

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 209

October 23, 1957

ALIMONY: PAYMENTS PURSUANT TO AN INTERLOCUTORY DECREE OF DIVORCE

Syllabus:

Support payments made pursuant to an interlocutory decree of divorce entered after March 1, 1954, shall be considered alimony under the 1955 Personal Income Tax Law. Such payments are not considered to be alimony under the 1954 Personal Income Tax Law.

The gross income of a wife separated from her husband includes periodic payments received from him "under a decree entered after March 1, 1954, requiring the husband to make the payments for her support or maintenance". 1954 Internal Revenue Code Section 71(a)(3) and 1955 Personal Income Tax Law Section 17081(c). An interlocutory decree of divorce constitutes a support decree within the meaning of these provisions (Revenue Ruling 57-368, I.R.B. 1957-32; proposed Federal Regulation Section 1.71-1(b)(3)) and consequently payments pursuant to an interlocutory decree of divorce entered after March 1, 1954, if they qualify as periodic and for the wife's support, constitute alimony under the 1955 Personal Income Tax Law.

It must be noted that support payments during the interlocutory period receive different treatment under the 1954 Personal Income Tax Law. Revenue Ruling 57-368, I.R.B. 1957-32, which is consistent with Evans v Comm., 19 TC 1102, aff'd 211 F2d 378, holds that support payments pursuant to an interlocutory decree of divorce do not constitute alimony under the Internal Revenue Code as it read prior to the 1954 revision because the parties were not separated under a "decree of divorce" and there was no provision for payments under a support decree in the Code at that time. This holding also applies to cases arising under the Personal Income Tax Law for years prior to 1955.

Although support payments during the interlocutory period are treated differently for alimony purposes under the 1954 Personal Income Tax Law and the 1955 Personal Income Tax, the effect of Eccles v Comm., 19 TC 1049, aff'd per curiam 208 F2d 796 and Ostler v Comm., 14 TCM 831, which held that parties separated under an interlocutory decree of divorce could file joint returns, has not been changed. Consequently spouses separated by an interlocutory decree may file a joint return.