

TAX TALK
BY JEFFREY D. SKOLNICK, CPA, M.S. TAXATION

TAXATION OF ALIMONY AND CHILD SUPPORT

In today's environment of divorce rate in excess of 50% coupled with harsh economic times, alimony and child support payments have become even more of a hot topic than in the past. This article will attempt to clarify some of the rules.

What is alimony and what are the tax implications?

Alimony is clearly defined by the Internal Revenue Code and payments which meet the definition of alimony are allowable as deductions (whether or not the individual itemizes) on the return of the payor and includible as income on the return of the payee spouse.

In order for payments to be considered alimony the following tests must be met:

- **Payments must be made under a divorce or separation agreement**
- **The divorce or separation agreement does not designate the payments as child support or a property settlement**
- **Payments must be in cash**
- **Divorced or legally separated couples must live in separate households**
- **The obligation to make payments must end upon the death of the payee spouse**

Although the definition of alimony has not changed, in these economic times there are more couples living together until they can sell their home. It is important to keep in mind that as long as they live in the same home, the payments being made, even if under a divorce or separation agreement are not alimony.

What is considered child support and what are the tax implications?

Child support payments are simply what they say, payments to support the children. There is no deduction to the payor spouse, nor any income to be reported by the payee spouse.

What if not all alimony and child support payments are made during the year?

Unfortunately in recent times there has been an increase in the amount of individuals who simply cannot keep up with their alimony and child support payments. The tax treatment in such a situation is simply to apply all payments to child support first and then the remainder is considered alimony.

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This methodology can be very good or very bad depending on whose perspective you are looking at it from. If you are the paying spouse struggling to pay whatever you can and you still do not receive a deduction for the payments, it can be painful. If, on the other hand, you are the payee spouse, you will have no taxable income to report.

What is a property settlement and are there tax implications?

Property settlements incident to a divorce are defined as transfers from one spouse to another within 1 year of the date which the marriage ceases. Generally, these are not taxable although there are some special rules relating to retirement plans and IRAs. The basis of the property transferred is the same basis that the transferor had in the property, usually its original cost.

Conclusion

This article discusses very general questions relating to alimony, child support and property settlements. Each situation is unique and as always if you're not sure of the rules, then check with a tax professional.