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# Wright v. Commissioner, 62 T.C. 377 (1974), aff'd, 543 F.2d 593 (7th Cir. 1976)

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**Income Tax**—PROPERTY SETTLEMENT IN DIVORCE—AN UNSETTLED AREA OF SETTLED LAW—*Wright v. Commissioner*, 62 T.C. 377 (1974), *aff'd*, 543 F.2d 593 (7th Cir. 1976).

*Wright v. Commissioner*[1] provides an excellent illustration of the problems which the issue of property settlement in divorce can present for even the most practiced attorney. This comment will consider several of the indices used by the courts in federal income tax litigation to answer this question: When is a "property settlement" not a property settlement?

William C. Wright (William) sued for divorce from his wife, Jean, on April 28, 1967. A final judgment was entered on February 2, 1968,[2] denying alimony.[3] Jean was awarded the personal property stipulated in a statement of assets and liabilities as belonging to her, with a total value of $227,752.[4] Jean was also awarded $228,000, to be paid on a fixed schedule within ten and one-half years of October 4, 1967.[5] William retained the balance of the property, which was stipulated as belonging to him.[6]

For calendar years 1968, 1969, and 1970, William deducted from his gross income the payments made on the $228,000 lump sum award, pursuant to section 215 of the Internal Revenue Code.[7] Jean did not include these payments in her gross income during those years.[8] The Commissioner sent notices of deficiency to both parties. The Tax Court found that William's partial payments toward the $228,000 total were deductible by him and taxable to his wife.[9] The Seventh Circuit Court of Appeals affirmed.[10]

Under the relevant code sections, the tax consequences to each of

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1. 543 F.2d 593 (7th Cir. 1976).
2. Wright v. Commissioner, 62 T.C. 377, 382 (1974). Following the divorce hearing on October 4, 1967, Jean's attorney submitted proposed findings of fact and conclusions of law to which William's attorney objected. *Id.* at 379. After another hearing on December 8, 1967, the court adopted, with modifications, the proposals of Jean's counsel. *Id.* at 381. Note that the divorce was granted on October 4, 1967, and a final judgment was entered some four months later.
3. *Id.* at 383.
4. 543 F.2d at 598.
5. 62 T.C. at 384. Jean was also made the owner and beneficiary of a term life insurance policy. William's right to deduct the premium payments on this policy was also in litigation. The Tax Court held—and the Seventh Circuit affirmed—that the premiums paid by William on the policy should not be included in Jean's gross income and, therefore, were not deductible by William. This complicated issue will not be addressed in this comment.
6. *Id.* at 385.
7. All references to the Internal Revenue Code are to the Act of 1954, as amended.
8. 62 T.C. at 386.
9. *Id.* at 395.
10. 543 F.2d at 600.

the parties in *Wright* were substantial, depending on whether the "property settlement" of $228,000 in the case was determined to be a genuine property settlement or, instead, alimony. According to the code, if the amounts paid are for a property settlement, the husband may not take a deduction for them and the wife need not include them in her income. Conversely, if the amounts paid are considered alimony, the husband is allowed a deduction and the wife must include the money in her gross income. The preferences of each party are clear: the husband prefers to call the payments "alimony" while the wife prefers a "property settlement."

Section 215 of the Internal Revenue Code allows the husband a deduction for alimony or support payments which are includible in the gross income of the wife.[11] Such payments are included in the wife's gross income if they meet the requirements of section 71(a)(1).[12] Accordingly, such payments must be: (1) periodic payments made to the wife, (2) after a decree of divorce or legal separation, (3) in discharge of a legal obligation arising out of the marital relationship, and (4) imposed on the husband under a divorce or separation decree, or under a written instrument incident to a divorce or separation.

The Treasury Regulations define the characteristics of "periodic payments" as either (1) payments made over a period of ten years

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11. (a) GENERAL RULE.—In the case of a husband described in section 71, there shall be allowed as a deduction amounts includible under section 71 in the gross income of his wife, payment of which is made within the husband's taxable year. No deduction shall be allowed under the preceding sentence with respect to any payment if, by reason of section 71(d) or 682, the amount thereof is not includible in the husband's gross income.

I.R.C. § 215.

HUSBAND AND WIFE.—As used in sections 71, 152(b)(4), 215 and 682, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the terms "husband" shall be read "wife" and the term "wife" shall be read "husband."

*Id.* § 7701(a)(17).

