***21 T.C. 1063 (1954)***

Alimony payments made under a written agreement subsequent to a divorce decree are deductible if the agreement is a direct revision of a prior agreement that was incident to the divorce, even if the revised agreement is not explicitly mentioned in the decree.

**Summary**

In *Walsh v. Commissioner*, the U.S. Tax Court addressed whether alimony payments made by a husband to his former wife, pursuant to a written agreement executed after the divorce decree, were deductible under the Internal Revenue Code. The court held that the payments were deductible because the post-divorce agreement was a revision of an earlier agreement entered into in contemplation of the divorce, and thus, was considered "incident to the divorce" even though not incorporated into the decree. The court further determined that payments made for life insurance premiums on the husband's life, where the wife held only a contingent interest, were not deductible. Finally, the court clarified that when the payments were made from community income, the husband could only deduct his community one-half.

**Facts**

Raoul Walsh and Miriam Cooper Walsh divorced in 1928, with no alimony provisions in the final decree. Prior to the divorce, in 1927, they had entered into a written agreement for alimony payments. This agreement was not incorporated into the divorce decree. Subsequent agreements in 1934 and 1941 modified the payment terms. The 1941 agreement, which provided for weekly payments and life insurance premiums, was the basis for the tax dispute. Raoul made alimony payments from community income. The IRS disallowed deductions for these payments and the life insurance premiums paid by Raoul, leading to the tax court case.

**Procedural History**

The Commissioner of Internal Revenue determined income tax deficiencies for Raoul Walsh. Walsh petitioned the U.S. Tax Court to challenge these deficiencies, asserting that the alimony payments were deductible. The Tax Court ruled on the issue of jurisdiction and the deductibility of alimony payments and life insurance premiums.

**Issue(s)**

1. Whether the U.S. Tax Court had jurisdiction over the 1944 tax year given that the tax deficiency had already been paid prior to the notice of deficiency.

2. Whether the payments made by petitioner in 1945 to his former wife, Miriam, were deductible under section 23 (u) of the Code.

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3. Whether the life insurance premiums paid by the petitioner for policies on his own life, where his former wife had a contingent interest, were deductible as alimony.

**Holding**

1. No, the Tax Court lacked jurisdiction for 1944 because the tax had been paid before the deficiency notice was issued.

2. Yes, the payments made by petitioner to his former wife were deductible, because the 1941 agreement, although made after the divorce, was a revision of the original 1927 agreement, which was incident to the divorce.

3. No, the life insurance premiums were not deductible as alimony.

**Court’s Reasoning**

The court first addressed the jurisdictional issue, stating that a valid deficiency notice is a prerequisite for its jurisdiction and that because the tax for 1944 was paid before the notice, the notice was invalid. The court then turned to the primary issue of deductibility, which hinged on whether the 1941 agreement was

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