29 T.C. 1095 (1958)

Payments made by a divorced husband for the support of his stepchild, even if included in a divorce agreement, are not deductible as alimony under Section 23(u) of the Internal Revenue Code of 1939 if they are not considered to be for the benefit of the former wife.

Summary

In *Faber v. Commissioner*, the Tax Court addressed whether a divorced husband could deduct payments specifically allocated for the support of his stepchild under a divorce agreement. The court held that these payments were not deductible as alimony. The agreement stipulated annual payments to the former wife, allocating a portion for her support and a separate portion for her son (the taxpayer's stepson). The court reasoned that Section 22(k) and 23(u) of the 1939 Code, governing alimony deductions, were intended to apply to payments for the support of the wife, not third parties unless those payments directly benefited the wife. Since the allocated stepchild support payments were not demonstrably for the wife's benefit, they were deemed nondeductible by the husband.

Facts

Albert Faber married Ada Faber, who had a minor son, William, from a previous marriage. Faber never legally adopted William, though William's name was changed to Faber. Upon divorce, Albert and Ada entered into an agreement, incorporated into the divorce decree, requiring Albert to pay Ada $55,000 in installments. The agreement allocated $2,300 annually for Ada's support and $2,700 annually for William's support. The agreement stipulated that if either Ada or William died, the corresponding allocated payment would cease. Albert deducted the full $5,000 annual payment as alimony on his tax return, but the Commissioner disallowed the $2,700 allocated to William.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Albert Faber's income tax for 1952, disallowing the deduction of $2,700 attributed to stepchild support. Faber petitioned the Tax Court to contest this deficiency.

Issue(s)

1. Whether periodic payments made by a divorced husband to his former wife, specifically allocated for the support of her minor son (his stepson) under a divorce decree, are deductible by the husband as alimony under Section 23(u) of the Internal Revenue Code of 1939.

Holding

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1. No, because the payments allocated for the stepson's support were not shown to be for the benefit of the wife and thus did not qualify as deductible alimony under Section 23(u), as interpreted in conjunction with Section 22(k) of the Internal Revenue Code of 1939.

Court's Reasoning

The Tax Court reasoned that Sections 22(k) and 23(u) were intended to address alimony payments, which are payments arising from the marital relationship and intended for the support of the wife. The court emphasized that Section 22(k) includes in the wife's gross income only those payments received "in discharge of, a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree." The court noted that Faber had no legal obligation to support his stepson arising from the marital relationship with Ada.

The court rejected Faber's argument that because the payments were not explicitly designated for the "minor children of such husband" (as per the exception in Section 22(k) for child support), they should automatically be deductible. The court clarified that this exception merely clarifies that payments explicitly for the husband's minor children are not alimony, but it does not imply that all other payments are automatically alimony. The court stated, "To the contrary, we think that the second sentence of section 22 (k) does not state an exception to the first sentence of the same section but instead merely clarifies one ambiguity which might otherwise exist due to the loose usage of the terms 'alimony' and 'separate maintenance.'"

The court distinguished the case from situations where payments to a third party might be considered alimony if they are demonstrably for the wife's benefit, such as in *Robert Lehman* where payments to a mother-in-law were deductible because they were clearly intended to support the wife by supporting her dependent mother. In *Faber*, however, there was no evidence that the stepchild support payments were for Ada's benefit. The allocation in the agreement, especially the provision that the stepchild support payments would cease upon William's death, suggested the payments were intended for William's direct benefit, not as a form of alimony to Ada. The court concluded that Faber failed to prove that the allocated payments were constructively received by Ada for her benefit, and therefore, they were not deductible as alimony.

Practical Implications

Faber v. Commissioner clarifies that for payments to be deductible as alimony under the relevant sections of the 1939 Internal Revenue Code (and similar provisions in subsequent codes), they must be demonstrably for the benefit of the former spouse. Simply including payments in a divorce agreement does not automatically make them deductible alimony. When agreements allocate payments for third parties, such as stepchildren or other relatives, the taxpayer must clearly demonstrate that

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these payments provide a direct economic benefit to the former spouse to qualify for alimony deduction. This case highlights the importance of carefully structuring divorce agreements and clearly articulating the intended beneficiary of each payment to ensure the desired tax consequences. Later cases have cited *Faber* to emphasize the necessity of demonstrating that payments, even if made pursuant to a divorce decree, must discharge a legal obligation related to the marital relationship and benefit the former spouse to be considered deductible alimony.

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