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Global View

Should Taxpayers Translate Documents into English for the IRS?

By Robert Misey

As we all know, the key to success in an IRS audit is the flow of information. The IRS may ask various questions and request various documents *via* Information Document Requests or other information gathering tools. How and when the taxpayer's representative provides information and documents to these requests is instrumental in resolving tax issues with the least cost to the client.

A threshold problem confronting multi-national U.S. taxpayers is that most of their foreign affiliates do not have records that are in a usable format, as the foreign affiliates often prepare records in foreign languages. Federal court proceedings must be conducted in English,¹ resulting in litigants having an obligation to translate foreign documents into English. Must a U.S. taxpayer spend a large amount of time and money translating the documents into English for the IRS?

Only one tax case, *Nissei Sangyo America, Ltd.*,² has ever dealt with this issue. *Nissei Sangyo* involved the audit of a U.S. subsidiary of a Japanese parent. In response to an IRS summons, the U.S. subsidiary randomly selected documents relating to the issue under examination and provided full translations. The Japanese parent also randomly selected and translated documents. In addition, the U.S. subsidiary translated the subject matter headings or titles of 1,441 pages of Japanese correspondence and prepared English translation keys for the travel expense authorization forms. The IRS demanded that the taxpayer translate into English all these documents, which *Nissei Sangyo* estimated would cost from \$850,000 to \$1.5 million. The court held that the IRS could not compel the translation of documents that were either not relevant to the tax liability or that the IRS already had in its possession.³

Oddly enough, despite the passing of 23 years since *Nissei Sangyo* was decided in 1995, no new tax case has dealt with the translation issue. However, the majority of non-tax cases have ruled that the requesting party should bear the cost of translating documents.⁴ If applied to the typical tax case scenario, the IRS, as the requesting party, should pay for the translation.

Most cases do not involve translation costs of \$1 million, but just as there are subtle nuances of meaning in the definitions in the Internal Revenue Code, there are subtle nuances of meaning in the translation of languages.⁵

Considering the diverse army of employees that the IRS has to consult with for translations, a representative should encourage a taxpayer to engage a translator who will resolve any ambiguities in meaning in the taxpayer's favor. Although *Nissei*

Sangyo involved summons enforcement, this lesson is applicable to any type of information gathering tool that the IRS may use.⁶

Should the matter proceed to trial, the taxpayer's attorney should make sure that all of its witnesses agree with the

translation. Failing to ensure in advance that the witness agrees with the translation could be disastrous at trial. When offering the document as evidence, the attorney should proffer not only the original document, but the certified English translation.

The bottom line is that the taxpayer is best served by controlling the translation. Although the weight of authority is that the taxpayer should not be burdened with the cost of translating documents, enduring that cost will ensure control over the translation.

ENDNOTES

¹ *Diaz*, CA-1, 519 F3d 56, 64; *Rivera-Rosario*, CA-1, 352 F3d 1-7.

² *Nissei Sangyo America, Ltd.*, DC-IL, 95-2 USTC ¶150,327. The internal procedures of the IRS require the IRS to request documents, review them, and then specify the documents to be translated. Reg. §1.6038A-3(b)(3).

³ See the general summons standard of *M. Powell*, S.Ct., 64-2 ustr ¶9858, 379 US 48, 85 S.Ct 248.

⁴ See, e.g., *In Re: Puerto Rico Electric Power Authority*, CA-1, 687 F2d 501.

⁵ When watching a DVD of his favorite TV series "The A Team" with French subtitles, the author realized that the English translation of the French subtitles for Mr. T's gruff "Ain't getting' on no plane Hannibal!"—"Hannibal, je ne souhaite pas voler" was a softer sounding "Hannibal, I do not wish to fly."

⁶ In addition to Information Document Requests, these may include, for example, summonses (Code Sec. 6503), designated summonses (Code Sec. 6503(j)) and formal document requests (Code Sec. 982).

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