Owens-Illinois, Inc. v. Commissioner, 76 T. C. 493 (1981)

Foreign law is subject to discovery under the Tax Court Rules of Practice and Procedure, specifically Rules 70(b) and 146.

Summary

In Owens-Illinois, Inc. v. Commissioner, the U. S. Tax Court addressed the discoverability of foreign law in tax disputes. The case involved Owens-Illinois's claim for deemed-paid foreign tax credits, which depended on West German law. The court held that foreign law could be discovered, enabling the respondent to understand the petitioner's legal position based on foreign statutes and regulations. This decision was grounded in the court's need for a complete and fair presentation of the case, emphasizing the flexibility of Rule 146 and the broader discovery provisions under Rule 70(b). The ruling underscores the importance of discovery in clarifying foreign law issues before trial, impacting how such matters are handled in future tax litigation.

Facts

Owens-Illinois, Inc. filed a petition against the Commissioner of Internal Revenue regarding the computation of deemed-paid foreign tax credits under section 902 of the Internal Revenue Code of 1954. The petitioner argued that liabilities accrued by its West German subsidiaries for unfunded deferred employee pension plans should reduce the accumulated profits factor in the denominator of the section 902 fraction. The petitioner intended to rely on West German tax law, corporate law, labor law, bankruptcy law, and the U. S. -West Germany tax treaty. The respondent requested discovery of the foreign law on which the petitioner's position was based, but the petitioner initially resisted providing this information.

Procedural History

The case was assigned to a special trial judge for hearing on motions related to discovery. The petitioner moved for more definite answers to its second set of requests for admissions and interrogatories, while the respondent moved to enforce interrogatories. The parties attempted to resolve the issue through the traditional stipulation process under Rule 91. The court granted additional time for stipulation but ultimately ruled on the discoverability of foreign law as a matter of first impression.

Issue(s)

1. Whether foreign law is subject to discovery under the Tax Court Rules of Practice and Procedure, specifically Rules 70(b) and 146?

Holding

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1. Yes, because foreign law is discoverable under Rules 70(b) and 146 to ensure a complete and fair presentation of the case, allowing the respondent to understand the petitioner's position based on foreign statutes and regulations.

Court's Reasoning

The court reasoned that discovery of foreign law is essential for fair trial preparation, as outlined in Rule 146, which allows the court to consider any relevant material in determining foreign law. The court emphasized the flexibility intended by Rule 146 and the Federal Rules of Civil Procedure's Rule 44. 1, which it closely resembles. The court noted that foreign law's unique character and the high cost of obtaining related materials justify a wider scope of discovery. The court rejected the petitioner's work product objection, finding that the foreign law was not prepared in anticipation of litigation but rather used to support the tax position at the time of filing returns. The court required the petitioner to provide translations of foundational foreign statutes and regulations along with its construction of them, but not the foreign case law on which it relied.

Practical Implications

This decision expands the scope of discovery in tax cases involving foreign law, requiring parties to disclose foundational foreign legal materials during the discovery phase. It impacts how attorneys prepare for and litigate cases involving foreign law, emphasizing the need for early disclosure to facilitate informed stipulations and trial preparation. The ruling may lead to increased costs and complexities in tax cases with international elements but aims to promote fairness and efficiency in resolving such disputes. Subsequent cases have followed this precedent, reinforcing the principle that foreign law is discoverable in U. S. tax litigation.

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