



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D. C. 20224

OFFICE OF THE CHIEF COUNSEL

October 28, 2019

Number: **2019-0027**
Release Date: 12/27/2019

CC:ITA:B02
GENIN-116734-19

UIL: 71.00-00, 215.00-00

Attention:

Dear _____ :

This letter responds to your request for information dated July 10, 2019. You requested guidance on alimony arrears _____. We cannot opine on your particular set of facts or on issues of state law. However, we can provide guidance on the general application of federal tax law.

Section 215(a) of the Internal Revenue Code ("Code")¹ allows individuals to deduct an amount equal to the alimony or separate maintenance payments paid during the individual's tax year. Under section 215(b) the term "alimony or separate maintenance agreement" means any alimony or separate maintenance payment (as defined in section 71(b)) which is includible in the gross income of the recipient under section 71.

Under section 71(b)(1) the term "alimony or separate maintenance payment" means any payment in cash if:

- Such payment is received by (or on behalf of) a spouse under a divorce or separation instrument;
- 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;

¹ References to sections in this letter refer to sections of the Internal Revenue Code of 1986.

- 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
- 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.

Under section 1041(a) no gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of):

- A spouse, or
- A former spouse, but only if the transfer is incident to the divorce

Under section 11051 of the Tax Cuts and Jobs Act (“the Act”), Pub. L. 115-96, both section 71 and section 215 were eliminated from the Code for any divorce or separation instrument executed after December 31, 2018 and for any divorce or separation agreement entered into before January 1, 2019 that is modified after that date to expressly provide that sections 71 and 215 no longer apply to the payments made under that agreement.

In Iglicki v. Commissioner, T.C. Memo 2015-80, the petitioner, an ex-husband, deducted as alimony amounts he paid to his ex-wife pursuant to a judgment for past-due spousal support. To fall under the definition of alimony under section 71(b)(1)(D), there has to be no obligation to make a payment as a substitute for amounts owed under the agreement after the payee-spouse’s death. The court order reducing the past-due spousal support to judgment did not indicate whether the ex-husband would still have to pay the judgment if the ex-wife died before it was paid, so the Tax Court considered whether the money judgment would still be owed after the ex-wife’s death under state law. Under Colorado law, the payee’s death does not affect the payor’s liability to pay a final money judgment, therefore the Tax Court determined that the ex-husband’s payments satisfying the judgment were not deductible alimony under section 215(a). The case did not discuss the tax implications of the judgment proceeds for the ex-wife.

This letter addresses general principles of federal tax law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2019-1, 2019-1 I.R.B. 9. If you have any additional questions, please contact our office at .

Sincerely,

Bridget Tombul
Branch Chief, Branch 2
Office of Associate Chief Counsel
(Income Tax & Accounting)