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**Internal
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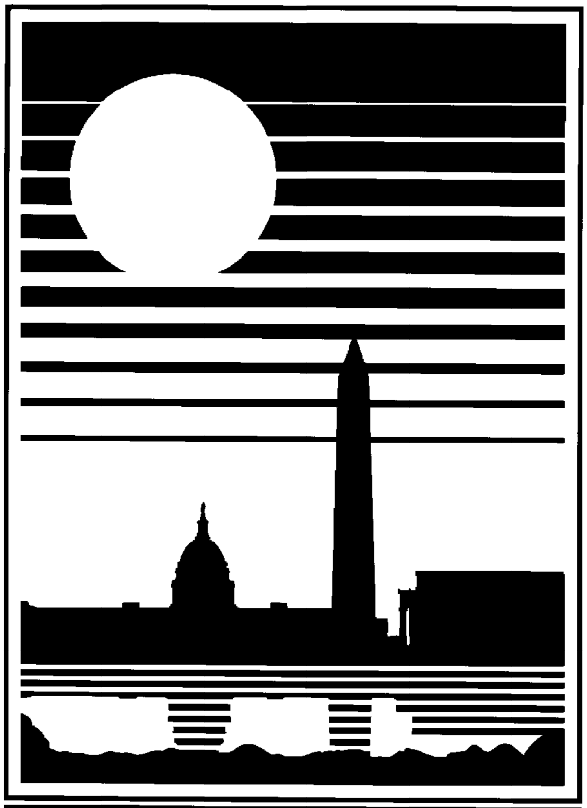
Divorced or Separated Individuals

For use in preparing

1996 Returns



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See *How To Get More Information* in this publication.

Contents

Important Change for 1996

Social security numbers for dependents. For 1996, you must list the social security number of every dependent you claim who was born before December 1, 1996. See *Exemptions for Dependents,* later.

Individual taxpayer identification number (ITIN). The IRS will issue an ITIN to a nonresident or resident alien who does not have and is not eligible to get a social security number (SSN). To apply for an ITIN, Form W-7 must be filed with the IRS. It usually takes about 30 days to get an ITIN. The ITIN is entered wherever an SSN is requested on a tax return. If you are required to include another person's SSN on your return and that person does not have and cannot get an SSN, enter that person's ITIN.

Important Reminders

Change of address. If you change your mailing address, be sure to notify the Internal Revenue Service using **Form 8822,** *Change of Address.* Mail it to the Internal Revenue Service Center for your old address (addresses for the Service Centers are on the back of the form).

Change of name. If you change your name, be sure to notify the Social Security Administration using **Form SS–5,** *Application for a Social Security Card.*

Introduction

This publication explains tax rules that apply if you are divorced or separated from your spouse. The first part covers general filing information. It can help you choose your filing status whether you are separated or divorced. It also can help you decide which exemptions you are entitled to claim, including dependency exemptions.

The next part of the publication discusses payments and transfers of property that often occur as a result of divorce and how you must treat them on your tax return. Examples include alimony, child support, other court-ordered payments, property settlements, and transfers of individual retirement arrangements. This part also explains deductions allowed for some of the costs of obtaining a divorce.

The last part of the publication explains special rules that may apply to persons who live in community property states.

Useful Items

You may want to see:

Publications

- ☐ **501** Exemptions, Standard Deduction, and Filing Information
- ☐ **544** Sales and Other Dispositions of Assets
- ☐ **555** Community Property
- ☐ **590** Individual Retirement Arrangements (IRAs)

Filing Status

Your filing status is used in determining your filing requirement, standard deduction, and correct tax. It may also determine whether you can claim certain deductions and credits. The filing status you may choose depends partly on your marital status on the last day of your tax year.

Marital status. If you are considered unmarried, your filing status is single or, if you meet certain requirements, head of household. If you are considered married, your filing status is either married filing a joint return or married filing a separate return.

TIP *If both you and your spouse have income, you should usually figure your tax on both a joint return and separate returns to see which gives you the lower tax.*

Considered unmarried. You are considered unmarried for the whole year if either of the following applies.

1) You have obtained a final ***decree of divorce or separate maintenance*** by the last day of your tax year. You must follow your state law to determine if you are divorced or legally separated.
   Exception: If you and your spouse obtain a divorce in one year for the sole purpose of filing tax returns as unmarried individuals, and at the time of divorce you intend to remarry each other and do so in the next tax year, you and your spouse must file as married individuals.

2) You have obtained a ***decree of annulment,*** which holds that no valid marriage ever existed. You also must file amended returns claiming unmarried status for all tax years affected by the annulment that are not closed by the statute of limitations. The statute of limitations generally does not end until 3 years after the due date of your original return.

Considered married. You are considered married for the whole year if you are separated but you have not obtained a final decree of divorce or separate maintenance by the last day of your tax year. An interlocutory decree is not a final decree.

Exception. If you live apart from your spouse, under certain circumstances you may be considered unmarried and can file as head of household. See *Head of Household,* later.

Joint Return

If you are married, you and your spouse can choose to file a joint return. If you file jointly, you both must include all your income, exemptions, deductions, and credits on that return. You can file a joint return even if one of you had no income or deductions.

To file a joint return, at least one of you must be a U.S. citizen or resident at the end of the tax year. However, if either of you was a nonresident alien at any time during the tax year, you can file a joint return only if you agree to treat the nonresident spouse as a resident of the United States. This means that your combined worldwide incomes are subject to U.S. income tax. Get Publication 519, *U.S. Tax Guide for Aliens.*

Signing a joint return. Both you and your spouse must sign the return, or it will not be considered a joint return.

Joint and individual liability. Both you and your spouse are responsible, jointly and individually, for the tax and any interest or penalty due on your joint return. This means that one spouse may be held liable for all the tax due even if all the income was earned by the other spouse.

Divorced taxpayers. If you are divorced, you are still jointly and individually responsible for any tax, interest, and penalties due on a joint return for a tax year ending before your divorce. This responsibility applies even if your divorce decree states that your former spouse will be responsible for any amounts due on previously filed joint returns.

Innocent spouse exception. You may not have to pay the additional tax, interest, and penalties if the tax on your joint return was understated by more than $500 because your spouse either:

1) Omitted an item of his or her gross income, or
2) Claimed a deduction, credit, or property basis for which there was no basis in fact or law.

To determine whose gross income was omitted (other than income from property), do not apply community property rules.

To qualify under this exception, you must meet both of the following requirements.

1) You must establish that you did not know, and had no reason to know, about the tax understatement.
2) It must be unfair, under all the facts and circumstances, to hold you liable for the additional tax, interest, and penalties.

A factor in determining that it is unfair to hold you liable is the absence of any significant benefit to you, either direct or indirect, from the understatement of tax. Your receipt of property from your spouse may be a significant benefit, even if it is received several years after the year of the tax understatement. Normal support is not a significant benefit.

In addition, if the tax understatement resulted from claiming a deduction, credit, or basis, the exception applies only if the additional tax, interest, and penalties are more than:

1) 10% of your adjusted gross income (AGI) for the preadjustment year, if your AGI was $20,000 or less, or
2) 25% of your AGI for the preadjustment year, if your AGI was more than $20,000.

Your preadjustment year is your most recent tax year ending before a deficiency notice was mailed. If you were married to a different person at the end of the preadjustment year, your AGI includes your new spouse's income, whether or not you filed a joint return for that year.

Tax refund applied to spouse's debts. If your spouse has not paid child or spousal support payments or certain federal debts such as student loans, the refund shown on your joint return may be used to pay the past-due amount. But you can get your share of the refund if you qualify as an injured spouse.

Injured spouse. You qualify as an injured spouse if you meet all the following conditions:

1) You do not have to pay the past-due amount.

2) You received and reported income (such as wages, taxable interest, etc.) on the joint return. This is not required if your main home is in a community property state other than Arizona.

3) You made and reported tax payments (such as federal income tax withheld from your wages or estimated tax payments), or you took the earned income credit, on the joint return.

If you are an injured spouse, you can obtain your portion of the joint refund by completing **Form 8379,** *Injured Spouse Claim and Allocation.* Follow the instructions on the back of the form.

Note. Refunds that involve community property states must be divided according to local law. If you live in a community property state in which all community property is subject to the debts of either spouse, your entire refund is subject to offset.

Separate Returns

If you and your spouse file separate returns, you should each report only your own income, exemptions, deductions, and credits on your individual return. You can also file a separate return if only one of you had income. For information on exemptions you can claim on your separate return, see *Exemptions,* later.

Community or separate income. If you live in a community property state and file a separate return, your income may be separate income or community income for income tax purposes. For more information, see *Community Income,* later.

Itemized deductions. If you and your spouse file separate returns and one of you itemizes deductions, the other spouse will not qualify for the standard deduction and should also itemize deductions.

Dividing itemized deductions. You may be able to claim itemized deductions on a separate return for certain expenses that you paid separately or jointly with your spouse. The rules that follow apply only if you do not live in a community property state.

If you paid the medical expenses of a qualifying person with funds deposited in a joint checking account in which you and your spouse have an equal interest, you and your spouse are presumed to have paid the medical expenses equally for purposes of computing the medical expense deduction on your separate returns. You can rebut this presumption if you can show that you alone paid the expenses.

If both you and your spouse paid property tax or mortgage interest on property held as tenants by the entirety, you can deduct on your separate return the amount of property tax or qualifying interest that you alone actually paid.

If you file a separate state income tax return, you can deduct on your separate federal return the amount of state income tax you paid during the year.

If you file a joint state income tax return, and you and your spouse are jointly and individually liable for the full amount of the state income tax, you can deduct on your separate federal return the amount of state income tax you alone paid during the year. But if you are liable for only your own share of the state income tax, your deduction is limited to the smaller of:

1) The state income tax you alone paid during the year, or

2) The total state income tax you and your spouse paid during the year multiplied by a fraction, the numerator of which is the amount of your gross income and the denominator of which is your combined gross income.

