CURTIS A. & RITA M. TREADWAY 28 Michigan Avenue Montgomery, Alabama 36110-1716,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayers,	§	DOCKET NO. INC. 96-292
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed income tax against Curtis A. and Rita M. Treadway ("Taxpayers") for 1992 and 1993. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on September 17, 1996. The Taxpayers represented themselves at the hearing. Assistant Counsel David Avery represented the Department.

Curtis A. Treadway (individually "Taxpayer") was divorced in January 1992. The divorce decree required the Taxpayer to make the monthly loan payments on his ex-wife's car. The issue in this case is whether the Taxpayer can deduct the car payments as alimony pursuant to Code of Ala. 1975, §40-18-15(18).

The Taxpayer's divorce decree contained the following provisions:

> 14. AUTOMOBILES:
>
> a. The Wife shall be the sole and absolute owner of her automobile, a 1989 Cutlass. Commencing with the January, 1992 payment, Husband shall pay the payments thereon and shall hold Wife harmless in the approximate amount of Three Hundred Sixty-eight and no/100 Dollars ($368.00) per month for a period of thirty-one (31) months or until paid in full. Wife shall be solely responsible for obtaining automobile insurance in her own name at the next renewal date. Husband agrees to execute

any and all documents necessary to transfer complete title of said automobile to Wife.

17. ALIMONY: Neither party shall be responsible for the payment of alimony to the other party.

The Taxpayer deducted the monthly payments required by Paragraph 14 as alimony on his 1992 and 1993 Alabama income tax returns. The Department denied the deductions, and based thereon entered the final assessments in issue. The Taxpayers appealed to the Administrative Law Division.

Alimony can be deducted in Alabama the same as allowed by federal law at 26 U.S.C. §215. See, §40-18-15(18). Payments can be deducted as alimony under §215 if such payments are included in the income of the payee spouse under 26 U.S.C. §71.

26 U.S.C. §71(b) defines "alimony and separate maintenance payments" as follows:

> (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 Department denied the payments as alimony because (1) the divorce decree designated that neither spouse would pay alimony, and (2) the Taxpayer was liable to make the payments after his ex-wife's death. I agree with the Department.

Paragraph 17 of the divorce decree clearly states that neither party will pay alimony. That provision conflicts with §71(b)(1)(B) because it designates that none of the payments under the decree, including the car payments, shall be considered deductible alimony under §215. The Taxpayer argues that Paragraph 17 was not intended to prohibit all alimony, but rather "was included in the decree to terminate alimony payments that had been granted to the former spouse as alimony pendent lite in a temporary support agreement in 1991." There is no evidence to support that claim. But in any case, it is irrelevant why Paragraph 17 was included. Paragraph 17 clearly provides that alimony shall not be paid by either party, which is contrary to the definition of alimony at §71(b)(1)(B).

The payments also do not qualify as alimony because the Taxpayer's liability to make the monthly payments did not end on the death of his ex-wife. The Taxpayer was obligated to make the payments until the loan was paid in full. The fact that the ex-wife had credit life insurance that would have paid the loan after her death is irrelevant. If the credit life policy had been

cancelled or the insurance carrier had delayed or refused to pay on the policy, the Taxpayer would still have been obligated under the divorce decree and Alabama law to pay the loan in full. Consequently, the payments do not constitute alimony as defined at §71(b)(1)(D).

The Taxpayers cite ¶554 of the 1994 CCH Federal Tax Manual, which states that "amounts payable under a life insurance policy of the payee spouse are not considered a substitute payment for purposes of this provision." However, the issue of substitute payments is irrelevant because the Taxpayer was obligated to make the actual loan payments until the loan was paid in full, even if his ex-wife died. For that reason, the payments do not qualify as alimony under §71(b)(1)(D). Substitute payments in lieu of the monthly payments are not mentioned in the decree.

In summary, the payments in issue constituted a property settlement made by the Taxpayer to satisfy a liability that existed prior to the couple's divorce. They did not qualify as alimony under §71.

The final assessments are affirmed. Judgment is entered against the Taxpayers for 1992 income tax of $282.91 and 1993 income tax of $260.45, plus applicable interest.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered November 6, 1996.

BILL THOMPSON

Chief Administrative Law Judge