90 T.C. 237 (1988)

In tax proceedings, a taxpayer generally lacks standing to challenge the admissibility of evidence obtained from the search and seizure of a third party's records if the taxpayer's own Fourth Amendment rights were not violated.

Summary

Taxpayers challenged IRS notices of deficiency based on evidence seized from a third party, Kersting, arguing the search warrant was primarily for civil purposes and thus unlawful. The Tax Court addressed whether taxpayers had standing to challenge the search of Kersting's office and the seizure of his records. The court held that taxpayers lacked standing because the search did not violate their Fourth Amendment rights, as it was directed at Kersting's records, not theirs. The court further clarified that the exclusionary rule and the court's supervisory power cannot be used to suppress evidence obtained from a third party if the taxpayer's own constitutional rights were not infringed. This case underscores that Fourth Amendment rights are personal and cannot be vicariously asserted.

Facts

The IRS investigated Henry Kersting for a scheme creating fictitious debt to generate interest deductions.

An undercover IRS agent gathered information from Kersting about his tax shelter schemes.

Based on this investigation, the IRS obtained a search warrant for Kersting's office, suspecting violations of criminal tax laws.

During the search, the IRS seized documents, including notes, stock certificates, and client lists, related to Kersting's clients, including the petitioners.

Notices of deficiency were issued to petitioners, disallowing interest deductions related to Kersting's schemes, based on the seized documents.

Petitioners sought to suppress the seized evidence, arguing the warrant was for civil purposes and violated Federal Rules of Criminal Procedure and the court's supervisory power.

Procedural History

The IRS issued notices of deficiency to the taxpayers.

Taxpayers petitioned the Tax Court, challenging the deficiencies and seeking to suppress evidence seized from Kersting's office.

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The Tax Court severed the evidentiary issues for trial and opinion.

The Tax Court issued an opinion denying the taxpayers' motion to suppress the evidence.

Issue(s)

1. Whether petitioners can challenge the search and seizure of a third party not before the Court?

2. If petitioners can challenge the search and seizure, whether the Internal Revenue Service utilized a search warrant to compel the production of information which was to be used primarily for civil purposes?

3. If the IRS did utilize the search warrant for such purpose, whether it has such authority?

4. If the IRS does not have such authority, whether the exclusionary rule should be applied?

Holding

1. No, because petitioners have not established that the search and seizure violated their own Fourth Amendment rights.

2. Not addressed because the court ruled petitioners lacked standing to challenge the search.

3. Not addressed because the court ruled petitioners lacked standing to challenge the search.

4. No, the exclusionary rule and the court's supervisory power cannot be used to suppress evidence seized from a third party when the petitioner's own Fourth Amendment rights were not violated.

Court's Reasoning

The court relied on *Rakas v. Illinois*, 439 U.S. 128 (1978), stating that Fourth Amendment rights are personal and cannot be asserted vicariously. The court quoted *Rakas*: "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted."

Petitioners did not claim their Fourth Amendment rights were violated, only that the search of Kersting's office was improper and for civil purposes.

The court cited *United States v. Payner*, 447 U.S. 727 (1980), which rejected using supervisory power to suppress evidence unlawfully seized from a third party not before the court. The court stated, "Federal courts may use their supervisory power

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in some circumstances to exclude evidence taken from the *defendant* by 'willful disobedience of law.'... This Court has never held, however, that the supervisory power authorizes suppression of evidence obtained from third parties in violation of Constitution, statute, or rule."

The court distinguished *Proesel v. Commissioner*, 73 T.C. 600 (1979), and clarified that its supervisory power does not extend to suppressing evidence where the taxpayer's own constitutional rights are not violated by the search, even in civil tax cases.

The court concluded that to contest a search and seizure, petitioners must demonstrate a violation of their own Fourth Amendment rights. Since they did not, their motion to suppress was denied.

Practical Implications

Dixon v. Commissioner clarifies that taxpayers in civil tax disputes generally cannot challenge evidence obtained from searches of third parties unless their own Fourth Amendment rights were violated.

This case reinforces the principle of personal Fourth Amendment rights in tax litigation, limiting the ability to suppress evidence based on alleged violations of others' rights.

Legal practitioners should advise clients that challenging evidence based on unlawful searches and seizures requires demonstrating a direct violation of the client's own Fourth Amendment rights, not those of third parties.

Later cases have consistently applied *Dixon* and *Payner* to deny standing to taxpayers seeking to suppress evidence obtained from third-party searches, unless a personal Fourth Amendment violation is established.

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