12. DECREE OF DIVORCE OR SEPARATE MAINTENANCE.—If a wife is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, the wife's gross income includes periodic payments, (whether or not made at regular intervals) received after such decree in discharge of (or attributable to property transferred, in trust or otherwise, in discharge of) a legal obligation which, because of the marital or family relationship, is imposed on or incurred by the husband under the decree or under a written instrument incident to such divorce or separation.

*Id.* § 71(a)(1).

or more (in which case only that portion of a payment in any one year which does not exceed ten percent of the entire lump sum award is considered alimony);[13] or (2) payments made over a period of less than ten years which are subject to alteration or modification upon the death of either spouse, remarriage of the wife, or change in the economic circumstances of either spouse,[14] and are "in the nature of alimony or an allowance for support."[15] If these requirements are not met, the payments are considered to be in discharge of an obligation of the principal sum specified in the decree[16] and thus represent a nontaxable event to the wife.

The judges of the Seventh Circuit Court of Appeals felt that the facts in *Wright* presented a "close and difficult case."[17] But the circuit court affirmed the Tax Court's decision that the sum of $228,000 was alimony and therefore deductible by the husband and taxable to the wife. The court offered two principal reasons for this holding.

First, there was no clear indication that any of Jean's property rights were exchanged for the $228,000.[18] Contrary to the finding of the Tax Court, the circuit court found that if the parties intended an exchange of property, a finding in support of a property settlement would be justified.[19] Faced with a silent record, the court looked to the statement of assets and liabilities, which showed the tangible property of each party as being returned to each—plus an additional $228,000 to be paid by William to Jean.[20] There was no indication of an exchange.

Second, the court gave great weight to the timing of the payments as an indication of the intent of the parties. Because the schedule for making the payments was within the control of the parties at the time of the divorce negotiations, arrangements could easily have

13. Treas. Reg. § 1.71-1(d)(2) (1957).

14. *Id.* § 1.71-1(d)(3)(i)(a).

15. *Id.* § 1.71-1(d)(3)(i)(b).

16. I.R.C. § 71(c)(1) provides: "GENERAL RULE.—For purposes of subsection (a), installment payments discharging a part of an obligation the principal sum of which is, either in terms of money or property, specified in the decree, instrument, or agreement shall not be treated as periodic payments."

17. 543 F.2d at 598.

18. *Id.*

19. *Id.*

20. As part of the divorce proceedings, William's attorney had prepared a statement of assets and liabilities. William's assets and liabilities were clearly the result of his personal efforts. Jean's possessions were just as clearly purchased with funds she had inherited. The division represented by the statement showed a definite division of property, but the $228,000 was obviously to come from William's resources, and the statement showed no tangible property for which the sum might be exchanged. 62 T.C. at 385.

been made to meet the requirements of section 71(c)(1).[21] If the payments had been scheduled for completion *within* ten years, the court could have found that a principal sum specified in the divorce decree had been discharged. The amounts would not have been deductible by William or includible by Jean. Section 71(c)(2) provides that if the payments in discharge of a principal sum are completed in *more than* ten years, such payments will be treated *as if they were* periodic payments.[22] That is, the tax consequences change, and the amounts become deductible by the payor and includible by the recipient. In *Wright,* since the parties decided on a payment period of ten and one-half years, the court inferred that the payments were meant to be alimony.[23]

Jean's arguments in rebuttal deserve attention because they very nearly persuaded the Seventh Circuit to rule in her favor. Jean pointed out that (1) the payments were for a fixed sum, (2) they were secured, (3) they were not contingent on either her death or her remarriage, (4) the divorce court adopted the conclusions of law of her attorney,[24] and (5) alimony was specifically denied in the divorce decree. Jean contended that the lump sum was payment for her "inchoate interest in William's property at the time of the divorce under Wis. Stat. Ann. section 247.26 (1957) . . . ."[25]

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21. For the text of § 71(c)(1), see note 16 *supra.*

22. WHERE PERIOD FOR PAYMENT IS MORE THAN 10 YEARS.—If, by the terms of the decree, instrument, or agreement, the principal sum referred to in paragraph (1) is to be paid or may be paid over a period ending more than 10 years from the date of such decree, instrument, or agreement, then (notwithstanding paragraph (1)) the installment payments shall be treated as periodic payments for purposes of subsection (a), but (in the case of any one taxable year of the wife) only to the extent of 10 percent of the principal sum. For purposes of the preceding sentence, the part of any principal sum which is allocable to a period after the taxable year of the wife in which it is received shall be treated as an installment payment for the taxable year in which it is received.

