***19 T.C. 1102 (1953)***

Payments made to a wife during an interlocutory divorce decree period, where the parties are still considered married under state law, are not taxable income to the wife under Section 22(k) of the Internal Revenue Code.

**Summary**

Alice Humphreys Evans received monthly payments from her husband, John, following an interlocutory divorce decree in Colorado. The IRS argued these payments were taxable income to her. The Tax Court held that because Colorado law stipulates that the parties remain married during the six-month interlocutory period, the payments received during that time were not taxable alimony under Section 22(k) of the Internal Revenue Code. This decision aligns with the principle that the payments must be received after the legal separation or divorce to be considered taxable alimony.

**Facts**

Alice and John Evans were married in 1938 and separated in 1947, when Alice filed for divorce in Colorado. On December 5, 1947, they entered into a property settlement agreement that stipulated temporary alimony payments to Alice pending the final divorce decree. The Colorado court entered an interlocutory divorce decree on December 10, 1947, stipulating that the final divorce would be granted six months later. Alice received $3,750 in monthly payments from John during this six-month period. The final divorce decree was entered on June 11, 1948.

**Procedural History**

The Commissioner of Internal Revenue determined a deficiency in Alice Evans' income tax for 1948, arguing that the payments received during the interlocutory decree period were taxable income. Evans contested this determination in the United States Tax Court.

**Issue(s)**

Whether monthly support payments received by a wife during the interlocutory period of a divorce decree in Colorado constitute taxable income to the wife under Section 22(k) of the Internal Revenue Code.

**Holding**

No, because under Colorado law, the parties remain married during the interlocutory period, and Section 22(k) applies only to payments received after a decree of divorce or legal separation.

**Court's Reasoning**

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The Tax Court relied on its prior decision in *Marriner S. Eccles, 19 T.C. 1049*, which addressed a similar issue under Utah law. The court reasoned that Colorado law, like Utah law, stipulates that parties are still married during the interlocutory period. Referencing *In re McLaughlin's Estate, 117 Colo. 67, 184 P.2d 130 (S. Ct. Colo. 1947)*, the court noted that if one party dies during this period, the divorce action abates, and the surviving spouse is entitled to inherit. The court also quoted *Doty v. Doty, 103 Colo. 543, 88 P.2d 573 (S. Ct. Colo. 1939)*, stating, "under the statute and the express provisions of the interlocutory decree, the parties were still married and might lawfully have cohabited together as husband and wife." Therefore, the payments were not considered to be made "subsequent to such decree" as required by Section 22(k) to be taxable.

**Practical Implications**

This case clarifies that the timing of a divorce decree is crucial in determining the taxability of alimony payments. Payments made before the final decree, during an interlocutory period where the parties are still legally married under state law, are not considered taxable income to the recipient under Section 22(k). Attorneys should carefully examine state law regarding the legal status of parties during interlocutory periods to advise clients on the tax implications of divorce settlements. Later cases would need to consider revisions to the tax code and parallel changes to state divorce laws. The case highlights the importance of understanding the interplay between federal tax law and state family law. This ruling provides certainty in tax planning for divorcing couples in states with similar interlocutory decree provisions.

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