12 T.C. 188 (1949)

Payments made pursuant to a divorce settlement agreement are considered installment payments, not periodic payments, and therefore not deductible, if the principal sum is specified, even if subject to contingencies like death or remarriage of the recipient.

Summary

Frank Orsatti and his wife Lien entered into a property settlement agreement before their divorce, stipulating weekly alimony payments. The Tax Court addressed whether these payments were deductible by Frank as periodic alimony payments under sections 22(k) and 23(u) of the Internal Revenue Code. The court held that because the agreement specified a total sum calculable by multiplying the weekly payment by the number of weeks, the payments were considered installment payments and were not deductible, despite being contingent on Lien's death or remarriage.

Facts

Frank and Lien Orsatti divorced in 1942. Prior to the divorce, they executed a property settlement agreement. The agreement stipulated that Frank would pay Lien $125 per week as alimony. These payments were to continue for two years or until Lien's death or remarriage. Frank made payments continuously from July 18, 1942, to July 29, 1944. Neither the interlocutory nor the final divorce decree referenced the property settlement agreement or provided separately for alimony.

Procedural History

The Commissioner of Internal Revenue disallowed deductions claimed by Frank Orsatti for alimony payments made to his ex-wife in 1942, 1943, and 1944. The Commissioner determined deficiencies in Orsatti's income and victory tax for 1943 and income tax for 1944. The Estate of Frank P. Orsatti, through its administrators, petitioned the Tax Court for review.

Issue(s)

Whether payments made by the decedent to his divorced wife pursuant to a property settlement agreement incident to their divorce were "periodic" or "installment" payments within the meaning of section 22(k) of the Internal Revenue Code, thereby determining their deductibility under section 23(u).

Holding

No, because the payments were deemed installment payments as the principal sum was specified in the agreement, making them non-deductible under section 23(u).

Court's Reasoning

The court relied heavily on its prior ruling in *J.B. Steinel, 10 T.C. 409*, which held that the term "obligation" in section 22(k) should be construed broadly to include obligations subject to contingencies, as long as those contingencies did not avoid the obligation during the relevant tax years. The court stated that the "principal sum" of an obligation can be specified even if payment is contingent on the death or remarriage of the wife, and the principal sum is considered specified until such contingencies arise. The court found no meaningful difference between specifying the total amount directly and specifying weekly payments and the number of weeks they were to be paid. The court distinguished *Roland Keith Young, 10 T.C. 724*, and *John H. Lee, 10 T.C. 834*, finding the instruments in those cases to be different. Because the Orsatti agreement specified a calculable principal sum (even with contingencies), the payments were installment payments and not deductible.

Practical Implications

This case clarifies how to determine whether payments in a divorce settlement are deductible alimony (periodic payments) or non-deductible property settlements (installment payments) for tax purposes. Even if payments are subject to contingencies like death or remarriage, if a principal sum is ascertainable, the payments are likely to be considered installment payments and not deductible. Legal practitioners should draft settlement agreements carefully, especially concerning alimony, to clearly define the nature of the payments to ensure the intended tax consequences. Later cases have used *Orsatti* and *Steinel* to determine if a "principal sum" is specified and, therefore, not deductible by the payor. Agreements need to be carefully drafted so the payments are clearly periodic and not a disguised property settlement.