If you sustain a casualty loss on a home you own as tenants by the entirety, you can report half of the loss on your separate return. Neither spouse may report the total casualty loss.

Separate liability. If you and your spouse file separately, you each are responsible only for the tax due on your own return.

Separate returns may give you a higher tax. Some married couples file separate returns because each wants to be responsible only for his or her own tax. But in almost all instances, if you file separate returns, you will pay more combined federal tax than you would with a joint return. This is because the tax rate is higher for married persons filing separately. The following rules also apply if you file a separate return.

1) You cannot take the credit for child and dependent care expenses in most cases.

2) You cannot take the earned income credit.

3) You cannot exclude the interest from Series EE savings bonds that you used for higher education expenses.

4) If you lived with your spouse at any time during the tax year—

   a) You cannot claim the credit for the elderly or the disabled, and

   b) You will have to include in income up to 85% of any social security or equivalent railroad retirement benefits you received.

5) You will become subject to the limit on itemized deductions and the phaseout of the deduction for personal exemptions at income levels that are half of those for a joint return.

Joint return after separate returns. If you or your spouse, or both, file separate returns, you can change to a joint return any time within 3 years from the due date (not including extensions) of the separate returns. This applies even if the separate returns were filed as head of household. Use Form 1040X, *Amended U.S. Individual Income Tax Return.*

For tax years beginning on or before July 30, 1996, if the amount paid on your separate returns is less than the total tax paid on the joint return, you must pay the additional tax when you file Form 1040X. For tax years beginning after July 30, 1996, you do not have to pay the additional tax as a condition to filing the joint return.

Separate returns after joint return. After the due date of your return, you and your spouse ***cannot*** file separate returns if you previously filed a joint return.

Head of Household

You may be eligible to file as head of household if you meet the requirements discussed later.

Filing as head of household has the following advantages.

1) You can claim the standard deduction even if your spouse itemizes deductions on a married filing separate return.

2) Your standard deduction is higher than that allowed on a single or married filing separate return.

3) Your tax rate may be lower than that on a single or married filing separate return.

4) You may be able to claim certain credits you cannot claim on a married filing separate return.

5) You will become subject to the limit on itemized deductions at an income level that is twice that for a married filing separate return.

6) You will become subject to the phaseout of the deduction for personal exemptions at a higher income level than those for a single or a married filing separate return.

Requirements. You can file as head of household only if you were unmarried or were considered unmarried on the last day of the year. You also must have paid more than half the cost of keeping up a home that was the main home for more than half the year (except for temporary absences, such as for school) for you and any of the following:

1) ***Your unmarried child,*** grandchild, stepchild, foster child, or adopted child. This child (except foster child) does not have to be your dependent. A foster child must qualify as your dependent.

2) ***Your married child,*** grandchild, stepchild, foster child, or adopted child whom you can claim as your dependent, or whom you could claim as your dependent except that:

   a) By your written declaration you allow the noncustodial parent to claim the dependent, or

   b) The noncustodial parent provided at least $600 for the support of the dependent and claims the dependent under a pre-1985 agreement.

3) ***Any other relative*** whom you can claim as a dependent. However, your dependent parent does not have to live with

you. (See *Father or mother,* later.) For persons who qualify as a relative, see *Test 1—Relationship* under *Dependency Tests,* later.

Your married child or other relative will not qualify you as a head of household if you claim that person as a dependent under a multiple support agreement (discussed later).

Father or mother. If your dependent parent does not live with you, you can file as head of household if you paid more than half the cost of keeping up a home that was your parent's main home for the ***whole year.*** Keeping up the main home for your dependent parent includes paying more than half the cost of keeping your parent in a rest home or home for the elderly.

Considered unmarried. If you are married, you will be considered unmarried if you meet all of the following tests.

1) You file a separate return.
2) You paid more than half the cost of keeping up your home for the tax year.
3) Your spouse did not live in your home during the last 6 months of the tax year.
4) Your home was, for more than half the year, the main home of your child, stepchild, adopted child, or foster child whom you can claim as a dependent, or whom you could claim as your dependent except that:
   a) By your written declaration you allow the noncustodial parent to claim the dependent, or
   b) The noncustodial parent provided at least $600 for the support of the dependent and claims the dependent under a pre-1985 agreement.

Nonresident alien spouse. If your spouse was a nonresident alien at any time during the tax year, and you have not chosen to treat your spouse as a resident alien, you are considered unmarried for head of household purposes. However, your spouse does not qualify as a relative. You must have another qualifying relative and meet the other requirements to file as head of household.

Keeping up a home. You are keeping up a home only if you pay more than half the cost of its upkeep. This includes rent, mortgage interest, taxes, insurance on the home, repairs, utilities, and food eaten in the home. This does not include the cost of clothing, education, medical treatment, or transportation for any member of the household.

For more information on filing as head of household, get Publication 501.

Exemptions

For 1996 you are allowed a $2,550 deduction for each exemption you can claim. However, see *Phaseout of Exemptions,* later. You can claim your exemptions whether or not you itemize deductions.

You can claim your own exemption unless someone else can claim you as a dependent. If you are married, you may be able to take an exemption for your spouse. You can take an exemption for each person who qualifies as your dependent under the dependency tests discussed later.

Exemption for Your Spouse

Your spouse is never considered your dependent. You can take an exemption for your spouse only because you are married.

Joint return. If you and your spouse file a joint return, you can claim an exemption for each of you.

Separate return. If you file a separate return, you can take an exemption for your spouse only if your spouse had no gross income and was not the dependent of someone else. This is true even if your spouse is a nonresident alien.

Alimony paid. If you paid alimony to your spouse and deduct it on your separate return, you cannot take an exemption for your spouse. This is because alimony is gross income to the spouse who received it.

Former spouse. You cannot take an exemption for your former spouse for the year in which you were divorced or legally separated under a final decree. This rule applies even if you paid all your former spouse's support that year.

Exemptions for Dependents

You can take an exemption for each person who is your dependent. A dependent is any person who meets all five of the dependency tests discussed later under *Dependency Tests.*

Note. If you can claim an exemption for your dependent, the dependent cannot claim his or her own exemption on his or her own tax return. This is true even if you do not claim the dependent's exemption or the exemption will be reduced or eliminated under the phaseout rule for high-income individuals.

Social security numbers for dependents. For 1996, if you claim a dependent who was born before December 1, 1996, you must list the dependent's social security number (SSN) on your Form 1040 or Form 1040A. If your dependent was born in December of 1996 and does not have an SSN, enter ''12/96 ''in column (2).

You do not need an SSN for a child who was born in 1996 and died in 1996. Write ''Died '' in column (2) of line 6c of your Form 1040 or Form 1040A.

CAUTION *If you do not list the dependent's SSN when required or if you list an incorrect SSN, the exemption may be disallowed.*

How to obtain a social security number. To apply for an SSN, get Form SS-5 from your local Social Security Administration (SSA) office or call the SSA at 1–800–772–1213. The completed form should be returned to the SSA.

It usually takes about 2 weeks to get an SSN.

Taxpayer identification number for aliens. If your dependent is a resident or nonresident alien who does not have and is not eligible to get an SSN, the IRS will issue your dependent an individual taxpayer identification number (ITIN) instead of an SSN. Enter your ITIN wherever an SSN is required on your tax return. If you are required to include another person's SSN on your return and that person cannot get an SSN, enter that person's ITIN. To apply for an ITIN, file Form W-7, *Application for IRS Individual Taxpayer Identification Number* with the IRS.

It usually takes about 30 days to get an ITIN.

An ITIN is for tax use only. It does not entitle you to social security benefits or change your employment or immigration status under U.S. law.

Birth or death of dependent. You can take an exemption for a dependent who was born or who died during the year if he or she met the dependency tests while alive. This means that a child who lived only for a moment can be claimed as a dependent. Whether a child was born alive depends on state or local law. There must be proof of a live birth shown by an official document, such as a birth certificate. You cannot claim an exemption for a stillborn child.

Dependency Tests

A dependent must meet ***all*** the following tests:

1) Relationship,
2) Married person,
3) Citizen or resident,
4) Income, and
5) Support.

Test 1—Relationship

The dependent must either:

1) Be related to you, or
2) Have been a member of your household.

Related. If the dependent is not a member of your household, he or she must be related to you (or your spouse if you are filing a joint return) in one of the following ways:

Child	Great-grand-child, etc.	Brother-in-law
Stepchild		Sister-in-law
Mother	Half-brother	Son-in-law
Father	Half-sister	Daughter-in-law
Grandparent	Stepbrother	If related by blood:
Great-grand-parent, etc.	Stepsister	
	Stepmother	Uncle
Brother	Stepfather	Aunt
Sister	Mother-in-law	Nephew
Grandchild	Father-in-law	Niece

Any relationships that have been established by marriage are not considered ended by death or divorce.

Child. Your child is:

1) Your son, daughter, stepson, stepdaughter, or adopted son or daughter,
2) A child who lived in your home as a member of your family, if placed with you by an authorized placement agency for legal adoption, or
3) A foster child (any child who lived in your home as a member of your family for the whole year, for whom you did not receive qualified foster care payments).

Member of household. If the dependent is not related to you, he or she must have lived in your home as a member of your household for the whole year (except for temporary absences, such as for vacation or school). A person is not a member of your household if at any time during your tax year the relationship between you and that person violates local law.

Test 2—Married Person

The dependent cannot have filed a joint return for the year. However, this test does not have to be met if neither the dependent nor the dependent's spouse must file, but they file a joint return to get a refund of all tax withheld.

Test 3—Citizen or Resident

To meet the citizen or resident test, a person must be a U.S. citizen or resident, or a resident of Canada or Mexico for some part of the calendar year in which your tax year begins.

Children usually are citizens or residents of the country of their parents. If you were a U.S. citizen when your child was born, the child may be a U.S. citizen although the other parent was a nonresident alien and the child was born in a foreign country. If so, and the other dependency tests are met, the child is your dependent and you may take the exemption. It does not matter if the child lives abroad with the nonresident alien parent.

