

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 081

June 17, 1958

## ALIMONY: LUMP-SUM V. PERIODIC PAYMENTS

### Syllabus:

Payments made pursuant to a divorce decree which orders support payments to the former wife for a stipulated period of time and is then subject to mandatory modification for the continuance of payments are "periodic" payments.

A divorce decree provided for monthly payments of \$250 a month from March, 1948 to March, 1953 but with the following reservation:

"it is hereby further ordered, adjudged, and decreed that five years after March 15, 1948, the Court shall, upon motion of either of the parties hereto or its own motion, make such further order or orders for the continued support of the wife, as may be proper, necessary and just at said time".

The decree was modified in March, 1953 to provide for monthly payments of \$225 until death or remarriage of the former spouse. Advice is requested whether the payments under the original decree constitute periodic payments.

Divorce decrees in California are subject to possible modification whether such a reservation of authority is expressly stated in the decree or not. Such a contingency, however, does not change the tax effect of the original order, where the provision is merely discretionary.

In the instant case, however, the decree does not contain language of discretion with the respect to power to modify. It states that the court shall on motion of either party or on its own motion make further provision for continued support, and it was so done. It seems obvious that the court did not originally intend that alimony payments would only be made for five years. Consequently, the total sum was not stated and could not be ascertained by computation. And under the law the amounts paid both before and after modification are periodic payments, includible in the income of the former wife and deductible by the husband.