21 T.C. 349 (1953)

A state court's *nunc pro tunc* order retroactively clarifying that divorce payments were intended solely for child support, not spousal support, is given effect for federal income tax purposes, thus excluding those payments from the recipient's taxable income.

Summary

Margaret Sklar received payments from her former husband under a divorce decree initially designating them as "permanent alimony" for herself and their child. Years later, both parties stipulated that the payments were always intended solely for child support. The state divorce court issued a *nunc pro tunc* order retroactively amending the original decree to reflect this intent. The Tax Court addressed whether these payments were includible in Sklar's income for federal tax purposes. The court held that because the *nunc pro tunc* order clarified the original intent that the payments were exclusively for child support, they were not taxable income to Sklar.

Facts

Margaret Rice Sklar and Joseph Sklar divorced in 1940. The divorce decree ordered Joseph to pay $7 weekly as "permanent alimony for the support of said plaintiff and their child." Subsequent court orders in 1942 and 1947 increased the weekly payments, still terming them "permanent alimony" without allocating amounts between spousal and child support. In 1952, based on a stipulation by both parties that the payments were always intended only for child support and were used exclusively for that purpose, the divorce court issued a *nunc pro tunc* order. This order retroactively amended the divorce decree and subsequent orders to state that the payments were solely for the "support of their child." The Commissioner of Internal Revenue included these payments in Margaret Sklar's income for 1949 and 1950.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Margaret Sklar's income tax for 1949 and 1950, including the divorce payments in her income. Sklar petitioned the Tax Court to contest this determination.

Issue(s)

1. Whether payments received by Margaret Sklar from her former husband under a divorce decree, which was subsequently reformed *nunc pro tunc* by a state court to clarify that the payments were solely for child support, are includible in her gross income for federal income tax purposes.

Holding

1. No, because the *nunc pro tunc* order effectively corrected the prior orders to accurately reflect the original intent that the payments were exclusively for child support, these payments are not includible in Margaret Sklar's gross income.

Court's Reasoning

The Tax Court emphasized that the *nunc pro tunc* order from the Michigan court clarified the original intent of the divorce decree and subsequent modifications. The court stated, "Examination of all of the facts persuades us that the final decree of the state court upon the hearing of the divorce case between petitioner and her husband, and each of the amendatory orders thereafter which had to do only with the amounts to be paid petitioner, provided that the entire sum here in controversy was for the support of the child alone and not in any part for the support of petitioner. The original order and the orders amendatory thereof were in error in stating otherwise, and the last order of the court merely corrected that error." The court distinguished this case from *Peter Van Vlaanderen*, noting that in *Sklar*, the state court's order was a genuine correction of a prior error to reflect original intent, not a retroactive alteration of substance for tax avoidance. The Tax Court thus gave effect to the state court's *nunc pro tunc* order for federal tax purposes, concluding the payments were solely for child support and not taxable to Margaret Sklar.

Practical Implications

Sklar v. Commissioner illustrates the principle that *nunc pro tunc* orders from state courts can retroactively clarify the nature of divorce decrees for federal tax purposes, particularly regarding the characterization of support payments. This case is important for family law practitioners and tax attorneys as it demonstrates that if a state court clarifies through a *nunc pro tunc* order that payments were always intended for child support, the IRS and federal courts are likely to respect that clarification. It highlights the importance of clearly distinguishing between spousal support and child support in divorce decrees to avoid unintended tax consequences. Later cases may distinguish *Sklar* if the *nunc pro tunc* order appears to be a tax avoidance maneuver rather than a genuine correction of clerical or judicial error reflecting original intent.

