

Internal Revenue Service

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Department of the Treasury

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Date:
August 20, 2002

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

Dear :

This is in response to a private letter ruling request dated March 22, 2002, submitted by your authorized representative on your behalf. Specifically, you have requested a ruling that a lump sum payment of \$y ("Payment") to be paid by you to your Former Spouse pursuant to a court order constitutes deductible alimony under § 71 and § 215 of the Internal Revenue Code.

APPLICABLE FACTS:

Taxpayer is an individual using the cash method of accounting over a calendar year. On Date A, Taxpayer and Former Spouse were divorced under State law pursuant to an Order issued by the Circuit Court of County ("Court Order"). The Court Order was issued subsequent to a separation agreement entered into by the parties ("Separation Agreement"). The Court Order incorporates the Separation Agreement by reference.

Section 3 of the Court Order provides that Taxpayer shall pay Former Spouse "as support and maintenance such sums of money as set out in Paragraph 16 of the aforesaid [S]eparation [A]greement pursuant to the terms and conditions therein

contained.”

Sentence 1 of Paragraph 16 requires Taxpayer to provide monthly alimony payments of \$x for the support and maintenance of Former Spouse beginning on Date B until she dies, a further court order is issued, she becomes remarried, or after Date C. Sentence 6 of Paragraph 16 states that if Taxpayer has paid alimony through Date C, then Taxpayer “has the option to a lump sum settlement of \$y or to continue paying alimony as aforesaid or until such time as he chooses to exercise the option to pay \$y lump sum settlement.”

Neither the Court Order nor Paragraph 16 of the Separation Agreement exclude any of the support and maintenance payments from the Former Spouse’s income under § 71 or preclude Taxpayer from deducting any of these payments under § 215.

Taxpayer and Former Spouse have maintained separate households at all times since the effective date of the divorce. The payments described in the Court Order in Paragraph 16 of the Separation Agreement are not contingent on events associated with any children of the marriage.

Taxpayer has determined to make a lump-sum payment of \$y in cash to Former Spouse in satisfaction of his support and maintenance obligation under Section 3 of the Court Order pursuant to Paragraph 16, Sentence 6 of the Settlement Agreement.

RULINGS REQUESTED:

1. Taxpayer’s payment of \$y for the support and maintenance of Former Spouse pursuant to the Court Order is alimony under § 71(b).
2. Taxpayer may deduct Payment from his federal income taxes pursuant to § 215(a).

LAW AND ANALYSIS

Section 71(a) of the Code includes amounts received as alimony or separate maintenance payments in gross income. Under § 71(b), the term “alimony or separate maintenance payments” 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 § 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 215(a) provides that an individual shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual's taxable year. Under § 215(b), the term "alimony or separate maintenance payment" means any alimony or separate maintenance payment (as defined in § 71(b)) which is includible in the gross income of the recipient under § 71.

If a payment satisfies all of the factors set forth in § 71(b), then it is alimony; if it fails to satisfy any one of the above factors, it is not alimony. Jaffe v. Commissioner, T.C. Memo. 1999-196. The facts and representations set forth in your submission indicate that the requirements in subparagraphs (A), (B), (C), and (D) of § 71(b)(1) are satisfied with respect to the Payment to be made to Former Spouse.

In the instant case, the Court Order is a divorce or separation instrument under § 71(b)(2) as it requires Taxpayer to make payments for the support and maintenance of Former Spouse under Section 3 of the Court Order. Former Spouse will receive the Payment in cash pursuant to the Court Order. The Court Order does not exclude the Payment from Former Spouse's gross income or preclude Taxpayer from deducting Payment under § 215. Taxpayer and Former Spouse have not shared the same household since the divorce. Taxpayer is not required to make any payments after Former Spouse's death pursuant to Paragraph 16, Sentence 1 of the Settlement Agreement, which is incorporated within the Court Order. The Payment is not a child support payment because it is not contingent on events associated with any children in the Court Order. Accordingly, the Payment to be made to Former Spouse is alimony or separate maintenance within the meaning of § 71 of the Code, and thus, deductible by Taxpayer under § 215 when Payment is made.

RULINGS:

Based solely on the facts and representations submitted, we conclude and rule as follows:

1. Taxpayer's payment of \$y to Former Spouse constitutes alimony under § 71(b).
2. Taxpayer may deduct Payment from his federal income taxes pursuant to § 215(a).

DISCLAIMERS AND LIMITATIONS:

Except as specifically ruled above, no opinion is expressed as to the federal tax treatment of the transaction under any other provisions of the Code and the Income Tax Regulations that may be applicable or under any other general principles of federal income taxation. Neither is any opinion expressed as to the tax treatment of any

conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling.

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

Sincerely yours,

CLIFFORD M. HARBOURT
Senior Technician Reviewer, Branch 2
Associate Chief Counsel
(Income Tax & Accounting)

cc: