Masek v. Commissioner, 91 T. C. 1096 (1988)

Rule 82 of the Tax Court Rules of Practice and Procedure may not be used for discovery purposes; an applicant must show a substantial need to perpetuate testimony when there are discovery aspects involved.

Summary

John Masek sought to perpetuate the testimony of two witnesses under Rule 82 of the Tax Court Rules, despite no pending case, due to an ongoing IRS investigation into his tax liabilities for 1976-1982. The Commissioner did not object, but the witnesses did. The court held that Rule 82 is not for discovery, and Masek failed to demonstrate a substantial need to perpetuate the testimony of the witnesses, who were not in immediate danger of being unable to testify. This case establishes the importance of distinguishing between discovery and perpetuation of testimony in pre-trial depositions.

Facts

John Masek was under investigation by the IRS for unreported income from 1976 to 1982. He sought to perpetuate the testimony of Marvin Davis and Gordon Kalt, shareholders in Crude Co. , believing they had knowledge of transactions related to his disputed income. Masek alleged he needed their testimony because he could not access the company's financial records and feared that the records and testimony might be lost over time. The Commissioner did not oppose the application, but both Davis and Kalt objected, asserting their good health and no immediate risk of testimony loss.

Procedural History

Masek filed an application under Rule 82 of the Tax Court Rules to take depositions of Davis and Kalt. The case was assigned to Special Trial Judge Carleton D. Powell. The court reviewed the application and the objections from the deponents, ultimately adopting the opinion of the Special Trial Judge.

Issue(s)

1. Whether the Tax Court has the authority to protect the integrity of its Rules, regardless of a lack of objection by a party.
2. Whether Rule 82 may be used for discovery purposes.
3. Whether Masek met the requirement of showing a substantial need to perpetuate the testimony of Davis and Kalt.

Holding

1. Yes, because the court has inherent authority to protect the integrity of its Rules, even if a party does not object.

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2. No, because Rule 82 may not be used for discovery; it is intended for the perpetuation of testimony.
3. No, because Masek failed to demonstrate a substantial need to perpetuate the testimony, especially given the discovery aspects of his application and the good health of the deponents.

Court’s Reasoning

The court emphasized the distinction between discovery and perpetuation of testimony under Rule 82, which is derived from Federal Rule of Civil Procedure 27(a). The court noted that Rule 82 requires an applicant to show that the testimony would, in all probability, be lost before trial, a standard not met by Masek’s vague assertions about the potential loss of records and testimony. The court also highlighted the inherent authority to protect its Rules, citing precedent that even without a party’s objection, the court must prevent abuse of its processes. The court rejected Masek’s application due to its discovery aspects and the lack of demonstrated need for perpetuation, given the deponents’ health and the absence of immediate risk to their testimony.

Practical Implications

This decision clarifies that Rule 82 depositions are not to be used for discovery in tax cases before a case is filed. Practitioners must be cautious in using pre-trial depositions and should ensure that any application under Rule 82 is strictly for the purpose of perpetuating testimony that is at risk of being lost. This ruling may impact how taxpayers and their counsel prepare for potential litigation, particularly in cases involving complex business transactions where access to records is limited. Subsequent cases may reference Masek to distinguish between legitimate perpetuation of testimony and impermissible discovery attempts before a case is initiated.

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