Special rule for your adopted child. If you are a U.S. citizen living abroad who has legally adopted a child who meets the other dependency tests, the citizen or resident test does not apply. The child is your dependent and you may take the exemption if your home is the child's main home and the child is a member of your household for your entire tax year.

Test 4—Income

The dependent must have received less than $2,550 of gross income in 1996. Gross income does not include nontaxable income, such as welfare benefits or nontaxable social security benefits.

Special rules for your dependent child. The income test does not apply if your child:

1) Was under age 19 at the end of the year, or
2) Was a student during the year and was under age 24 at the end of the year.

Child. See *Test 1—Relationship,* earlier, for the definition of ''child.''

Student. To qualify as a student, your child must have been, during some part of each of 5 calendar months (not necessarily consecutive) during the year:

1) A full-time student at a school that has a regular teaching staff and course of study, and a regularly enrolled body of students in attendance, or
2) A student taking a full-time, on-farm training course given by a school described in (1) above or a state, county, or local government.

A ***full-time student*** is one who was enrolled for the number of hours or courses the school considers to be full-time attendance.

The term ''school'' includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade, and mechanical schools. It does not include on-the-job training courses, correspondence schools, or night schools.

Test 5—Support

In general, you must have given over half the dependent's support for the year. If you file a joint return, the support could have come from you or your spouse. Even if you did not give over half the dependent's support, you will be treated as having given over half the support if you meet the tests explained later under *Multiple Support Agreement.*

If you are divorced or separated and you or the other parent, or both together, gave over half your child's support for the year, the support test for your child may be based on a special rule. See *Children of Divorced or Separated Parents,* later.

In figuring total support, you must include money the dependent used for his or her own support, even if this money was not taxable (for example, gifts, savings, and welfare benefits). If your child was a student, do not include amounts he or she received as scholarships.

Support includes food, a place to live, clothes, medical and dental care, recreation, and education. In figuring support, use the actual cost of these items. However, the cost of a place to live is figured at its fair rental value.

Support does not include income tax, social security and Medicare taxes, premiums for life insurance, or funeral expenses.

Joint ownership of home. If your dependent lives with you in a home that is jointly owned by you and your spouse or former spouse, and each of you has the right to use and live in the home, each of you is considered to provide half your dependent's lodging. However, if your decree of divorce gives only you the right to use and live in the home, you are considered to provide your dependent's entire lodging, even though legal title to the home remains in the names of both you and your former spouse.

Capital items. You must include capital items such as a car or furniture in figuring support, but only if they were actually given to, or bought by, the dependent for his or her use or benefit. Do not include the cost of a capital item for the household or for use by persons other than the dependent. For example, include in support a bicycle purchased by and used solely by the dependent for transportation; do not include a lawn mower you purchase that is occasionally used by the dependent.

Children of Divorced or Separated Parents

In general, a dependent must meet the support test explained earlier under *Test 5—Support.* However, the support test for a child of divorced or separated parents is based on a special rule if certain requirements are met.

Special-Rule Requirements

In determining whether the support test for a child of divorced or separated parents has been met, the special rule applies only if the parents meet all of the following three requirements.

1) The parents were divorced or legally separated under a decree of divorce or separate maintenance, were separated under a written separation agreement, or lived apart at all times during the last 6 months of the calendar year.
2) One or both parents provided more than half the child's total support for the calendar year.
3) One or both parents had custody of the child for more than half the calendar year.

The special rule does not apply if the child's support is determined under a multiple support agreement.

Child is defined earlier under *Test 1—Relationship.*

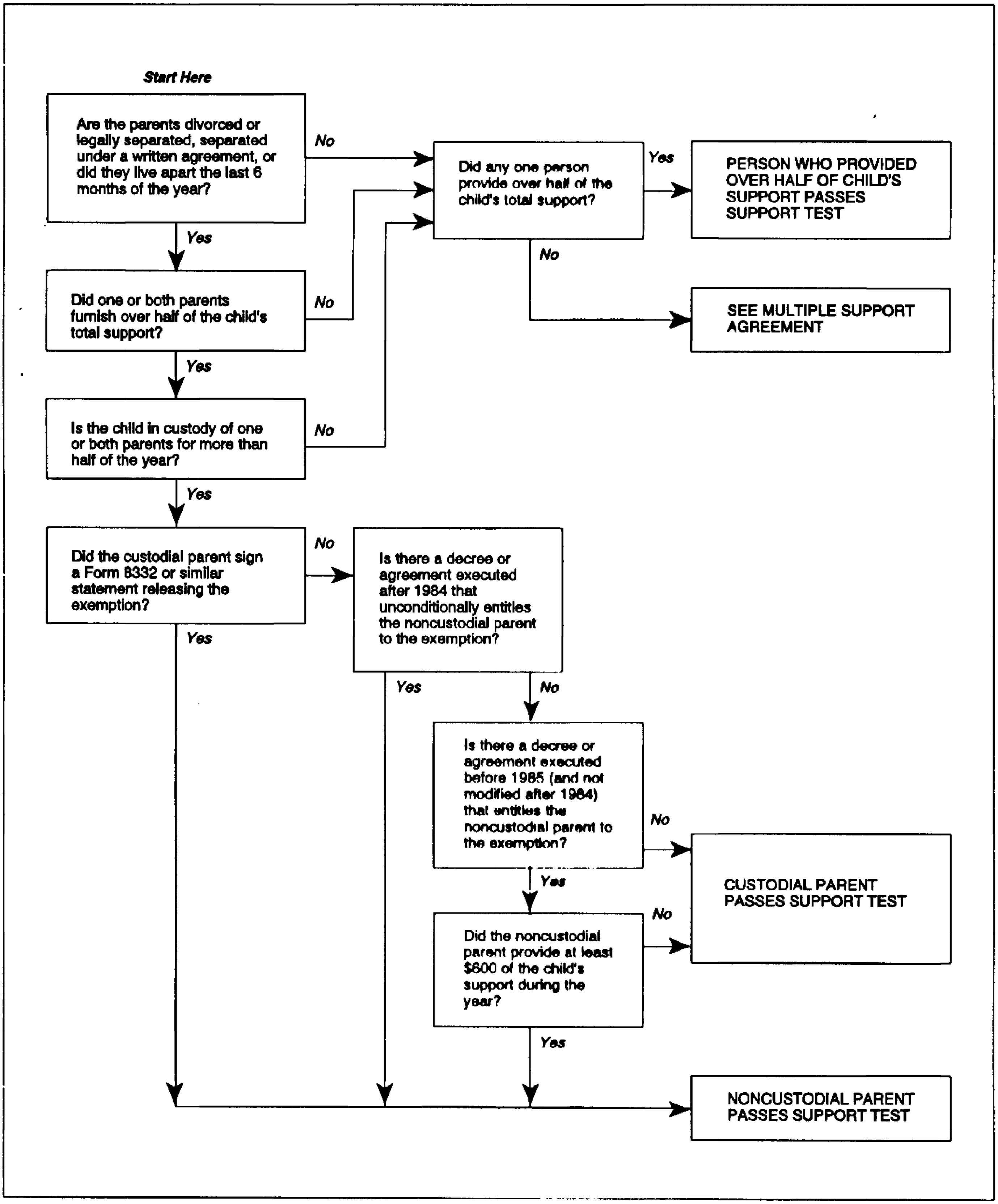
Support provided by parents. Support given to a child of a divorced or separated parent by a relative or friend is not included as support given by that parent.

Example. You are divorced. During the whole year, you and your child lived with your mother in a house she owns. You must include the fair rental value of the home provided by your mother for your child in figuring total support, but not as part of the support provided by you.

Remarried parent. If you remarried, the support your new spouse gave is treated as given by you.

Example. You have two children from a former marriage who lived with you. You remarried and lived in a home owned by your present spouse. The fair rental value of the home provided to the children by your present spouse is treated as provided by you.

Figure 1. **Support Test for Children of Divorced or Separated Parents**



Custodial Parent

Under the special rule, the parent who had custody of the child for the greater part of the year (the custodial parent) is generally treated as the parent who provided more than half the child's support. This parent is usually allowed to claim the exemption for the child, if the other dependency tests are met. However, see *Noncustodial Parent,* later.

Custody. Custody is usually determined by the most recent decree of divorce or separate maintenance, or a later custody decree. If there is no decree, use the written separation agreement.

If neither a decree nor an agreement establishes custody, then the parent who had physical custody of the child for the greater part of the year is considered the custodial parent. This also applies if a decree or agreement calls for ''split'' custody, or if the validity of a decree or agreement awarding custody is uncertain because of legal proceedings pending on the last day of the calendar year.

If the parents were divorced or separated during the year after having had joint custody of the child before the separation, the parent who had custody for the greater part of the rest of the year is considered the custodial parent for the tax year.

Example 1. Under your divorce decree, you have custody of your child for 10 months of the year. Your former spouse has custody for the other 2 months. You and your former spouse provided the child's total support. You are considered to have given more than half the child's support.

Example 2. You and your former spouse provided your child's total support for the year. You had custody of your child under your 1990 divorce decree, but in October, a new custody decree granted custody to your former spouse. Because you had custody for the greater part of the year, you are considered to have provided more than half the child's support.

Example 3. You were separated on June 1. Your child's support for the year was $1,200, of which you gave $500, your spouse $400, and the child's grandparents $300. No multiple support agreement was entered into. (See *Multiple Support Agreement,* later.) Before the separation, you and your spouse had joint custody of your child. Your spouse had custody from June through September and you had custody from October through December. Because your spouse had custody for 4 of the 7 months following the separation, your spouse was the custodial parent for the year and is treated as having given more than half the child's support for the year.

Noncustodial Parent

Under the special rule, the parent who did not have custody, or who had it for the shorter time, is treated as the parent who gave more than half the child's support if:

1) The custodial parent signs a statement agreeing not to claim the child's exemption, and the noncustodial parent attaches this statement to his or her return (see *Form 8332,* later), or

2) A decree or written agreement ***made before 1985*** provides that the noncustodial parent can take the exemption and he or she gave at least $600 for the child's support during the year, unless the pre-1985 decree or agreement was modified after 1984 to specify that this provision will not apply.

