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Person to Contact:

ID No.

Telephone Number:

Refer Reply to:

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Date:

July 22, 2004

Dear

In your letter of June 27, 2004, you requested an advisory opinion considering several alimony issues in connection with one of your clients. To obtain a private ruling on which to rely, your client should follow Rev. Proc. 2004-1, 2004-1 I.R.B. 1, and submit a power of attorney and the appropriate user fee. However, I hope the following general information will be helpful.

Alimony is a cash payment that meets certain requirements, the first of which is that it be *to, or on behalf of*, a spouse. Section 71(b)(1) of the Internal Revenue Code. Payment by a husband (H) of a separate debt of a wife (W) is generally alimony, as a payment to a third party on behalf of W. Payment by H of a joint obligation such as a mortgage, real estate taxes, or insurance on a jointly-owned house is half H's and half W's. Thus, half the amount H paid is alimony because half is paid on behalf of W. These payments satisfy the requirement of § 71(b)(1)(D) that the alimony cease upon the death of W because, although H remains obligated to continue payments in connection with that property, those payments cease to be on behalf of W upon W's death. *Zinsmeiser v. Commissioner*, T.C. Memo. 2000-364, *aff'd by unpublished opinion* (8th Cir. 2001). H's payments after that are purely of his own debt. Payment of an item that is solely H's obligation, such as H's half of the mortgage or H's rent, is not paid on behalf of W, and thus is not alimony.

Alimony must be paid under a divorce or separation agreement, which includes a decree of divorce or separate maintenance, or a written instrument incident to such a decree. Section 71(b)(2). The validity of the court order adopting the agreement, such as signature requirements, depends upon state law.

Child support is not alimony, under § 71(c). Thus, any amount specified in the divorce or separation agreement as child support is not deductible as alimony. Where the children live does not affect this.

Sincerely,

Clifford M. Harbourt
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax & Accounting)