

Alimony Modifications: Taxation of Alimony Payments Under the 2017 Tax Act

TAX SECTION



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Prior to the 2017 Tax Act, Section 71 provided alimony payments entitled the payor to a deduction and required the payee to include them in taxable income. The 2017 Tax Act repealed Section 71. For alimony orders executed after December 31, 2018, a payor of alimony receives no deduction, and an alimony recipient is no longer taxable on it.

While this change may seem straightforward, an interesting question arises when an alimony order is executed on or prior to December 31, 2018 but is later modified. Although Treasury has not yet issued guidance, the 2017 Tax Act provides guidance at Pub. L. 115-97 § 11051(c). That section states “any divorce or separation agreement (as so defined) executed on or before [December 31, 2018] and modified after such date [shall be bound by the amendments to this section] *if the modification expressly provides that the amendments made by this section apply to such modification*” (emphasis added). Thus, one must expressly adopt the new law in the modification of the old alimony for the new law to apply.

By providing that one may essentially contract his or her way into the new law, Congress has passed the responsibility to the taxpayer. Family law attorneys should be deeply familiar with these aspects of the tax code.

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