I.R.C. § 71(c)(2).

23. 543 F.2d at 600.

24. The final proposals of Jean's attorney as provided in the divorce judgment were:

Twenty-second. That alimony be and hereby is denied.

. . . .

Twenty-sixth. (a) That as and for a complete division . . . of property of the parties, the plaintiff be and he hereby shall pay to the defendant the sum of $228,000.00 within ten and one-half (10 ½) years of October 4, 1967; and payable on the following terms: No less than $2,000.00 per month be paid by the plaintiff to the defendant for the first six months; that thereafter the plaintiff shall pay to the defendant no less than the sum of $1,800.00 per month for the balance of the term of the payment of the $228,000.00 specified herein.

62 T.C. at 383-84.

25. *Id.* at 389. The statute provided in part:

Upon every divorce from the bond of matrimony for any cause excepting that of adultery committed by the wife, and also upon every divorce from bed and board,

In 1962, the United State Supreme Court held, in *United States v. Davis,*[26] that inchoate rights "do not even remotely reach the dignity of co-ownership. The wife has no interest—passive or active—over the management or disposition of her husband's personal property" and "the rights of succession and reasonable share do not differ significantly from the husband's obligations of support and alimony."[27] However, as the Supreme Court pointed out four years earlier in *United States v. Bess,*[28] property rights are created by the states, not by the federal government. The decision in *Davis* was based on Delaware law. It is necessary in each case to look to state law to determine the extent to which inchoate rights may be property rights and so may serve as the basis for a property division at divorce.

The *Wright* court ruled that Wisconsin did not accord the wife an ownership or property interest in her husband's property. Under section 247.26 of the Wisconsin Statutes, the trial court's duty to divide property is discretionary, not mandatory.[29] Consequently, the timing of the installment payments became crucial to the decision.

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> the court *may* further adjudge to the wife such alimony out of the estate of the husband, for her support and maintenance, and such allowance for the support, maintenance and education of the minor children committed to her care and custody as it shall deem just and reasonable, and the court *may* finally decide and distribute the estate, both real and personal, of the husband and so much of the estate to the wife as shall have been derived from the husband, between the parties and divest and transfer the title of any thereof accordingly . . . .

Act of Aug. 16, 1935, ch. 379, § 1, 1935 Wis. Laws 592 (current version at WIS. STAT. ANN. § 247.26 (West Cum. Supp. 1977-1978)) (emphasis added).

26. 370 U.S. 65 (1962).

27. *Id.* at 70. While *Davis* was concerned with whether and, if so, when a transfer of appreciated property by a husband to a former wife would be taxable, nevertheless, the quoted passage has often been cited in support of decisions such as *Wright. See* DuCanto, *Negotiating and Drafting Property Settlement Agreements in the Reflected Light of Davis and Lester Cases,* 19 DEPAUL L. REV. 717 (1970).

28. 357 U.S. 51, 55 (1958).

29. For text of statute, see note 25 *supra.*

Nor does Florida recognize an "inchoate property right" which might form part of a property division such as the one attempted in *Wright.* In Pawley v. Pawley, 46 So. 2d 464 (Fla. 1950), the inchoate right to dower and the right to alimony were the only property rights the court recognized as connected with the marriage relationship. *Id.* at 472 n.2. The *Pawley* court held that a divorce decree granted with no consideration of the wife's right to alimony does not destroy that right. The court found that the inchoate right to dower had "some of the incidents of property" and was in "the nature of a lien or encumbrance." *Id.* Such a right, however, does not survive divorce. In 1950, the right to dower was the only inchoate right considered to arise from the marriage relationship. The right to alimony, of course, arises from the dissolution of that relationship. This remained true as late as 1973. Ryan v. Ryan, 277 So. 2d 266, 269 (Fla. 1973). Florida has since abolished the right to dower by statute effective January 1, 1976, FLA. STAT. § 732.111 (1977), and has substituted the right of the surviving spouse to an elective share. FLA. STAT. § 732.201 (1977).

