16 T.C. 916 (1951)

Payments of alimony pendente lite, attorney's fees, and court costs are not deductible under Section 23(u) of the Internal Revenue Code if they are not made pursuant to a decree of divorce or legal separation as required by Section 22(k).

Summary

Robert McKinney sought to deduct alimony pendente lite, attorney's fees, and court costs paid to his wife during their divorce proceedings. The Tax Court ruled against McKinney, holding that these payments were not deductible under Section 23(u) of the Internal Revenue Code because they were not made after a decree of divorce or legal separation, as required by Section 22(k). The court emphasized that Section 22(k) specifically applies to payments made to a wife who is divorced or legally separated, and temporary payments before such a decree do not qualify for deduction.

Facts

Robert and Thelma McKinney separated in December 1943. Robert filed for divorce in June 1945. In July 1945, Thelma requested alimony pendente lite. On July 30, 1945, the court ordered Robert to pay Thelma $120 per month for two months, $125 to her attorney, and $20 for court costs. Robert paid Thelma $420, her attorney $175, and the court $20, and also paid $100 to his own attorney. An interlocutory divorce decree was granted to Thelma on January 31, 1946, which included further support payments. A final decree of divorce was entered on February 24, 1947.

Procedural History

Robert McKinney claimed a deduction of $1,115 on his 1945 tax return. The Commissioner of Internal Revenue disallowed $715, including the alimony pendente lite, attorney's fees, and court costs. McKinney appealed the Commissioner's decision to the United States Tax Court.

Issue(s)

Whether payments made for alimony pendente lite, attorney's fees, and court costs during divorce proceedings are deductible under Section 23(u) of the Internal Revenue Code.

Holding

No, because Section 23(u) allows a deduction only for payments that qualify under Section 22(k), which requires that payments be made to a wife who is divorced or legally separated under a decree of divorce or separate maintenance.

Court's Reasoning

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The Tax Court relied on the language of Section 22(k) of the Internal Revenue Code, which specifies that its provisions apply only to payments made to a wife who is divorced or legally separated from her husband under a decree of divorce or separate maintenance. The court cited *Frank J. Kalchthaler, 7 T.C. 625 (1946)*, emphasizing that Section 22(k) does not apply to decrees of separate maintenance made to a wife who is not legally separated or divorced. The court also referenced *Charles L. Brown, 7 T.C. 715 (1946)*, and *George D. Wick, 7 T.C. 723 (1946)*, aff'd, *161 F.2d 732 (1947)*. The court stated, "The construction which must be placed upon section 22 (k) with respect to the question presented here is that it relates to periodic payments made under a decree of separate maintenance to a wife who is legally separated or divorced from her husband, but that it does *not* apply to a decree of separate maintenance made to a wife, who is not legally separated or divorced." Since the payments in question were made before the divorce decree, they did not meet the requirements of Section 22(k) and were therefore not deductible under Section 23(u). The court also summarily disallowed deductions for both parties' attorney's fees and court costs, citing relevant regulations.

Practical Implications

This case clarifies that only alimony payments made after a decree of divorce or legal separation are deductible for federal income tax purposes. Payments made during the pendency of a divorce, such as alimony pendente lite, do not qualify for deduction under Section 23(u) because they do not fall within the scope of Section 22(k). Legal professionals must advise clients that only payments made pursuant to a formal decree will be deductible. This ruling affects tax planning in divorce cases and emphasizes the importance of the timing of payments relative to the formal legal separation or divorce decree. Later cases would likely distinguish between payments made before and after the decree, adhering to the principle set forth in *McKinney*.

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