Internal Revenue Service

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Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B02
PLR-104535-16

Date:
July 26, 2016

TY:

Legend

Taxpayer =
Ex-spouse =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
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a =
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A =
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C

Dear :

This is in response to your request for a private letter ruling which was received by the Service on January 19, 2016. You requested a ruling that certain payments your Ex-spouse was ordered to pay you pursuant to a Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree where the parties' marriage was dissolved do not constitute alimony payments within the meaning of I.R.C. § 71(b).

FACTS

Taxpayer is an individual. Taxpayer and Ex-spouse were married on Date1. a children were born of the marriage on Date 2 .

Ex-spouse filed a proceeding to dissolve the marriage. On Date 3, Ex-spouse and Taxpayer orally reached a settlement on the record before the court. The court ordered Ex-spouse's counsel to submit Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree in conformity with the oral settlement. On Date 5, the court for the A executed the Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree which was filed on the same day.

Pursuant to the Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree, the parties' marriage was dissolved; child custody, visitation and support were determined; property was awarded; and spousal support was determined.

The section entitled Spousal Support reads as follows:

B

Ex-spouse was further ordered to maintain a life insurance policy in an amount sufficient to cover his maintenance and child support obligations. In addition, the court made the following finding of fact:

C

LAW and ANALYSIS

I.R.C. § 71(a) provides that gross income includes amounts received as alimony or separate maintenance payments. Section 71(b)(1) defines the term "alimony or separate maintenance payment" as any payment in cash if--(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument, (B) the divorce or separation instrument does not designate such payment as a payment which

is not includible in gross income under section 71 and not allowable as a deduction under section 215, (C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and (D) there is no liability to make such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payment after the death of the payee spouse.

If a payment satisfies all of the factors set forth in section 71(b) then it is alimony, but if it fails to satisfy any one of the above factors, it is not alimony. *Rood v. Commissioner*, T.C. Memo. 2012-122. If the divorce decree or other relevant document does not expressly state that the payment obligation terminates upon the death of the payee spouse, the payment will qualify as alimony provided that the termination of the obligation would occur by operation of state law. *Hoover v. Commissioner*, 102 F.3d 842, 845-46 (6th Cir. 1996). *See also* Notice 87-9, 1987-1 C.B. 421 (divorce or separation instrument executed after December 31, 1984, need not expressly state that the payor spouse's liability ends upon payee's death if termination would occur by operation of state law). The mere fact that the documents may characterize a payment as alimony has no effect on the consequences of that payment for federal tax purposes. *Hoover,* 102 F.3d at 844.

Section 71(c) provides that section 71(a) shall not apply to that part of any payment which the terms of the divorce or separation instrument fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of children of the payor spouse.

Temp. Treas. Reg. § 1.71-1T(b), Q&A-10, provides that assuming all the other requirements relating to the qualification of certain payments as alimony or separate maintenance payments are met, if the payor spouse is required to continue to make the payments after the death of the payee spouse, then none of the payments before (or after) the death of the payee spouse qualify as alimony or separate maintenance payments.

Section 1.71-1T(c), Q&A-15, provides that a payment which under the terms of the divorce or separation instrument is fixed (or treated as fixed) as payable for the support of a child of the payor spouse does not qualify as an alimony or separate maintenance payment. Thus, such a payment is not deductible by the payor or includible in the income of the payee spouse.

Section 1.71-1T(c), Q&A-16, provides that a payment is fixed as payable for the support of a child of the payor spouse if the divorce or separation instrument specifically designates some sum or portion (which sum or portion may fluctuate) as payable for the support of a child of the payor spouse. A payment will be treated as fixed as payable for the support of a child of the payor spouse if the payment is reduced (a) on the happening of a contingency relating to a child of the payor, or (b) at a time which can clearly be associated with such a contingency. A payment may be treated as fixed as

payable for the support of a child of the payor spouse even if other separate payments specifically are designated as payable for the support of a child of the payor spouse.

Section 1.71-1T(c), Q&A-17, provides that a contingency relates to a child of the payor if it depends on any event relating to that child, regardless of whether such event is certain or likely to occur. Events that relate to the child of the payor include the following: the child's attaining a specified age or income level, dying, marrying, leaving school, leaving the spouse's household, or gaining employment. In addition, under section 1.71-1T(c), Q&A-18, where the payments are to be reduced not more than six months before or after the date the child is to attain the age of 18, 21, or the local age of majority, such payments which would otherwise qualify as alimony or separate maintenance payments, will be presumed to be reduced at a time clearly associated with the happening of a contingency relating to a child of the payor.

Minn. Stat. § 518.54 Subd. 3 defines “maintenance” as “an award made in a dissolution or legal separation proceeding of payments from the future income or earnings of one spouse for the support or maintenance of the other.”

Minn. Stat. § 518.552 discusses the requirements to be awarded maintenance including the grounds, the amount and duration, and reopening maintenance awards. Subd. 5 reads:

> **Private agreements.** The parties may expressly preclude or limit modification of maintenance through a stipulation, if the court makes specific findings that the stipulation is fair and equitable, is supported by consideration described in the findings, and that full disclosure of each party’s financial circumstances has occurred. The stipulation must be made a part of the judgment and decree.

