

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 90-167

JAMES B. & JANICE ANDERSON
318 Coffee Road
Russellville, AL 35653,

§

§

Taxpayers.

§

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed income tax against James B. and Janice Anderson for the years 1986 and 1987. The Andersons appealed to the Administrative Law Division and a hearing was conducted on August 23, 1993. CPA Glen Strickland appeared for the Andersons. Assistant counsel Gwen Garner represented the Department.

The issue in dispute in this case is whether a \$70,000.00 lump sum payment made by James B. Anderson (Taxpayer) to his ex-wife in 1986 in lieu of all future alimony is deductible as alimony in the year paid. The Taxpayer concedes that a \$5,000.00 payment in 1985 cannot be deducted in 1986, and also that life insurance premiums paid by the Taxpayer in 1986 and 1987 on a policy on which the ex-wife was a partial beneficiary cannot be deducted in those years.¹

The Taxpayer divorced in 1981 and pursuant to the divorce decree was required to pay his ex-wife alimony of \$1,500.00 per month "until the wife's death or remarriage".

In 1985 the parties agreed that the Taxpayer would pay the ex-

¹ The ex-wife did not own the policy as required for the payments to be deductible. See, IRC Reg. 1.71-1T.

wife a lump sum of \$75,000.00 in lieu of all future alimony payments. The divorce decree was modified accordingly by court order and the Taxpayer was directed to pay \$5,000.00 in November, 1985 and \$70,000.00 within sixty days. The Taxpayer subsequently paid the \$70,000.00 in February, 1986.

The Taxpayer claimed the \$70,000.00 payment as a deduction on his 1986 Alabama return. The Department denied the deduction because (1) the divorce decree did not state that the alimony payments would end with the ex-wife's death (or remarriage) and, (2) lump sum payments cannot be deducted as alimony.

In response, the Taxpayer's representative presented a copy of the original divorce decree at the administrative hearing which stated that the \$1,500.00 alimony payments would stop if the ex-wife died or remarried. Also, the representative cited federal authority indicating that a lump sum alimony payment in lieu of continuing alimony can be deducted as alimony by the payor/spouse. See, Smith v. Commissioner of Internal Revenue, 192 F.2d 841, and Rev. Ruling 58-152, 1958-1 CB32. The Department, after reviewing the above authority, now concedes that the \$70,000.00 payment can be deducted.

The Department is directed to recompute the 1986 assessment by allowing the \$70,000.00 payment as a deduction. The \$5,000.00 payment made in November, 1985 as well as the life insurance premiums were properly disallowed by the Department. The 1987 assessment which is based entirely on the disallowance of the life

insurance premiums is upheld.

The Department is directed to inform the Administrative Law Division of the adjusted amounts due for both years. A Final Order will then be entered setting out the Taxpayers' liability.

Entered on August 25, 1993.

BILL THOMPSON
Chief Administrative Law Judge