Floyd H. Brown and Catherine B. Brown v. Commissioner, 16 T.C. 623 (1951)

Payments made under a separation agreement are considered 'incident to a divorce' for tax purposes if the agreement is made in contemplation of divorce, even if the divorce occurs significantly later and the agreement doesn't explicitly mention it.

Summary

Floyd and Catherine Brown sought to deduct payments made to Catherine under a 1935 separation agreement. The Tax Court addressed whether these payments were made under a written instrument incident to divorce, as defined by sections 22(k) and 23(u) of the Internal Revenue Code. While the agreement didn't mention divorce and the divorce occurred over a year later, the court found that the agreement was indeed incident to divorce because the parties had discussed divorce, and the omission was to avoid collusion charges. The court allowed the deduction, reversing the Commissioner's decision.

Facts

Floyd and Catherine Brown entered into a separation agreement on February 6, 1935, which obligated Floyd to make weekly payments to Catherine. The agreement itself made no mention of divorce. Divorce was discussed between the parties, and Catherine agreed to divorce Floyd. The agreement did not mention divorce because the attorney felt that doing so could lead to collusion charges. Floyd paid approximately $450 for the expense of the divorce which was applied for and granted more than a year and a half after the agreement. The divorce decree did not mention the payments. At the time of the agreement, Floyd earned $100 per week and had limited property; the agreement obligated him to pay Catherine $35 weekly beginning September 1, 1935.

Procedural History

The Commissioner of Internal Revenue denied the Browns' deduction for payments made under the separation agreement. The Browns petitioned the Tax Court for review of the Commissioner's decision.

Issue(s)

Whether the payments made by Floyd to Catherine under the 1935 separation agreement were made under a written instrument incident to their subsequent divorce, thus qualifying the payments for deduction under sections 22(k) and 23(u) of the Internal Revenue Code.

Holding

Yes, because the evidence showed the agreement was made in contemplation of divorce, even though the divorce occurred later and the agreement didn't explicitly

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mention it.

Court’s Reasoning

The court focused on whether the agreement was “incident to such divorce”. The court distinguished *Joseph J. Lerner, 15 T. C. 379*, noting that in *Lerner*, divorce was never discussed. Here, in contrast, divorce was discussed between the parties; the only reason it was omitted from the agreement was to avoid a collusion charge. Although the divorce was not applied for until over a year later, the court found this delay reasonably explained by Floyd’s financial situation. The court reasoned that the discussion of divorce, coupled with the circumstances, indicated the agreement was incident to divorce. Applying the common definition of “incident,” the court held that the agreement was indeed incident to divorce, and therefore, the payments were deductible.

Practical Implications

This case provides guidance on interpreting what constitutes an agreement

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