13 T.C. 658 (1949)

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Alimony payments made under a written separation agreement are taxable income to the recipient if the agreement is incident to a divorce, even if the divorce occurs in a different jurisdiction than initially contemplated when the agreement was created.

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Summary

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Jessie Fry and her husband executed a support agreement anticipating a divorce in Nevada. Fry later obtained a divorce in New York based on evidence of adultery provided by her husband. The divorce decree didn't explicitly incorporate the support agreement. The Tax Court held that payments Fry received under the agreement were taxable income because the agreement was incident to the New York divorce, despite the original intention to divorce in Nevada. The court reasoned that the ultimate divorce, regardless of location, was the vital factor, and the agreement was made in contemplation of divorce.

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Facts

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Jessie and Thornton Fry experienced marital difficulties starting in 1939 or 1940.r
In 1943, they discussed divorce, and Thornton moved to New York City.r
On December 27, 1943, they signed a support agreement where Thornton would pay Jessie $237.50 monthly in lieu of alimony, with a clause stating it would govern any future divorce allowances and survive any decree.r
Thornton believed Jessie would seek a divorce in Nevada and provided funds for her travel expenses.r
Jessie delayed going to Nevada, and Thornton later provided her with evidence of his adultery.r
Jessie then sued for divorce in New York in April 1945, not requesting alimony in the complaint due to the existing support agreement.r
The New York divorce decree was finalized on July 12, 1945, without mentioning the support agreement.r

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Jessie received $1,900 in payments under the support agreement in 1945.r

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Procedural History

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The Commissioner of Internal Revenue determined a deficiency in Jessie Fry’s income tax for 1945, arguing the $1,900 received under the support agreement was taxable income. Fry challenged this determination in the Tax Court.r

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Issue(s)

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Whether payments received by the petitioner under a written support agreement are includible in her taxable income under Section 22(k) of the Internal Revenue Code when the agreement was initially made in contemplation of a Nevada divorce, but the divorce was ultimately obtained in New York.r

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Holding

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Yes, because the support agreement was incident to the divorce, regardless of the change in venue from Nevada to New York. The court emphasized that the divorce itself is the vital factor, and the agreement was made in anticipation of a divorce.r

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Court’s Reasoning

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The court focused on whether the support agreement was

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