***Bogard v. Commissioner, 59 T. C. 97 (1972)***

A written agreement providing support in the context of an actual separation, even without an explicit separation clause, qualifies as a "written separation agreement" under Section 71(a)(2) of the Internal Revenue Code.

**Summary**

In Bogard v. Commissioner, the U. S. Tax Court ruled that a written agreement between spouses Howard and Bridget Bogard, executed during their separation but not explicitly mentioning separation, constituted a "written separation agreement" under Section 71(a)(2). This allowed Bridget to include periodic payments from Howard in her gross income and Howard to deduct these payments. The court emphasized that the actual separation of the parties, rather than a formal declaration within the agreement, was sufficient to qualify the agreement under the tax code. This decision highlights the importance of actual separation over formalities in defining such agreements for tax purposes.

**Facts**

Howard and Bridget Bogard, married in 1951, faced marital problems leading to a separation in July 1965. On July 29, 1965, they signed an agreement detailing financial support for Bridget, including monthly payments and responsibility for certain expenses, but it did not mention their separation. They lived separately until their divorce in August 1967. Howard made payments to Bridget in 1966 and 1967, which he claimed as deductions on his tax returns, while Bridget did not include these payments in her gross income.

**Procedural History**

The Commissioner of Internal Revenue determined deficiencies in Howard and Bridget's federal income taxes for 1966 and 1967. The cases were consolidated and presented to the U. S. Tax Court to determine if the payments made by Howard to Bridget under their agreement should be included in her gross income under Section 71(a)(2) and deductible by Howard under Section 215(a).

**Issue(s)**

1. Whether the written agreement between Howard and Bridget Bogard, executed during their separation but not explicitly stating their separation, qualifies as a "written separation agreement" under Section 71(a)(2) of the Internal Revenue Code?

**Holding**

1. Yes, because the agreement was executed in the context of their actual and continuous separation, it qualifies as a "written separation agreement" under

Section 71(a)(2), making the periodic payments includable in Bridget’s gross income and deductible by Howard.

**Court’s Reasoning**

The court reasoned that Section 71(a)(2) requires a written agreement of support in the context of an actual separation, which may be shown by extrinsic evidence. The court rejected the argument that the agreement must explicitly state the parties’ intention to live separately, noting that such a requirement would elevate form over substance. The court cited legislative history indicating Congress’s intent to treat support payments as income to the recipient and deductible to the payer, emphasizing administrative convenience and clarity in written terms of support. The court also distinguished this case from a revenue ruling that required a formal agreement to separate, finding such a requirement to be unduly harsh and contrary to Congressional intent. The court concluded that the Bogards’ agreement, executed during their separation, met the statutory requirements for a written separation agreement.

**Practical Implications**

This decision clarifies that for tax purposes, a written agreement providing support during an actual separation can be treated as a “written separation agreement” under Section 71(a)(2), even if it does not explicitly state the parties’ intention to separate. This ruling has implications for how similar cases are analyzed, emphasizing the importance of actual separation over formal declarations in such agreements. Legal practitioners should advise clients that informal agreements can have tax implications, provided they are written and executed in the context of a separation. This case also underscores the need for clear documentation of support terms in separation scenarios to ensure proper tax treatment. Subsequent cases have applied this ruling, reinforcing the principle that actual separation, rather than formal language, is key to determining the tax treatment of support payments under written agreements.