*11 T.C. 16 (1948)*

Life insurance premiums paid by a husband pursuant to a divorce decree, where the policy benefits the former wife and the premiums are considered part of her alimony, are deductible from the husband's gross income and includible in the wife's gross income for tax purposes.

**Summary**

The estate of Boies C. Hart sought to deduct life insurance premiums paid by Hart as alimony. Hart had created an insurance trust for his former wife and son, and a subsequent divorce decree stipulated that a percentage of Hart's income, including the insurance premiums, would be paid to his former wife. The Tax Court held that the premiums were deductible by Hart's estate because the payments were constructively received by the former wife as part of her alimony, despite being paid directly to the insurance company, and therefore were includible in her gross income.

**Facts**

Boies C. Hart created an unfunded insurance trust in 1933, with his then-wife, Ruth, and their son as beneficiaries. In 1934, Hart and Ruth entered a separation agreement where Hart agreed to pay Ruth $9,528 per year plus education expenses for their son. The agreement stipulated Hart would maintain life insurance and that premiums would be considered when calculating Hart's net income for alimony purposes. Hart obtained a divorce in 1935. In 1938, a New York court ordered Hart to pay Ruth 38.5% of his income, explicitly including life insurance premium payments in this amount. Hart paid Ruth a sum of cash plus insurance premiums in both 1942 and 1943.

**Procedural History**

The Commissioner of Internal Revenue determined a deficiency in Boies C. Hart's income tax for 1943 and also challenged the 1942 tax year. The Tax Court reviewed the Commissioner's determination of deficiency.

**Issue(s)**

1. Whether life insurance premiums paid by the decedent, Boies C. Hart, on policies held in an insurance trust for the benefit of his former wife, Ruth H. Hart, constitute deductible alimony payments under Sections 22(k) and 23(u) of the Internal Revenue Code.

**Holding**

1. Yes, because the premiums were considered part of the former wife's alimony payment under a court decree and were constructively received by her, making

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them deductible by the husband and taxable to the wife.

**Court's Reasoning**

The court reasoned that the New York Supreme Court decree explicitly included the insurance premiums as part of the 38.5% of Hart's income designated for Ruth's use. The court rejected the Commissioner's argument that Ruth did not actually receive the premiums, noting that they were paid to a trustee for her benefit and were officially designated as part of her alimony. The court also found that Ruth had some control over the premium payments, as she could direct Hart to reduce the amount payable in premiums, thereby increasing the cash payment to her.

The court cited Section 29.22(k)-1(d) of Regulations 111, which states that payments received by a wife for herself and any other person are includible in the wife's income in whole, unless a specific amount is designated for the support of minor children. The court distinguished the case from situations where the benefit to the wife is too remote. It cited prior cases such as *Richard R. Deupree, 1 T.C. 113 (1942)*, finding support for the conclusion that the payments were constructively received by Ruth. The court stated: "It is, therefore, our holding that the insurance payments made by Boies C. Hart in the taxable years herein involved were paid to the insurance company by Hart as the result of an agreement with his wife; that they constituted constructive income to her and were made for her benefit and on her behalf; and that they are taxable in her gross income and deductible from the taxable income of the petitioner herein."

**Practical Implications**

This case establishes that life insurance premiums can be considered alimony payments for tax purposes if they are mandated by a divorce decree or separation agreement and benefit the former spouse. This ruling highlights the importance of clearly defining the nature and purpose of payments in divorce agreements. The case informs how similar situations should be analyzed, focusing on the benefit to the former spouse and whether the payments are integrated into the overall alimony arrangement. This decision has implications for tax planning in divorce settlements and can be cited in cases where the IRS challenges the deductibility of life insurance premiums paid as part of alimony.

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