Example 1. Under your 1983 divorce decree, your former spouse has custody of your child. The decree states that you can claim the child's exemption. You gave $1,000 of your child's support during the year and your spouse gave the rest. You are considered to have given over half the child's support, even if your former spouse gave more than $1,000.

Example 2. You and your spouse provided all of your child's support. Under your 1988 written separation agreement, your spouse has custody of your child. The agreement conditionally states that you can claim the child's exemption. Because the agreement was made after 1984, you are considered to have given over half the child's support only if your spouse agrees not to claim the child's exemption on Form 8332 or a similar statement.

Example 3. You and your former spouse provided all of your child's support. Your divorce decree gives custody of your child to your former spouse. It does not say who can claim the child's exemption. Your former spouse is considered to have given over half the child's support, unless he or she agrees not to claim the child's exemption on Form 8332 or a similar statement.

Form 8332. The custodial parent can sign Form 8332, *Release of Claim to Exemption for Child of Divorced or Separated Parents,* or a similar statement, agreeing not to claim the child's exemption. The exemption may be released for a single year, for a number of specified years (for example, alternate years), or for all future years.

If you are the noncustodial parent, you must attach the release to your return. If the exemption is released for more than one year, you must attach the original release to your return the first year and a copy each following year.

Similar statement. If your divorce decree or separation agreement went into effect after 1984 and it states that you can claim the child as your dependent without regard to any condition, such as payment of support, you can attach to your return copies of the following pages from the decree or agreement instead of Form 8332:

1) The cover page (write the other parent's social security number on this page),

2) The page that states you can claim the child as your dependent, and

3) The signature page with the other parent's signature and the date of the agreement.

Agreements made before 1985. If you are a noncustodial parent who claims a child's exemption under a decree or agreement made before 1985, you must give at least $600 for that child's support.

Child support. Child support payments received from the noncustodial parent are considered used for the child's support, even if actually spent on things other than support.

Example. Your 1982 divorce decree requires you to pay child support to the custodial parent and states that you can claim your child's exemption. The custodial parent paid for all support items and put the $1,000 child support you paid during the year into a savings account for the child. Because your payments are considered used for support, you are considered to have given over half the child's support.

Back child support. Even if you owed child support for an earlier year, your payments are considered support for the year paid, up to the amount of your required child support for that year. If you paid back child support by paying more than the amount required for the year paid, the back child support is not considered support for either the year paid or the earlier year.

Example. You and your former spouse provide all your child's support. Your 1981 divorce decree requires you to pay $800 child support each year to the custodial parent and allows you to claim your child's exemption. Last year you paid only $500, but you made up the $300 you owed by paying $1,100 this year. The $300 back child support you paid this year is not considered support for last year or for this year.

Medical Expenses

A child of divorced or separated parents whose support test is based on the special rule described in this section is treated as a dependent of both parents for the medical expense deduction. A parent can deduct medical expenses he or she paid for the child even if an exemption for the child is claimed by the other parent.

Multiple Support Agreement

Sometimes two or more people together pay over half a dependent's support, but no one alone pays over half. One of those people can claim an exemption for the dependent if all the following requirements are met.

1) The person paid over 10% of the dependent's support.

2) If not for the support test, the person could claim the dependent's exemption.

3) The person and at least one other person who meets requirement (2) together paid for over half the dependent's support.

4) The person attaches to his or her tax return a signed **Form 2120,** *Multiple Support Declaration,* from every other person who meets requirements (1) and (2). This form states that the person who signs it will not claim the dependent's exemption for that year.

Phaseout of Exemptions

The amount you can claim as a deduction for exemptions is phased out if your adjusted gross income (AGI) falls within the bracket shown below for your filing status.

Filing Status	AGI
Single	$117,950 – $240,450
Married filing jointly or qualifying widow(er)	$176,950 – $299,450
Married filing separately	$ 88,475 – $149,725
Head of household	$147,450 – $269,950

If your AGI is more than the highest amount in the bracket for your filing status, your deduction for exemptions is zero. If your AGI falls within the bracket, use the *Deductions for Exemptions Worksheet* in the instructions for Form 1040 to figure your deduction.

Alimony

Alimony is a payment to or for a spouse or former spouse under a divorce or separation instrument. It does not include voluntary payments that are not made pursuant to a divorce or separation instrument.

Alimony is deductible by the payer and must be included in the spouse's or former spouse's income. Although this discussion is generally written for the payer of the alimony, the recipient can use the information to determine whether an amount received is alimony.

To be alimony, a payment must meet certain requirements. Different requirements apply to payments under instruments executed after 1984 and to payments under instruments executed before 1985. These requirements are discussed later.

Spouse or former spouse. Unless otherwise stated in the following discussions about alimony, the term ''spouse'' includes former spouse.

Divorce or separation instrument. The term ''divorce or separation instrument'' means:

1) A decree of divorce or separate maintenance or a written instrument incident to that decree,
2) A written separation agreement, or
3) A decree or any type of court order requiring a spouse to make payments for the support or maintenance of the other spouse, including a temporary decree, an interlocutory (not final) decree, and a decree of alimony *pendente lite* (while awaiting action on the final decree or agreement).

Invalid decree. Payments under a divorce decree can be alimony even if the decree's validity is in question. A divorce decree is valid for tax purposes until a court having proper jurisdiction holds it invalid.

Amended instrument. An amendment to a divorce decree may change the nature of your payments. Amendments are not ordinarily retroactive for federal tax purposes. However, a retroactive amendment to a divorce decree correcting a clerical error to reflect the original intent of the court will generally be effective retroactively for federal tax purposes.

Example 1. A court order retroactively corrected a mathematical error under your divorce decree to express the original intent to spread the payments over more than 10 years. This change also is effective retroactively for federal tax purposes.

Example 2. Your original divorce decree did not fix any part of the payment as child support. To reflect the true intention of the court, a court order retroactively corrected the error by designating a part of the payment as child support. The amended order is effective retroactively for federal tax purposes.

Deducting alimony paid. You can deduct alimony you paid, whether or not you itemize deductions on your return. You must file Form 1040; you cannot use Form 1040A or Form 1040EZ.

Enter the amount of alimony you paid on line 29 (Form 1040). In the space provided on line 29, enter your spouse's or former spouse's social security number.

If you paid alimony to more than one person, enter the social security number of one of the recipients. Show the social security number and amount paid for each other recipient on an attached statement. Enter your total payments on line 29.

CAUTION *If you do not provide your spouse's or former spouse's social security number, you may have to pay a $50 penalty and your deduction may be disallowed.*

Reporting alimony received. Report alimony you received on line 11 of Form 1040; you cannot use Form 1040A or Form 1040EZ.

CAUTION *You must give the person who paid the alimony your social security number. If you do not, you may have to pay a $50 penalty.*

Withholding on nonresident aliens. If you are a U.S. citizen or resident and you pay alimony to a nonresident alien spouse or former spouse, you must withhold income tax at a rate of 30% (or lower treaty rate) on each payment. For more information, get Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Corporations.*

General Rules

The following rules apply to alimony regardless of when the divorce or separation instrument was executed.

Payments not alimony. Not all payments under a divorce or separation instrument are alimony. Alimony does not include:

1) Child support,
2) Noncash property settlements,
3) Payments that are your spouse's part of community income, as explained later under *Community Property,*
4) Use of property, or
5) Payments to keep up the payer's property.

Example. Under your written separation agreement, your spouse lives rent-free in a home you own and you must pay the mortgage, real estate taxes, insurance, repairs, and utilities for the home. Because you own the home and the debts are yours, your payments for the mortgage, real estate taxes, insurance, and repairs are not alimony. Neither is the value of your spouse's use of the home.

If they otherwise qualify, you can deduct the payments for utilities as alimony. Your spouse must report them as income. If you itemize deductions, you can deduct the real estate taxes and, if the home is a qualified home, you can also include the interest on the mortgage in figuring your deductible interest.

Child support. To determine whether a payment is child support, see the separate discussions under *Instruments Executed After 1984* or *Instruments Executed Before 1985,* later.

Underpayment. If both alimony and child support payments are called for by your divorce or separation instrument, and you pay less than the total required, the payments apply first to child support and then to alimony.

Example. Your divorce decree calls for you to pay your former spouse $200 a month as child support and $150 a month as alimony. If you pay the full amount of $4,200 during the year, you can deduct $1,800 as alimony and your former spouse must report $1,800 as alimony received. If you pay only $3,600 during the year, $2,400 is child support. You can deduct only $1,200 as alimony and your former spouse must report $1,200 as alimony received.

Payments to a third party. Payments to a third party on behalf of your spouse under the terms of your divorce or separation instrument may be alimony, if they otherwise qualify. These include payments for your spouse's medical expenses, housing costs (rent, utilities, etc.), taxes, tuition, etc. The payments are treated as received by your spouse and then paid to the third party.

Example 1. Under your divorce decree, you must pay your former spouse's medical and dental expenses. If the payments otherwise qualify, you can deduct them as alimony on your return. Your former spouse must report them as alimony received and can include them in figuring deductible medical expenses.

Example 2. Under your separation agreement, you must pay the real estate taxes, mortgage payments, and insurance premiums on a home owned by your spouse. If they otherwise qualify, you can deduct the payments as alimony on your return, and your spouse must report them as alimony received. If itemizing deductions, your spouse can deduct the real estate taxes and, if the home is a qualified home, also include the interest on the mortgage in figuring deductible interest.

Life insurance premiums. Premiums you must pay under your divorce or separation instrument for insurance on your life qualify as alimony to the extent your spouse owns the policy.

Payments for jointly-owned home. If your divorce or separation instrument states that you must pay expenses for a home owned by you and your spouse, some of your payments may be alimony.

Mortgage payments. If you must make all the mortgage payments (principal and interest) on a jointly-owned home, and they otherwise qualify, you can deduct one-half of the total payments as alimony. If you itemize deductions and the home is a qualified home, you can include the other half of the interest in figuring your deductible interest. Your spouse must report one-half of the payments as alimony received. If your spouse itemizes deductions and the home is a qualified home, he or she can include one-half of the interest on the mortgage in figuring deductible interest.

Taxes and insurance. If you must pay all the real estate taxes or insurance on a home held as ***tenants in common,*** you can deduct one-half of these payments as alimony. Your spouse must report one-half of these payments as alimony received. If you and your spouse itemize deductions, you can each deduct one-half of the real estate taxes.

If your home is held as ***tenants by the entirety*** or ***joint tenants*** (with the right of survivorship), none of your payments for taxes or insurance are alimony. But if you itemize deductions, you can deduct all of the real estate taxes.

Instruments Executed After 1984

The following rules for alimony apply to payments under divorce or separation instruments executed after 1984. They also apply to payments under earlier instruments that were modified after 1984 to:

1) Specify that these rules will apply, or
2) Change the amount or period of payment or add or delete any contingency or condition.

The rules in this section do not apply to divorce or separation instruments executed after 1984 if the terms for alimony are unchanged from an instrument executed before 1985. For the rules for alimony payments under other pre-1985 instruments, see *Instruments Executed Before 1985,* later.

Example 1. In November 1984, you and your former spouse executed a written separation agreement. In February 1985, a decree of divorce was substituted for the written separation agreement. The decree of divorce did not change the terms for the alimony you pay your former spouse. The decree of divorce is treated as executed before 1985. Alimony payments under this decree are not subject to the rules for payments under instruments executed after 1984.

Example 2. Assume the same facts as in Example 1 except that the decree of divorce changed the amount of the alimony. In this example, the decree of divorce is not treated as executed before 1985. The alimony payments are subject to the rules for payments under instruments executed after 1984.

Alimony Requirements

A payment to or for a spouse under a divorce or separation instrument is alimony if the spouses do not file a joint return with each other and all the following requirements are met.

1) The payment is in cash.
2) The instrument does not designate the payment as not alimony.
3) The spouses are not members of the same household (if separated under a decree of divorce or separate maintenance).
4) There is no liability to make any payment (in cash or property) after the death of the recipient spouse.
5) The payment is not treated as child support.

Each of these requirements is discussed below.

Payment must be in cash. Only cash payments, including checks and money orders, qualify as alimony. Transfers of services or property (including a debt instrument of a third party or an annuity contract), execution of a debt instrument, or the use of property do not qualify as alimony.

Payments to a third party. Cash payments to a third party under the terms of your divorce or separation instrument can qualify as a cash payment to your spouse. See *Payments to a third party* under *General Rules,* earlier.

Also, cash payments made to a third party at the written request of your spouse qualify as alimony if all the following requirements are met.

1) The payments are in lieu of payments of alimony directly to your spouse.
2) The written request states that both spouses intend the payments to be treated as alimony.
3) You receive the written request from your spouse before you file your return for the year you made the payments.

Payments designated as not alimony. You and your spouse may designate that otherwise qualifying payments are not alimony by including a provision in your divorce or separation instrument that the payments are not deductible by you and are excludable from your spouse's income. For this purpose, any writing signed by both of you that makes this designation and that refers to a previous written separation agreement is treated as a written separation agreement. If you are subject to temporary support orders, the designation must be made in the original or a later temporary support order.

To exclude the payments from income, your spouse must attach a copy of the instrument designating them as not alimony to his or her return for each year the designation applies.

Spouses cannot be members of the same household. Payments to your spouse while you are members of the same household are not alimony if you are separated under a decree of divorce or separate maintenance. A home you formerly shared is considered one household, even if you physically separate yourselves in the home.

You are not treated as members of the same household if one of you is preparing to leave the household and does leave no later than one month after the date of the payment.

Exception. If you are not legally separated under a decree of divorce or separate maintenance, a payment under a written separation agreement, support decree, or other court order may qualify as alimony even if you are members of the same household when the payment is made.

Liability for payments after death of recipient spouse. If you must continue to make payments for any period after your spouse's death, none of the payments made before or after the death are alimony.

The divorce or separation instrument does not have to expressly state that the payments cease upon the death of your spouse if, for example, the liability for continued payments would end under state law.

Example. You must pay your former spouse $10,000 in cash each year for 10 years. Your divorce decree states that the payments will end upon your former spouse's death. You must also pay your former spouse or your former spouse's estate $20,000 in cash each year for 10 years. The death of your spouse would not terminate these payments under state law.

The $10,000 annual payments are alimony. But because the $20,000 annual payments will not end upon your former spouse's death, they are not alimony.

Substitute payments. If you must make any payments in cash or property after your spouse's death as a substitute for continuing otherwise qualifying payments, the otherwise qualifying payments are not alimony. To the extent any payments are to increase in amount or begin or accelerate as a result of your spouse's death, the payment may be treated as a substitute for continuing the otherwise qualifying payments.

Example 1. Under your divorce decree, you must pay your former spouse $30,000 annually. The payments will stop at the end of 6 years or upon your former spouse's death, if earlier.

Your former spouse has custody of your minor children. The decree provides that if any child is still a minor at your spouse's death, you must pay $10,000 annually to a trust until the youngest child reaches the age of majority. The trust income and corpus (principal) are to be used for your children's benefit.

These facts indicate that the payments to be made after your former spouse's death are a substitute for $10,000 of the $30,000 annual payments. $10,000 of each of the $30,000 annual payments is not alimony.

Example 2. Under your divorce decree, you must pay your former spouse $30,000 annually. The payments will stop at the end of 15 years or upon your former spouse's death, if earlier. The decree provides that if your former spouse dies before the end of the 15-year period, you must pay the estate the difference between $450,000 ($30,000 × 15) and the total amount paid up to that time. For example, if your spouse dies at the end of the tenth year, you must pay the estate $150,000 ($450,000 − $300,000).

These facts indicate that the lump-sum payment to be made after your former spouse's death is a substitute for the full amount of the $30,000 annual payments. None of the annual payments are alimony. The result would be the same if the payment required at death were to be discounted by an appropriate interest factor to account for the prepayment.

Child support. A payment that is specifically designated as child support or treated as specifically designated as child support under your divorce or separation instrument is not alimony. The designated amount or part may vary from time to time. Child support payments are neither deductible by the payer nor taxable to the payee.

A payment will be ***treated as specifically designated*** as child support to the extent that the payment is reduced either:

1) On the happening of a contingency relating to your child, or
2) At a time that can be clearly associated with the contingency.

A payment may be treated as specifically designated as child support even if other separate payments are specifically designated as child support.

Contingency relating to your child. A contingency relates to your child if it depends on any event relating to that child. It does not matter whether the event is certain or likely to occur. Events relating to your child include the child's:

- Reaching a specified age or income level,
- Dying,
- Marrying,
- Leaving school,
- Leaving the household, or
- Becoming employed.

Clearly associated with a contingency. Payments are presumed to be reduced at a time clearly associated with the happening of a contingency relating to your child only in the following situations.

1) The payments are to be reduced not more than 6 months before or after the date the child will reach 18, 21, or local age of majority.
2) The payments are to be reduced on two or more occasions that occur not more than one year before or after a different child reaches a certain age from 18 to 24. This certain age must be the same for each child, but need not be a whole number of years.

In all other situations, reductions in payments are not treated as clearly associated with the happening of a contingency relating to your child.

Either you or the IRS can overcome the presumption in the two situations above. This is done by showing that the time at which the payments are to be reduced was determined independently of any contingencies relating to your children. For example, if you can show that the period of alimony payments is customary in the local jurisdiction, such as a period equal to one-half of the duration of the marriage, you can treat the amount as alimony.

Recapture of Alimony

If your alimony payments decrease or terminate during the first 3 calendar years, you may be subject to the recapture rule. If you are subject to this rule, you have to include in income in the third year part of the alimony payments you previously deducted. Your spouse can deduct in the third year part of the alimony payments previously included in income.

The 3-year period starts with the first calendar year you make a payment qualifying as alimony under a decree of divorce or separate maintenance, or a written separation agreement. Do not include any time in which payments were being made under temporary support orders. The second and third years are the next 2 calendar years, whether or not payments are made during those years.

The reasons for a reduction or termination of alimony payments can include:

- A failure to make timely payments,
- A change in your instrument,
- A reduction in your spouse's support needs, or
- A reduction in your ability to provide support.

Subject to the recapture rule. You are subject to the recapture rule in the third year if the alimony you pay in either the second year or the third year decreases by more than $15,000 from the prior year.

To figure a decrease in alimony, do not include payments made under a temporary support order. Also, do not include payments required over a period of at least 3 calendar years of a fixed part of your income from a business or property, or from compensation for employment or self-employment. These payments are not subject to the recapture rule.

Exception. You are not subject to the recapture rule if your payments decrease because of the death of either spouse or the remarriage of the spouse receiving the payments.

Figuring the recapture. Both you and your spouse can use *Table 2* to figure recaptured alimony.

Example. Myrna pays Phil the following amounts of alimony under their divorce decree.

Year	Amount
1	$60,000
2	40,000
3	20,000

The recaptured alimony is $22,500, as shown in *Table 1.*

Myrna shows $22,500 as income on line 11 of her Form 1040 for Year 3. Phil deducts $22,500 on line 29 of his Form 1040 for Year 3.

Including the recapture in income. If you must include a recapture amount in income, show it on Form 1040, line 11 (''Alimony received''). Cross out ''received'' and write ''recapture.'' On the dotted line next to the amount, enter your spouse's last name and social security number.

Deducting the recapture. If you can deduct a recapture amount, show it on Form 1040, line 29 (''Alimony paid''). Cross out ''paid'' and write ''recapture.'' In the space provided, enter your spouse's social security number.

