Masek v. Commissioner, 92 T. C. 814 (1989)

The U. S. Tax Court will scrutinize motions to perpetuate testimony, particularly when they serve discovery purposes, requiring the applicant to demonstrate a significant risk that the testimony will be unavailable at trial.

Summary

John Masek sought to perpetuate testimony in a tax case but was denied by the U. S. Tax Court. The court reaffirmed its prior decision, emphasizing that while discovery aspects do not automatically preclude such motions, they necessitate careful scrutiny of the applicant's need. Masek failed to show a significant risk that the testimony would be unavailable at trial, and lacked evidence of the deponent's ill health. This case underscores the court's protective stance on its processes against potential abuse through discovery motions.

Facts

John Masek applied to the U. S. Tax Court for a motion to perpetuate testimony, which had been previously denied. His application was related to an ongoing tax dispute. Masek argued that the health of a key witness, Mr. Davis, was deteriorating, thus necessitating the perpetuation of testimony. However, Masek provided no concrete evidence of Mr. Davis's health condition. The court had previously noted the discovery aspects of Masek's motion, which led to a careful review of his need to perpetuate testimony.

Procedural History

Masek initially filed a motion to perpetuate testimony, which was denied by the U. S. Tax Court in a decision reported at 91 T. C. 1096. Following this denial, Masek sought reconsideration of the court's decision, leading to the supplemental opinion in 92 T. C. 814. The court reaffirmed its original decision, denying Masek's motion for reconsideration.

Issue(s)

1. Whether the discovery aspects of a motion to perpetuate testimony should preclude granting such a motion?
2. Whether Masek demonstrated a significant risk that the testimony of Mr. Davis would be unavailable at trial?

Holding

1. No, because while discovery aspects do not automatically preclude granting a motion to perpetuate testimony, they require the court to scrutinize the applicant's need carefully.
2. No, because Masek failed to provide evidence of a significant risk that Mr. Davis's

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testimony would be unavailable at trial, relying only on counsel's statements about his health.

Court's Reasoning

The U. S. Tax Court emphasized that while the discovery aspects of a motion to perpetuate testimony do not automatically bar such a motion, they do necessitate careful scrutiny of the applicant's need to ensure the court's processes are not abused. The court reiterated that the focus should be on the risk that the testimony will be unavailable when a trial commences. Masek's failure to provide any concrete evidence of Mr. Davis's health condition was critical in the court's decision. The court also noted that previous cases had rejected a lower standard where an applicant merely showed inability to commence an action. The court's decision was influenced by the need to protect its processes from potential abuse through discovery motions, and it found that Masek did not meet the necessary criteria under Rule 82 of the Tax Court Rules of Practice and Procedure.

Practical Implications

This decision reinforces the U. S. Tax Court's cautious approach to motions to perpetuate testimony, particularly when they may serve as discovery tools. Practitioners must be prepared to provide substantial evidence of the risk that testimony will be unavailable at trial, especially in cases involving health claims. The ruling suggests that courts will closely examine such motions to prevent their misuse for discovery purposes. This case may influence how similar motions are approached in future tax litigation, emphasizing the need for clear and convincing evidence of necessity. Additionally, it highlights the importance of understanding and adhering to specific court rules, such as Rule 82, when seeking to perpetuate testimony.

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