Hartz Mountain Industries, Inc. and Subsidiaries, and the Hartz Group, Inc. , as Successor Common Parent Corporation of Affiliated Group, and Leonard Stern and Judith Peck, Petitioners v. Commissioner of Internal Revenue, Respondent, 93 T. C. 521 (1989); 1989 U. S. Tax Ct. LEXIS 139; 93 T. C. No. 42; 1989-2 Trade Cas. (CCH) P68,846

The attorney-client privilege and work product doctrine can be waived by a party's actions, including the selective disclosure of privileged materials.

Summary

Hartz Mountain Industries settled an antitrust lawsuit for $42. 5 million, claiming the payment as an ordinary deduction. The Commissioner challenged this, asserting it was a capital loss. Hartz withheld documents citing attorney-client privilege and work product doctrine. The Tax Court ruled that Hartz waived these protections by selectively disclosing privileged materials in affidavits supporting its summary judgment motion. This case illustrates how a party's actions can lead to the loss of confidentiality protections, impacting how similar disputes are handled in future tax litigation.

Facts

In 1978, A. H. Robins filed an antitrust lawsuit against Hartz Mountain Industries, alleging harm to its pet products business. After settlement discussions in 1979, Hartz agreed to pay Robins $42. 5 million over five years. The settlement did not specify the nature of the payment. Hartz claimed the payment as an ordinary deduction for past lost income, while the Commissioner argued it was a capital loss. Hartz withheld documents related to the settlement, claiming attorney-client privilege and work product protection. Hartz's in-house counsel submitted affidavits discussing the company's internal position on the settlement, which led to the Commissioner's motion to compel production of the withheld documents.

Procedural History

The case was assigned to a Special Trial Judge in the U. S. Tax Court. Hartz filed a motion for partial summary judgment, supported by affidavits from its in-house counsel. The Commissioner requested withheld documents, leading to a motion to compel production. The Tax Court reviewed the documents in camera and issued a ruling on the applicability of the attorney-client privilege and work product doctrine.

Issue(s)

1. Whether Hartz waived the attorney-client privilege by submitting affidavits from its in-house counsel discussing the company's internal position on the antitrust settlement?
2. Whether Hartz waived the work product doctrine by selectively disclosing privileged materials?

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Holding

1. Yes, because Hartz waived the attorney-client privilege by submitting affidavits that selectively disclosed privileged communications related to the antitrust settlement.
2. Yes, because Hartz waived the work product doctrine by making a testimonial use of work product materials in its affidavits, thereby necessitating the production of all related work product.

Court’s Reasoning

The court found that Hartz waived the attorney-client privilege by submitting affidavits from its in-house counsel that discussed the company’s internal position on the antitrust settlement. These affidavits placed the factual matters surrounding the antitrust payment in issue, thus waiving the privilege for all related communications except one document unrelated to the antitrust or Giret issues. The court also determined that Hartz waived the work product doctrine by selectively disclosing work product materials in the affidavits. The court emphasized the practical nature of the work product doctrine, noting that the dangers associated with discovery of work product were minimal given the age and different context of the original litigation. The court cited cases like Upjohn Co. v. United States and Hickman v. Taylor to support its reasoning on the scope and waiver of these privileges.

Practical Implications

This decision impacts how parties handle privileged information in tax litigation. It underscores the importance of maintaining confidentiality to preserve attorney-client privilege and work product protection. Practitioners must be cautious about selectively disclosing privileged materials, as such actions can lead to a waiver of these protections. The ruling may influence how similar disputes are managed in future cases, emphasizing the need for clear settlement agreements and careful management of privileged communications. Additionally, this case may be cited in subsequent litigation to argue for or against the waiver of privilege based on the actions of the parties involved.

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