*26 T.C. 827 (1956)*

Alimony payments made after remarriage are not deductible if the obligation to pay arises from an agreement made to facilitate the remarriage, rather than an agreement incident to the divorce.

**Summary**

In 1946, Hans Hollander and Idy Hollander divorced. Their property settlement agreement, incorporated into the divorce decree, specified alimony payments that would cease upon Idy's remarriage. In 1948, when Idy wished to remarry, but the prospective spouse was less financially secure, Hans entered into a new agreement to continue payments even after her remarriage. The U.S. Tax Court held that the payments made after Idy remarried were not deductible as alimony because they were not made under the original divorce-related agreement, but rather under a new agreement entered into to facilitate Idy's remarriage. The court focused on the substance of the agreements and determined the payments were not in discharge of an obligation arising from the marital relationship as required by the relevant tax code.

**Facts**

Hans and Idy Hollander divorced in June 1946. Prior to the divorce, in March 1946, they signed a property settlement agreement that provided alimony payments to Idy until her death or remarriage. This agreement was incorporated into the divorce decree. In 1948, Idy expressed her desire to remarry, but her intended spouse was of limited financial means. To enable her remarriage, Hans entered into a second agreement in March 1948, agreeing to continue alimony payments even after her remarriage. Idy remarried shortly thereafter. Hans made payments to Idy in 1948 and 1949. Hans claimed the alimony payments as deductions on his income tax returns for those years, but the Commissioner disallowed the deductions for payments made after Idy remarried.

**Procedural History**

The Commissioner of Internal Revenue determined deficiencies in Hans Hollander's income tax for 1948 and 1949, disallowing the claimed alimony deductions for payments made after Idy's remarriage. The Hollanders petitioned the United States Tax Court, challenging the Commissioner's determination.

**Issue(s)**

1. Whether payments made by Hans Hollander to Idy Hollander after her remarriage were deductible as alimony under Section 23(u) of the Internal Revenue Code of 1939.

**Holding**

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1. No, because the post-remarriage payments were not made under a written agreement incident to the divorce, but under an agreement incident to Idy's remarriage.

**Court's Reasoning**

The court examined the relevant provisions of the Internal Revenue Code, specifically Section 23(u) regarding alimony deductions and Section 22(k) regarding the inclusion of alimony in gross income. These sections allow deductions for alimony payments that are includible in the recipient's income under the statute. The court found that the critical factor was whether the payments were made pursuant to an agreement that was "incident to" the divorce. The original 1946 agreement met this criterion because it was entered into in contemplation of the divorce. However, the court found that the 1948 agreement was not incident to the divorce, but rather to Idy's subsequent remarriage. The 1946 agreement specifically stated that alimony payments would cease upon remarriage. The court determined the new agreement was created to allow for the remarriage of the former spouse, and not as a modification of the terms of the original divorce, and therefore not deductible. The court distinguished the case from precedent which considered the issue of whether a "continuing obligation" for support was in place to be the driving factor. Here, the original agreement provided the obligation would terminate at remarriage.

**Practical Implications**

This case clarifies the scope of what constitutes a deductible alimony payment under the tax code. It emphasizes that the key is the nexus between the payment and the divorce. The payments must be made under a decree of divorce or a written agreement "incident to" the divorce. Agreements made after the divorce, particularly those designed to facilitate a subsequent event (like remarriage), do not qualify, even if they relate to the initial divorce agreement. Attorneys should carefully draft divorce and separation agreements, including provisions for potential modifications, and should advise clients on the tax implications of any post-divorce agreements. Furthermore, this case reminds practitioners that the substance of an agreement, not just its form, is critical when determining whether it triggers a certain tax result.

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