

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:ITA:06-PLR-103475-01
Date:
April 10, 2001

DO: Area TY:

Legend

Former Spouse	=
Taxpayer	=
State A	=
County A	=
Date A	=
Date B	=
Date C	=
\$x	=
\$y or Payment	=

Dear :

This is in response to a private letter ruling request dated January 8, 2001 submitted by your authorized representative on your behalf. Specifically, you have requested a ruling that \$y ("Payment") to be paid to you by Former Spouse pursuant to a Proposed Stipulation is not alimony includible as income to you, as Taxpayer, under section 71 of the Internal Revenue Code of 1986. The following facts and representations are relevant.

The marriage of the Taxpayer and Former Spouse was dissolved by Judgment dated Date A and entered by the Superior Court of State A for County A. The Superior Court entered a Further Judgment on Reserved Issues on Date B. Pursuant to the terms of this Further Judgment, as modified by the court on Date C, Former Spouse is obligated to pay Taxpayer spousal support payments equal to \$x per month until the death of Taxpayer, death of Former Spouse, remarriage of Taxpayer or further order of the court (the "Current Spousal Support Obligation"). Taxpayer represents that the Current Spousal Support Obligation is modifiable. Taxpayer further represents that neither Former Spouse nor Taxpayer have any claims against the other and that Former Spouse is current on the payment of the Current Spousal Support Obligation to Taxpayer through the date of the submission. That is, there are no amounts in arrears at this time.

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Your submission provides that Taxpayer and Former Spouse propose to modify the Current Spousal Support Obligation by executing the Proposed Stipulation For Modification of Spousal Support and Order Thereon with the Superior Court of State A for County A. Once this Proposed Stipulation is approved by the Superior Court of State A for County A, Former Spouse will pay the Payment amount to Taxpayer. Upon receipt of the Payment by Taxpayer, all past, present and future claims for spousal support from Former Spouse and all claims by Taxpayer against Former Spouse for posting security for said support shall be deemed satisfied in full and terminated.

Concerning the Payment, the Proposed Stipulation designates that the Payment is not to be treated as alimony by Former Spouse or Taxpayer, and, accordingly, is not includible as income by Taxpayer under section 71 of the Code, or otherwise, and is not deductible by Former Spouse under section 215 of the Code, or otherwise. Specifically, Paragraph 1 of the Proposed Stipulation states, "This [Payment], pursuant to Internal Revenue Code §215 or otherwise, shall not be reported as a deductible item by [Former Spouse]; and, pursuant to Internal Revenue Code §71 or otherwise, shall not be reported as a taxable item by [Taxpayer]." Taxpayer anticipates that the Proposed Stipulation will be executed by the court, Taxpayer and Former Spouse immediately upon receiving a favorable ruling from the national office.

Law and Analysis

Section 71(a) of the Code includes amount received as alimony or separate maintenance payments in gross income. Under section 71(b), 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.

Section 71(b)(2) defines "divorce or separation instrument" as (A) a decree of divorce or separate maintenance or a written instrument incident to such a decree, (B) a written separation agreement, or (C) a decree (not described in subparagraph (A)) requiring a spouse to make payments for the support or maintenance of the other spouse.

Section 1.71(b)-1T, A-8, of the temporary Income Tax Regulations provides that the spouses may designate that payments otherwise qualifying as alimony or separate maintenance payments shall be nondeductible by the payor and excludible from gross income by the payee by so providing in a divorce or separation instrument (as defined

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in section 71(b)(2)). ...A copy of the instrument containing the designation of payments as not alimony or separate maintenance payments must be attached to the payee's first filed return of tax (Form 1040) for each year in which the designation applies.

Your submission represents that the Proposed Stipulation qualifies as a divorce or separation instrument for purposes of section 71(b)(2)(B) of the Code and section 1.71(b)-1T, A-8, of the temporary regulations because it is a decree requiring one spouse to make payments for the support and maintenance of the other spouse. With respect to the Payment, the quoted language in Paragraph 1 of the Proposed Stipulation states, "This [Payment], pursuant to Internal Revenue Code §215 or otherwise, shall not be reported as a deductible item by [Former Spouse]; and, pursuant to Internal Revenue Code §71 or otherwise, shall not be reported as a taxable item by [Taxpayer]."

Accordingly, we rule that this language constitutes a valid designation pursuant to section 1.71(b)-1T, A-8, of the temporary regulations that the Payment is not to be treated as alimony by Taxpayer, and, therefore, is not includible as income by Taxpayer under section 71 of the Code.

The above ruling is contingent upon the Proposed Stipulation being executed by Former Spouse and being approved and executed by the Superior Court of State A for County A. In addition, a copy of the Proposed Stipulation, once approved by the court, must be attached to the Taxpayer's first filed return of tax (Form 1040) for each year in which the above designation applies.

In addition, this ruling is limited solely to a determination of whether Payment constitutes alimony or separate maintenance for purposes of section 71 and section 215 of the Code. No determination is being made concerning whether Payment is includible in gross income or deductible from gross income with respect to any other provision of the Internal Revenue Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed

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by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,
Associate Chief Counsel
(Income Tax and Accounting)
/s/ S. J. Toomey

By: Stephen J. Toomey
Assistant to the Chief, Branch 6

Enclosure: Copy for § 6110 purposes