



Can you Deduct that Alimony?

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Alimony payments are tax-deductible only if they meet certain requirements that are outlined below. When negotiating a divorce settlement, it is important to have your divorce decree or separation agreement reviewed for tax purposes before it becomes effective, to make sure these requirements are met. Even if the decree or agreement specifies that the payments are alimony **they won't be treated as alimony for tax purposes unless these requirements are satisfied.** Your tax advisor should be consulted before signing the legal instrument. Following are the requirements for alimony to be treated as tax deductible:

- **No voluntary payments:** For an alimony payment to be deductible, it must be required by a divorce or separate maintenance decree (legal separation where marriage is not legally dissolved yet) or a written separation agreement. Therefore, it's possible to deduct alimony payments before the couple is divorced or legally separated, as long as one of the above documents is signed or a court order or decree is effective.
- **Cash only:** Only payments of cash (or cash equivalent) qualify as deductible alimony. The cash can either be paid directly to the spouse or can be paid on the spouse's behalf under the terms of the instrument to cover an expense such as rent or the mortgage.
- **Payments to stop at death of recipient:** For the payments to qualify as alimony, the payments must be required (under the instrument or by law) to stop when the spouse dies. Many individuals seek to have the payments stop at the remarriage of the spouse as well. This won't prevent deductibility, but isn't a requirement for deductibility. (Note: if the payments are to continue after the spouse dies, then none of the payments-including those made while the spouse is alive-are deductible.) The divorce papers should always declare whether the obligation continues to exist after the death of the recipient.

- **Separate living arrangements:** If you're making payments under a divorce decree, you must be living apart from your spouse for the payments to qualify as alimony. The former spouses also cannot file a joint tax return.
- **Distinguish child support:** Payments made for child support are not deductible. This includes payments clearly fixed in the instrument as child support. It also includes, however, payments which the instrument calls alimony but which are linked to a contingency relating to the child. For example, if the "alimony" required to be paid monthly is \$1,500, but drops to \$1,000 in (or near) the month in which the child becomes 18, the "extra" \$500 a month will be treated as nondeductible child support.

A recent study determined that there is a large gap between the amount of alimony deductions claimed and the amount of alimony included in income. For 2010, this gap totaled \$1.4 billion. The payer's tax return is obligated to report the recipient's social security number along with the alimony deduction. IRS attempts to match the alimony deduction and social security number with the recipient's tax return, to ensure that the amounts are in agreement. If they do not, a notice may be sent to one or both parties. Further examination is possible. However, such examinations are typically reserved for those with alimony deductions that are higher than average.

Finally, the legal instrument cannot state that payments are not alimony, by indicating that the payment is not deductible by the payer or not includable in the recipient's income. For example, it cannot be stated that such payments are tax-free to the recipient spouse, even if they meet all of the above requirements as deductible alimony.

Getting your former spouse to agree to take alimony instead of child support can cut your taxes substantially. However, the alimony is included in the spouse's taxable income while the child support isn't. Therefore, you must first determine how much the deduction will save you in taxes. Then, in your negotiations, you can offer your spouse a portion of your savings in the form of additional alimony, to get your spouse to agree. For example, you can offer \$1,000 a month in child support, but be willing to pay, say, \$1,200 a month if she consents to have the payments structured so as to qualify as alimony.

For answers to these or other tax questions, contact one of the tax professionals at Zinner & Co. LLP.