10 T.C. 955 (1948)

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Payments made under an agreement executed more than seven months after a divorce decree, where the decree made no provision for alimony or property settlement, are not considered “incident to” the divorce and are therefore not deductible by the payor under sections 22(k) and 23(u) of the Internal Revenue Code.

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Summary

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Benjamin Cox sought to deduct payments made to his former wife under a written agreement executed more than seven months after their divorce. The Tax Court denied the deduction, holding that the agreement was not “incident to” the divorce as required by the Internal Revenue Code. The court reasoned that because the divorce decree was silent on alimony and property settlement, and the agreement was reached long after the divorce, the payments were not part of the divorce settlement but a separate, later obligation. This case highlights the importance of timing and integration of agreements with divorce decrees for tax deductibility.

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Facts

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Benjamin Cox and his wife separated in 1941. Cox moved to Florida and obtained a divorce decree in October 1943; his wife was not personally served and did not appear in court. The divorce decree made no provision for alimony or property settlement. In November 1943, Cox remarried in New York. In June 1944, more than seven months after the divorce, Cox and his former wife entered into a written agreement where he agreed to pay her a portion of his income for her support and the support of their children. The agreement also contained a clause where the former wife agreed not to contest the Florida divorce as long as Cox fulfilled the agreement terms.

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Procedural History

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Cox deducted the payments made to his former wife on his 1944 federal income tax return. The Commissioner of Internal Revenue disallowed the deduction. Cox petitioned the Tax Court, arguing that the payments were deductible as alimony under sections 22(k) and 23(u) of the Internal Revenue Code.

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Issue(s)

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Whether payments made pursuant to a written agreement executed more than seven months after a divorce decree, which made no provision for alimony or property settlement, are “incident to” the divorce within the meaning of section 22(k) of the Internal Revenue Code, thereby making the payments deductible by the payor under section 23(u).

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Holding

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No, because the agreement was not contemporaneous with or directly connected to the divorce decree itself. The divorce was finalized without any agreement on support or property, and the later agreement was a separate and distinct event.

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Court’s Reasoning

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The Tax Court reasoned that the statute intended that the husband’s obligation to support his wife be continued either by the divorce decree or by a contract taking its place. The court emphasized that “incident to” the divorce would ordinarily involve an agreement prior to or coincident with the divorce. The court distinguished this case from situations where an oral agreement existed prior to the divorce, which a subsequent written agreement merely formalized. The court stated,

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