Hesse v. Commissioner, 7 T.C. 700 (1946)

Payments made pursuant to a written agreement are considered incident to a divorce if the evidence demonstrates that divorce was discussed between the parties, even if the agreement itself does not explicitly mention divorce, and the divorce occurs a significant time after the agreement.

Summary

The Tax Court addressed whether payments made by the petitioner to his former wife were deductible as alimony payments under sections 22(k) and 23(u) of the Internal Revenue Code. The payments were made under a written agreement that did not mention divorce. The court held that the payments were deductible because the agreement was incident to a divorce, despite the agreement's silence on the matter and the fact that the divorce occurred over a year and a half after the agreement was signed. The court reasoned that divorce was discussed and contemplated by the parties, and the omission of any reference to it in the agreement was due to concerns about collusion.

Facts

The petitioner and his wife entered into a written agreement on February 6, 1935, which provided for weekly payments to the wife. The agreement did not mention divorce. Divorce was discussed between the parties, and the wife agreed to divorce the petitioner. The petitioner's attorney advised against mentioning divorce in the agreement due to concerns about collusion. The divorce was not applied for or granted until more than a year and a half later. The petitioner paid the expenses of the divorce. The divorce decree did not mention the payments or impose alimony because the complaint alleged that support, maintenance, and child custody had been settled by written agreement.

Procedural History

The Commissioner of Internal Revenue denied the petitioner's deductions for payments made to his former wife. The petitioner appealed this decision to the Tax Court.

Issue(s)

Whether the payments made by the petitioner to his former wife were made under a written instrument incident to a divorce, as defined by sections 22(k) and 23(u) of the Internal Revenue Code, thus making them deductible.

Holding

Yes, because the evidence indicates that divorce was contemplated and discussed between the parties at the time of the agreement, and the absence of divorce in the

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agreement was due to concerns about collusion. Therefore, the agreement was incident to a divorce.

Court's Reasoning

The court distinguished this case from *Joseph J. Lerner, 15 T.C. 379*, where no divorce was contemplated during the separation agreement. Here, the court found that the discussion of divorce and the reason for its omission from the agreement (collusion concerns) indicated that the payments were indeed incident to a divorce. The court noted, "Here such contemplation of divorce appears. In the Fry case divorce was discussed, in addition to being mentioned in writing. In this case there was discussion of divorce between the parties, and the reason mention thereof was left out of the agreement was the possibility of charge of collusion. Under these circumstances it seems to us that the payments made under the agreement were incident to a divorce." The court also addressed the delay between the agreement and the divorce, finding it reasonably explained by the petitioner's financial situation.

Practical Implications

This case clarifies the meaning of

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