***Gordon v. Commissioner, 63 T. C. 51 (1974)***

Search warrants for business premises can be valid and broadly applied if based on probable cause, and seized records can be used to assess tax deficiencies even when destroyed by the taxpayer.

**Summary**

Gordon, a partner in a Nevada gambling establishment, challenged the IRS's use of evidence obtained through a search warrant to assess unreported income and impose penalties. The court upheld the search warrant's validity and the use of seized records to calculate tax deficiencies based on a projection from a single day's wagering, despite the records' destruction by Gordon's employees. The court found no constitutional violations in the search or seizure and rejected Gordon's claims of arbitrariness in the IRS's assessment method. However, the fraud penalty was not sustained due to insufficient evidence of Gordon's direct involvement in the skimming operation.

**Facts**

Harry Gordon was an 80% partner in the Derby Turf Club, a legal Nevada gambling establishment. Employees Shoughro and Quinn accepted unreported bets, destroying the records to evade taxes. The IRS, after unsuccessful attempts to obtain records, executed a search warrant at the Derby, seizing betting tickets and tapes that revealed the unreported wagers. The IRS then projected unreported income based on the seized records from the day of the raid, leading to a deficiency determination against Gordon.

**Procedural History**

Gordon filed a motion to suppress the evidence obtained from the search, arguing constitutional violations. The Tax Court heard the case and allowed the evidence to be used. The court upheld the IRS's assessment method and the use of seized records but did not sustain the fraud penalty against Gordon.

**Issue(s)**

1. Whether the statutory assessment was based on evidence that should have been suppressed due to constitutional violations during the search and seizure?
2. Whether the IRS's method of determining additional partnership income was arbitrary and excessive?
3. Whether the underpayment of tax was due to fraud?
4. Whether the additional income in 1967 was wagering income ineligible for income averaging?

**Holding**

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1. No, because the search warrant was valid, not overbroad, and the search party acted within its authority. The Fifth Amendment did not preclude the use of partnership records in the trial.
2. No, because the IRS's method was not arbitrary or excessive, despite being based on extrapolation from one day's operation; Gordon's destruction of records precluded greater exactitude.
3. No, because the fraud penalty was not supported by clear and convincing evidence of Gordon's direct involvement in the skimming operation.
4. Yes, because the additional income was wagering income, and thus ineligible for income averaging under section 1302(b)(3).

**Court's Reasoning**

The court found that the search warrant was specific enough in describing the place to be searched and the items to be seized, and was based on probable cause. The court rejected Gordon's Fourth Amendment claims, finding no overbreadth in the warrant or in the seizure of the tapes. The Fifth Amendment privilege against self-incrimination did not apply to the partnership records seized, following the Supreme Court's ruling in *Bellis v. United States*. The court also found no Sixth Amendment violation as Gordon's attorneys were not denied access during the search. For the income projection, the court upheld the IRS's method as reasonable under the circumstances, given Gordon's destruction of records. The fraud penalty was not sustained due to lack of clear and convincing evidence linking Gordon directly to the skimming operation. Finally, the court held that the additional income was ineligible for income averaging as it was wagering income under section 1302(b)(3).

**Practical Implications**

This decision reinforces the IRS's authority to use search warrants to gather evidence of tax evasion, particularly in cases involving the destruction of records. It highlights the importance of maintaining accurate business records and the consequences of failing to do so. For legal practitioners, this case underscores the need to challenge the validity of search warrants early and thoroughly, as well as the complexities of proving fraud in tax cases. Businesses, especially those in heavily regulated industries like gambling, must be aware of the potential for broad searches and the use of seized records in tax assessments. Subsequent cases have cited *Gordon* in discussions about the scope of search warrants and the use of seized evidence in tax proceedings.

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