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Instruments Executed Before 1985

The following rules for alimony apply to payments under divorce or separation instruments executed before 1985. However, if the instrument was modified after 1984 to specify that the rules for instruments executed after 1984 apply, or to change the terms regarding the amount or period of payment or other contingency or condition, follow the rules under *Instruments Executed After 1984,* earlier.

Alimony Requirements

A payment to or for a spouse under a divorce or separation instrument is alimony if the spouses do not file a joint return and the payment meets both of the following requirements.

1) It is based on the marital or family relationship.
2) It is not child support.

In addition, the spouses must be separated and living apart for a payment under a separation agreement or court order to qualify as alimony.

Table 1. **Worksheet for Recapture of Alimony**

Note: Do not enter less than zero on any line.

1.	Alimony paid in **2nd year**		*40,000*	
2.	Alimony paid in **3rd year**	*20,000*		
3.	Floor	$15,000		
4.	Add lines 2 and 3		*35,000*	
5.	Subtract line 4 from line 1			*5,000*
6.	Alimony paid in **1st year**		*60,000*	
7.	Adjusted alimony paid in **2nd year** (line 1 less line 5)	*35,000*		
8.	Alimony paid in **3rd year**	*20,000*		
9.	Add lines 7 and 8	*55,000*		
10.	Divide line 9 by 2	*27,500*		
11.	Floor	$15,000		
12.	Add lines 10 and 11		*42,500*	
13.	Subtract line 12 from line 6			*17,500*
14.	**Recaptured alimony.** Add lines 5 and 13			* *22,500*

* If you deducted alimony paid, report this amount as income on line 11, Form 1040.
If you reported alimony received, deduct this amount on line 29, Form 1040.

Payments of fixed sum. If you must pay a fixed sum in installments, your payments during the year that you treat as alimony cannot be more than 10% of the fixed sum. This limit applies to payments for the current year and payments in advance, but not to late payments for an earlier year.

However, do not treat any part of a late installment payment as alimony if the fixed sum was payable over a period ending 10 years or less from the date of the divorce or separation instrument.

Example. Your 1984 divorce decree states that you must pay your former spouse $150,000 in installments of $10,000 for 15 years. The payments are not subject to any contingencies. You paid $10,000 each year until last year, when you made no payment. This year you paid $30,000, consisting of $10,000 for last year, $10,000 for this year, and a $10,000 advance payment for next year.

Only $25,000 of your $30,000 payment is considered periodic. This is the $10,000 payment for last year and $15,000 (10% of $150,000) of the payments for this year and next year.

Payments subject to contingencies. Payments are not considered installment payments of a fixed sum if they are to end or change in amount on the happening of one or more of the following contingencies.

1) Your or your spouse's death,
2) Your spouse's remarriage, or
3) A change in your or your spouse's economic status.

The contingency may be either specified in your instrument or imposed by local law.

Marital or family relationship. To be alimony, your payments must be based on your obligation, because of the marital or family relationship, to continue supporting your spouse. Any payment that does not arise out of that support obligation, such as the repayment of a loan, is not alimony.

Property settlement. Payments are not based on your obligation to continue support if they are a settlement of property rights. However, even if a state court describes payments made under a divorce decree as payments for property rights, they are alimony if they are made to fulfill a legal support obligation and they otherwise qualify.

Child support. A payment that is specifically designated as child support under your divorce or separation instrument is not alimony. If the instrument calls for payments that otherwise qualify as alimony and does not separately designate an amount as child support, all the payments are alimony. This is true even if the payments are subject to a contingency relating to your child.

Example. Your divorce decree states that you must pay your former spouse $400 a month for life for the support of your former spouse and your child. The payment is to be reduced to $300 upon the first of the following to happen: the child's death, the child's 22nd birthday, or the child's marriage. Despite these contingencies, no amount of child support is fixed by the decree. The entire payment is alimony.

Alimony Trusts, Annuities, and Endowment Contracts

If you transferred property to a trust or bought or transferred an annuity or endowment contract to pay the alimony you owe, the trust income or other proceeds that would ordinarily be includible in your income must be included in your former spouse's income as alimony received. You do not include the payments in your income, nor can you deduct them as alimony paid. This rule applies whether the proceeds are from the earnings or the principal of the transferred property. It does not apply to any trust income that is fixed for child support.

Example. You must make monthly alimony payments of $500. You bought your former spouse a commercial annuity contract paying $500 a month. Your former spouse must include the full amount received under the contract in income, as alimony. It does not matter whether the amount is paid out of principal or interest. You do not include any part of the payment in your income, nor can you deduct any part.

Annuity and endowment contracts. Proceeds from annuity and endowment contracts bought for or transferred to a spouse after July 18, 1984, cannot be treated as alimony. However, this does not apply to contracts bought or transferred to pay alimony under a divorce or separation instrument executed before July 19, 1984, unless both spouses choose to have it apply.

Proceeds not alimony. If the proceeds from an annuity or endowment contract cannot be treated as alimony, the amount received is reduced by the cost of the contract. Get Publication 575, *Pension and Annuity Income (Including Simplified General Rule),* for information on reporting annuities, and Publication 525, *Taxable and Nontaxable Income,* for information on reporting endowment proceeds.

If the proceeds from a trust cannot be treated as alimony, see the rules for reporting trust income in Publication 525.

Qualified Domestic Relations Order

A qualified domestic relations order (QDRO) is a judgment, decree, or court order (including an approved property settlement agreement) issued under a domestic relations law. A QDRO relates to the rights of someone other than a participant to receive benefits from a qualified retirement plan (such as most pension and profit-sharing plans) or a tax-sheltered annuity. It specifies the amount or portion of the participant's benefits to be paid to the participant's spouse, former spouse, child, or dependent.

Benefits paid to a child or dependent. Benefits paid under a QDRO to the plan participant's child or dependent are treated as paid to the participant. For information about the tax treatment of benefits from retirement plans, see Publication 575.

Benefits paid to a spouse or former spouse. Benefits paid under a QDRO to the plan participant's spouse or former spouse generally must be included in the spouse's or former spouse's income. If the participant contributed to the retirement plan, a prorated share of the participant's cost (investment in the contract) is used to figure the taxable amount.

The spouse or former spouse can use the special rules for lump-sum distributions (the 5- or 10-year tax option or capital gain treatment) if the benefits would have been treated as a lump-sum distribution had the participant received them. For this purpose, consider only the balance to the spouse's or former spouse's credit in determining whether the distribution is a total distribution. See *Lump-Sum Distributions* in Publication 575 for information about the special rules.

Rollovers. If you receive an eligible rollover distribution under a QDRO as the plan participant's spouse or former spouse, you can generally roll it over tax free into an individual retirement arrangement (IRA) or another qualified retirement plan. This applies to taxable distributions other than required distributions (generally, distributions that must begin once you reach age 70 ½) and certain long-term periodic payments.

You can choose to have the distribution paid directly to the new plan. If any part of the taxable distribution is paid to you, 20% will be withheld for federal income tax. You can still make a tax-free rollover to another plan or an IRA within 60 days, but for a complete rollover you must add funds from another source equal to the tax withheld.

If you roll over only part of the taxable distribution, you cannot use the special lump-sum distribution rules to figure the tax on the part you keep.

For more information on the tax treatment of eligible rollover distributions, see Publication 575.

Individual Retirement Arrangements

The following discussions explain some of the effects of divorce or separation on individual retirement arrangements (IRAs).

Spousal IRA. If you get a final decree of divorce or separate maintenance by the end of your tax year, you cannot deduct contributions you make to your former spouse's IRA. You can deduct only contributions to your own IRA. For information on IRAs, get Publication 590, *Individual Retirement Arrangements (IRAs).*

IRA transferred as a result of divorce. The transfer of all or part of your interest in an IRA to your spouse or former spouse, under a decree of divorce or separate maintenance or a written instrument incident to the decree, is not considered a taxable transfer. Starting from the date of the transfer, the IRA interest transferred is treated as your spouse's or former spouse's IRA.

IRA contribution and deduction limits. All taxable alimony you receive under a decree of divorce or separate maintenance is treated as compensation for the IRA contribution and deduction limits. Your contributions to your IRA are limited to the smaller of:

1) $2,000, or
2) 100% of your compensation.

If you are covered by an employer retirement plan, your deduction for contributions to your IRA may be reduced or eliminated. For more information, see Publication 590.

Property Settlements

You do not recognize a gain or loss on the transfer of property between spouses, or former spouses if the transfer is because of a divorce. You may, however, have to report the transaction on a gift tax return. See *Gift Tax on Property Settlements,* later. If you sell property that you own jointly to split the proceeds as part of your property settlement, you each must report your share of the gain or loss on the sale. See *Sale of Jointly-Owned Property,* later.

Transfer Between Spouses

No gain or loss is recognized on a transfer of property from you to (or in trust for the benefit of):

- Your spouse, or
- Your former spouse, but only if the transfer is incident to your divorce.

This rule applies even if the transfer was in exchange for cash, the release of marital rights, the assumption of liabilities, or other considerations.

However, this rule does not apply if your spouse or former spouse is a nonresident alien. Nor does it apply to certain transfers covered under *Transfers in trust,* later.

The term ''property'' includes all property whether real or personal, tangible or intangible, or separate or community. It includes property acquired after the end of your marriage and transferred to your former spouse. It does not include services.

Incident to divorce. A property transfer is incident to your divorce if the transfer:

1) Occurs within one year after the date your marriage ends, or
2) Is related to the ending of your marriage.

A divorce, for this purpose, includes the ending of your marriage by annulment or due to violations of state laws.

Related to the ending of marriage. A property transfer is related to the ending of your marriage if both the following conditions apply.

1) The transfer is made under your original or modified divorce or separation instrument.
2) The transfer occurs within 6 years after the date your marriage ends.

Unless these conditions are met, the transfer is presumed not to be related to the ending of your marriage. However, this presumption will not apply if you can show that the transfer was made to carry out the division of property owned by you and your spouse at the time your marriage ended. For example, the presumption will not apply if you can show that the transfer was made more than 6 years after the end of your marriage because of business or legal factors which prevented earlier transfer of the property.

