16 T.C. 1485 (1951)

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Payments made under a separation agreement are not deductible as alimony if they are not made under a decree of divorce or separate maintenance, or under a written instrument incident to such a decree.

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Summary

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George Feinberg sought to deduct payments made to his former wife, Anna, under a separation agreement. He argued these payments qualified as alimony deductible under sections 22(k) and 23(u) of the Internal Revenue Code. The Tax Court disallowed the deductions, holding that the payments were not made pursuant to a divorce decree or an instrument incident to such a decree. The separation agreement was not incorporated into the subsequent Florida divorce decree, and the circumstances surrounding the divorce suggested a lack of mutual anticipation of divorce at the time the agreement was executed.

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Facts

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George and Anna Feinberg entered into a separation agreement in February 1940, stipulating that George would pay Anna $3,900 annually in weekly installments. The agreement included a provision that if George obtained a divorce in New York, the agreement would terminate. It also stipulated that if either party initiated a separation or divorce suit, the provisions of the agreement should be incorporated into the final decree. Subsequently, George obtained a Florida divorce decree that made no mention of alimony or the separation agreement. Anna later sued in New York to declare the Florida divorce invalid, and the court declared her to be George’s lawful wife. George continued to make payments under the separation agreement.

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Procedural History

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The Commissioner of Internal Revenue disallowed George Feinberg’s deductions for payments made to Anna under the separation agreement for the tax years 1942 and 1943. Feinberg petitioned the Tax Court for a redetermination of the deficiency.

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Issue(s)

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Whether payments made by George Feinberg to his former wife, Anna Feinberg, pursuant to a separation agreement, are deductible as alimony under sections 22(k) and 23(u) of the Internal Revenue Code when the subsequent divorce decree makes no provision for alimony and does not incorporate the separation agreement.

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Holding

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No, because the payments were not made under a decree of divorce or separate maintenance, nor under a written instrument incident to such a decree.

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Court’s Reasoning

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The Tax Court reasoned that for payments to qualify as deductible alimony under sections 22(k) and 23(u), they must be made either under a divorce decree or a written instrument

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