Internal Revenue Service

Number: **200329003**
Release Date: 7/18/2003
Index No.: 71.07-00, 215.07-00

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:ITA:2 – PLR-102370-03
Date:
March 20, 2003

In Re:

LEGEND:

H =
W =
$X =
$Y =

Dear :

You requested a private letter ruling on behalf of *H* in your letter of December 3, 2002, concerning a proposed lump-sum payment to be made to *W* in satisfaction of all spousal support obligations of *H*.

RULING:

H may deduct the proposed lump-sum payment to *W* as alimony under § 215 of the Internal Revenue Code.

FACTS:

H and *W* executed a marriage settlement agreement (MSA) in 1991 by which they divided their property and made provisions in case of divorce. They separated in 1991 and were divorced in 1993. The divorce decree specifically approved the MSA and merged and incorporated it by reference into the decree.

By the terms of the MSA divorce provisions, *H* is required to pay $X spousal support to *W* each year in equal monthly installments. These payments are defined by the MSA as alimony which is deductible by *H* and includible in the income of *W*. The MSA specifies that all such obligations and payments by *H* shall terminate conclusively and forever upon the death of *W*. *H* has paid alimony to *W* since the 1993 divorce.

The MSA also provides that, in lieu of paying the specified monthly alimony, *H* at his sole discretion may elect to pay *W* $Y as a "payment in lieu of spousal support." Upon this payment, *W*'s right to alimony under the MSA ceases.

ANALYSIS:

A taxpayer may deduct an amount equal to the alimony or separate maintenance payments paid during such individual's taxable year, under § 215(a). The alimony or separate maintenance payments must be includible in the gross income of the recipient under § 71(a).

The term "alimony or separate maintenance payment" is defined by § 71(b)(1) as any payment in cash if--

> (A) the payment is received by (or on behalf of) a spouse under a divorce or separation instrument,
>
> (B) the divorce or separation instrument does not designate the payment as a payment which is not includible in gross income under § 71 and not allowable as a deduction under § 215,
>
> (C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and
>
> (D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.

We conclude that a lump-sum payment under the MSA made in satisfaction of *H*'s alimony obligation qualifies as an alimony payment under § 71(b), and thus is deductible under § 215(a).

> (A) The payment will be made under the divorce decree that incorporated the terms of the MSA by specific approval and reference. The MSA requires spousal support payments. Because under the MSA the "payment in lieu of spousal support" is in complete satisfaction of *H*'s future obligation to pay alimony, the lump-sum payment stands in the place of the alimony required by the divorce decree.
>
> (B) The MSA specifies that the payments shall be deductible by *H* as alimony and included in the income of *W*.
>
> (C) You have represented that *H* and *W* are divorced, live separately, and do not file joint income tax returns.

(D) The MSA specifies that upon the death of *W*, all obligations of *H* to pay spousal support terminate, including any obligations to *W*'s estate. *H* is not obligated to pay either monthly alimony or a lump sum to relieve his alimony obligation after the death of *W*.

Child support payments are excluded from the definition of alimony or separate maintenance payments by § 71(c). However, the proposed lump-sum payment is not a child support payment under the MSA and is not contingent on events associated with any children in the divorce decree.

CAVEATS:

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter. This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Thomas D. Moffitt
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2)

cc: