**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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PLR-116451-16

Date: November 7, 2016

TY:

Legend

Taxpayer =
Ex-spouse =

Date 1 =
Date 2 =
a =
b =
c =
State =
A =

Dear :

This is in response to your request for a private letter ruling which was received by the Service on Date 1. You requested a ruling that certain lump sum payments you are required to make to Ex-spouse pursuant to a court judgment constitute alimony payments within the meaning of I.R.C §§ 215(a) and 71(b).

FACTS

Taxpayer is an individual. On Date 2, the family court in State entered a divorce decree and a court judgment in proceedings between Taxpayer and Ex-spouse. The court judgment effectuated an agreement between Taxpayer and Ex-spouse. Among other provisions, the court judgment provided for lump sum and annual payments of "alimony."

Paragraph 2 of the court judgment reads as follows:

A

Taxpayer represented that there have been no lump sum alimony payments to date.

LAW AND ANALYSIS

I.R.C. § 215(a) provides in the case of an individual, there shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual's taxable year.

I.R.C. § 215(b) provides that the term "alimony or separate maintenance" means any alimony or separate maintenance payment (as defined in section 71(b)) which is includible in the gross income of the recipient under section 71.

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. 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 v. Commissioner*, 102 F.3d 842, 844 (6th Cir. 1996).

The payment is required pursuant to a court judgment entered as part of the divorce proceeding. The first requirement is satisfied. Taxpayer represented that the parties will not be members of the same household at the time the lump sum payments are made. The third requirement is satisfied.

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*, 102 F.3d at 845-46. *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 relevant document does not provide that the lump sum payments will terminate upon the death of the payee spouse. However, state law provides that the payment will terminate upon the death of the payee spouse. *See Cohan v. Feur*, 810 N.E.2d 1222 (Mass. 2004). The fourth requirement is satisfied.

The second requirement is not satisfied in this case. The court judgment provides that the lump sum payments are non-taxable to Ex-spouse and non-deductible by Taxpayer. The written instrument does not specifically reference sections 71 and 215. However, the Tax Court has held that the designation in the instrument need not specifically refer to sections 71 and 215. The instrument must contain a clear, explicit and express direction that the payments are not to be treated as income for the payments not to satisfy this second requirement. If there is no express direction that the payments are not to be treated as income, the payments are considered alimony for federal income tax purposes. *Baker v. Commissioner*, T.C. Memo. 2000-164 *8-9. *See also Jaffe v. Commissioner*, T.C. Memo. 1999-196.

There is an express designation in the court judgment that the lump sum payments are not includible in Ex-spouse's income. Therefore, the lump sum payments are not alimony. This is especially apparent in this case because the parties agreed the annual alimony payment was taxable to Ex-spouse and deductible by Taxpayer. The annual alimony payments would qualify as alimony for federal income tax purposes.

RULINGS

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

The b lump sum payments of "alimony" of $c ordered pursuant to the court judgment effectuating Taxpayer's and Ex-spouse's agreement do not constitute alimony payments within the meaning of I.R.C. § 71(b) and § 215(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, 18, 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.

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,

_____

BRIDGET E. TOMBUL
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Income Tax & Accounting)

Enc. Copy for section 6110 purposes