Minn. Stat. § 518.64 Subd. 3 provides that “Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.”

In *Karon v. Karon*, 435 N.W.2d 501 (Minn. 1989), the parties agreed the husband would pay maintenance to the wife and she would not pay maintenance to him and the court was divested from having any jurisdiction to award any other maintenance. The Supreme Court of Minnesota held that the court could not modify the original dissolution decree. Stipulations are carefully drawn compromises which affect property distribution as well as future income. *Id*. at 504.

In *Telma v. Telma*, 474 N.W.2d 322 (Minn.1991), the husband argued that his obligation to pay maintenance to his ex-wife should be terminated because of her remarriage in reliance on Minn. Stat. § 518.64 Subd. 3. The parties’ agreement was that the ex-wife was to receive spousal support in the amount of $1,200 per month for five years with the award to be terminated on the earlier of two stated contingencies – the expiration of the five year period or the ex-wife’s adjusted gross income exceeding $30,000 per year. Id. at 323. The husband specifically waived any right to have the court modify his obligation to pay maintenance, either as to amount or duration or termination. The court held that while in *Gunderson v. Gunderson*, 408 N.W.2d 852 (Minn. 1987), it held that

Subd. 3 required that a marital dissolution clause decree expressly state that maintenance will continue beyond remarriage, it did not foreclose the consideration of clear written expressions of the parties' intention in this regard as ascertained from their agreement as a whole. *Id*. at 323. The court held the husband must continue to pay maintenance until the earlier of the two stated contingencies. *Id*. at 323.

In *Young v. Young*, 2003 Minn. App. LEXIS 1283 (Minn. Ct. App. 2003), the court, in an unpublished opinion, held that the husband's spousal-maintenance obligation may not be terminated upon the ex-wife's remarriage even though the maintenance provision does not state that maintenance will continue beyond remarriage, because the parties agreed to divest the court of jurisdiction to modify the maintenance award and no event that permits termination under the judgment has occurred.

In *Butt v. Schmidt*, 747 N.W.2d 566 (Minn. 2008), the court looked at the requirements of *Karon* and Minn. Stat. § 518.552 Subd. 5 and held that four requirements must be met before a stipulation precluding or limiting maintenance modification divests the court of its jurisdiction over maintenance. These requirements are: 1) the stipulation must include a contractual waiver of the parties' rights to modify maintenance; 2) the stipulation must expressly divest the district court of jurisdiction over maintenance; 3) the stipulation must be incorporated into the final judgment and decree; and 4) the court must make specific findings that the stipulation is fair and equitable, is supported by consideration described in the findings, and that full disclosure if each party's financial circumstances has occurred.

In the instant case, the court-ordered spousal maintenance payments of $b per month do not meet the definition of alimony described in section 71(b)(1). Although three of the four requirements for designating the payments as alimony are satisfied, [1] the requirement that the payments terminate on the death of the payee spouse is not satisfied. Even though the Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree does not expressly state that Ex-spouse's liability will not end upon Taxpayer's death, the parties agreed the court would not have jurisdiction to consider modification of the award in accordance with *Karon, Young, Butt* and Minn. Stat. § 518.552 Subd. 5. Therefore, Ex-spouse's obligation to pay maintenance payments to Taxpayer will continue for c months and would not be terminated upon her death. *See Telma, supra; Young, supra*. Accordingly, the maintenance payments do not qualify as alimony under § 71(b).

Because there are minor children, it must also be determined if the payments could be child support rather than spousal support.

Under section 1.71-1T(c), Q&A 18, there would be a presumption that the payments are child support if they end within six months before or after the date the children turn 18 or

[1] The three requirements that are satisfied are that 1) the payment is received by a spouse pursuant to a divorce decree and 2) the divorce decree does not designate the payment as not includible in gross income under section 71 and not allowable as a deduction under section 215 and 3) Taxpayer has represented that the payee spouse and the payor spouse were not members of the same household when the payments were made.

the local age of majority. Pursuant to the Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree, the maintenance payments were payable over a c month period beginning on Date 4. The children will turn 18 on Date 6. The maintenance payments will end on Date 7, approximately d months after the children reach age 18. Thus, the spousal maintenance payments are not presumed to be child support.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule that:

1. The payments of spousal support of $b per month do not constitute alimony payments within the meaning of I.R.C. § 71(b).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. No opinion is expressed as to the federal tax treatment of the transaction under any other provisions of the Internal Revenue Code and the Treasury Regulations that may be applicable or under any other general principles of federal income taxation. This letter ruling is only applicable to matters under our jurisdiction. See Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 6, Section 1. No opinion is expressed as to the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling.

This ruling is directed only to the taxpayer requesting it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Enclosed is a copy of this letter ruling showing the deletions proposed to be made in the letter when it is disclosed under section 6110.

Sincerely,

_____

David M. Christensen
Assistant to the Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Income Tax & Accounting)

cc:

Enc. Copy for section 6110 purposes