

## CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 319

January 10, 1967

Alimony Payments: Determination of Marital Status

Syllabus:

The recent cases of the Estate of Borax and Wondsel set forth the so-called rule of validation to the effect that if there has been a valid divorce decree in one state, that divorce decree will be recognized as being valid for federal tax purposes, notwithstanding a declaration by another state that the divorce is invalid. The rule seeks to avoid the uncertainty of conflicting state determinations as to the validity of a divorce. The reasoning of Borax and Wondsel is not necessarily valid for State tax purposes. The state taxing agency must honor the decisions of California courts, regardless of conflicting decisions of foreign courts.

If the spouses had executed a written agreement, Section 17081 would allow the alimony deduction regardless of whether or not any divorce proceedings had occurred. If there was no written agreement, then an alimony deduction based on a foreign divorce decree will be allowed if the parties both participate in a foreign divorce or if they otherwise rely on it in good faith. If there is a decision of a California court declaring either the foreign divorce invalid or the support provision incident to such divorce invalid, then the California judgment must be respected also for tax purposes. The alimony deduction is not allowed and the taxpayer is permitted to file a joint return with a subsequent spouse.

The result is different in the case where an interlocutory decree has been rendered. To protect the validity and weight of a California interlocutory judgment, unless the parties enter a written agreement subsequent to the interlocutory, no alimony deduction will be allowed and no joint return will be permitted with a subsequent spouse until the California final decree has been entered. If the parties should enter a written agreement subsequent to the interlocutory, it will take precedence over the interlocutory decree.