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State of Wisconsin
Department of Revenue
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STATE OF WISCONSIN
TAX APPEALS COMMISSION

ELIZABETH KAMER *
2145 Norhardt Drive *
Brookfield, WI 53005 * DOCKET NO. 91-I-516

Petitioners, * RULING AND ORDER
vs. * ON RESPONDENT'S
* MOTION FOR
* SUMMARY JUDGMENT

WISCONSIN DEPARTMENT OF REVENUE *
P.O. Box 8933 *
Madison, WI 53708 *

Respondent. *

JOSEPH P. METTNER, COMMISSIONER:

This case has been submitted to the Commission for ruling based upon the respondent's motion for summary judgment, filed with the Commission on November 9, 1993.

On December 17, 1993 the petitioner filed its objection to the respondent's motion and moved that summary judgment be granted in favor of the petitioner.

Each party has submitted a written brief in support of its respective position.

The petitioner was represented by Larry J. Soukup, C.P.A. of Virchow, Krause & Company, Brookfield, Wisconsin. The respondent was represented by Attorney Veronica Folstad.

Having considered the submissions of the parties, this commission finds, rules, and orders as follows:

1. The petitioner and her former spouse, Leonard J. Kamer were issued a judgment of divorce in Waukesha County Circuit Court

on October 29, 1981.

2. Under the terms of a stipulation signed by the petitioner and her former spouse, which was approved and incorporated by reference in the October 9, 1981 judgment, limited maintenance was to be paid to the petitioner by her former spouse at the rate of \$1,300 per month, terminable upon the death of either party to the stipulation, or upon the remarriage of the petitioner. These payments were to be made until the petitioner's sixty-second birthday, with the payment period equitably limited to expire on September 1, 1987.

3. On February 27, 1989, the Waukesha County Circuit Court issued an Order on the petitioner's Motion for Modification and Continuation of Maintenance. The findings accompanying the court's order provide that a lump sum maintenance payment in the amount of \$67,000 was to be made by the petitioner's former spouse to the petitioner's attorney, with the payment eventually to be remitted to the petitioner during 1989. The findings accompanying the order also detail the intentions of the parties that the petitioner's former spouse would be entitled to an income tax deduction for payment of the lump sum, and that the petitioner would recognize gross income upon receipt of the payment.

4. The petitioner filed her 1989 federal and state income tax returns in April of 1990, declaring a \$67,000 payment received by her in 1989 as an "alimony settlement."

5. The petitioner filed an amended 1989 Wisconsin income tax return with the respondent during March of 1991, in which she

eliminated from 1989 adjusted gross income as originally declared the \$67,000 maintenance payment which she received. The amended return resulted in a refund claim by the petitioner in the amount of \$4,545. The amended Wisconsin income tax return was filed in conformity with an amended 1989 federal income tax return filed by the petitioner.

6. By notice dated May 8, 1991, the respondent denied the petitioner's claim of refund for the 1989 tax year.

7. On May 21, 1991, the petitioner filed a petition for redetermination with the respondent, objecting to the respondent's denial of the petitioner's claim for refund relating to the 1989 tax year.

8. In a notice of action issued by the respondent on October 3, 1991 and received by the petitioner on October 4, 1991, the respondent denied the petitioner's petition for redetermination.

9. There is no genuine issue of material fact in this case.

10. Under § 802.08, Stats., the respondent is entitled to judgment in its favor as a matter of law, because the February 27, 1989 modification of the October 29, 1981 divorce decree provided, by its terms, that I.R.C. § 71, as amended by Public Law 98-369, was to control the income tax treatment of the 1989 lump sum transfer to the petitioner from her former spouse.

Express language in the February 27, 1989 order provided for an income tax deduction on the part of the petitioner's former spouse for making the 1989 lump sum maintenance payment, and for gross income recognition by the petitioner upon receipt of the

payment. This language must be considered an express indication that the amendments to I.R.C. § 71 enacted in Public Law 98-369 were to apply to the 1989 payment. Without this language, the lump sum, or non-periodic nature of the 1989 maintenance payment would preclude it from being considered alimony or maintenance for which payor deductibility and recipient gross income inclusion would apply under the pre-1984 amendment provisions of I.R.C. § 71. See, Deficit Reduction Act of 1984, Publ. Law 98-369, § 422, 98 Stat. 798 (1984), reprinted in, 1984-3 C.B. Vol. 1 at 306. This is precisely the outcome the parties chose to avoid by including the language concerning tax treatment in the 1989 order.

In order to reach the conclusion urged by the petitioner in this case, we would have to ignore the clear language of the very order we have been asked to interpret. This incongruous construction of the 1989 decree modification would amount to a substitution of the petitioner's ex post facto preferences for the clear intentions of the parties approved by the court in its 1989 order.

Therefore,

IT IS ORDERED

That the respondent's motion for summary judgment is granted, and that the respondent's action on the petitioner's petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 20th day of July,
1994.

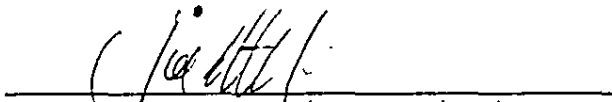
WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Thomas R. Timken, Commissioner



Joseph P. Mettner, Commissioner

ATTACHMENT:
"Notice of Appeal Information"