

When is alimony deductible?

Alimony paid by a taxpayer is deductible while child support is not. Conversely, alimony payments are taxable to the recipient, while amounts paid for child support are tax free.

Be aware of these tax ramifications if you're negotiating a divorce. Then make sure the decree properly reflects your tax expectations.

Significantly, the mere fact that payments are characterized as "alimony" by one or both sides doesn't ensure that it will be deductible. Certain requirements spelled out in the tax law and IRS regulations must be met. For instance, payments must be made in cash or an equivalent; payments must be received by (or on behalf of) a spouse under a divorce or separation agreement, and the agreement cannot designate payments as being nontaxable to the recipient spouse and nondeductible by the payor spouse.

In addition, liability to make payment can't extend beyond the death of the recipient ex-spouse.

New decision: As part of a legally binding agreement, the taxpayer was required to pay \$735 per month in child support to his ex-spouse. The agreement didn't require the taxpayer to pay any spousal support unless he defaulted on his obligations.

In that event, he would become immediately liable for \$1,000 per month in spousal support. The obligation would continue until his ex-spouse died, the taxpayer died or he made 36 payments.

The taxpayer defaulted and the court in Colorado ordered him to pay past due child support and interest and \$36,000 in past due spousal support, plus interest.

However, under Colorado law, future alimony obligations terminate at the death of either spouse (unless otherwise agreed to in writing or expressly provided in the decree). In contrast, an order enforcing alimony arrears becomes a final money judgment, which is not affected by the death of either the payor or the payee.

Accordingly, because the taxpayer's liability was based on a judgment for which he would remain liable after either party's death, the Tax Court determined that the spousal support payments failed to qualify as deductible alimony. (*Iglicki, TC Memo 2015-80*)