11 T.C. 1093 (1948)

Payments made under a written agreement are taxable as income to the recipient only if the agreement is incident to a decree of divorce or separate maintenance.

Summary

The Tax Court held that payments received by Miriam Cooper Walsh from her former husband under a 1941 agreement were not includible in her gross income under Section 22(k) of the Internal Revenue Code. The court reasoned that the 1941 agreement, which modified prior agreements and settled litigation, was not incident to the 1928 divorce decree. As such, the payments were not considered alimony under the statute and were not taxable to Walsh. The court followed its prior decisions in *Dauwalter* and *Cox*, emphasizing the requirement that the agreement be directly connected to the divorce decree to trigger taxability.

Facts

Miriam Cooper Walsh and Raoul Walsh were married in 1916 and divorced in 1928. They entered into a separation agreement in 1927, which was not incorporated into the divorce decree. This agreement was modified in 1934. In 1941, after disputes arose regarding payments, they entered into a new agreement that rescinded the prior agreements. The 1941 agreement provided for weekly payments to Miriam Walsh until her death or remarriage. Miriam Walsh received payments under the 1941 agreement in 1942 and 1943 but did not report them as income, relying on advice from her attorney.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Walsh’s income and victory tax for 1943 and asserted penalties for failure to file income tax returns for 1942 and 1943. Walsh petitioned the Tax Court for a redetermination, contesting the deficiency and penalties. The Tax Court reviewed the case based on stipulated facts.

Issue(s)

1. Whether payments received by the petitioner from her former husband under the 1941 agreement are includible in her gross income under Section 22(k) of the Internal Revenue Code.
2. If the payments are includible in gross income, whether penalties for failure to file income tax returns are warranted.

Holding

1. No, because the 1941 agreement was not incident to the 1928 divorce decree as required by Section 22(k).

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2. Because the payments are not includible in gross income, the penalties are not warranted.

Court’s Reasoning

The Tax Court analyzed Section 22(k) of the Internal Revenue Code, which provides that periodic payments received by a divorced wife are includible in her gross income if made under a decree of divorce or under a written instrument incident to such divorce. The court relied on its prior holdings in *Frederick S. Dauwalter* and *Benjamin B. Cox*, which interpreted “incident” to mean directly related to the divorce decree itself. The court found that the 1941 agreement, entered into approximately fourteen years after the divorce, was not incident to the divorce decree. The court emphasized that the 1941 agreement was a separate settlement of litigation and a modification of prior agreements, not a direct consequence of the divorce proceedings. Therefore, the payments received under the 1941 agreement did not meet the statutory requirements for inclusion in gross income under Section 22(k). The court did not address the penalties for failure to file, as the determination that the payments were not taxable rendered that issue moot.

Practical Implications

The *Walsh* case clarifies the

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