***12 T.C. 1223 (1949)***

A taxpayer who files a fraudulent original return cannot avoid a fraud penalty under Section 293(b) of the Internal Revenue Code by later filing an amended return and paying the additional tax owed.

**Summary**

Aaron Hirschman and his partners initially filed fraudulent tax returns, underreporting income by $30,909. After learning of an IRS investigation into a customer's returns, they filed amended returns reporting the omitted income and paid the additional tax. The Tax Court held that the initial fraudulent intent was not expunged by the subsequent amended filings and payments. The court upheld the IRS's assessment of a 50% fraud penalty on the difference between the tax liability and the amount shown on the original return, even though the deficiency notice also addressed non-fraudulent adjustments.

**Facts**

The partnership of Clair & Hirschman filed a partnership return for 1943, followed by individual income tax returns by the partners, which reported specific income amounts. Later, the petitioners learned the IRS was investigating a customer, Weisenfeld, regarding unreported purchases from Clair & Hirschman. Shortly after, the partnership and individual partners filed amended returns, reporting an additional $30,909 in income previously omitted. The omitted income stemmed from unrecorded sales, primarily to Weisenfeld, and over-the-counter cash sales. The cost of goods had been properly reported, but the corresponding income had not.

**Procedural History**

The IRS audited the original and amended returns. The IRS determined deficiencies based on the unreported sales and disallowed some deductions. The Commissioner assessed a 50% fraud penalty under Section 293(b) of the Internal Revenue Code, based on the difference between the original and the correctly calculated tax liability. The taxpayers petitioned the Tax Court, challenging the fraud penalty.

**Issue(s)**

1. Whether taxpayers who file fraudulent original income tax returns can eliminate the fraud penalty by subsequently filing amended returns and paying the taxes due.
2. Whether the

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