whether the Commissioner must produce the special agent's report.
3. Whether the Commissioner must produce the revenue agent's report.
4. Whether the Commissioner must produce a statement made by the petitioner to a third party.

Holding

1. Yes, because the documents are relevant to the case and not gathered in anticipation of litigation.
2. Yes, because the factual portions of the report are severable from protected

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material.
3. No, because the revenue agent's report contained no additional factual information beyond what was in the special agent's report.
4. No, because the statement was to be used for impeachment purposes and thus falls under an exception to discovery.

Court's Reasoning

The court applied Rule 72 of the Tax Court Rules, which governs discovery, and found that the requested documents were relevant and should be produced, except where exceptions applied. The court rejected the Commissioner's argument that the documents were gathered in anticipation of litigation, noting that they represented raw facts used in the agents' reports. The court distinguished between factual material, which must be produced, and deliberative material, which is protected under governmental privilege. The court cited prior cases like P. T. &L. Construction Co. and Nena L. Matau Dvorak to support its reasoning on the anticipation of litigation issue. For the special agent's report, the court emphasized that factual sections could be severed from protected sections. The court also considered the Commissioner's objection to producing a statement made by Barger to a third party, upholding the objection due to its use for impeachment purposes, citing Rule 70(c) and the need to protect trial strategy.

Practical Implications

This decision clarifies the scope of discovery in Tax Court proceedings, balancing the taxpayer's right to information with the government's need to protect certain materials. Practitioners should be aware that they can generally obtain relevant documents, but exceptions may apply for materials used for impeachment or protected under governmental privilege. This ruling may influence how similar discovery requests are handled in future tax cases, potentially affecting the strategy of both taxpayers and the IRS in preparing for litigation. The decision also highlights the importance of distinguishing between factual and deliberative material in government documents, which may impact how such documents are prepared and disclosed in other areas of law.

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