Reed v. Commissioner, 90 T. C. 698 (1988)

To perpetuate testimony before trial under Rule 82, an applicant must demonstrate that the testimony is in danger of being lost before trial.

Summary

In Reed v. Commissioner, petitioners sought to depose physicians to preserve testimony regarding the mental state of a testator for potential future litigation over generation-skipping transfers. The U. S. Tax Court denied the request, emphasizing that Rule 82 requires a showing that the testimony is likely to be unavailable at trial. The court found the physicians to be in good health and the case not yet ripe for adjudication, thus not justifying the extraordinary measure of pre-trial depositions. This decision underscores the high threshold for granting pre-trial depositions to perpetuate testimony.

Facts

Petitioners, heirs and beneficiaries of a testator's will, sought to depose two physicians who had treated the testator. The purpose was to preserve testimony about the testator's mental state and testamentary capacity on specific dates relevant to a potential future tax dispute over generation-skipping transfers. The physicians were middle-aged and in good health, with no immediate threat of unavailability. The underlying tax dispute would only arise if the testator died, an estate tax return was filed, and a deficiency was determined by the respondent.

Procedural History

Petitioners filed an Application For Order To Take Depositions Before Commencement of Case under Rule 82 of the Tax Court Rules of Practice and Procedure. A hearing was held, and the matter was taken under advisement. The Tax Court ultimately denied the application.

Issue(s)

1. Whether petitioners met the requirements of Rule 82 for taking depositions to perpetuate testimony before the commencement of a case?

Holding

1. No, because petitioners failed to demonstrate that the physicians' testimony was in danger of being lost before trial, a requirement under Rule 82.

Court's Reasoning

The Tax Court emphasized that Rule 82, derived from Rule 27(a) of the Federal Rules of Civil Procedure, is an extraordinary measure intended to prevent the failure

© 2025 SCOTUSreports.com. All rights reserved.

or delay of justice. The court applied the test from Gale East, Inc. v. Commissioner, requiring a showing that the testimony would likely be unavailable at trial. The court found that the physicians were middle-aged, in good health, and not subject to any immediate threat of unavailability. The potential for the physicians to move away or for their memories to fade over time was deemed insufficient to meet the Rule 82 standard. The court also rejected a more permissive test from In re Hawkins, as it would render Rule 82 meaningless by allowing depositions for any contemplated lawsuit. The court noted that petitioners could use discovery provisions once a petition is filed or reapply under Rule 82 if the physicians' availability becomes compromised.

Practical Implications

Reed v. Commissioner sets a high bar for granting pre-trial depositions to perpetuate testimony under Rule 82. Attorneys must demonstrate a clear and present danger of testimony being lost before trial, not merely a speculative future risk. This decision impacts how practitioners approach the preservation of evidence in tax cases, particularly when the case's justiciability is uncertain. It underscores the importance of timing in legal strategy, as parties must wait until a case is ripe for adjudication before seeking to preserve testimony unless extraordinary circumstances exist. Subsequent cases have continued to apply this strict interpretation of Rule 82, affecting both tax litigation and broader civil procedure regarding the perpetuation of testimony.

© 2025 SCOTUSreports.com. All rights reserved.