

Anneal of Barry S. Bleeck

Helen \$500 a month for her support, the payments to begin "upon the first day of the month following entry of the Interlocutory Judgment." By oral agreement with his wife, however, appellant began in February to make these monthly payments of \$500 each; When the Interlocutory Judgment was finally entered on November 16, 1966, it ordered appellant to pay \$500 a month "commencing October 1, 1966, ..." Respondent allowed appellant to deduct the payments he made in October, November, and December, but determined that appellant could not deduct the payments he voluntarily made from February through September, 1966.

Section 17263 of the Revenue and Taxation Code allows a husband to deduct support payments to his wife if those payments are includible in the wife's gross income. Section 17081 sets forth the circumstances under which such payments constitute gross income to the wife. In general, support payments are taxable to the wife if she is separated from her husband and the payments are received:-

- (a) under a decree of divorce or separate maintenance or written instrument incident thereto; or
- (b) under a written separation agreement; or
- (c) under a decree requiring the husband to make the payments for the wife's support or maintenance.

Appellant contends that the payments in question were made pursuant to a written separation agreement within the meaning of subdivision (b) of section 17081, or, in the alternative, pursuant to a decree for support within the meaning of subdivision (c) of section 17081. Neither contention is tenable.

-The 'record reveals' that the spouses never executed a written separation agreement within the ordinary meaning of that term; Appellant argues, however, that the oral agreement between him and his wife constituted the adoption of the Memorandum Decision as their written separation agreement. We do not think that is enough to satisfy the clear requirement of the statute. Since deductions may be allowed or withheld by the Legislature as it sees fit, they are to be narrowly construed against the taxpayer.' (Great Western Financial Corp. v. Franchise Tax Board, 4 Cal. 3d 1.). Under section 17081, subdivision (b), the absence of a writing executed by the spouses is fatal to appellant's contention. Appellant's agreement to pay his

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wife support prior to October 1, 1966, was an oral agreement which does not meet the requirements of section 17081. (See LeRoy Keebler, T.C. Memo., Sept. 29, 1969.)

Subdivision (c) of section 17081 is of no greater help to appellant. In order for payments to be includible in the wife's gross income under that subdivision, the payments must be received under a decree requiring the husband to make them for her support or maintenance. Neither the Memorandum Decision nor the Interlocutory Judgment required appellant to make payments prior to October 1, 1966. The payments made prior to the date are thus not includible in Helen's income under subdivision (c) and, hence, are not deductible by appellant.

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 Barry S. Bleeck against a proposed assessment of additional personal income tax in the amount of \$213.79 for the year 1966, is modified in accordance with respondent's concession. In all other respects the action of the **Franchise Tax** Board is sustained.

Done at Sacramento, California, this 13th day of September, 1971, by the State Board of Equalization.

, Chairman
 , Member
 , Member
 , Member
M e m b e r

ATTEST:

, Secretary