

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 062

June 27, 1958

ALIMONY: DETERMINATION OF WHAT CONSTITUTES A DIVORCE IN FOREIGN PROCEEDINGS

Syllabus:

Whether a judicial proceeding taken in a foreign jurisdiction to dissolve a marriage constitutes a divorce for the purpose of section 17081 is a question to be decided by the nature of the proceeding in the light of the laws of the foreign jurisdiction.

Taxpayer's marriage was annulled by a German court on the grounds of physical incapacity of her husband. Under the German statutes taxpayer was entitled to enforce support rights as though the marriage had been terminated by divorce. Taxpayer and her husband entered into an alimony contract under which periodic payments were made. Advice is requested whether the payments received by the taxpayer constitute alimony under section 17081 in view of the clear-cut distinction between divorce and annulment in California.

Whether a judicial proceeding taken in a foreign jurisdiction to dissolve a marriage constitutes a divorce for the purposes of section 17081 is a question to be decided by examining the nature of the proceeding in light of the laws of that jurisdiction rather than the laws of California. The fact that, under California law, taxpayer could have obtained only an annulment and not a divorce on the grounds stated, and no legal right to permanent alimony, is irrelevant. Although the German decree was an annulment in the sense that it was granted for a cause existing at the inception of the marriage, the feature of the German law which gives support rights to the putative wife makes the decree more in the nature of a divorce for the purposes of the alimony provisions of the State income tax law. The essence of section 17081 is that periodic payments which a wife receives in satisfaction of her legal right to support arising out of the marriage relationship are to be included in her gross income. Consequently, for the purposes of section 17081 the payments are alimony and all such payments which accrued while taxpayer was a resident of California are includible in her gross income.