***Grosshandler v. Commissioner, 75 T. C. 1 (1980)***

Hypnotically refreshed testimony is inadmissible in tax fraud cases due to its dubious probative value and the risk of suggestion.

**Summary**

Stanley Grosshandler, an attorney, was assessed deficiencies and fraud penalties for failing to file tax returns from 1963 to 1969. He claimed to have filed returns for 1963-1965 and used hypnosis to refresh his memory. The Tax Court ruled that hypnotically refreshed testimony was inadmissible due to lack of safeguards and the risk of suggestion. The court found Grosshandler's testimony unconvincing and upheld the fraud penalties, emphasizing his pattern of nonfiling, false statements to IRS agents, and failure to maintain adequate records as evidence of fraud.

**Facts**

Stanley Grosshandler, an attorney, was assessed deficiencies and fraud penalties for the tax years 1963 through 1969. He claimed to have filed returns for 1963-1965 but admitted not filing for 1966-1969. During the audit, Grosshandler provided notarized statements claiming he had filed returns for 1963-1965. He underwent hypnosis to refresh his memory about filing these returns, but no records were kept of the first two sessions, and the third session suggested the filing of returns. Grosshandler's wife had no knowledge of him preparing or filing returns, and he failed to maintain adequate records of his income.

**Procedural History**

The IRS determined deficiencies and fraud penalties for Grosshandler's tax years 1963-1969. Grosshandler petitioned the Tax Court, claiming he had filed returns for 1963-1965 and using hypnotically refreshed testimony to support his claim. The Tax Court heard the case, ultimately ruling on the admissibility of the hypnotically refreshed testimony and the imposition of fraud penalties.

**Issue(s)**

1. Whether hypnotically refreshed testimony regarding memory of filing tax returns is admissible in court.
2. Whether Grosshandler failed to file Federal income tax returns for the years 1963, 1964, and 1965.
3. Whether the assessment and collection of Grosshandler's Federal income taxes for 1963-1965 are barred by the statute of limitations.
4. Whether any part of the underpayment of income tax for each of the years 1963-1969 was due to Grosshandler's fraud with intent to evade tax.
5. Whether Grosshandler is liable for the additions to tax under section 6654 for failure to make estimated tax payments for each of the years 1964-1969.

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## Holding

1. No, because the hypnotically refreshed testimony lacked the necessary safeguards and carried a high risk of suggestion, rendering it inadmissible.
2. Yes, because the IRS records showed no filing of returns for those years, and Grosshandler's testimony was unconvincing.
3. No, because Grosshandler failed to file returns, and the statute of limitations does not apply under section 6501(c)(3).
4. Yes, because the IRS proved fraud by clear and convincing evidence, including Grosshandler's pattern of nonfiling, false statements, and inadequate record-keeping.
5. Yes, because Grosshandler failed to file estimated tax returns or make payments for those years, and no computational exceptions applied.

## Court's Reasoning

The court applied the Federal Rules of Evidence, particularly Rules 401 and 612, which allow for the use of hypnosis to refresh recollection under appropriate safeguards. However, the court found that the procedures used in Grosshandler's case lacked these safeguards, as the first two hypnosis sessions were not recorded, and the third session assumed the ultimate fact of filing returns. The court emphasized the risk of suggestion and the dubious probative value of the testimony, citing cases like United States v. Adams and United States v. Narciso. The court also considered Grosshandler's inconsistent statements, lack of corroborating evidence, and his selective use of hypnosis as reasons to give the testimony no weight. The court upheld the fraud penalties based on Grosshandler's pattern of nonfiling, false statements to IRS agents, failure to cooperate, inadequate record-keeping, and willful concealment of income.

## Practical Implications

This decision establishes that hypnotically refreshed testimony is inadmissible in tax fraud cases without proper safeguards, such as complete records of the hypnosis sessions and the presence of impartial or adverse parties. Attorneys should advise clients against relying on hypnosis to refresh memory in tax cases, as it may be viewed as an attempt to bolster credibility rather than genuine recollection. The case also reinforces the importance of maintaining adequate records and cooperating with IRS investigations, as failure to do so can be used as evidence of fraud. Tax practitioners should be aware that extended patterns of nonfiling, coupled with other indicia of fraud, can result in significant penalties. Subsequent cases, such as United States v. Awkard, have continued to uphold the strict standards for admitting hypnotically refreshed testimony in court.

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