

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 189

August 30, 1956

ALIMONY: PERIODIC PAYMENTS SUBJECT TO A CONTINGENCY

Syllabus:

Payments of specified amounts by a taxpayer to his former wife for a period of less than ten years constitute alimony if the decree provides that the payments shall cease on the occurrence of any one contingencies of death or remarriage of either spouse. Baker v. Commissioner, 205 Fed. 2d 369, followed.

X became obligated by a decree of divorce to pay his former wife \$200 per week for a period of five years. The decree provided that the payments were to cease in the event that the wife remarried prior to the expiration of the five years. Advice has been requested as to whether these payments constitute alimony.

Section 17083 provides that "installment payments discharging a part of an obligation the principal sum of which is . . . specified in the decree, instrument or agreement" shall not be treated as alimony when the payment period does not extend over more than ten years. Shortly after the inclusion of this provision in the Internal Revenue Code and in our Personal Income Tax Law, a rule was developed that the provision applied to decrees providing that the husband is to pay his former wife a specified sum each period over a given number or years. While such decrees do not literally state a principal sum for the husband's obligation, such sum can be readily computed. For example, a decree ordering the husband to pay \$100.00 per month for five years clearly contemplates a principal sum of \$6,000.00. Under Section 17083, payments made in compliance with such a decree do not constitute alimony.

Where the decree is of the type discussed above but goes on to provide that the payments shall cease in the event that a named contingency occurs, such as the wife's remarriage or the wife's death or the husband's death, Section 17083 and its federal equivalent do not apply because the contingency creates an uncertainty and the ultimate amount to be paid cannot be mathematically computed. Baker v. Commr., 205 Fed. 2d 369; Prewett v. Commr., 221 Fed. 2d 250; Smith v. Commr., 208 Fed. 2d 349; Fidler v. Commr., 231 Fed. 2d 250; Myers v. Commr., 212 Fed. 2d 448; Davidson v. Commr., 219 Fed. 2d 147.