No. 1162

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JUN 13 1973

FILED

MARTIN L. FLEMING,

Petitioner

v.

DISTRICT OF COLUMBIA,

Respondent

Docket No. 2309

OPINION AND ORDER

The petitioner, who is pro se, filed this appeal from District of Columbia income tax assessments in the total amount of $2,126.86, made against him for taxable years 1973 and 1974. The sole question presented is whether the District of Columbia Code permits a taxpayer to take a deduction for lump sum alimony in computing his District income tax.

The underlying facts are as follows: The petitioner married his wife on October 10, 1959, and two children were born of that marriage. His wife filed for divorce in the State of Connecticut in 1971 and a Judgment granting the divorce was filed in the Superior Court of Connecticut, sitting in Hartford, on August 3, 1973. Under the terms of that Judgment, the wife received custody of the children subject to petitioner's right of reasonable visitation. Petitioner was directed to pay child support in the amount of $400 per child. The court also directed the petitioner to make other contributions and arrangements for the care and support of the children however, those requirements are not relevant here and need not

be discussed. The Judgment then went on to provide:

> As lump sum alimony, the Defendant [Petitioner] shall transfer his interest in and to premises known as 87 Juniper Drive, Windsor Locks, Connecticut, to the Plaintiff and shall pay to the Plaintiff the sum of Sixteen Thousand ($16,000) Dollars, Six Thousand ($6,000) Dollars within ten days of the date of the Divorce Decree, and the further sum of Ten Thousand ($10,000) Dollars on or before March 31, 1974. (Matter in Brackets this Court's.)

The petitioner complied with the Judgment by transferring his interest in the Juniper Drive property to his wife in 1973 and by paying her $6,000 in 1973 and $10,000 in 1974. He then deducted the $6,000 cash payment as well as $5,885, representing the then market value of the house less the outstanding mortgage, from his income in computing his 1973 District taxes, and he deducted the $10,000 payment from his income in computing his 1974 District taxes. Those deductions were denied by the District and this tax appeal followed.

Before discussing the merits of the case, it is important to note what is not at issue in this case. The District does not dispute that the payments totalling $16,000 were made by the petitioner, nor does it dispute the petitioner's claim that the value of his sole interest in the house transferred to his wife was $5,885 and that the transfer was made in 1973. The District does not argue that the transfer of the house and money were a distribution of property owned by the parties. Rather, the District accepts the petitioner's facts in the case and relies solely upon its argument that D. C. Code 1973, §47-1557b(a)(10) does not permit a deduction for lump sum alimony. The petitioner contends that he properly deducted

the above alimony payments pursuant to Section 47-1557b(a)(10).

I

Section 47-1557b(a)(10) provides:

§47-1557b. Deductions.

(a) Deductions allowed.--The following deductions shall be allowed from gross income in computing net income:

* * *

(10) Alimony or separate maintenance.--In the case of residents, amounts paid as alimony or separate maintenance pursuant to and under a decree or judgment of a court of record of competent jurisdiction to adjudge or decree that the taxpayer pay such alimony or separate maintenance: Provided, however, That all amounts allowed as a deduction under this subsection shall be reported and taxed as income of the recipient thereof if such recipient is a resident as defined in this subchapter.

The petitioner argues that the above statute permits a taxpayer to deduct all alimony paid pursuant to or under a decree or a judgment of a court of competent jurisdiction regardless as to whether the payments were periodic, lump sum or in the form of installment payments for greater or lessor than ten years. The District denied the deductions and takes the position that the above section allows a deduction for alimony only to the extent such alimony payments would be deductible in computing federal income taxes.

Deductions for alimony in computing federal income taxes are allowed only to the extent provided for in Sections 71 and 215 of the Internal Revenue Code of 1954 as amended (26 U.S.C. §§71, 215). It is not necessary to set out the precise language of those sections; suffice it to say that it provides that payments

must be "periodic" in order to qualify as deductible although it is true that some "lump sum" payments may qualify where the payments are made over a period of more than ten years from the date of the judgment or decree or where they may be subject to one or more contingencies, such as death, remarriage or change of economic status. Apparently, the petitioner concedes that, should the court conclude that Section 47-1557b (a)(10) must be read so as to be consistent with the Internal Revenue Code, he would not be entitled to the deductions since his payments were not periodic.

The District seeks to have the Court read Sections 71 and 215 of the Internal Revenue Code into Section 47-1557b(a)(10) of the District of Columbia Code based on its argument that that section is ambiguous.

This Court has reviewed the language of that section and finds that it is concise, clear and unambiguous. It simply provides for the deduction of alimony without reference as to whether there are one or more payments or whether the payments are subject to one or more contingencies. "It is a maxim of statutory construction that the language of the statute should be interpreted in accordance with its ordinary and usual sense, and 'with the meaning commonly attributed to it'". (Citations omitted.) United States v. Thompson, 347 A.2d 581, 583 (D.C. App. 1975). Where the language is clear, the duty of interpretation does not arise. United Shoe Workers of America, AFL-CIO v. Bedell, 165 U.S. App. D.C. 113, 506 F.2d 174 (1974); District of Columbia National Bank v. District of Columbia, 121 U.S. App. D.C.

196, 348 F.2d 808 (1965); General Motors Acceptance Corp.v. One 1962 Chevrolet Sedan, 191 A.2d 140 (D.C. App. 1963).

The District argues that, even though Section 47-1557b(a)(10) may appear to be unambiguous, there is an ambiguity because the term "alimony" is ambiguous and because Congress did not define "alimony" as it did in the Internal Revenue Code. That argument is also without merit.

The term "alimony" is commonly understood to be the "allowance for support and maintenance"; its sole object being "the provision of food, clothing, habitation and other necessaries for the support of the wife". As a result "every provision in a judgment or decree of divorce or separation made solely for this purpose is to be regarded as alimony, whether expressly designated as such or not, and irrespective whether it requires the payment of money at intervals or in a given sum". 24 Am. Jur. 2d, Divorce and Separation, §814. The term "comes from the Latin 'alimonia' meaning subsistence or support of the wife by her divorced husband and stems from a common law right of the wife to support by her husband". Black's Law Dictionary (rev. 4th ed 1968). Thus, the term "alimony" has a definite meaning, is well understood and need not be interpreted here.

Finally, the District is in error when it states that Congress found it necessary to define alimony and did, in fact, define "alimony" in the Internal Revenue Code. As the District has noted, a tax deduction is a matter of legislative grace rather than of personal right. Congress could have provided

that all alimony should be deductible; rather than to do so, they merely restricted the right to deduct alimony to such alimony made in the form of periodic payments. In short, the Internal Revenue Code sets forth what types of alimony will qualify for the deductions. Surely, it cannot be disputed that a taxpayer who is required to pay a lump sum payment for the support of his divorced wife rather than periodic payments is paying alimony nevertheless, however, such a payment would not qualify for a deduction under the Internal Revenue Code.

The language in Section 47-1557b(a)(10) permits a taxpayer to deduct lump sum alimony whereas the federal tax code is far more restrictive. It is clear that the Court need not look to the federal tax statute where the federal and District tax provisions are too dissimilar to permit meaningful analogies upon which to base a decision. See [illegible] v. District of Columbia, 139 U.S. App. D.C. 303, 309, 433 F.2d 451, 457, n. 29 (1971).

After reviewing the applicable statute, this Court holds that lump sum alimony falling into the criteria set forth in Section 47-1557b(a)(10) is deductible. Here, it is not disputed that the alimony was paid pursuant to the judgment of a court of competent jurisdiction. Nor does the District argue that the payments constituted a distribution of property rights. Since the payments fall within the commonly accepted definition of alimony, it follows that the petitioner is now entitled to take a deduction and that the denial of that deduction was error.

II

Although the Court has found that the issue raised in this case can be resolved without resort to the legislative history, the Court finds that that history would not affect the outcome of this litigation.

The District seeks to have the Court look to the legislative history since it contends that the history supports the argument that deductions are allowed under Section 47-1557b (a)(10) only to the extent they are allowed under the Internal Revenue Code. A careful reading of the legislative history belies that contention.

The District cites the Court to H.R. Rep. No. 543, 80th Cong., 1st Sess. 2 (1947) where it is stated:

> Title III sets up the deductions which may be made from gross income in computing net income. These deductions are substantially the same as those in the present District of Columbia Income Tax Act, except that certain new deductions have been allowed to bring the bill more in conformity with the Federal Internal Revenue Code. Among these new deductions are nonbusiness expenses incurred in the production of income subject to tax under this article; certain medical and dental expenditures; alimony or separate maintenance; and the amount contributed by an employer to an employee trust or annuity plan to the extent that they are allowed as deductions under the Federal Internal Revenue Code. (Emphasis this Court's.)

It argues that the underscored language is sufficient evidence that Congress intended that the allowance for alimony deduction in the District follow that of the federal statute. This Court disagrees.

The above report reveals that Congress, by amending the statute in 1947, was attempting to bring the District taxing statute more into conformity with the federal statute, not that Congress intended to reach the exact same result. With respect to alimony, the District statute was brought more in conformity with the federal statute by the 1947 amendment since for the first time it provided a deduction for alimony. Compare Section 47-1557b(a)(10) which allows a deduction for alimony effective January 1, 1947 with Section 47-1505, the pre January 1, 1947 tax law, which allowed no such deduction. Thus, by allowing any deduction for alimony, Congress had brought the local taxing statute more into conformity with the federal statute.

The District next cites the Court to the second underscored portion of the report which states that such deductions are allowed "to the extent that they are allowed as deductions under the Federal Internal Revenue Code". That statement applies, however, only to the deductions of the amount contributed by an employer to an employee trust or annuity plan. The same language is carried over into the statute itself, Section 47-1557b(a)(11), which specifically states that deductions for such contributions are allowed "to the extent that deductions for the same are allowed the taxpayer under the provisions of section 23(p) of the Federal Internal Revenue Code". It is noted that the District taxing statute also makes references to other federal tax sections as a means of defining or noting any limitations on deductions. See, e.g., Section 47-1557b(a)(16). It is significant that no such reference over to the

federal statute is made by Section 47-1557b(a)(10).

The Court concludes, that a reading of the legislative history together with Section 47-1557, only adds more weight to petitioner's claim. Congress saw fit to specifically refer to the federal taxing statute in setting forth limitations on certain deductions allowed under Section 47-1557; the fact that the same Congress did not do so with respect to alimony deductions is strong, if not conclusive, evidence that they did not intend that the federal limitations on alimony deductions apply to District of Columbia income taxes.

III

The conclusion is inescapable that, for whatever reason, Congress did not limit alimony deductions under Section 47-1557b(a)(10) to periodic payments as that term is used in the Internal Revenue Code. The petitioner, therefore, is entitled to take a full deduction for all alimony paid in 1973 and 1974.

ORDER

It is hereby

ORDERED that the District of Columbia shall refund to the petitioner the amount of $2,126.86, representing income taxes paid in taxable years 1973 and 1974, plus interest as provided by law.

Dated: June 12, 1978

JOHN GARRETT PENN
Judge

Martin Fleming
Pro se

Richard Amato
Assistant Corporation Counsel
Copies mailed postage prepaid
to parties indicated above on
6/13, 1978.

Mr. Kenneth Beck
Finance Officer, D. C.