

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 002

June 27, 1958

ALIMONY: PRINCIPAL SUM PAID IN INSTALLMENTS

Syllabus:

From a factual standpoint it was determined that the installment payments herein constituted periodic payments within the meaning of the statute.

Taxpayer and his former wife entered into an agreement on September 12, 1945 (during the pendency of their divorce action) settling and adjusting property rights and providing for alimony and support of the wife. By said instrument, taxpayer was required to pay his former wife \$500 each month for a period of 123 consecutive months, commencing September 1, 1945. Payments were made on September 1, October 1, and November 1, 1945.

The Interlocutory Decree of Divorce dated November 21, 1945, incorporated the substance of that portion of the instrument regarding the alimony and support payments to the former spouse, but provided that the payments shall commence on December 1, 1945, and continue through November 1, 1955.

The only exception made in reference to periodic payments is found in section 17083 which provides that an installment payment shall be considered a periodic payment if such principal sum, by the terms of the decree or instrument, may be or is to be paid within a period ending more than 10 years from the date of such decree or instrument, but only to the extent that such installment payment or payments for the taxable year does not exceed 10 per centum of such principal sum.

The alimony and support obligation herein was founded on the incidental agreement antedating the divorce decree (Blum v. Comm., 177 F2d 670) which instrument prescribed consecutive payments for a period of 10 years and 3 months totaling for each year less than 10 per centum of the principal sum.