25 T.C. 1154 (1956)

Payments made under a decree for support where separation exists in fact but not legally sanctioned by a separate maintenance decree, and installment payments for property settlement in a divorce decree, are not considered deductible alimony under Section 22(k) of the 1939 Internal Revenue Code.

Summary

In *Keleher v. Commissioner*, the Tax Court addressed whether payments made by Mr. Keleher to his wife were deductible as alimony under the 1939 Internal Revenue Code. The case involved two types of payments: (1) weekly payments under a decree for 'maintenance' issued during separation but before divorce, and (2) weekly payments preceding a lump-sum property settlement in a divorce decree. The court held that neither type of payment qualified as deductible alimony. The pre-divorce payments were deemed support payments not made under a 'separate maintenance' decree as defined by tax law, and the divorce-related payments were considered installment payments of a property settlement, not periodic alimony. Thus, Mr. Keleher could not deduct these payments from his income.

Facts

1. John and Anna Keleher separated in 1946 after Anna removed a substantial amount of money from their joint safety deposit boxes.

2. In 1947, Anna sued for 'limited divorce and/or maintenance.' John counterclaimed for divorce.

3. In 1949, the court dismissed Anna's divorce claim and John's counterclaim but ordered John to pay Anna $100 per week for maintenance.

4. In 1949, Anna filed a second suit for limited divorce; John sued for absolute divorce.

5. In 1950, the court dismissed Anna's second divorce suit and granted John an absolute divorce.

6. The divorce decree ordered John to pay Anna a $60,000 lump-sum property settlement and $100 weekly until the decree became final, these weekly payments to be deducted from the lump sum.

7. John deducted the payments made to Anna in 1949 and 1950 as alimony.

8. The Commissioner of Internal Revenue disallowed these deductions.

Procedural History

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1. The Commissioner of Internal Revenue determined deficiencies in John Keleher's income tax for 1949 and 1950 due to disallowed alimony deductions.

2. Keleher petitioned the Tax Court to contest the Commissioner's determination.

3. The Tax Court issued its opinion in favor of the Commissioner, upholding the disallowance of the deductions.

Issue(s)

1. Whether the weekly payments made to Anna in 1949 and early 1950 under the 1949 'maintenance' decree constituted payments under a decree of 'separate maintenance' as defined by Section 22(k) of the Internal Revenue Code of 1939, and thus deductible by John under Section 23(u).

2. Whether the weekly payments made to Anna in 1950, preceding the final divorce decree and related to the lump-sum property settlement, constituted 'periodic payments' or 'installment payments' under Section 22(k) of the Internal Revenue Code of 1939, and thus deductible by John under Section 23(u).

Holding

1. No, because the 1949 decree was not a decree of 'separate maintenance' in the tax law sense, as it did not legally sanction the separation but merely enforced the husband's support obligation during a factual separation. Therefore, these payments are not deductible.

2. No, because the weekly payments related to the $60,000 lump-sum property settlement were considered 'installment payments discharging a part of an obligation the principal sum of which is, in terms of money or property, specified in the decree,' and thus are explicitly excluded from being considered 'periodic payments' deductible as alimony under Section 22(k).

Court's Reasoning

The court reasoned that for separate maintenance payments to be deductible under Section 22(k), they must be made under a decree that legally recognizes or sanctions the separation. The 1949 decree, while ordering maintenance payments, explicitly dismissed Anna's claim for limited divorce, meaning it did not legally sanction the separation. The court stated, "It is clear to us that such decrees merely enforce the family obligation of support on the part of the husband arising through the marital relationship where a separation or desertion has taken place *in fact* and not where the *right* to separation has been determined by a judgment or decree." Therefore, these payments were akin to general support obligations, not deductible alimony.

Regarding the payments under the 1950 divorce decree, the court pointed to the

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explicit language of Section 22(k) which excludes "[i]nstallment payments discharging a part of an obligation the principal sum of which is, in terms of money or property, specified in the decree" from being considered periodic payments. The $60,000 lump sum was a specified principal sum, and the weekly payments were installments against this sum. The court noted the Court of Appeals had found the lump sum to be a property division, not alimony. Thus, these payments were also non-deductible installment payments of a property settlement, not periodic alimony.

Practical Implications

Keleher clarifies the distinction between deductible separate maintenance payments and non-deductible support payments during separation, as well as the difference between periodic alimony and non-deductible property settlement installments in divorce cases for tax purposes under the 1939 IRC (and similar provisions in subsequent tax codes). For legal practitioners, this case highlights the critical importance of the specific legal basis and wording of court decrees in separation and divorce regarding payment obligations to ensure the intended tax consequences. A decree must explicitly grant a legal separation (limited divorce) for payments to qualify as deductible separate maintenance. Furthermore, labeling payments as 'periodic' is insufficient if they are tied to a specified principal sum in a property settlement. This case emphasizes that the substance of the payment, as determined by the decree's legal effect and relationship to marital rights and property, governs its tax treatment, not merely its label.

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