Transfers to third parties. If you transfer property to a third party on behalf of your spouse (or former spouse, if incident to your divorce), the transfer is treated as two transfers:

1) A transfer of the property from you to your spouse or former spouse, and
2) An immediate transfer of the property from your spouse or former spouse to the third party.

You do not recognize gain or loss on the first deemed transfer. Instead, your spouse or former spouse may have to recognize gain or loss on the second deemed transfer.

For this treatment to apply, the transfer from you to the third party must be one of the following:

1) Required by your divorce or separation instrument,
2) Requested in writing by your spouse or former spouse, or
3) Consented to in writing by your spouse or former spouse. The consent must state that both you and your spouse or former spouse intend the transfer to be treated as a transfer from you to your spouse or former spouse subject to the rules of section 1041 of the Internal Revenue Code. You must receive the consent before filing your tax return for the year you transfer the property.

Transfers in trust. If you make a transfer in trust for the benefit of your spouse (or former spouse, if incident to your divorce), you must recognize gain or loss in certain situations. You generally must recognize gain or loss if you transfer an installment obligation to a trust. However, this does not apply if the deferred profit portion of the installment obligation will revert to you or your spouse. For information on the disposition of an installment obligation, see Publication 537, *Installment Sales.*

On other transfers in trust, the gain you must recognize is the amount by which the liabilities assumed by the trust, plus the liabilities to which the property is subject, exceeds the total of your adjusted basis in the property transferred.

Example. You own property with a fair market value of $10,000 and an adjusted basis of $1,000. The trust did not assume any liabilities. The property is subject to a $5,000 liability. Your recognized gain on the transfer of the property in trust for the benefit of your spouse is $4,000 ($5,000 − $1,000).

Reporting income from property. If you transfer income-producing property (for example, an interest in a business, rental property, stocks, or bonds), include on your tax return any profit or loss, rental income or loss, dividends, or interest generated or derived from the property during the year up to the date of transfer. Your spouse or former spouse who receives the property must report any income or loss generated or derived from the property after the date of transfer.

U.S. savings bond interest. If you transfer a U.S. savings bond, include in income all interest on the bond that has been earned up to the date of transfer but not previously reported. Your spouse or former spouse who receives the bond will be taxed on interest earned after the transfer, but can usually defer reporting the interest until the bond is cashed or matures. Get Publication 550, *Investment Income and Expenses,* for more information.

Unused passive activity losses. If you transfer an interest in a passive activity to your spouse, or former spouse if incident to divorce, you cannot deduct your accumulated unused passive activity losses allocable to the interest. Instead, the adjusted basis of the transferred interest is increased by the amount of the unused losses. For information on passive activity losses, get Publication 925, *Passive Activity and At-Risk Rules.*

Investment credit recapture. If you transfer property for which you claimed an investment credit in an earlier year to your spouse (or former spouse if incident to divorce), you do not have to recapture any part of the credit. Instead, your spouse or former spouse may have to recapture part of the credit if he or she disposes of the property or changes its use before the end of the recapture period. For more information, see the instructions for Form 4255, *Recapture of Investment Credit.*

Record requirements. When you transfer property under these rules, you must give the recipient sufficient records to determine the adjusted basis and holding period of the property on the date of the transfer. If the recipient could be subject to recapture of investment credit, you also must provide sufficient records to determine the amount and period of the recapture.

Tax treatment of property received. Property you receive from your spouse (or former spouse if the transfer is incident to divorce) is treated as acquired by gift for income tax purposes. Its value is not taxable to you.

Basis of property received. Your basis in property received from your spouse (or former spouse if incident to divorce) is the same as the transferor's adjusted basis. This applies for determining either gain or loss when you later dispose of the property. It applies whether the property's adjusted basis is less than, equal to, or greater than either its value at the time of the transfer or any consideration you paid. It also applies even if the property's liabilities are more than its adjusted basis.

This rule generally applies to all property received after July 18, 1984, under an instrument in effect after that date. It also applies to all other property received after 1993 for which you and your spouse (or former spouse) made a ***section 1041 election*** to apply this rule. For information about that election, see Regulations section 1.1041–1T(g).

Example. Karen and Don owned their home jointly. Karen transferred her interest in the home to Don as part of their property settlement when they divorced last year. Don's basis in the interest received from Karen is her adjusted basis in the home. His total basis in the home is their joint adjusted basis.

Property received before July 19, 1984. Your basis in property received in settlement of marital support rights before July 19, 1984, or under an instrument in effect before that date (other than property for which you made a section 1041 election) is its fair market value when you received it.

Example. Larry and Gina owned their home jointly before their divorce in 1978. That year, Gina received Larry's interest in the home in settlement of her marital support rights. Gina's basis in the interest received from Larry is the part of the home's fair market value proportionate to that interest. Her total basis in the home is that part of the fair market value plus her adjusted basis in her own interest.

Property transferred in trust. If the transferor recognizes gain on property transferred in trust, as described earlier under *Transfers in trust,* the trust's basis in the property is increased by the recognized gain.

Example. Your spouse transfers property in trust, recognizing a $4,000 gain. Your spouse's adjusted basis in the property was $1,000. The trust's basis in the property is $5,000 ($1,000 + $4,000).

U.S. savings bonds. The basis of U.S. savings bonds you receive is increased by the interest included in the transferor's income, as described earlier under *U.S. savings bond interest.*

Gift Tax on Property Settlements

The federal gift tax does not apply to most transfers of property between spouses, or between former spouses because of divorce. The transfers usually qualify for one or more of the exceptions explained in this discussion. However, if your transfer of property does not qualify for an exception, or qualifies only in part, you must report it on a gift tax return. See *Form 709,* later.

For more information about the federal gift tax, get Publication 950, *Introduction to Estate and Gift Taxes.*

Exceptions

Your transfer of property to your spouse or former spouse is not subject to gift tax if it meets any of the following exceptions.

1) It is made in settlement of marital support rights.
2) It qualifies for the marital deduction.
3) It is made under a divorce decree.
4) It is made under a written agreement, and you are divorced within a specified period.
5) It qualifies for the annual exclusion.

Settlement of marital support rights. A transfer in settlement of marital support rights is not subject to gift tax to the extent the value of the property transferred is not more than the value of those rights. This exception does not apply to a transfer in settlement of dower, curtesy, or other marital property rights.

Marital deduction. A transfer of property to your spouse before receiving a final decree of divorce or separate maintenance is not subject to gift tax. However, this exception does not apply to:

- Transfers of certain terminable interests, or
- Transfers to your spouse who is not a U.S. citizen.

Get the instructions for Form 709 for more information.

Transfer under divorce decree. A transfer of property under the decree of a divorce court having the power to prescribe a property settlement is not subject to gift tax. This exception also applies to a property settlement agreed on before the divorce if it was made part of or approved by the decree.

Transfer under written agreement. A transfer of property under a written agreement in settlement of marital rights or to provide a reasonable child support allowance is not subject to gift tax if you are divorced within the 3–year period beginning 1 year before and ending 2 years after the date of the agreement. This exception applies whether or not the agreement is part of or approved by the divorce decree.

Annual exclusion. The first $10,000 of gifts of present interests to any person during the calendar year is not subject to gift tax. The annual exclusion is $100,000 for transfers to a spouse who is not a U.S. citizen that would qualify for the marital deduction if the donee were a U.S. citizen.

Form 709

Report a transfer of property subject to gift tax on Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return.* Generally, Form 709 is due April 15 following the year of the transfer.

Transfer under written agreement. If a property transfer would be subject to gift tax except that it is made under a written agreement, and you do not receive a final decree of divorce by the due date for filing the gift tax return, you must report the transfer on Form 709 and attach a copy of your written agreement. The transfer will be treated as not subject to the gift tax until the final decree of divorce is granted, but no longer than 2 years after the effective date of the written agreement.

Within 60 days after you receive a final decree of divorce, send a certified copy of the decree to the IRS office where you filed Form 709.

Sale of Jointly-Owned Property

If you sell property that you and your spouse own jointly, you must report your share of the gain or loss on your income tax return for the year of the sale. Your share of the gain or loss is determined by your state law governing ownership of property. For information on reporting gain or loss, get Publication 544, *Sales and Other Dispositions of Assets.*

Sale of home. If you sell your main home and buy or build a new one, you may be able to postpone paying the tax on some or all of any gain from the sale. If you and your spouse have agreed to live apart and sell your jointly-owned home, the rules for postponing tax apply separately to the gain realized by each of you. For information on these rules, and on the rules for excluding gain if you are 55 or older when you sell your home, get Publication 523, *Selling Your Home.*

If you are divorced after filing a joint return on which you postponed tax on the gain on the sale of your home, but you do not buy or build a new home in the time required (and your former spouse does), you must file an amended joint return to report the tax on your share of the gain. If your former spouse refuses to sign the amended joint return, attach a letter explaining why your former spouse's signature is missing.

Costs of Getting a Divorce

You cannot deduct legal fees and court costs for getting a divorce. But you may be able to deduct legal fees paid for tax advice in connection with a divorce and legal fees to get alimony that you must include in gross income. In addition, you may be able to deduct fees you pay to appraisers, actuaries, and accountants for services in determining your correct tax or in helping to get alimony.

TIP *Fees you pay may include charges that are deductible and charges that are not deductible. You should request a breakdown showing the amount charged for each service performed.*

You can claim deductible fees only if you itemize deductions on Schedule A (Form 1040). Claim them as miscellaneous deductions subject to the 2% of adjusted gross income limit. For more information, get Publication 529, *Miscellaneous Deductions.*

Fees for tax advice. You can deduct fees for advice on federal, state, and local taxes of all types, including income, estate, gift, inheritance, and property taxes.

If a fee is also for other services, you must determine and prove the expense for tax advice. The following examples show how you can meet this requirement.

