Linda M. Liberi Toner v. Commissioner of Internal Revenue, 76 T. C. 217 (1981)

The cost of a trial transcript purchased by a petitioner before the appeal is not taxable against the Commissioner if it was not necessary for the appeal's determination.

Summary

In Toner v. Commissioner, the Tax Court ruled that the cost of a trial transcript purchased by the petitioner immediately after the trial was not taxable against the Commissioner under Federal Rule of Appellate Procedure 39(e). The petitioner sought to recover costs after successfully appealing a decision to the Third Circuit, which reversed the Tax Court's initial ruling on educational expense deductions. The Tax Court held that the transcript was not necessary for the appeal's determination, as it was primarily purchased for the initial Tax Court proceedings and not for the appeal itself. This decision highlights the specific criteria for cost recovery in appeals from Tax Court decisions.

Facts

Linda M. Liberi Toner sought a deduction for educational expenses, which the Tax Court initially disallowed. She appealed to the Third Circuit, which reversed the Tax Court's decision. Toner then sought reimbursement for costs, including the trial transcript she purchased immediately after the Tax Court trial. The Commissioner agreed to reimburse other costs but contested the transcript cost.

Procedural History

The Tax Court initially disallowed Toner's educational expense deduction. Toner appealed to the Third Circuit, which reversed the Tax Court's decision. Following the appeal, Toner moved for costs in the Third Circuit, which granted some costs but denied the cost of the trial transcript and attorney's fees. Toner then sought these costs from the Tax Court under Federal Rule of Appellate Procedure 39(e).

Issue(s)

1. Whether the cost of the trial transcript purchased by the petitioner immediately after the trial was necessary for the determination of the appeal within the meaning of Federal Rule of Appellate Procedure 39(e).

Holding

1. No, because the transcript was purchased primarily for the initial Tax Court proceedings and not for the appeal itself, and the Tax Court's copy was provided to the appellate court without additional cost to the petitioner.

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Court’s Reasoning

The Tax Court’s decision was based on the interpretation of Federal Rule of Appellate Procedure 39(e), which allows for the taxation of costs incurred in the preparation and transmission of the record, including the reporter’s transcript, only if necessary for the appeal’s determination. The court noted that the transcript was purchased before any appeal was contemplated, primarily for use in the initial Tax Court proceedings. The Tax Court emphasized that its practice is to transmit its copy of the transcript to the appellate court without additional cost to the parties, rendering the petitioner’s purchase unnecessary for the appeal. The court also found that the inclusion of the transcript in the appendix was not required by appellate rules, and thus, the cost was too attenuated from the appeal to be taxable. The court highlighted the burden on the party seeking costs to establish their necessity for the appeal.

Practical Implications

This decision clarifies that costs incurred before an appeal is contemplated, such as a trial transcript purchased for initial proceedings, are not recoverable under Federal Rule of Appellate Procedure 39(e) unless directly necessary for the appeal. Legal practitioners should carefully consider the timing and purpose of purchasing transcripts and other materials, as costs not directly linked to the appeal’s determination may not be recoverable. This ruling also underscores the Tax Court’s unique practices regarding the provision of transcripts to appellate courts, which may affect cost considerations in appeals from Tax Court decisions. Subsequent cases have continued to apply this principle, distinguishing between costs necessary for the appeal and those incurred for other purposes.

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