7 T.C. 723 (1946)

Payments for spousal support made before a formal divorce or separate maintenance decree are not deductible as alimony under Section 23(u) of the Internal Revenue Code.

Summary

George D. Wick sought to deduct payments made to his wife during 1942 and 1943 as alimony. These payments included amounts paid pursuant to an oral agreement before a court order and payments of alimony *pendente lite* (temporary alimony) after a court order but before a final divorce decree. The Tax Court held that neither the payments made under the oral agreement nor the alimony *pendente lite* were deductible because they were not made pursuant to a decree of divorce or separate maintenance as required by Section 22(k) and therefore not deductible under Section 23(u) of the Internal Revenue Code.

Facts

George D. Wick and Margaret I. Wick were married. The couple separated on July 7, 1942. From that date until the end of 1942, Wick made payments to his wife for her support under an oral agreement. In May 1943, Margaret Wick filed for divorce *a mensa et thoro* (limited divorce). On July 20, 1943, the court ordered Wick to pay Margaret Wick $600 for maintenance up to August 1, 1943, and then $375 per month as alimony *pendente lite*, along with counsel fees. Wick also filed for an absolute divorce. The two divorce cases were tried together.

Procedural History

The Tax Court addressed deficiencies in Wick's income tax for 1941 and 1943, resulting from adjustments made by the Commissioner of Internal Revenue. The central dispute concerned Wick's claim for deductions under Section 23(u) of the Internal Revenue Code for payments to his wife. The Court of Common Pleas denied Wick's petition for an absolute divorce but granted Margaret Wick a divorce *a mensa et thoro* in January 1944. Both decisions were appealed. The Superior Court affirmed the denial of Wick's divorce but reversed the grant of divorce to Margaret. The Supreme Court of Pennsylvania ultimately sustained the Court of Common Pleas' original rulings.

Issue(s)

1. Whether payments made to a wife for support under an oral agreement, prior to any court decree of divorce or separate maintenance, are deductible as alimony under Section 23(u) of the Internal Revenue Code?
2. Whether payments of alimony *pendente lite*, made pursuant to a court order but prior to a final decree of divorce or separate maintenance, are deductible under Section 23(u)?

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Holding

1. No, because such payments are not includible in the wife's gross income under Section 22(k) since they were not made pursuant to a decree of divorce or separate maintenance.
2. No, because alimony *pendente lite* is not considered a payment made subsequent to a decree of divorce or separate maintenance as required by Section 22(k) and therefore not deductible by the husband under Section 23(u).

Court's Reasoning

The court reasoned that Section 22(k) of the Internal Revenue Code requires that payments must be received subsequent to a decree of divorce or separate maintenance to be included in the wife's gross income. Since Section 23(u) allows a deduction only for payments includible in the wife's gross income under Section 22(k), payments made before such a decree are not deductible. The court emphasized that alimony *pendente lite*, by its nature, is paid during the pendency of a divorce suit, not after a final decree. The court also noted that a decree of separate maintenance has the same meaning as a decree of separation. The court cited *Charles L. Brown, 7 T.C. 715*, emphasizing that Congress intended to include only payments made where a separation of the spouses had been consummated under a decree of separate maintenance.

The court stated, "From a careful reading of the language it is apparent that the Congress did not intend to include under this section any payment which may be called 'alimony.' The payments involved here were 'alimony *pendente lite*,' but such payments are not provided for nor described in section 22 (k). They were payments pending a suit for a divorce. The section refers to 'payments * * * received subsequent to such decree [decree of divorce or of separate maintenance].'"

Practical Implications

This decision clarifies that for alimony payments to be deductible under the tax code, they must be made after a formal decree of divorce or separate maintenance. Payments made before such a decree, even if made under a court order for alimony *pendente lite*, do not qualify for deduction. This case highlights the importance of the timing of divorce decrees in relation to alimony payments for tax purposes. Legal practitioners must advise clients that only alimony payments made subsequent to a formal decree qualify for tax deductions, influencing the structuring and timing of divorce settlements. Later cases and IRS guidance have continued to refine the definition of alimony and the requirements for deductibility, but the core principle established in *Wick* remains relevant.

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