



OFFICE OF THE CHIEF COUNSEL

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

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The Honorable Richard Nugent
Member, United States House of Representatives
11035 Spring Hill Drive
Spring Hill, FL 34608

Attention:

Dear Congressman Nugent:

I am responding to your inquiry dated October 20, 2014, on behalf of your constituent, . asked if certain medical insurance expenses her ex-husband pays for her benefit are alimony and therefore taxable to her.

Gross income includes amounts received as alimony or separate maintenance payments (section 71(a) of the Internal Revenue Code (Code)). Alimony or separate maintenance payment is any payment in cash if:

- The spouse (or someone on the spouse's behalf) receives such payment under a divorce or separation instrument.
- The divorce or separation instrument does not designate such payment as a payment that is not includible in gross income under section 71 of the Code and not allowable as a deduction under section 215 of the Code.
- 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.
- No liability exists to make such payment for any period after the death of the payee spouse, and no liability exists to make any payment (in cash or property) as a substitute for such payment after the death of the payee spouse (section 71(b)(1) of the Code).

A divorce or separation instrument means, in part, a decree of divorce or separate maintenance or a written instrument incident to such decree or a written separation agreement (section 71(b)(2) of the Code).

If a payment satisfies all of the factors listed in section 71(b) of the Code, then it is alimony. However, if it fails to satisfy any one of the above factors, it is not alimony. See Q and A-2 of section 1.71-1T(a) of the Income Tax Regulations.

If the divorce decree or other relevant document does not expressly state that the payment obligation terminates upon the death of the payee spouse, the payment will qualify as alimony provided that the termination of the obligation would occur by operation of state law. See Notice 87-9, 1987-1 C.B. 421.

 may also want to refer to Publication 504, *Divorced or Separated Individuals*, for additional information about the general rules for alimony. I am enclosing a copy of this publication.

We understand that applied for a letter ruling in . We advised in a letter dated , to her that the user fee she submitted was not sufficient and that she might qualify for a reduced user fee. The procedures to request a letter ruling are in Revenue Procedure 2014-1, 2014-1 I.R.B. 1 (January 2, 2014) (or its successor). I am enclosing parts of the revenue procedure, which may help if she wants to request a letter ruling. The enclosure includes a schedule of user fees and the eligibility requirements for paying a reduced user fee for a letter ruling request (Appendix A of Rev. Proc. 2014-1).

I hope this information is helpful. If you have any questions, please contact me, , or at () .

Sincerely,

Thomas D. Moffitt
Chief, Branch 2
Office of the Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2)