

## Divorce and the New Tax Law



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A change in the tax law will eliminate a tax break for alimony payments made pursuant to divorces that are finalized after December 31, 2018.

For 2018, alimony (or spousal support or spousal maintenance) is tax deductible by the payor and taxable to the payee. This means that if you are the person paying alimony, then you get a deduction for the amount you paid. If you are the one receiving the alimony payment, then you have to include it in your taxable income.

Under the Tax Cuts and Jobs Act of 2017 ("TCJA"), for divorces finalized on or after January 1, 2019, all payments will be tax-neutral – the payor can no longer deduct the alimony payment, and the person receiving alimony does not claim the alimony as income.

This TCJA tax treatment of alimony payments will apply to payments that are required under divorce or separation instruments that are: (1) executed after December 31, 2018 or (2) modified after that date if the modification specifically states that the TCJA tax treatment of alimony payments (not deductible by the payer and not taxable income for the recipient) now applies.

The change in the treatment of alimony payments treats such payments the same as other divorce-related payments. However, it removes the ability to shift income from a high tax rate to a low tax rate. When it comes to alimony, the paying spouse is generally the higher earner and therefore taxed at a higher rate. Similarly, the receiving spouse is typically the lower earner and taxed at a lower tax rate. Under the pre-TCJA tax treatment of alimony, there are less taxes to pay resulting in more dollars available. Under the TCJA tax treatment of alimony, there are more taxes to pay resulting in less money to get the case settled.

For most people going through a divorce, the income tax deduction for alimony has always been an incentive to the payor and a useful settlement tool to avoid trial. The TCJA tax treatment of alimony may change this use of alimony as a settlement tool in divorces. Not only will the payor lose the income tax deduction, but without it some payors may be pushed into a higher tax bracket. And they will still have to pay the alimony with fewer available dollars.

However, the window is still open. If the divorce is filed and finalized before January 1, 2019, the pre-TCJA tax treatment will still apply. After that, the new TCJA tax treatment will inevitably reduce the amount of cash available to settle a case using alimony.