

INTERNAL REVENUE SERVICE

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The Honorable Peter DeFazio
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. DeFazio:

This letter is in response to your inquiry to the National Director for Legislative Affairs dated September 8, 2001, on behalf of your constituent, [REDACTED] [REDACTED] asked about the federal income tax treatment of alimony payments. I hope the following general information concerning the law is helpful.

According to [REDACTED] letter dated June 25, 2001, she receives \$2000 cash per month from her former spouse. The payment apparently comes from her former spouse's monthly retirement check. [REDACTED] stated her ex-husband makes the payments as mandated by a divorce decree. However, she did not include a copy of this or any other document to support this information with her letter. She also did not show she received a property interest in her former spouse's retirement plan, nor that the payments are subject to a Qualified Domestic Relations Order. [REDACTED] lives in [REDACTED], which is not a community property state.

The Internal Revenue Code (the Code) addresses the treatment of alimony for federal income tax purposes in sections 71 and 215. Individuals must include alimony or separate maintenance payments in their gross income. Section 71(a) of the Code. Alimony or separate maintenance payment means any payment in cash if:

- (A) The 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 included in gross income under this section and not allowed as a deduction under section 215.
- (C) If the individual is legally separated from his or her spouse under a decree of divorce or separate maintenance, the payee spouse and the payer spouse are not members of the same household at the time the payer spouse makes the payment.
- (D) The individual has no liability to make any such payment for any period after the payee spouse dies and has no liability to make any payment (in cash or property) as a substitute for such payments after the payee spouse dies.

Section 215(a) allows an individual to deduct an amount equal to the alimony or separate maintenance payments paid during the individual's taxable year.

If the payments to [REDACTED] meet the requirements of section 71(b)(1), the Code requires she include those alimony payments in gross income. Her former spouse is entitled to an itemized deduction equal to the amount of the alimony payments he paid during the taxable year. Section 215(a) of the Code. The current system of taxing the recipient of alimony payments and allowing a deduction to the payer has been part of the tax code since 1942. The Revenue Act of 1942, Pub. L. No. 753, 56 Stat. 798, 816, added the predecessors to sections 71 and 215 to the Code. The Congress explained that the changes to the law regarding alimony payments "are intended to treat such payments as income to the spouse actually receiving or actually entitled to receive them and to relieve the other spouse from the tax burden upon whatever part of the amount of such payments is under the present law includible in his gross income." H.R. Rep. No. 2333, 77th Cong., 2d Sess. 71 (1942). Thus, current law requires payments that meet the definition of alimony under section 71 be included in gross income. Changing this result would require a statutory amendment.

I am enclosing a copy of sections 71 and 215 of the Code and Internal Revenue Service Publication 504, Divorced or Separated Individuals.

Again, I hope this information helpful. If you have any further questions, please call me at (202) 622-4800 or [REDACTED], of my staff at (202) 622-5020.

Sincerely,

Kimberly L. Koch
Assistant to Branch Chief, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)