9 T.C. 47 (1947)

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A state court decree entered *nunc pro tunc* to retroactively establish a legal separation does not retroactively qualify payments made before the decree for federal income tax deductions under Section 23(u) of the Internal Revenue Code.

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Summary

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Robert Daine sought to deduct payments made to his wife in 1942 and 1943, claiming they qualified as alimony under Section 23(u) of the Internal Revenue Code. Daine and his wife had a separation agreement since 1940. In 1944, a New York court issued a separation decree *nunc pro tunc*, effective January 1, 1940. The Tax Court denied Daine’s deduction, holding that the retroactive decree could not alter the fact that the payments in 1942 and 1943 were not made pursuant to a legal separation decree, a requirement for deductibility under the federal tax code. The payments were not made

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