The divorce decree of October 4, 1967, called for payments to be completed in ten and one-half years, that is, by April 4, 1978. Thus, for William's payments to qualify as periodic payments, his obligation to pay must have arisen prior to April 4, 1968.[30] Jean argued that according to section 247.37 of the Wisconsin Statutes, the obligation did not arise until six months later, on October 4, 1968—one year after the date of the judgment. This statute provided that no judgment of divorce was effective so far as it affected the status of the parties "until the expiration of one year from the granting of such judgment . . . ."[31]

Under Wisconsin law, however, a divorce decree is *not* an interlocutory judgment. It is final as to marital status subject only to the death of a party or the lapse of the statutory period.[32] Further, under Wisconsin law, the portion of a judgment of divorce relating to property divisions cannot be changed or vacated by the divorce court after sixty days from the date of expiration of the term of the court granting the divorce.[33] Since the term of the Circuit Court of Milwaukee County ended on December 30, 1967, the operative date was February 29, 1968—still more than two months before April 4, 1968. Moreover, in *Seiler v. Seiler,* a case directly on point, the Wisconsin Supreme Court based its holding on the premise that for purposes of determining whether a payment is periodic, a divorce is granted when the formal judgment is entered.[34]

Clearly William's attorney made a very astute move in choosing

30. *See* I.R.C. § 71(c)(2), the text of which is set forth in note 22 *supra.*

31. The statute provided in part:

> When a judgment *or decree* of divorce from the bonds of matrimony is granted so far as it affects the status of the parties it shall not be effective until the expiration of one year from the date of the . . . granting of such judgment *or decree*; excepting that it shall immediately bar the parties from cohabitation together and except that it may be reviewed on appeal during said period. But in case either party dies within said period, such judgment *or decree*, unless vacated or reversed, shall be deemed to have entirely severed the marriage relation immediately before such death.

Act of May 18, 1931, ch. 117, § 1, 1931 Wis. Laws 239 (current version at WIS. STAT. ANN. § 247.37 (West Cum. Supp. 1977-1978)). The requisite one-year period following the judgment has been changed to six months.

32. Rogers v. Hollister, 146 N.W. 488, 490 (Wis. 1914). Florida is faced with neither the problem of interlocutory decree nor the one year grace period. The court may, upon a showing that injustice would result, enter a final decree before the 20 days otherwise required since the filing of the original petition for dissolution of the marriage have elapsed. FLA. STAT. § 61.19 (1977). The only case construing this statute involved the date at which a constructive trust might be imposed. The court held that a divorce decree was final when it was reduced to writing and signed by the chancellor. Leitner v. Willaford, 306 So. 2d 555, 557 (Fla. 3d Dist. Ct. App. 1975). The Supreme Court of Florida has not addressed the issue.

33. Anderson v. Anderson, 98 N.W.2d 434, 437 (Wis. 1959).

34. 180 N.W.2d 627, 630 (Wis. 1970).

a period of ten and one-half years. Even if William's obligation to pay were found to have arisen, not on the date the divorce was granted, but sixty days after expiration of the term of the court, the commencement date of his obligation would then have been February 29, 1968, because after *that* date provisions regarding property divisions could not be changed. Of the three possible dates, two were within the necessary time period.[35] The *Seiler* decision foreclosed use of the third. The Seventh Circuit noted that "[h]ad the parties intended these to be installment . . . rather than periodic payments . . . they could easily have provided that the . . . $228,000 must be paid within ten years."[36]

The Seventh Circuit distinguished two of its previous decisions upon which Jean relied. These decisions further illustrate judicial approaches to the problem of property settlement.

In *Van Orman v. Commissioner*,[37] F. Harold Van Orman and Rae Van Orman were granted a divorce and executed a "Property Settlement Agreement" on April 28, 1960. The agreement contained separate sections providing for child support, alimony, and the purchase of a new home for Rae.[38] The husband deducted the mortgage payments and insurance on the house, but the Commissioner disallowed the deductions. The Tax Court held—and the Seventh Circuit affirmed—that the payments were installment payments under section 71(c)(1).[39] No contingencies were involved, for neither the death nor the remarriage of Rae would have affected her former husband's obligation to purchase the house and deliver a free and clear title to Rae within ten years.[40] Moreover, the title was to remain in his name until that time. The Tax Court noted with apparent disapproval that the husband "passes lightly over the fact that the title to the house is in his name by saying that he merely 'held this title as trustee.'"[41] Both courts pointed out as well that separate

35. Both October 4, 1967 (the date the divorce decree was granted) and February 29, 1968 (the date 60 days after expiration of the term of the court granting the divorce) came before April 4, 1968 (the date 10 years before the final payment was due). Only if the court found that the divorce did not become final until October 4, 1968, would the payments have been made in less than 10 years.

