

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 071

June 27, 1958

PROPERTY SETTLEMENT AGREEMENTS: INCIDENT TO A DECREE OF DIVORCE

Syllabus:

A property settlement agreement which is neither incorporated in the divorce decree nor mentions the divorce is incident to the decree of divorce if the surrounding facts indicate that the agreement and divorce were part of a unitary plan for the dissolution of the marriage and the payments were intended to take the place of alimony.

Taxpayer and his former wife entered into a property settlement agreement in April, 1943 requiring him to pay her \$100 a month until her death or remarriage. Except for this reference to remarriage, there was no mention of a prospective divorce. Five days later taxpayer obtained a decree of divorce in Mexico which made no mention of the agreement or any provisions for alimony or the division of community property. Advice is requested whether the payments made pursuant to the agreement are deductible by the taxpayer.

In order for alimony payments to be includible in the wife's gross income and deductible by the husband, they must be in discharge of a legal obligation imposed upon or incurred by the husband under a divorce decree or a written instrument incident to such divorce.

The courts in construing the requirement that the instrument be "incident to" the divorce have placed a liberal interpretation on this requirement and have held that the agreement need not contemplate the divorce nor is it necessary that the decree mention the agreement. Where payments under an agreement obviously take the place of alimony and satisfy the other requirements, although not formally incorporated in the decree, they should not be denied effect under the law merely because there was no evidence that the divorce and settlement were not contemporaneously planned and carried out.

In the instant case the provisions of the agreement that payments for support of the wife were to terminate upon remarriage, plus the fact that the divorce was obtained only five days after the agreement was made, indicate that the agreement and divorce were parts of a unitary plan for the dissolution of the marriage and that the payments were intended to take the place of alimony. This compels the conclusion that the agreement was incidental to the decree of divorce and the deduction of these payments by the husband and their inclusion in the wife's income is in conformity with the alimony provisions of the Personal Income Tax Law.