

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal)
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)
FRANCES B. WILLSON)

Appearances:

For Appellant: Fabius T. Finch, Attorney at Law

For Respondent: **Hebard** P. Smith, Associate Tax Counsel

O P I N I O N

This appeal by Frances B. **Willson** is made pursuant to Section **18593** of the Revenue and Taxation Code from the action of the Franchise Tax Board on her protest to a proposed **asses-**ment of additional personal income tax for the year 1948 in the amount of **\$144.00**.

Appellant married Joseph S. Civelli on July 29, 1941. In the latter part of 1945 the two decided to separate and they entered into a property settlement agreement in which they settled their rights in the **community** property and "**all** rights to support and maintenance." Under the agreement Appellant was to receive \$1,300 for expense money pending the divorce, a fur coat, \$30,000 after she secured the divorce and \$500 per month so long as Mr. Civelli was employed by the Emporium or by another employer at similar compensation. She was also to be named beneficiary in a \$10,000 group term life insurance policy carried by Mr. Civelli.

Appellant obtained a divorce in Nevada on February 1, 1946, and the property settlement agreement was incorporated in the decree of divorce. On April 23, 1946, she married **Ralph W. Willson**. **Mr. Civelli** thereupon refused to pay her **\$500 per** month as required by the agreement and Appellant brought suit in the Superior Court of San Mateo County for said payments. Although Mr. Civelli contended that these payments represented alimony and that therefore under Civil Code Section 139 the duty to pay them stopped upon Appellant's remarriage, the court held that the agreement remained enforceable and gave judgment for Appellant for past due installments in the amount of **\$12,500**. It is this amount which the Franchise Tax Board is requiring Appellant to include in her income for the year **1948**.

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The Franchise Tax Board contends that this sum must be included ~~in~~ her income under Section 17104 of the Revenue and Taxation Code (now Sections 17081 and 17083(b) which read:

"In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regular intervals) received subsequent to such decree in discharge of, or attributable to property transferred (in trust or otherwise) in discharge of, a legal obligation which because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written **instrument** incident to such divorce or separation shall be includible in the **gross** income of **such** wife. Such amounts received as are attributable to property so transferred shall not be **includible** in the gross income of such husband,"

Appellant, on the other hand, argues that the payments in question were **not** alimony and, accordingly, were not such payments as **are made includible** in the wife's income by that section.

Appellant's argument seems to be that if her remarriage did not cut off the duty to pay, ~~then~~ the monthly payments are not taxable to her under Section 17104 of the Revenue and Taxation Code. But this is not necessarily so. in California integrated agreements for the division of property and the support of the wife will not be modified subsequently by the courts. The periodic payments under such agreements may, nevertheless, constitute payments in lieu of support, rather than ~~the~~ division of property, See Lane v. Bradley 124 Cal. App, 2d 661, 665 (1954) where the court said: "To take from such periodic payments the character of modifiable alimony it is not essential that the wife has received more or less than her share of the community property and that that fact has influenced the amount of the periodic payments allowed **her**."

The contention of Appellant has twice been determined adversely to her by the Federal courts. In Brown v. U. S., 121 Fed. Supp, 106, the Federal District Court held **that the** payments here in question were in discharge of marital obligations and deductible by Mr. Civelli under Sections 22(k) and 23(u) of the Internal Revenue Code, Similarly, in Estate of Frances B. Willson, T. C. Memo., Docket No. 56434, the Tax Court determined that the payments were includible

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in the gross income of Appellant, In the latter decision the court stated:

"Neither the decree of the divorce court nor the judgment of The Superior Court of the State of California in and for the County of San Mateo expressly categorizes the \$500 monthly payments called for by the decree of the former. Viewed in the light of the general rule, however, we think both documents are sufficiently definitive that a conclusion is required that such payments constitute the periodic payments in discharge of a marital obligation of Civelli to support the decedent."

There is little we can add to this. It should be noted, however, that Appellant received a substantial sum at the time of the divorce which, it would appear, was adequate to compensate her for whatever interest she had in the community property. For this reason and those considered by the Federal courts, we conclude that the action of the Franchise Tax Board must be upheld.

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 upon the protest of Frances B. Willson to a proposed assessment of additional personal income tax in the amount of \$144.00 for the year 1948 be and the same is hereby sustained,

Done at Los Angeles, California, this 25th day of June, 1957, by the State Board of Equalization.

Robert E. McDavid, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

George R. Reilly, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary