Gordon v. Commissioner, 63 T. C. 501 (1975)

An accrual basis taxpayer may accrue an excise tax liability in the same year as the income from unreported wagers, even if the taxpayer attempted to conceal those transactions.

Summary

In Gordon v. Commissioner, the U. S. Tax Court ruled on the proper tax year for accruing excise tax on unreported wagers in an illegal gambling operation. The court held that the Derby, an accrual basis taxpayer, could accrue the excise tax in 1967, the same year the wagers were made, despite the petitioner's attempt to conceal these transactions. This decision was based on the principle that the tax liability accrued when the wagers were accepted, and allowing accrual in the same year as the income was necessary to accurately reflect the taxpayer's income. The ruling underscores the importance of matching income and related expenses in the same tax year, even in cases involving tax evasion attempts.

Facts

The petitioners, Harry and Geraldine Gordon, were partners in the Derby, an illegal gambling operation. The Derby operated on an accrual basis and reported some income from its wagering activities in 1967, but failed to report all wagers, attempting to evade the associated excise tax. The Commissioner projected the unreported income and argued that the excise tax should not be accrued in 1967 due to the attempted concealment of the wagers.

Procedural History

The Tax Court initially issued an opinion on October 31, 1974, which was followed by joint and individual motions for revision from both parties. After considering these motions, the court issued a supplemental opinion on January 30, 1975, modifying the original opinion to address the accrual of the excise tax.

Issue(s)

1. Whether an accrual basis taxpayer may accrue an excise tax liability in the same year as the income from unreported wagers, despite an attempt to conceal those transactions.

Holding

1. Yes, because the tax liability accrued when the wagers were accepted, and accruing the tax in the same year as the income accurately reflects the taxpayer's income.

Court's Reasoning

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The court applied the principle from section 1. 461-1(a)(2) of the Income Tax Regulations, which states that an expense is deductible in the year all events determining the liability occur and the amount can be reasonably determined. The court found that the excise tax accrued when the Derby accepted the wagers, regardless of the attempted concealment. The court rejected the Commissioner's argument that the attempted evasion created a "dispute" under section 1. 461-1(a)(3)(ii), which would prevent accrual until the dispute was resolved. The court emphasized that the tax clearly attached to the transactions when they occurred, and there was no legitimate question about the tax's applicability. The court quoted section 44. 4401-3 of the Treasury Regulations, stating that the tax attaches when a wager is accepted, even on credit. The court's decision was driven by the policy of proper income measurement, ensuring that income and directly related expenses are accounted for in the same tax year.

Practical Implications

This ruling clarifies that for accrual basis taxpayers, even those engaged in illegal activities attempting to evade taxes, the excise tax on unreported wagers must be accrued in the same year as the income. This decision impacts how tax professionals should handle cases involving unreported income and related tax liabilities, ensuring that both are accounted for in the same tax year. It also underscores the importance of matching income and expenses for accurate income reporting, which could influence future cases involving tax evasion and the accrual method of accounting. Businesses and tax practitioners must be aware that attempted concealment does not alter the timing of tax accrual. Subsequent cases, such as those involving similar tax evasion schemes, may reference Gordon v. Commissioner to support the principle of matching income and expenses in the same tax year.

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