

O'NEIL & STEINER, PLLC ALIMONY INFORMATION

The Tax Cuts and Jobs Act (TCJA) has amended the tax treatment of alimony that you will be interested in. These changes take effect for divorces and legal separations after 2018.

Old rules. Under the current rules, an individual who pays alimony may deduct an amount equal to the alimony or separate maintenance payments paid during the year as an “above-the-line” deduction. (An “above-the-line” deduction, i.e., a deduction that a taxpayer need not itemize deductions to claim, is more valuable for the taxpayer than an itemized deduction.)

And, under current rules, alimony and separate maintenance payments are taxable to the recipient spouse (includible in that spouse's gross income).

Please note that the tax rules for *child support*—i.e., that payers of child support don't get a deduction, and recipients of child support don't have to pay tax on those amounts—is unchanged.

New - TCJA rules. Under the TCJA rules, there is no deduction for alimony for the payer. Furthermore, alimony is not gross income to the recipient. So, for divorces and legal separations that are executed (i.e., that come into legal existence due to a court order) after 2018, the alimony-paying spouse won't be able to deduct the payments, and the alimony-receiving spouse doesn't include them in gross income or pay federal income tax on them.

This is a major change for those paying and/or receiving alimony. The recipient of alimony payments has previously been responsible for reporting payments as income and paying the taxes that result. The payer was able to deduct payments made, thereby only paying tax on income minus alimony. This will reverse beginning after 2018, with the payer having to pay tax on their full income without subtracting required alimony payments made during the year.

TCJA rules don't apply to existing divorces and separations. It's important to emphasize that the pre-2018 rules (see old rules above) continue to apply to divorces and separations that are executed *before 2019*.

Some taxpayers may want the TCJA rules to apply to their existing divorce or separation. Under a special rule, if taxpayers have an earlier (pre-2019) divorce or separation decree, and they have that agreement legally modified, then the new rules don't apply to that modified decree, unless the modification *expressly provides* that the TCJA rules are to apply. Applying the TCJA rules voluntarily may be beneficial for the taxpayers, such as a change in the income levels of the alimony payer or the alimony recipient.

If you wish to discuss the impact of these rules on your situation, please give us a call to schedule a consultation.