

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 233

October 28, 1959

ALIMONY – INTERLOCUTORY PERIOD ENDING PRIOR TO JANUARY 1, 1955: FORM VS SUBSTANCE

Syllabus:

(1) Trust payments to the wife during an interlocutory period ending prior to January 1, 1955, do not qualify as alimony payments.

(2) Trust payments to the wife, following the final decree of divorce, are includible in her gross income although labeled payments of her interest in the community property.

A and B were husband and wife. In 1953 they entered into a separation agreement during the pending of a divorce action. The agreement stated that A had separate property; that there was community property; that there was a revocable trust created by A prior to his marriage to B, for the use and benefit of A, and that since the marriage there have been additions to the corpus of said trust in which B claims an interest as her share of the community property.

The pertinent provisions of the agreement are: (1) that each party was released from all claims of the other party for support and maintenance as wife or husband or otherwise, (2) that the husband would pay the wife in cash by a specified time one-half the aggregate value of the total community property, (3) that the husband was to make payments of \$300 a month to the wife for the remainder of her life as installment payments of her community interest, including her interest in the trust fund, that upon remarriage of the wife the payments were to be reduced to \$150 per month, (4) and that A was to amend the trust from which the payments were to be made so that the monthly payments to B would not be subject to income taxation.

An interlocutory decree was entered in 1953, and the property settlement agreement was made part of the decree. The final decree was entered in 1954 and the agreement was made part of that decree.

(1) For taxable years beginning prior to January 1, 1955, payments during the interlocutory period are not alimony, the interlocutory period having ended prior to that date. The trust is revocable, since not made expressly irrevocable. Therefore, A is taxable upon the payments during the interlocutory period.

(2) For the years following the final decree, the requirements of Section

17081(a) were satisfied. The term alimony includes payments in settlement of property rights. These payments are to be included in the wife's income and excluded from the husband's income even though the income of the trust would otherwise be taxed to the husband. Even though the separation agreement states the monthly payments are not alimony, the true nature of the payments, not the form, is controlling.

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