



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of

AMELIA L. MacCONAUGHEY

Appearances:

For Appellant: Gaylord & Gaylord, Attorneys at Law

For Respondent: Burl D. Lack, Chief Franchise Tax 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 Commissioner (now succeeded by the Franchise Tax Board) on the protests of Amelia L. MacConaughey to proposed assessments of additional personal income tax in the amounts of \$60.15, \$74.79 and \$58.98 for the years 1943, 1944 and 1945, respectively,

Appellant was formerly the wife of H. E. MacConaughey. On January 7, 1931, motivated by the fact that she was about to file suit for divorce, she and her former husband entered into a written agreement "to settle and adjust their property rights and all financial issues between them without litigation ***" which was to be effective in the event a decree of divorce should be awarded either one. The agreement provided for the allotment of designated community property to each of the parties, the husband receiving property stated to have a net value of approximately \$54,000 and the wife receiving property stated to have a net value of approximately \$77,500. One of the principal items of property passing to Mr. MacConaughey was stock in a company of which he was vice president and sales manager. The agreement also provided that Mr. MacConaughey was to pay the premiums on a \$25,000 insurance policy on his life, the Appellant to be named as beneficiary, or in the event of her predecease, the children, or the survivor of them, to be the beneficiaries thereunder. It provided miscellaneous other benefits for Appellant, and provided for the support and maintenance of the children of the parties. In addition, paragraphs 6 and 8 of the agreement read as follows:

"6. As a part of the property settlement hereby made, and in consideration of the property settlement hereby accepted by second party, and of the waivers on her part herein contained, first party agrees to pay to second party the sum of Five Hundred Dollars (\$500.00) per month for the term of her natural life, or until her eariier re-marriage, such payments to be made on the first day of each calendar month."

* * * *

"8. Second party shall and does receive the property and rights by this agreement awarded to her in full settlement and satisfaction of all claims and demands existing or to exist in her favor for support or maintenance by first party, and waives for all time all right on her part to claim support or maintenance from him, including the right to claim maintenance, either temporary or permanent, in any actions-at law or in equity, whether for divorce, maintenance or otherwise, which hereafter may be pending between them."

Appellant secured, on the grounds of extreme cruelty, an interlocutory decree of divorce on February 21, 1931, filed in the City and County of San Francisco, State of California, and a final decree of divorce on February 26, 1932. The final decree stated in part as follows:

"IT APPEARING that the parties to this action have, subject to the approval of the Court in the event of the award of an interlocutory decree of divorce to either of them, entered into an agreement dated January 7, 1931, settling their property rights, segregating their community property interests, specifying the present and future property which is to be owned by each of them, respectively, as separate property, fixing payments to be made by defendant to plaintiff as a part of said property settlement, and providing for the future maintenance and support of the children of the parties, and the Court having duly considered said agreement, and it appearing that the same is in all respects just and equitable, and

duly protective of the rights of both parties, and that the property and rights to be received by plaintiff under said agreement are sufficient in amount and value to constitute the share of community property to which she is entitled by law,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED pursuant to and *in* conformity with said interlocutory decree as follows:

1. That said property settlement agreement be and the same is hereby ratified, approved and confirmed in all respects, and is hereby adopted as the judgment and award of this Court as fully for all purposes as if herein set forth at length, and that it is the judgment and decree of this Court that each of the parties to this action perform all and singular the terms of said settlement agreement upon his respective part."

The proposed assessments resulted from the inclusion by the Commissioner in Appellant's gross income in each of the years involved herein of the sum of \$6,000 received by Appellant from her former husband in \$500 monthly payments, pursuant to paragraph 6, *supra*. The single issue for our consideration is whether the monthly payments were received, as contended by Appellant, in settlement of her community property rights or, as contended by the Franchise Tax Board, in discharge of a legal obligation which was incurred by the husband because of his marital relationship, within the meaning of Section 7(k) of the Personal Income Tax Act (now Section 17104 of the Revenue and Taxation Code). 7

Section 7(k) provided in part as follows:

"7(k) 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 *** 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, and such amounts received as are attributable to

property so transferred shall not be
.includible in the gross income of
such husband .***"

Under Section 8(o) of the Act (new Section 17317.5 of the Code) amounts includible in the gross income of the wife under Section 7(k) were deductible by the husband. The Legislature, in enacting Sections 7(k) and 8(o) adopted the identical provisions previously enacted by Congress in Sections 22(k) and 23(u), respectively, of the Internal Revenue Code.

On his returns for the years involved herein Mr. MacConaughy claimed the deduction of the \$500 monthly payments, and the Commissioner allowed the deductions.