Example 1. The lawyer handling your divorce consults another law firm, which handles only tax matters, to get information on how the divorce will affect your taxes. You can deduct the part of the fee paid over to the second firm and separately stated on your bill, subject to the 2% limit.

Example 2. The lawyer handling your divorce uses the firm's tax department for tax matters related to your divorce. Your statement from the firm shows the part of the total fee for tax matters. This is based on the time used, the difficulty of the tax questions, and the amount of tax involved. You can deduct this part of your bill, subject to the 2% limit.

Example 3. The lawyer handling your divorce also works on the tax matters. The fee for tax advice and the fee for other services are shown on the lawyer's statement. They are based on things such as the time spent on each service and the fees charged locally for similar services. You can deduct the fee charged for tax advice, subject to the 2% limit.

Fees for getting alimony. Because you must include alimony you receive in your gross income, you can deduct fees you pay to get or collect alimony.

Example. You pay your attorney a fee for handling your divorce and an additional fee that is for services in getting and collecting alimony. You can deduct the fee for getting and collecting alimony, subject to the 2% limit, if it is separately stated on your attorney's bill.

Nondeductible expenses. You cannot deduct the costs of personal advice, counseling, or legal action in a divorce. These costs are not deductible, even if they are paid, in part, to arrive at a financial settlement or to protect income-producing property.

However, you can add certain legal fees you pay specifically for a property settlement to the basis of the property you receive. For example, you can add the cost of preparing and filing a deed to put title to your house in your name alone to the basis of the house.

You cannot deduct fees you pay for your spouse or former spouse, unless your payments qualify as alimony. (See *Payments to a third party* in the earlier discussion of the general rules for alimony.) If you have no legal responsibility arising from the divorce settlement or decree to pay your spouse's legal fees, your payments are gifts and may be subject to the gift tax.

Tax Withholding and Estimated Tax

When you become divorced or separated, you will usually have to file a new **Form W–4,** *Employee's Withholding Allowance Certificate,* with your employer to claim your proper withholding allowances. If you receive alimony, you may have to make estimated tax payments.

CAUTION *If you do not pay enough tax either through withholding or by making estimated tax payments, you will have an underpayment of estimated tax and you may have to pay a penalty. If you do not pay enough tax by the due date of each payment, you may have to pay a penalty even if you are due a refund when you file your tax return.*

For more information, get Publication 505, *Tax Withholding and Estimated Tax.*

Joint estimated tax payments. If you and your spouse made joint estimated tax payments for 1996 but file separate returns, either of you can claim all of your payments, or you may divide them in any way you agree on. If you cannot agree, you must divide the payments in proportion to your individual tax amounts as shown on your separate returns for 1996.

If you claim any of the payments on your tax return, enter your spouse's or former spouse's social security number in the space provided on the front of Form 1040 or Form 1040A. If you were divorced and remarried in 1996, enter your present spouse's social security number in that space. Also write your former spouse's social security number, followed by ''DIV''—

- On Form 1040, to the left of line 53 under the heading ''Payments,'' or
- On Form 1040A, in the margin to the left of line 29b.

Community Property

If you are married and your domicile (permanent legal home) is in a community property state, special rules determine your income. Some of these rules are explained in the following discussions. For more information, get Publication 555, *Community Property.*

Community property states. The following are community property states:

- Arizona,
- California,
- Idaho,
- Louisiana,
- Nevada,
- New Mexico,
- Texas,
- Washington, and
- Wisconsin.

Community Income

If your domicile is in a community property state during any part of your tax year, you may have community income. Your state law determines whether your income is separate or community income. If you and your spouse file separate returns, you must report half of any income described by state law as community income, and your spouse must report the other half. Each of you can claim credit for half the income tax withheld from community income.

Community property laws disregarded. Community property laws will not apply to an item of community income, and you will be responsible for reporting it, if:

1) You treat the item as if only you are entitled to the income, and
2) You do not notify your spouse of the nature and amount of the income by the due date for filing the return (including extensions).

Relief from separate return liability for community income. You are not responsible for reporting an item of community income if ***all*** of the following conditions exist:

1) You do not file a joint return for the tax year,
2) You do not include an item of community income in gross income on your separate return,
3) You establish that you did not know of, and had no reason to know of, that community income, and
4) Under all facts and circumstances, it would not be fair to include the item of community income in your gross income.

Spousal agreements. In some states a husband and wife may enter into an agreement that affects the status of property or income as community or separate property. Check your state law to determine how it affects you.

Spouses Living Apart All Year

Special rules apply if all the following conditions exist.

1) You and your spouse live apart all year.
2) You and your spouse do not file a joint return for a tax year beginning or ending in the calendar year.
3) You or your spouse has earned income for the calendar year that is community income.
4) You and your spouse have not transferred, directly or indirectly, any of the earned income in (3) between yourselves before the end of the year. Do not take into account transfers satisfying child support obligations or transfers of very small amounts or value.

If all these conditions exist, you and your spouse must report your ***community*** income as explained in the following discussions.

Earned income. Treat earned income that is not trade or business or partnership income as the income of the spouse who performed the services to earn the income. Earned income is wages, salaries, professional fees, and other pay for personal services.

Earned income does not include amounts paid by a corporation that are a distribution of earnings and profits rather than a reasonable allowance for personal services rendered.

Trade or business income. Treat income and related deductions from a trade or business that is not a partnership as those of the spouse carrying on the trade or business.

If capital investment and personal services both produce business income, treat all of the income as trade or business income.

Partnership income or loss. Treat income or loss from a trade or business carried on by a partnership as the income or loss of the spouse who is the partner.

Separate property income. Treat income from the separate property of one spouse as the income of that spouse.

Social security benefits. Treat social security and equivalent railroad retirement benefits as the income of the spouse who receives the benefits.

Other income. Treat all other community income, such as dividends, interest, rents, royalties, or gains, as provided under your state's community property law.

Example. George and Sharon were married throughout the year but did not live together at any time during the year. Both domiciles were in a community property state. They did not file a joint return or transfer any of their earned income between themselves. During the year their incomes were as follows:

	George	Sharon
Wages	$20,000	$22,000
Consulting business	5,000	
Partnership		10,000
Dividends from separate property	1,000	2,000
Interest from community property	500	500
Totals	$26,500	$34,500

Under the community property law of their state, all the income is considered community income. (Some states treat income from separate property as separate income—check your state law.) Sharon did not take part in George's consulting business.

Ordinarily, they would each report $30,500, half the total community income, on their separate returns. But because they meet the four conditions listed earlier under *Spouses Living Apart All Year,* they must disregard community property law in reporting all their income except the interest income from community property. They each report on their returns only their own earnings and other income, and their share of the interest income from community property. George reports $26,500 and Sharon reports $34,500.

Ending the Community

When the marital community ends, the community assets (money and property) are divided between the spouses. Income received before the community ended is treated according to the rules explained earlier. Income received after the community ended is separate income, taxable only to the spouse to whom it belongs.

An ***absolute decree of divorce or annulment*** ends the community in all community property states. A decree of annulment, even

Table 2. **Worksheet for Recapture of Alimony**

Note: Do not enter less than zero on any line.

1.	Alimony paid in **2nd year**		______	
2.	Alimony paid in **3rd year**	______		
3.	Floor	$15,000		
4.	Add lines 2 and 3		______	
5.	Subtract line 4 from line 1			______
6.	Alimony paid in **1st year**		______	
7.	Adjusted alimony paid in **2nd year** (line 1 less line 5)	______		
8.	Alimony paid in **3rd year**	______		
9.	Add lines 7 and 8	______		
10.	Divide line 9 by 2	______		
11.	Floor	$15,000		
12.	Add lines 10 and 11		______	
13.	Subtract line 12 from line 6			______
14.	**Recaptured alimony.** Add lines 5 and 13			* ______

* If you deducted alimony paid, report this amount as income on line 11, Form 1040.
If you reported alimony received, deduct this amount on line 29, Form 1040.

though it holds that no valid marriage ever existed, usually does not nullify community property rights arising during the ''marriage.'' However, you should check your state law for exceptions.

A ***decree of legal separation or of separate maintenance*** may or may not end the community. The court issuing the decree may terminate the community and divide the property between the spouses.

A ***separation agreement*** may divide the community property between you and your spouse. It may provide that this property, along with future earnings and property acquired, will be separate property. This agreement may end the community.

In some states, the community ends when the spouses permanently separate, even if there is no formal agreement. Check your state law.

Alimony (Community Income)

Payments that may otherwise qualify as alimony are not deductible by the payer if they are the recipient spouse's part of community income. They are deductible as alimony only to the extent they are more than that spouse's part of community income.

Example. You live in a community property state. You are separated but the special rules explained earlier under *Spouses Living Apart All Year* do not apply. Under a written agreement, you pay your spouse $12,000 of your $20,000 total yearly community income. Your spouse receives no other community income. Under your state law, earnings of a spouse living separately and apart from the other spouse continue as community property.

On your separate returns, each of you must report $10,000 of the total community income. In addition, your spouse must report $2,000 as alimony received on line 11 of Form 1040. You can deduct $2,000 as alimony paid on line 29 of Form 1040.

How To Get More Information

You can get help from the IRS in several ways.

Free publications and forms. To order free publications and forms, call 1–800–TAX-FORM (1–800–829–3676). You can also write to the IRS Forms Distribution Center nearest you. Check your income tax package for the address. Your local library or post office also may have the items you need.

For a list of free tax publications, order Publication 910, *Guide to Free Tax Services.* It also contains an index of tax topics and related publications and describes other free tax information services available from IRS, including tax education and assistance programs.

If you have access to a personal computer and modem, you also can get many forms and publications electronically. See *Quick and Easy Access to Tax Help and Forms* in your income tax package for details. If space permitted, this information is at the end of this publication.

Tax questions. You can call the IRS with your tax questions. Check your income tax package or telephone book for the local number, or you can call 1–800–829–1040.

TTY/TDD equipment. If you have access to TTY/TDD equipment, you can call 1–800–829–4059 to ask tax questions or to order forms and publications. See your income tax package for the hours of operation.