

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

DONALD J. ADAY and DIANA M. ADAY,)	
)	
Plaintiffs,)	TC-MD 050739A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs have appealed Defendant’s personal income tax assessment for the 2001 tax year. Plaintiffs appeared and made their arguments. Defendant was represented by Sofia E. Parra, of its staff.

I. STATEMENT OF FACTS

Pursuant to a divorce decree of a court, during the year at issue, Plaintiffs received \$706 each month. The issue in this case is whether or not those payments were periodic payments in the nature of alimony.

Plaintiffs provided the third page of the document “Property Settlement and Child Custody Agreement.” The document issued in 1983. At Paragraph 5, the document specifically recites that neither party shall pay spousal support. Defendant supplied additional pages. Paragraph 8 shows the payments were periodic, in that they were made at monthly intervals over the course of 25 years. Paragraph 9 sets out that the obligation to make the payments ends with the death of the recipient.

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II. ANALYSIS

Internal Revenue Code (IRC) section 71 provides that gross income includes “amounts received as alimony or separate maintenance payments.” That section further defines alimony as:

“(1) In general. The term ‘alimony or separate maintenance payment’ means any payment in cash if --

“(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument,

“(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,

“(C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

“(D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.”

The payments to Plaintiffs satisfied all the requirements of IRC section 71(b)(1). They were made under a divorce or separation instrument. The instrument did not designate the payments as not includible in gross income. The payor and payee were not members of the same household at the time the payments were made. A provision in the instrument expressly provides for the termination of payments upon the death of the payee spouse. The payments to Plaintiffs are therefore alimony.

A remaining point is the provision in the agreement specifically declaring that the payments are not spousal support. This court has previously held that the labels the parties attach to the payments are not as compelling as their characteristics, and that the court must apply the current version of the Internal Revenue Code. *Kemp v. Dept. of Rev.*, TC No 4241 (July 27, 1998). Defendant’s assessment is correct.

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that this appeal must be denied.

Dated this _____ day of January 2006.

SCOT A. SIDERAS
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

***This document was signed by Magistrate Scot A. Sideras January 17, 2006 .
The Court filed and entered this document January 17, 2006.***