Appellant bases her contention that the monthly payments were received in settlement of her community property rights on the language of the agreement and of the decree defining the monthly payments as a part of the property settlement: The Federal Tax Court, however, contrary to Appellant's contention, has not regarded language of this nature as controlling in construing similar agreements for purposes of Section 22(k) of the Internal Revenue Code. Floyd H. Brown, 16 T.C. 623; Thomas E. Hogg, 13 T.C. 361. In the Brown case the agreement incident to the decree of divorce provided that the parties "*** do hereby stipulate and agree that said community estate shall be partitioned and settled upon the following terms, conditions and covenants***" and the first item thereunder was a provision that the husband pay the wife \$500 per month for the term of her natural life. Notwithstanding this language the Court considering the property and rights received by each of the parties under the agreement held that the monthly payments were not in settlement of the community property rights of the wife but were made as alimony or support, includible in the gross income of the wife under Section 22(k), and hence deductible by the husband under Section 23(u). Likewise: in the Hogg case the agreement incident to divorce provided specified monthly payments to the wife for life and in the final paragraph recited that the agreement was "executed in settlement of their property rights." In view of the quoted language it was contended that the monthly payments were not for support, but were consideration passed in a property settlement. Nevertheless, the Court held that the monthly payments were for support of

the wife, includible in her income under Section 22(k) and deductible by the husband under Section 23(u).

Under the agreement involved herein Appellant transferred all her rights in community property having a net value of approximately \$54,000 to Mr. MacConaughy and waived "for all time all right on her part to claim support or maintenance from him." In consideration therefor she received community property valued at \$77,000, the rights as beneficiary under the \$25,000 insurance policy on the life of her husband, miscellaneous other rights and her husband's promise to pay her \$500 monthly until his death or her re-marriage. It is clear that under the agreement Appellant received settlement both of her community property rights and of her support rights. Paragraph 8, supra, expressly states that she received settlement of her support rights. "It would be unrealistic to hold that she gave up this right to support without consideration and that, as (Appellant) contends, everything she received under the agreement was in exchange for her share of the community property." Floyd H. Brown, 16 T.C. 623, 631. The agreement does not state of which rights the monthly payments were in settlement, but the unequal division of the community property in favor of Appellant leads us to conclude that the \$500 monthly payments constituted the consideration for her waiver of support rights. This conclusion appears to be supported by the fact that the monthly payments were to continue until Appellant's death or earlier re-marriage, the same period for which Appellant could have claimed an allowance for support and maintenance under Section 139 of the Civil Code, rather than until a specified sum had been paid.

As authority for her contention that the payments were in consideration of the division of community property, Appellant also relies on Wallace v. Wallace, 136 Cal. App. 488, and a number of other California decisions dealing with the power of the court to modify property settlement agreements containing integrated support and maintenance provisions. Under the decisions such contracts are treated like other property settlement agreements dealing solely with divisions of property and are not subject to modification after the decree without the consent of the parties. Adams v. Adams, 29 Cal. 2d 621. This chain of cases, however, is based upon the general policy that property settlement agreements should be final in order to secure stability of titles (Hough v. Hough, 26 Cal. 2d 605) and, in our opinion, has no bearing upon the construction to be given to Section 7(k), supra, which related solely to the taxation of personal income.

The application of Section 7(k) is not limited, as Appellant contends, to pure alimony payments. Tuckie G. Hessie, 7 T.C. 700. On the contrary, relinquishment of a

present right to support in exchange for a future contractual right to periodic payments as a part of a property settlement agreement is within the scope of that section. Thomas E. Hogg, supra, Where, as here, the property settlement agreement covered both property rights and support rights, an allocation must be made, based on the value of the property transferred to each spouse and the amount of the periodic payments. Floyd H. Brown, supra. Having regard for the entire agreement we think that the monthly payments received by Appellant were in settlement of her rights to support.

Appellant further contends that Tax Court cases have no authority as judicial decisions because of the power of the Commissioner of Internal Revenue to acquiesce or refuse to acquiesce therein. This contention is without merit. The decisions of the Tax Court are essentially judicial in character. Pclham Hall Co. v. Hassett, 147 Fed. 2d 63,66. Under Section 1141 of the Internal Revenue Code the United States Courts of Appeals are authorized to review decisions of the Tax Court "in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury." See also Grace Bros., Inc. v. Commissioner of Internal Revenue, 173 Fed. 2d 170. Inasmuch as Section 7(k), supra, was copied after Section 22(k) of the Internal Revenue Code, decisions under Section 22(k) rendered subsequent to the adoption of Section 7(k), while not binding on the State Courts, are entitled to great weight in interpreting identical language appearing in Section 7(k). Meanley v. McColgan, 49 Cal. App. 2d 203, 209.

In view of the above considerations we must conclude that the Commissioner properly included the monthly payments in Appellant's gross income.

O R D E R

Pursuant to the views 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 Commissioner (now succeeded by the Franchise Tax Board) on the protests of Amelia L. MacConaughy to proposed assessments of additional personal income tax in the amounts of \$60.15, \$74.79 and \$58.98 for the years 1943, 1944 and 1945, respectively, be and the same is hereby sustained.

Done at Los Angeles, California, this 7th day of
October, 1952, by the State Board of Equalization.

_____, Chairman

Wm. G. Bonelli, Member

J. H. Quinn, Member

Geo. R. Reilly, Member .

Thomas H. Kuchel, Member

ATTEST: Dixwell L. Pierce, Secretary