Internal Revenue Service

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

TIN:

Refer Reply To:
CC:ITA:B02
PLR-107564-06
Date:
June 12, 2006

Legend:

Taxpayer	=
Former Spouse	=
County	=
State	=
$x	=
$y	=
Year	=
Date1	=
Date2	=
Date3	=
Date4	=

Dear :

This ruling responds to a letter dated January 12, 2006, submitted by your authorized representative, requesting a ruling that a payment made by Taxpayer under a Stipulation and Settlement Agreement and Order Confirming Stipulation (collectively, the Agreement) is not alimony deductible by Taxpayer under section 215 of the Internal Revenue Code.

Facts

Taxpayer and Former Spouse were divorced in Year under the laws of State. The divorce decree ordered Taxpayer "to pay [Former Spouse] the sum of [$x] per month alimony commencing on [Date1], and continuing with like payments on a like day each month thereafter for her support and maintenance…The alimony provided herein shall terminate on the earliest of [Former Spouse's] death or remarriage." The divorce decree was signed by the district court of County, State, on Date2.

On Date3, Taxpayer and Former Spouse entered into Agreement to settle all past and future claims of alimony from Taxpayer to Former Spouse. The Agreement was approved by the district court of County, State, on Date4. The Agreement ordered Taxpayer to pay Former Spouse $y and:

> Such payment shall be non-taxable to [Former Spouse]; that is [Taxpayer] shall not claim for tax deduction purposes such payment, and [Former Spouse] shall not be required so far as allowed by law to pay any taxes, assessments or penalties of whatever kind or nature upon, for or regarding her receipt of such payment. Such payment is made for purposes of resolving the matters and issues of divorce between the parties. In accordance with Internal Revenue Code §71(b)(1)(B) the parties shall designate such payment as excludable/non-deductible payment for purposes of §71 and §215, respectively.

The Agreement further states that it "is therefore, [sic] and consistent herewith approved and confirmed and all remaining or outstanding claims under the settlement and Decree of Divorce entered in this action are hereby compromised and modified in accordance herewith."

Law and Analysis

Section 215(a) provides that an individual shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual's taxable year. Section 215(b) defines "alimony or separate maintenance payments" as 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.

Section 71(a) provides that gross income includes amounts received as alimony or separate maintenance payments. Section 71(b) provides that the term "alimony or separate maintenance payment" means any payment in cash if: (1) such payment is received by, or on behalf of, a spouse under a divorce or separation instrument; (2) 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; (3) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee and payor are not members of the same household at the time such payment is made; and (4) there is no liability to make such payment for any period after the death of the payee and no liability to make any payment as a substitute for such payments after the death of the payee. A payment must meet all of the factors to qualify as alimony.

Section 71(b)(2) defines a "divorce or separation instrument" as (A) a decree of divorce or separate maintenance or a written instrument incident to such decree, (B) a written separation agreement, or (C) a decree requiring a spouse to make payment for the support or maintenance of the other spouse.

Section 1.71-1T(b), A-8, of the Temporary Income Tax Regulations provides that spouses may designate that payments otherwise qualifying as alimony or separate maintenance payments shall be nondeductible by the payor and excludible from gross income by the payee by so providing in the divorce or separation instrument, as defined in section 71(b)(2). See also H.R. Rep. No. 98-432 at 1496 (1984), reprinted in 1984 U.S.C.C.A.N. 697, 1138 ("The parties, by clearly designating in a written agreement, can provide that otherwise qualifying payments will not be treated as alimony for federal income tax purposes and therefore will not be deductible or includible in income."); cf. Richardson v. Commissioner, 125 F.3d 551, 556 (7th Cir. 1997), affg. T.C. Memo. 1995-554. Further, the temporary regulation provides that a copy of the divorce or separation instrument containing the designation must be attached to the payee's first filed federal tax return (Form 1040) for each year in which the designation applies. Sec. 1.71-1T(b), A-8, Temporary Income Tax Regs.

The Agreement states that the divorce decree is modified in accordance with the Agreement. We note that the district court of County, State approved such modification of the divorce decree. We conclude that the modification of the original divorce decree is valid, and the provisions of the Agreement are effective with respect to the tax consequences of the payment made pursuant to the modification. See Davis v. Commissioner, 41 T.C. 815, 820 (1964)(latter contractual instrument governed the deductibility of alimony payments made pursuant thereto).

The Agreement clearly states that the payment is designated as not includible in the gross income of Former Spouse under section 71 and not deductible to Taxpayer under section 215. Consequently, the payment does not meet the definition of "alimony or separate maintenance payment" for purposes of section 71(b). As stated above, a payment must meet all of the factors of section 71(b) to qualify as alimony for purposes of sections 71 and 215. Accordingly, such payment is not deductible to Taxpayer under section 215. No determination is being made concerning whether the payment is includible in gross income or deductible from gross income with respect to any other provision of the Internal Revenue Code.

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A temporary regulation pertaining to the issue addressed in this ruling has not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of the temporary regulation to the extent the regulation is inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2006-1, 2006-1 I.R.B. 1, 49. However,

when the criteria in section 11.05 of Rev. Proc. 2006-1, supra, are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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 ruling contained in this letter is 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 ruling, it is subject to verification on examination.

Sincerely,

ROBERT M. BROWN
Associate Chief Counsel
(Income Tax & Accounting)

By: Thomas D. Moffitt
THOMAS D. MOFFITT
Chief, Branch 2

cc: