

**Internal Revenue Service**

Number: **201531013**  
Release Date: 7/31/2015  
Index Number: 71.00-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B02  
PLR-140938-14

Date:  
April 30, 2015

TY:

Legend

Taxpayer =  
Ex-spouse =  
Decree =  
Date 1 =  
Date 2 =  
Date 3 =  
A =  
B =  
C =

D =

E =

Dear \_\_\_\_\_ :

This is in response to your request for a private letter ruling which was received by the Service on Date 3. You requested a ruling that certain payments made to you by your ex-spouse pursuant to a Decree do not constitute alimony payments within the meaning of section 71(b) of the Internal Revenue Code.

#### FACTS

Taxpayer is an individual. On Date 1, Ex-spouse and Taxpayer entered into a Property Settlement Agreement. On Date 2, a judge of the A, signed and entered the Decree which incorporated the Property Settlement Agreement.

Paragraph B of the Property Settlement Agreement reads as follows:

B. C

#### LAW AND ANALYSIS

Section 71(a) provides that gross income includes amounts received as alimony or separate maintenance payments. Section 71(b)(1) defines the term "alimony or separate maintenance payment" as

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 section 71 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 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 payment after the death of the payee spouse.

If a payment satisfies all of the factors set forth in section 71(b) then it is alimony, but if it fails to satisfy any one of the above factors, it is not alimony. *Rood v. Commissioner*, T.C. Memo. 2012-122. See also *Sperling v. Commissioner*, T.C. Memo. 2009-141 (payments are not alimony under section 71(b)(1), as payor spouse's liability to make payments survived the death of the payee spouse under the divorce decree and property settlement agreement). 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. *Hoover v. Commissioner*, 102 F.3d

842, 845-46 (6<sup>th</sup> Cir. 1996). See *also* Notice 87-9, 1987-1 C.B. 421 (divorce or separation instrument executed after December 31, 1984, need not expressly state that the payor spouse's liability ends upon payee's death if termination would occur by operation of state law). The mere fact that the documents may characterize a payment as alimony has no effect on the consequences of that payment for federal tax purposes. *Hoover*, 102 F.3d at 844.

Section 1.71-1T(b), Q&A-10 of the Temporary Treasury Regulations, provides that assuming all the other requirements relating to the qualification of certain payments as alimony or separate maintenance payments are met, if the payor spouse is required to continue to make the payments after the death of the payee spouse, then none of the payments before (or after) the death of the payee spouse qualify as alimony or separate maintenance payments.

In the instant case, based on the facts provided and the Taxpayer's representations, the requirements of subparagraphs (A), (B), and (C) of section 71(b)(1) are satisfied. However, paragraph B of the Property Settlement Agreement provides that "Spousal maintenance shall not terminate at Wife's death . . ." so subparagraph (D) of section 71(b)(1) is not satisfied because Ex-spouse is required to continue making payments if the Taxpayer dies prior to the expiration of the D year term set forth in paragraph B. Therefore, the payments at issue are not alimony for federal tax purposes.

#### RULINGS

Based solely on the information submitted and the representations set forth above, we rule that the payments of \$E per month ordered pursuant to a Decree do not constitute alimony or separate maintenance payments within the meaning of section 71(b).

#### CAVEATS

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. No opinion is expressed as to the federal tax treatment of the transaction under any other provisions of the Internal Revenue Code and the Treasury Regulations that may be applicable or under any other general principles of federal income taxation. This letter ruling is only applicable to matters under our jurisdiction. See Rev. Proc. 2015-1, 2015-1 I.R.B. 1, 18, Section 1. No opinion is 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 requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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.

Enclosed is a copy of this letter ruling showing the deletions proposed to be made in the letter when it is disclosed under section 6110.

Sincerely,

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NORMA C. ROTUNNO  
Senior Technician Reviewer, Branch 2  
Office of the Associate Chief Counsel  
(Income Tax & Accounting)

cc:

Enc. Copy for section 6110 purposes