



Changes to Tax Treatment of Alimony

The Tax Cuts and Jobs Act (TCJA) has made changes to the tax treatment of alimony that you will be interested in. These changes take effect for divorces and legal separations after 2018.

Current rules. Under the current rules, an individual who pays alimony may deduct an amount equal to the alimony or separate maintenance payments paid during the year as an “above-the-line” deduction. An “above-the-line” deduction, i.e., a deduction that a taxpayer need not itemize deductions to claim, is more valuable for the taxpayer than an itemized deduction.

And, under current rules, alimony and separate maintenance payments are taxable to the recipient spouse (includible in that spouse’s gross income).

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

TCJA rules don’t apply to existing divorces and separations. It’s important to emphasize that the current rules continue to apply to already-existing divorces and separations, as well as divorces and separations that are executed before 2019.

Some taxpayers may want the TCJA rules to apply to their existing divorce or separation. Under a special rule, if taxpayers have an existing (pre-2019) divorce or separation decree, and they have that agreement legally modified, then the new rules don’t apply to that modified decree, unless the modification expressly provides that the TCJA rules are to apply. There may be situations where applying the TCJA rules voluntarily is beneficial for the taxpayers, such as a change in the income levels of the alimony payer or the alimony recipient.

Disclaimer

These materials are presented with the understanding that the information provided is not legal advice. Due to the rapidly changing nature of the law, information contained in this publication may become outdated. Anyone using these materials should always research original sources of authority and update this information to ensure accuracy when dealing with a specific matter. No person should act or rely upon the information contained in this publication without seeking the advice of an attorney.

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Questions?

If you wish to discuss any of these provisions, please contact a member of the Bowles Rice Tax Team.

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