

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SARA J. PALEVSKY)

For Appellant: Larry E. Martindale
Certified Public Accountant

For Respondent: David M. Hinman
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Sara J. Palevsky against proposed assessments of addktional personal income tax in the amounts of \$565.46, \$857.89, \$755.69, and \$943.93 for the years 1971, 1972, 1973, and 1974, respectively.

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The question presented is whether certain payments **appellant** received from her ex-husband pursuant to a property settlement agreement constituted gross income for tax purposes.

On March 24, 1971, an interlocutory judgment of dissolution of the marriage of appellant and Max Palevsky was filed in Los Angeles County Superior Court. Incorporated in the judgment was a stipulated property settlement agreement containing separate provisions dividing the spouses' community property and providing for spousal support. According to the agreement, Max was to pay appellant **\$2,500.00** a month for spousal support, consisting of **\$2,083.33** per month for general support and \$416.66 per month for appellant's medical care. Max also agreed, with respect to the monthly payments of **\$2,083.33** for general support, that he would claim an income tax deduction for only two-thirds of such payments.

In accordance with the agreement, Max paid appellant **\$2,500.00** per month from March 1, 1971, through the end of 1974. Although appellant received a total of **\$25,000.00** in 1971 and **\$30,000.00** in each of the years 1972-1974, she reported as income only **\$18,056.00** for 1971 and **\$21,667.00** for each of the years 1972-1974. After auditing appellant's returns for all four years, respondent determined that the full amount of the payments appellant received from Max in each year were **includible** in her income because the payments constituted "periodic payments" within the meaning of Revenue and Taxation Code section 17081. This determination led to the deficiency assessments now in question.

Revenue and Taxation Code section 17081, subdivision (a), provides, in relevant part:

If under a decree of dissolution ..., one spouse is to make periodic payments, to the other spouse, the gross income of **the** spouse receiving such payment shall include such payments ... received after such decree in discharge of ... a legal obligation which, because of the marital or family relationship, is imposed on or incurred by the other spouse under the decree or under a written instrument incident to such divorce

Although appellant contends that the unreported one-third of Max's general support payments was intended to be a division of the spouses' community property, it is clear that this was not the case. The property settlement agreement clearly denominated all of these payments as spousal support payments, and provided that they would cease if appellant

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died or remarried. Such a termination provision indicates that the payments were in recognition of Max's obligation to support appellant, and it establishes **that the** monthly payments were "periodic payments" rather than installment payments in discharge of a specific principal sum.

(Appeal of Miriam Goldenberg, Cal. St. Bd. of Equal., Jan. 4, 1966; see also Appeal of Amelia L. MacConaughy, Cal. St. Bd. of Equal., Oct. 7, 1952; cf. Appeal of Joel G. and Ruth I. Cleugh, et al., Cal. St. Bd. of Equal., April 6, 1977.)

Our conclusion that the full amount of Max's payments constituted "periodic payments" taxable to appellant is not altered by the portion of the agreement whereby Max agreed not to claim an income tax deduction for one-third of his general support payments. (Under Revenue and Taxation Code section 17263, Max is entitled to deduct support payments to appellant if they constitute gross income to her **under** section 17081.) The dissolution decree which incorporates this agreement does not purport to require the Franchise Tax Board to relieve appellant from a portion of her legitimate tax liability, but simply provides that Max will not "claim" a deduction otherwise allowed him **by** the Revenue and Taxation Code. (See Appeal of Fred and Joan Wiese, Cal. St. Bd. of Equal., Oct. 7, 1974; Appeal of Paul A. Pflueger, Jr., Cal. St. Bd. of Equal., March 26, 1974.) Such an agreement is ineffective to override the substantive provisions of the tax law.

For the reasons expressed above, respondent's action in this matter will be sustained.

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,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 1.8595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Sara J. Palevsky against proposed assessments of additional personal income tax in the amounts of \$565.46, \$857.89, \$755.69, and \$943.93 for the years 1971, 1972, 1973, and 1974, respectively, be and the same is hereby sustained.

Done at Sacramento, California, **this 16th day of**
August , 1979, by the State Board of **Equalization.**

Helen J. Bennett, Chairman
Evelyn M. Bennett, Member
John W. Bennett, Member
Robert H. Bennett, Member
_____, Member