

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No 262

August 21, 1964

ALIMONY: PERIODIC PAYMENTS

Syllabus:

Taxpayer requests advice as to the deduction of alimony in the following three factual situations:

- (1) Husband and wife do not enter into a written agreement but the divorce court requires H to pay W \$200 a month for six years.
- (2) Husband and wife enter into an agreement dated December 6, 1955, in which the husband agreed to pay the wife \$250 a month for a period of six years commencing December 26, 1955. The agreement, which is silent as to contingencies which would terminate the payments, is incorporated into the decree of divorce.
- (3) The situation is the same as in (2) except that the agreement specified the payments are in settlement of the property rights of the parties.

Does the 1951 amendment to Section 139 of the Civil Code, which reads "Except as otherwise agreed by the parties in writing, the obligation of any party in any decree, judgment or order for the support and maintenance of the other party shall terminate upon the death of the obligor or upon the remarriage of the other party" make payments taxable to the wife and deductible by the husband in the above circumstances.

Section 17083 of the Personal Income Tax Law has been interpreted to provide that payments of fixed amounts, made at regular intervals extending over a period of 10 years or less are not periodic unless subject to a contingency. We adopted the position that if the contingency was specified in the decree the payments were periodic. The current position of the Internal Revenue Service is that the payments are periodic even if the decree or written instrument is silent, so long as there is a contingency imposed by local law. Rev. Rul., 59-190, 1950-1 CB 23; Rev. Rul. 59-45, 1959-1 CB 666.

In California a divorce court has the power to award alimony (Civil Code Section 139) and to divide the community property (Civil Code Section 146). However, an agreement incident to divorce may contain pure property payments, ordinary alimony payments or support payments which are part of an integrated agreement settling both the property and support rights of the parties. *Adams v. Adams*, Cal. 2d 621 (1947).

Ordinary alimony payments terminated on the death of the obligor or the remarriage of the obligee even prior to the 1951 amendment to Section 139. Miller v. Superior Court, 9 Cal. 2d 733 (1937); Pearman v. Pearman, 104 Cal. App. 2d 250 (1951); Section 139 Civil Code as amended in 1933. Support payments contained in an integrated agreement made prior to September 22, 1951, did not terminate by operation of law on the occurrence of these contingencies. Anderson v. Mart, 47 Cal. 2d 274, (1956). However, if the agreement is made on or after that date the payments are subject to these contingencies. Hilton v. McNitt, 49 Cal. 2d 79 (1957).

Applying these principles to the facts herein we conclude:

- (1) Except for payments made pursuant to an interlocutory decree entered on or prior to March 1, 1954, alimony payments are deductible by the husband and includible by the wife irrespective of the date of the decree.
- (2) The same as (1) above for ordinary alimony payments. Support payments which are part of an integrated agreement are includible by the wife and deductible by the husband only if the agreement was executed on or after September 22, 1951. Based upon the limited facts available, the payments in the agreement involved in the instant case appear to be support payments which are part of an integrated agreement and are therefore to be taxed to the wife.
- (3) Pure property payments are under no circumstances to be given the treatment provided in Section 17081, Julia Nathan, 19 TC 865 (1953). However, the labels used are not determinative of the nature of the payments either under California divorce law, Pearman v. Pearman, supra, or Federal tax law, Julia Nathan, supra. The agreement and the surrounding circumstances must be examined to determine the true nature of the payments.