36. 543 F.2d at 598. For another case in which the date of the beginning of the payment period was crucial, see Joslin v. Commissioner, 52 T.C. 231 (1969), *aff'd*, 424 F.2d 1223 (7th Cir. 1970).

37. 27 T.C.M. (CCH) 1440 (1968), *aff'd*, 418 F.2d 170 (7th Cir. 1969).

38. 27 T.C.M. (CCH) at 1441. Section 16 of the agreement provided as follows: "16. The purchase of a new house for defendant [Rae] and the delivery of title thereto shall not be affected by the remarriage of the defendant. The plaintiff [F. Harold] is to have the right to all rentals in event she does not occupy the house." *Id.*

39. 418 F.2d at 172.

40. *Id.*

41. 27 T.C.M. (CCH) at 1442.

sections in the agreement pertained to child support and alimony.[42] The Seventh Circuit concluded that "[i]t is apparent the purchase of the new home was in satisfaction of some property right and not a periodic support payment."[43]

In *Houston v. Commissioner*,[44] Robert Houston and his wife Mary entered into a stipulation which was incorporated into a divorce decree on October 10, 1959. Subparagraphs 2(a)-(d) of the stipulation provided that within a month after the divorce, ownership of the following items would vest in the wife: (1) a house worth $40,000; (2) personal property worth $20,900; (3) insurance policies with a cash surrender value of $29,799.44; and (4) $115,000 in cash. Subparagraph 2(e) called for an additional $300,000 to be paid in equal installments over twelve years, with the first payment to be made one year after the last day of the month following the granting of the divorce.[45]

For the 1959 tax year, Robert Houston deducted $50,569.94, which he represented as being ten percent of thirteen periodic alimony payments.[46] The Commissioner disallowed all but a very small amount for temporary alimony.[47] The Tax Court found that the realty, personalty, insurance policies, and cash transferred in 1959 were, because of the nature and amount of the assets, "suggestive of a property settlement rather than the discharge of a recurrent, periodic obligation."[48] The Tax Court also noted that the 1959 transfer was to take place within two months of the divorce—a transfer the court characterized as "in the nature of a distribution of assets, in contradistinction to the support characteristics of the annual payments" of $25,000 for twelve years.[49]

It is interesting to note that on appeal to the Seventh Circuit, Robert Houston offered an argument mentioned by the Tax Court in a footnote.[50] While conceding that the house, personal property,

42. 418 F.2d at 171; 27 T.C.M. (CCH) at 1442.

43. 418 F.2d at 171. The property right mentioned was not otherwise characterized by the court. The Tax Court concluded that "[e]ach step in his [Harold's] argument is based on a completely fantastic, illogical interpretation of the contract. Respondent [IRS] was right in disallowing the deductions." 27 T.C.M. (CCH) at 1443.

44. 52 T.C. 815 (1969), *aff'd*, 442 F.2d 40 (7th Cir. 1971).

45. 52 T.C. at 816-17.

46. 442 F.2d at 41. (The house, personal property, and insurance policies total $90,699.44. Adding the cash [$115,000 plus $300,000], the total becomes $505,699.44.)

47. *Id.*

48. 52 T.C. at 818 (footnote omitted).

49. *Id.*

50. *Id.* n.3: "While a portion of the cash transferred in 1959 might have been treated in the stipulation as a 13th periodic payment, such treatment was not given, and Houston has made no argument that it would be appropriate to extend periodic-payment treatment to a portion of the sum transferred."

and insurance policies constituted a property transfer, Houston maintained that the $115,000 cash should be treated as the first of thirteen annual installments.[51] The court of appeals agreed with the Tax Court's statement that "Houston's asserted characterization of the transaction is simply an attempt to camouflage its true significance when viewed in terms of the framework set forth in the settlement stipulation."[52]

The other circuit courts of appeals have faced similar problems. In the Third Circuit, *Fox v. United States*[53] dealt with a divorce-related property settlement agreement. Though the particular section of the Internal Revenue Code under which deductions were claimed was not the same as in *Wright*,[54] the court's determination nevertheless hinged on whether or not the $1,000,000 at issue met the requirements of section 71(c)(1) so as to qualify as installment payments and thus be nondeductible. As in *Wright*, the *Fox* court found clear intent to meet the requirements of section 71(c)(1).[55] Specifically, the principal sum was contingent upon the divorce, and payments were to be made in installments over nine and one-half years.[56]

