10 T.C. 406 (1948)

A lump-sum payment made pursuant to a written agreement modifying a divorce decree is not deductible under Section 23(u) of the Internal Revenue Code because it is not considered a periodic payment includible in the wife's gross income under Section 22(k).

Summary

Frank Loverin sought to deduct a lump-sum payment made to his ex-wife following her remarriage, arguing it was a substitute for ongoing alimony payments. The Tax Court denied the deduction. The court reasoned that the payment was made pursuant to a new agreement, not the original divorce decree. Because the new agreement specified a single lump-sum payment, it did not qualify as a "periodic payment" under Section 22(k) of the Internal Revenue Code, and therefore was not deductible by Loverin under Section 23(u). The court rejected Loverin's argument that the payment should be viewed as a commutation of future alimony payments, emphasizing the terms of the superseding agreement.

Facts

Frank Loverin and Cornelia Loverin divorced in 1940. The divorce decree obligated Frank to pay Cornelia $60 per week for her support and maintenance.
In 1942, Cornelia sued Frank for conversion of personal property.
On January 2, 1942, Frank and Cornelia entered into a written agreement, contingent on Cornelia's remarriage by January 10, 1942. Frank agreed to pay Cornelia $8,500 and $1,500 for her attorneys' fees.
In exchange, Cornelia agreed to release Frank from future alimony obligations, dismiss the conversion lawsuit, and consent to a modification of the divorce decree eliminating the support payments.
Cornelia remarried on January 9, 1942, and Frank made the agreed-upon payments.
The New York Supreme Court modified the divorce decree, eliminating the alimony provision.

Procedural History

Frank Loverin deducted the $11,000 payment on his 1942 tax return.
The Commissioner of Internal Revenue disallowed the deduction.
Loverin petitioned the Tax Court for review.

Issue(s)

Whether Frank Loverin is entitled to a deduction under Section 23(u) of the Internal Revenue Code for the $11,000 he paid to his ex-wife in 1942 following a modification of their divorce decree.

Holding

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No, because the lump-sum payment was made pursuant to a new agreement, not the original divorce decree, and therefore does not constitute a “periodic payment” under Section 22(k) of the Internal Revenue Code which is required for deductibility under Section 23(u).

Court’s Reasoning

The court focused on whether the $8,500 payment to the ex-wife (excluding the attorney fees) qualified as a deductible expense under Section 23(u) of the Internal Revenue Code. Section 23(u) allows a deduction for amounts includible in the wife’s gross income under Section 22(k).

Section 22(k) generally includes periodic payments of alimony or payments in the nature of alimony made pursuant to a divorce decree or a written instrument incident to the divorce in the gross income of the divorced wife. However, it excludes lump-sum payments or installment payments of a specified principal sum unless the installments are to be paid over a period of more than ten years.

The court stated, “The fallacy in this argument is that it indiscriminately confuses the divorce decree with the written instrument of January 2, 1942, and overlooks the fact that the payment in question was made pursuant to the latter rather than the former.”

Because the payment was a single, lump-sum payment made under the 1942 agreement, not the divorce decree, it did not fall within the definition of “periodic payments” under Section 22(k). The court emphasized that the divorce decree’s alimony provisions were annulled, and no payments were made under it in 1942.

Therefore, the payment was not deductible by the husband under Section 23(u).

Practical Implications

This case clarifies that lump-sum payments intended to settle alimony obligations are generally not deductible by the payor unless they meet the specific requirements of Section 22(k) regarding payments over a period exceeding ten years.

When structuring divorce settlements, practitioners must carefully consider the tax implications of lump-sum versus periodic payments to ensure the intended tax treatment for their clients.

The case highlights the importance of distinguishing between payments made under a divorce decree and payments made under a separate agreement that modifies the decree, as the tax consequences may differ significantly.

This ruling has been cited in subsequent cases involving the deductibility of alimony payments, emphasizing the need for strict adherence to the statutory requirements for deductibility.

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