

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
BENJAMIN DAVIDSON )

Appearances:

For Appellant: Neil D. McCarthy,  
Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel  
Hebard P. Smith, Associate Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Benjamin Davidson to a proposed assessment of additional personal income tax in the amount of \$24.50 for the year 1946. A concession by the Respondent as to one of the two issues originally in controversy has, however, reduced the amount in dispute to \$2.00.

The remaining issue relates to the disallowance as a deduction by Appellant of the sum of \$1,700 paid by him to his former wife during the year 1946 under a property settlement agreement executed on June 19, 1946, and incorporated into the interlocutory decree of divorce between the parties entered on July 31, 1946. The agreement provided, among other things, for the custody of the children of the marriage and for the division of the property of the parties. In addition, paragraph "Seventh," under which the \$1,700 was paid, read as follows:

"The husband agrees in consideration of' the premises and mutual covenants and agreements herein contained to pay to the wife the sum of, Two Hundred Fifty (\$250.00) dollars per month for a period of five (5) years, for the support and maintenance of herself and the minor children, beginning on the first day of July, 1946 and continuing in monthly installments on the first day of each and every month thereafter for said five year period. However, if the wife shall remarry at any time within the five year period then thereafter the said monthly installment is to be reduced to the sum of One Hundred Twenty-five (\$125.00) dollars per month, payable on the first day of each and every month thereafter, for the support and maintenance of the said minor children of the parties hereto, unless the said minor daughter marries before she reaches the age of twenty-one years."

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The question presented for our consideration is whether the monthly payments totalling \$1,700 made by Appellant to his former wife under the property settlement agreement and divorce decree were, as asserted by the Appellant, periodic payments within the meaning of Sections 17104 to 17107 of the Revenue and Taxation Code and therefore deductible under Section 17317.5 or, as contended by the Respondent, installment payments within Section 17106 ~~of~~ the Code and accordingly nondeductible. The latter Section provided as follows:

"17106. Installment payments discharging a part of an obligation the principal sum of which is, in terms of money or property, specified in the decree or instrument shall not be considered periodic payments for the purposes of Sections 17104 and 17105."

This Section, enacted in 1943, was copied from Section 22(k) of the Federal Internal Revenue Code.

Appellant contends that the monthly payments, though to be made for only five years, were not installment payments under Section 17106 because the principal sum was not specified in the decree. The Federal Tax Court in construing the identical language of Section 22(k) has held, however, that there is no material difference between a decree or instrument in which the total amount is expressly set out and one in which it is necessary to multiply weekly or monthly payments by the number of weeks or months over which they were to be paid in order to determine the principal sum specified. Estate of Frank P. Orsatti, 12 T.C. 188; Frank R. Casey, 12 T.C. 224.

The taxpayer also contends that the payments were not installment payments under Section 17106 because, inasmuch as the agreement and decree provide for the reduction of payments in the event of certain contingencies (death or remarriage of the wife), no principal sum has been specified. Here, too, the Tax Court has determined to the contrary and has held that the word "obligation" in the corresponding language of Section 22(k) does not refer only to an absolute and unconditional obligation, but also includes obligations subject to contingencies where those contingencies have not arisen and have not voided the obligation during the taxable years. J. B. Steinel, 10 T.C. 409; Estate of Frank P. Orsatti, *supra*.

Appellant argues that the Tax Court decisions are erroneous; that inasmuch as the great majority of divorce decrees provide for alimony payment for a limited time and usually less than ten years, the effect of the interpretation of Sections 17104 - 17106 given by the Franchise Tax Board is to make nondeductible all periodic alimony payments which are payable for a period of less than ten years; and that this was not the intent of the Legislature. He presents no authority in support of these conclusions. In Meanley v. McColgan, 49 Cal. App. 2d 203, 209, on the other hand, the Court, in construing a provision of the

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California Personal Income Tax Law copied from the Federal Act, asserted that decisions under the Federal statute rendered subsequent to the adoption of the State statute, while not binding on the State, are entitled to great weight in interpreting identical language appearing in the State statute and pointed out that there is strong public policy in favor of interpreting similar statutes dealing with the same subject matter in a similar fashion.

In view of these considerations we are of the opinion that the monthly payments involved herein are installment payments within the meaning of Section 17106 and, accordingly, are not deductible by the Appellant under Section 17317.5. This determination renders unnecessary consideration of the nondeductibility under Section 17105 of \$125 of each monthly payment as a payment for the support of the minor children of the husband.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Benjamin Davidson to a proposed assessment of additional personal income tax in the amount of \$24.50 for the year 1946 be and the same is hereby modified; said action is hereby reversed as respects \$22.50 of said proposed assessment of additional tax; in all other respects said action is hereby sustained.

Done at Sacramento, California, this 27th day of March, 1952 by the State Board of Equalization.

J. L. Seawell, Chairman  
Wm. G. Bonelli, Member  
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary