

New Tax Law Changes – Spur in Divorces

Not So Fast, My Friend

Recently, the American Bar Association, *USA Today*, *Politico*, *Morningstar*, and other news sources published articles related to the tax law changes about divorce alimony and its deductibility for federal income tax purposes. The gist of the articles suggests, among other things, that there is a need for couples anticipating divorce to do it quickly, before the tax law changes with respect to the deduction of alimony¹ and/or separate maintenance.²

The authors, being sports fans, call upon the catchphrase of Lee Corso: “Not So Fast, My Friend.”³

Yes, there may be advantages for folks to rush and get a divorce to protect the alimony deduction—but let’s first look at the pros and cons as well as the practical side of the typical divorce process/proceedings.

If you fall under certain provisions and/or can take advantage of the 2018 window in time (see below), then deductibility of alimony and/or separate maintenance can still apply. If your matrimonial dispute is not settled in 2018 and occurs beginning in 2019, then the paying spouse will not be able to take any federal income tax deductions for said payments.

BACKGROUND

The Tax Cuts and Jobs Act (TCJA) made changes to the tax treatment of alimony that take effect for divorces and legal separations after December 31, 2018.⁴ Under current rules, an individual who pays alimony generally can deduct an amount equal to the alimony or separate maintenance payments paid during the year as an “above the line deduction.”⁵ Also under current rules, alimony and separate maintenance amounts are taxable to the recipient (e.g., spouse), which should be includable in taxable gross income.

The U.S. Census Bureau indicated that 243,000 people got alimony last year, 98 percent of them women. The Internal Revenue Service (IRS) indicated that 361,000 taxpayers claimed a total of \$9.6 billion (or an average of approximately \$26,593 per filer) in alimony 2015.⁶

However, approximately only 178,000 of the alimony recipients reported to the IRS that they received spousal support (alimony or separate maintenance). This is a huge gap, and you can do the math (or see below).⁷ This gap in reporting deductions and reporting income has not set well with our government (including the IRS) for a number of years.

PROPOSED CHANGES

With the TCJA there will be *no* deduction for alimony and/or separate maintenance for certain spouses who pay alimony beginning January 1, 2019.⁸ This means that beginning in 2019, for alimony and separate maintenance paid (under a divorce or legal separation agreement in calendar year 2019), the alimony-paying spouse won’t be able to deduct payments for federal income tax purposes. This also means the receiving spouse does not have to report the payments in gross income or pay federal income taxes on the subject payments.

EXISTING DIVORCES AND SEPARATIONS

The TCJA rules should not apply to existing divorces or separations.

WHAT IS A POOR BOY TO DO?

For planning purposes in a matrimonial dispute going into 2018, if alimony or separate maintenance payments are contemplated to be a significant part of the settlement,⁹ then:



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- Meet with your attorney and try to settle the matter prior to January 1, 2019.¹⁰
- If you can’t settle the matrimonial dispute before January 1, 2019, consult with your attorney and tax advisor to strategize on how to best achieve credible results.
- Re-examine with counsel and your tax advisor existing pre-nuptial/post-nuptial agreements to avoid any surprises.¹¹

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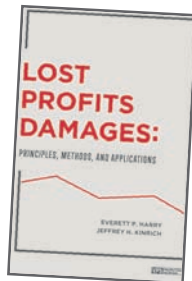
expert TIP

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GRAY, SCHRUPP, and ROUNDTREE, continued

CONCLUSION

The landscape is changing on tax benefits of alimony. News publications are saying there will be a rush on matrimonial disputes. Not so fast, my friends! There is still time to plan with your family law counsel, forensic accounting experts, and income tax advisors to achieve credible results. It takes a team approach to make it happen. I can't speak for Mr. Corso, but rest assured, he would probably agree on the *team* approach.

¹ “Alimony. A court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while the are involved in a matrimonial lawsuit, or after they are divorced; esp., money that a court orders someone to pay regularly to his or her former spouse after the marriage has ended. Alimony is distinct from a property settlement. [Under current regulations] Alimony payments taxable income to the receiving spouse and are deductible by the payor spouse; payments in settlement of property rights are not. The Supreme Court has held unconstitutional a statute that imposed alimony obligations on the husband only. *Orr v. Orr*, 440 U.S. 268, 99 S.Ct. 1102 (1979). – Also termed *spousal support*; *maintenance*. CF. CHILD SUPPORT; DIVORCE AGREEMENT. ‘Alimony,’ which signifies literally nourishment, or sustenance, means, in a general sense, the allowance required by law to be made to a spouse from the other spouse’s estate for support or maintenance, either during a matrimonial suit or at its termination, where the fact of marriage is established and the right to a separate maintenance is proved. Similarly stated, alimony is the allowance which a party may be compelled to pay to his or her spouse for maintenance when they are living apart or after they have been divorced.” 27B C.J.S. Divorce § 306, at 102-03 (1986). *Black’s Law Dictionary*, Deluxe Tenth Edition (*Black’s Law Dictionary*), Bryan A. Garner, editor in chief, © 2009, 2014 Thomson Reuters, p. 89.

² “Separate maintenance income is a form of income one spouse pays to another during a separation. This differs from alimony, which is a form of income one spouse pays

to another following a divorce. Separate maintenance income is something a judge has to order, and how this occurs varies by state. For example, some states may consider the amount to cover total support, but others only require this income to cover basic room and board. Those receiving this type of income [under current regulations] will have to report it when they file their federal income taxes because it is considered a part of their gross annual income.” ⁴www.reference.com/government-politics/separate-maintenance-income-32858caf47bd236c. “Separate maintenance. (17c) Money paid by one married person to another for support if they are no longer living together as husband and wife. This type of maintenance is often mandated by a court order. An action for separate maintenance is not maintainable after the marriage is dissolved. – Also termed *separate support*.” *Black’s Law Dictionary*, p. 1097.

³ Lee Corso is an American sports broadcaster and football analyst for ESPN and former coach. In 1987, Corso was hired by ESPN as an analyst for its Saturday *College Game Day* program that originates from the sit of one of the day’s big games.

⁴ <https://chechpoint.riag.com/app/view/toolItem?usid=11b883s108250&feature=tchekpoint...>

⁴ Above the Line Deductions – Above the line deductions are certain types of deductions that are subtracted from your income before the adjusted gross income is calculated for tax purposes. Above the line deductions include such items as losses on a property sale, alimony payments, and educational expenses. Since above the line deductions are generally deducted from taxable income, they are advantageous to taxpayers in the sense that they reduce the overall tax burden [for the taxpayer].

⁵ Last date the data was available. ⁵<https://usat.ly/2C1qxbt>. Only approximately 49 percent report income (e.g., 178,000) while one hundred percent take deductions (e.g., 361,000). ⁶<https://usat.ly/2C1qxbt>.

⁶ “This change doesn’t affect people who divorce or sign a separation agreement before 2019, according to the *USA Today*.” ⁷<http://www.abajournal.com/authors/4>.

⁷ For example, in Texas generally alimony (and separate maintenance) payments are not a significant part of the matrimonial dispute/settlement). However, if they are, please read on.

⁸ For large matrimonial estates this may not be practical – thus consider the changes in the income tax law noted above.

⁹ The authors are not aware of any changes in the new tax law that address pre or post nuptial agreements. This could upset certain parties who think they have this covered with existing agreements.

