



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GERALD KING)

Appearances:

For Appellant: Trippet,, Newcomer, Yoakum &
Thomas and Robinson and Powers,
Attorneys at Law

For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate
Tax 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 Gerald King to a proposed assessment of additional personal income tax in the amount of \$526.36 for the year 1945.

On June 29, 1944, following the filing of an action for divorce, Appellant and his then wife, Mrs. Neoma King, entered into a property settlement agreement. On August 4, 1944, an interlocutory decree of divorce was entered. Incorporated in the decree were the following provisions:

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the property settlement agreement heretofore entered into by and between the parties hereto on June 29th, 1944 be and the same is hereby approved, and each of the parties thereto is hereby ordered to fully perform and fulfill each and all of the duties and obligations thereunder.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant shall pay to the plaintiff the sum of Two Hundred Dollars (\$200.00) per week for a period of five (5) years from the date of said property settlement agreement to wit, June 29, 1944 and that in the event plaintiff remarries before the expiration of said 5-year period defendant shall pay to plaintiff the sum of Fifty Dollars (\$50.00) per week from the date of such remarriage to the end of said 5-year period."

The sole question for our consideration is whether weekly payments in the aggregate amount of \$10,400 made by Appellant to his former wife in 1945 under the property settlement agreement and interlocutory decree were periodic payments within the meaning of Sections 17104 and 17107 of the Revenue and Taxation Code and, therefore, deductible under Section 17317.5 or installment payments within Section 17106 of the Code and, accordingly, nondeductible. The latter Section provides as follows:

"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 17105.09

The United States Tax Court, in construing the similar provision of Section 22(k) of the Internal Revenue Code, has held that there is no material difference between a decree in which the total amount is expressly set out and one in which it is necessary to multiply the weekly payments by the number of weeks over which they are to be paid in order to determine the principal sum. In either situation the payments are regarded as installment payments discharging an obligation the principal sum of which is specified. Estate of Frank P. Orsatti, 12 T.C. 188; Frank R. Casey, 12 T.C. 224. This is true even though the obligation is subject to the contingencies of death or remarriage. J. B. Steinel, 10 T.C. 409; Frank P. Orsatti, supra.

The Appeal of Benjamin Davidson, decided March 27, 1952, involved facts substantially similar to those presented here. In that matter we sustained the action of the Franchise Tax Board in disallowing the claimed deduction. On

