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is in the re-evaluation of the social ideal of exaggerated free competition. Thus to the degree that the re-evaluation is smoldering perhaps Dean Pound is justified in asserting that we are dissatisfied with our social ideal of the present day.⁵³ And to that degree also perhaps that social ideal either has or will fail. The writer submits, however, that a proper division of the economy into the several levels of business activity can preserve the social ideal of free competition while at the same time it can stimulate rather than destroy the energetic impulses and individual initiatives which always have insured the preservation of our fundamental American concepts.

INCOME TAX ON ALIMONY

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Lawyers engaged in domestic relations and tax cases have been confronted with doubt and uncertainty as to the taxability of alimony received during the period for which an interlocutory decree is effective. Another tax problem concerning the same period is the right of the husband and wife to file a joint return if, at the end of the taxable year, a final decree of divorce has not been entered.

The case of *Alice Humphreys Evans v. Commissioner of Internal Revenue*,¹ held that alimony received by the wife prior to the entry of a final decree of divorce in the State of Colorado is not taxable to the wife and, likewise, not deductible by the husband.

Section 22(k) of the Internal Revenue Code prescribes the circumstances under which alimony and separate maintenance payments are includable in the gross income of the wife. To qualify under section 22(k) the payments must be received by the wife under the following circumstances:

- (a) The payments must be received by a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance.
- (b) They must be periodic payments received subsequent to such divorce.
- (c) They must be in discharge of legal obligation imposed upon or incurred by such husband.
- (d) The legal obligation must be imposed or incurred because of the marital or family relationship.
- (e) Such obligation must be imposed or incurred under such decree or under a written instrument incident to such divorce or separation.

⁵³ For Dean Pound's latest contribution to the field of social jurisprudence, the reader is referred to the August, 1952 edition of the American Bar Association Journal in which the problem of the function of the law school is considered.

¹ 19 T. C., No. 126 (March 20, 1953).

The Code provision does not define "divorce". In the *Evans'* case, *supra*, the wife did not include in her gross income alimony received during the effective period of the interlocutory decree of divorce entered in the District Court in and for the City and County of Denver, State of Colorado. As a result, a deficiency assessment was levied by the revenue agent on the alleged grounds of understatement of alimony income and determined in the assessment that the taxpayer occupied a single status for the entire year which includes the period of time prior to the final decree of divorce. A petition was filed with the Tax Court of the United States for a re-determination of the deficiency. The Bureau interpreted "decree of divorce" as contained in section 22(k) to mean an *interlocutory decree of divorce* and relied upon I. T. 3761 (C. B. 1945, 76) :

Advice is requested whether periodic payments received by a wife from her husband pursuant to an interlocutory decree of divorce in the State of California are includable in the gross income of the wife under section 22(k) of the Internal Revenue Code and deductible by the husband under section 23(u) of the Code.

It is held that periodic payments made pursuant to an interlocutory decree of divorce in the State of California by a husband for the support of his wife are includable in her gross income under section 22(k) of the Internal Revenue Code, and are deductible by the husband under section 23(u) of the Code.

Whether an "interlocutory decree of divorce" effects a divorce of the parties and is therefore a true "decree of divorce" depends upon its substantive effect on matrimonial status under the pertinent local law. Whether an interlocutory decree of divorce creates a legal separation or is a form of decree of separate maintenance also depends upon its real attributes as set forth in the pertinent local law.

In the proceeding before the Court the pertinent local law consisted of the statutes and decisions of the Courts of the State of Colorado.

The Tax Court opinion in the *Evans'* case, *supra*, set out fully sections 13 and 17 of Chapter 56, Volume 2, 1935 Colorado Statutes Annotated. These sections provide essentially that during the interlocutory period the parties shall not be divorced and that six months after the entry of an interlocutory decree, it shall be and become a final decree of divorce. In determining the effect of a Colorado interlocutory decree the Court cited the following:

If, during the period of the interlocutory decree, one of the parties dies, the surviving spouse is entitled to letters of administration since the divorce action abates with the death of one of the parties and there is no "status of marriage" upon which a decree of divorce can operate.²

² In re McLaughlin's Estate, 117 Colo. 67, 184 P. 2d 130 (1947).

Under the statute and the express provisions of the interlocutory decree, the parties were still married and might lawfully have cohabited together as husband and wife.³

Although not referred to in the opinion, it was also argued in the *Evans'* case, *supra*, that the property settlement agreement provided for specific payments from the date of the interlocutory decree to the date of the final decree, and provided separately for the payments to be effective if and when the final decree was entered. As a result the alimony payments did not qualify as periodic payments required by section 22(k) because they were made for a definite period of time and under the Code provisions are considered to be "installment payments" and not "periodic payments". Consequently, there is no need in the preparation of a property settlement agreement to provide separately for alimony payments to be made during the period of the interlocutory decree unless the amount to be paid is to change upon the entry of the final decree of divorce.

In the case of *Marriner S. Eccles*,⁴ the taxpayer's wife was granted an interlocutory decree of divorce in the State of Utah on August 2, 1949, and the decree became final after the expiration of six months. The laws of the State of Utah are substantially the same as those of Colorado in regard to the entry of the interlocutory and final decrees of divorce. The Tax Court held that the taxpayer and his wife were still husband and wife at the close of the taxable year 1949 and were thus entitled to file a joint return under section 51(b) of the Internal Revenue Code.

Depending upon other conditions, it now will become necessary to determine whether or not you want the final decree to enter prior or subsequent to the end of the taxable year. This problem could result in a hitherto unknown eagerness to have an interlocutory decree entered or, in the alternative, procrastination greater than that for which lawyers are now noted.

NEW ZEALAND AMBASSADOR TO SPEAK AT JUDICIAL CONFERENCE

The Judicial Conference for the Tenth Circuit will be held at the Stanley Hotel, in Estes Park, Thursday, Friday, and Saturday, July 16, 17, and 18, 1953.

The banquet will be held Friday evening, July 17, at 7 p.m. The speaker will be The Honorable Leslie Knox Munro, a native of New Zealand, and now Ambassador to the United States from that country. He is a permanent representative to the United Nations.

Reservations should be made before July 13 with Mr. George J. Stobie, Manager of the Stanley Hotel.

³ Doty v. Doty, 103 Colo. 543, 88 P. 2d 573, 574 (1939).

⁴ 19 T. C. (March 11, 1953).