Cothran v. Commissioner, 57 T. C. 296 (1971)

Payments designated as alimony are fully taxable unless the decree specifically allocates a portion for child support.

Summary

Josephine D. Cothran received monthly payments from her former husband under a 1965 decree that did not specify allocations for child support. The Tax Court held that these payments were taxable as alimony under section 71(a)(1) because the decree did not "fix" any portion as child support under section 71(b). However, the court allowed an exclusion for one-half of the payments Cothran made on a co-owned property, as these payments benefited her ex-husband's equity. The court also limited Cothran's deductions for interest and taxes on the property to one-half of the total paid.

Facts

Josephine D. Cothran and Charles H. Cothran, Jr. were married in 1948 and separated in 1962. In 1962, Josephine initiated an alimony action, and a decree was issued requiring Charles to pay $160 monthly for her and their children's support. In 1965, this was modified to $310 per month, with Josephine required to make mortgage, tax, and insurance payments on their co-owned residence. Charles obtained an absolute divorce in 1965, converting their tenancy by the entirety into a tenancy in common. In 1970, the court acknowledged an error in the 1965 decree for not allocating payments between alimony and child support but did not retroactively correct it.

Procedural History

In 1970, the IRS issued a notice of deficiency to Josephine for the tax years 1966 and 1967, asserting that the full $310 monthly payments were taxable alimony. Josephine petitioned the U. S. Tax Court, arguing that two-thirds of the payments were for child support and thus not taxable. The Tax Court held that the payments were taxable as alimony but allowed an exclusion for one-half of the payments Josephine made on the co-owned property.

Issue(s)

1. Whether the monthly payments received by Josephine from Charles under the 1965 decree constituted taxable alimony under section 71(a)(1).
2. Whether Josephine could exclude any portion of the payments as child support under section 71(b).
3. Whether Josephine could exclude from her income the payments she made on the co-owned property.
4. Whether Josephine was entitled to deduct the full amount of interest and taxes paid on the co-owned property.

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Holding

1. Yes, because the payments were made pursuant to a decree of separate maintenance and were for the support of Josephine and the children without specific allocation for child support.
2. No, because the decree did not "fix" any portion of the payments as child support under section 71(b).
3. Yes, because one-half of the payments made on the co-owned property benefited Charles' equity, and thus were not taxable to Josephine.
4. No, because Josephine could only deduct one-half of the interest and taxes paid on the co-owned property, reflecting her ownership interest.

Court's Reasoning

The court applied section 71(a)(1), which taxes payments made under a decree of separate maintenance as alimony. It rejected Josephine's argument that two-thirds of the payments were for child support, citing section 71(b) and the Supreme Court's decision in *Commissioner v. Lester*, which requires the decree to explicitly "fix" a portion for child support. The court noted the 1970 order's acknowledgment of the 1965 decree's error but emphasized that it did not retroactively correct the allocation. The court also considered the payments made on the co-owned property, excluding one-half from Josephine's income based on *Rev. Rul. 62-39* and prior cases like *James Parks Bradley* and *Hyde v. Commissioner*, as these payments benefited Charles' equity. Finally, the court limited Josephine's deductions to one-half of the interest and taxes, reflecting her ownership interest.

Practical Implications

This decision underscores the importance of clear allocation of payments between alimony and child support in divorce decrees to avoid tax disputes. Attorneys should ensure that decrees explicitly "fix" amounts for child support to allow for exclusions under section 71(b). The ruling also clarifies that payments made on co-owned property can be partially excluded from income if they benefit the other co-owner's equity. This case has influenced subsequent cases involving the tax treatment of alimony and property payments, reinforcing the strict interpretation of section 71(b). Legal practitioners should advise clients on the tax implications of divorce decrees and the potential for retroactive corrections of errors in allocation.

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