

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

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TY:

Legend

- Taxpayer =
- Ex-spouse =
- Court =
- Year 1 =
- Year 2 =
- \$x =
- \$y =
- Chapter X =
- State Code =
- b =

- c =

- d =

- Section Z =
- \$z =
- Section Y =
- e =

- f =
- g =
- h =
- i =

- j =
- k =

Dear :

This ruling responds to a letter dated Year 1 submitted by your authorized representative, requesting a ruling that payments made to taxpayer by her Ex-spouse and labeled as contractual alimony under a Decree of Divorce do not constitute alimony under section 71 of the Internal Revenue Code.

FACTS

Taxpayer was divorced from Ex-spouse by the Court in Year 2. The divorce decree ordered Ex-spouse to pay contractual alimony in monthly payments of \$x until a total amount of \$y had been paid in full. The Divorce Decree was signed by the presiding Judge in Year 2.

The agreement provided that the contractual alimony were support payments voluntarily undertaken by Ex-Spouse and were intended to qualify as contractual alimony. Under the heading 'Contractual Alimony', the Decree provided:

It is the mutual desire of the parties to provide a continuing measure of support for [Taxpayer], Receiving Party, after divorce. These support payments undertaken by [Ex-spouse], Paying Party, are intended to qualify as contractual alimony as that term is defined in Section 71(a) of the Internal Revenue Code.

The Decree did not provide any provision allowing for the termination of the payments upon the death of taxpayer, the payee spouse. Further, the Decree specifies that upon the death of Ex-spouse, the payor spouse, the payments are a fully binding obligation upon the estate of Ex-spouse.

LAW AND ANALYSIS

Section 61(a) provides that gross income means all income from whatever source derived, including alimony.

Section 71(a) provides that gross income includes amounts received as alimony or separate maintenance payments. Section 71(b) provides that the term 'alimony or separate maintenance payment' means any payment in cash if: (1) such payment is received by, or on behalf of, a spouse under a divorce or separation instrument; (2) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under section 71 and not allowable as a deduction under section 215; (3) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee and payor are not members of the same household at the time such payment is made; and (4) there is no liability to make such payment for any period after the death of the payee and no liability

to make any payment as a substitute for such payments after the death of the payee. A payment must meet all of these factors to qualify as alimony.

Notice 87-9, 1987-1 C.B. 421, states that the termination of the liability does not have to be expressly stated in the instrument if the termination would occur by operation of State law. This amendment applies to any divorce or separation instrument executed after December 31, 1984. *See also Hoover v. Commissioner*, 102 F.3d 842 (6th Cir. 1996) (holding that federal courts look to the state family law if the divorce decree is silent on the issue of whether payments terminate upon payee spouse's death).

Chapter X of the State Code provides that the court may order maintenance payments as temporary payments to allow a spouse a rehabilitation period to develop work skills and obtain employment with the goal of self-sufficiency. Such payments must be court ordered and based on detailed findings by the court. See b; c; d. Maintenance payments are subject to a three year cap and the amount is limited to minimum reasonable needs of the recipient, as determined by the court. Section Z of the State Code provides that maintenance payments cannot exceed the lesser of \$z of payor's average gross monthly income. See b, *supra*. Under Section Y, maintenance payments are terminated upon the death of either party or upon the remarriage of the obligee.

The state legislature has drawn a distinction between contractual alimony and contractual maintenance. Under state law, the legal force and meaning of marital property settlement agreements are governed by the law of contracts. See e; f; g. Further, in h, these agreements, though incorporated into the final divorce decree, do not transform the contractual payments into court ordered alimony and distinguish between court-ordered alimony payments and assumed contractual obligations for support. In contrast, maintenance payments are ordered by the court and are subject to a number of very stringent requirements.

The divorce decree specifically describes Ex-spouse's obligation as 'contractual alimony'. Nothing in the divorce decree refers to the spousal maintenance provisions of Chapter X of the State Code. The only statutory reference is to the definition of 'contractual alimony' pursuant to the Internal Revenue Code. There are no references to the payee spouse's eligibility for maintenance or the factors considered in determining nature, amount, duration and manner of payments, pursuant to Chapter X. Furthermore, the monthly payments exceed the statutory provisions for maintenance and continue for a set period of time, regardless of remarriage or death of either spouse. Consequently, Chapter X of the State Code does not apply to the divorce decree and therefore, the termination provision of Section Y does not apply. For similar analysis, see i; j; k. Based on this, we hold that the contractual alimony payments do not qualify as alimony as that term is defined under section 71 of the Internal Revenue Code because the payments do not terminate upon the death of the payee spouse. No

opinion is expressed as to whether these payments still constitute income under section 61 of the Code.

This ruling is directed only to the taxpayer 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. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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 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,

Christopher F. Kane
Branch Chief, Branch 3
(Income Tax & Accounting)