In the Tenth Circuit, *Wiles v. Commissioner*[57] raised the question of the inchoate rights of a wife in her husband's property. Following *Davis*,[58] the *Wiles* court resolved the issue on the basis of Kansas law, to the effect that the wife was not a co-owner and hence the "property division" was a taxable event.[59] The *Wiles* court also noted the disparities in application of federal tax law to transactions in other states within the Tenth Circuit.[60]

In conclusion, then, the attorney involved in divorce negotiations should remember that the courts consider the intent of the parties to be crucial.[61] All the facts and circumstances of the particular case

51. 442 F.2d at 41.

52. *Id.* at 42; 52 T.C. at 819.

53. 510 F.2d 1330 (3d Cir. 1975).

54. *Fox* involved § 483, regarding imputed interest.

55. "The Fox agreement appears to have been written with one eye on the typewriter and the other on the Internal Revenue Code." 510 F.2d 1334.

56. *Id.*

57. 499 F.2d 255 (10th Cir. 1974).

58. 370 U.S. 65 (1962).

59. 499 F.2d at 258.

60. *See, e.g.*, Imel v. United States, 523 F.2d 853 (10th Cir. 1975), *aff'g* 375 F. Supp. 1102 (D. Colo. 1973); Collins v. Commissioner, 388 F.2d 353 (10th Cir.) (Okla.), *vacated & remanded*, 393 U.S. 215 (1968), *on remand*, 412 F.2d 211 (10th Cir. 1969); Pulliam v. Commissioner, 329 F.2d 97 (10th Cir.) (Colo.), *cert. denied*, 379 U.S. 836 (1964). *See also* Wallace v. United States, 439 F.2d 757 (8th Cir. 1971). These decisions may usefully be consulted on the issue of the wife's property rights arising out of the marital relationship.

61. *See, e.g.*, Wright v. Commissioner, 543 F.2d at 598.

will be considered in determining whether payments are being made in discharge of a support obligation or as a transfer of property. The label given to any agreement between the parties will not be dispositive.[62]

Factors indicating that a property division is intended are: (1) no mention of alimony during the proceedings or alimony provided separately; (2) a state statute clearly vesting the wife with rights in her husband's property; (3) a statement of assets and liabilities of the parties showing an approximately equal distribution of property to each party; (4) some indication that payments are not to terminate on the death or remarriage of the wife; and (5) a lump sum payable shortly after the divorce decree is granted.

Factors indicating that alimony is intended are: (1) mention of alimony during the proceedings or a statement that a property division is "in lieu of alimony"; (2) a state statute either giving the wife no rights in her husband's property or allowing the court at its discretion to vest the wife with such rights; (3) a statement of assets and liabilities showing all the wife's property returned to her, plus an amount from the husband's property; (4) some indication that payments are to terminate on the death or remarriage of the wife; and (5) payments made over either a specified or indeterminate period.

Property settlements in divorce have significant federal income tax consequences. The cautious attorney will keep this in mind as negotiations proceed. Regardless of the emotional situation, the attorneys for both parties should attempt to work out a clear settlement to avoid litigation. The tax consequences to each party should be thoroughly explored. The attorneys should be certain that the husband and the wife understand what their tax obligations will be once the divorce is final. If a property division is contemplated, a clear statement to that effect is crucial. No such statement was made in *Wright,* and, based on the statement of assets and liabilities and on the timing of the payments, the court held that alimony was intended by the parties to the agreement.

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62. Ryker v. Commissioner, 33 T.C. 924, 929 (1960). *Compare with* Commissioner v. Lester, 366 U.S. 299 (1961), regarding child support payments:

> [I]f there is to be certainty in the tax consequences of such agreements [settlement agreements pursuant to divorce] the allocations to child support made therein must be 'specifically designated' and not left to determination by inference or conjecture. We believe that the Congress has so demanded in § 22(k) [now § 71]. After all, the parties may for tax purposes act as their best interests dictate, provided, as that section requires, their action be clear and specific. Certainly the Congress has required no more and expects no less.

*Id.* at 306.

Clarity is essential. But clarity is impossible unless the parties have reached an agreement based on an understanding of the consequences of their actions. Responsibility for achieving a clear agreement rests with the attorneys. An attorney has not acted in the best interests of his client if further litigation becomes necessary because of a poorly drafted divorce settlement.

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