

TAX TREATMENT OF ALIMONY UNDER THE TAX CUTS AND JOBS ACT

The Tax Cuts and Jobs Act ("TCJA"), signed into law by President Trump on December 22, 2017, changes the tax treatment for alimony payments, effective for divorce agreements and legal separation agreements executed after 2018.

Under the current rules, an individual who pays alimony or separate maintenance may deduct an amount equal to the alimony or separate maintenance payments paid during the year as an "above-the-line" deduction. (An "above-the-line" deduction - which is a deduction that a taxpayer need not itemize deductions to claim - is generally more valuable for the taxpayer than an itemized deduction.) In addition, under current rules, alimony and separate maintenance payments are taxable to the recipient spouse (i.e., includible in that spouse's gross income).

However, new rules are coming soon. Under the TCJA, there is no deduction for alimony for the payer. Furthermore, alimony is not gross income to the recipient. So for divorces and legal separations that are executed (i.e., that come into legal existence due to a court order) after 2018, the alimony-paying spouse won't be able to deduct the payments, and the alimony-receiving spouse won't include them in gross income or pay federal income tax on them.

These new rules don't apply to existing divorces and separations. The current rules continue to apply to already-existing divorces and separations, as well as to divorces and separations that are executed before 2019.

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Some taxpayers may want the TCJA rules to apply to their existing divorce or separation. Under a special provision, if taxpayers have an existing (pre-2019) divorce or separation decree, and they have that agreement legally modified after December 31, 2018, the new rules apply to that modified decree if the modification expressly so provides. There may be situations where applying these new rules voluntarily is beneficial for the taxpayers, such as a change in the income levels of the alimony payer or the alimony recipient.

If you wish to discuss the impact of these rules on your particular situation, please contact us.

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