Fundamentals of Spousal Support Taxation

By Matthew Crider, JD
Family Protection Attorney

As a Sacramento Divorce Lawyer, I deal with spousal support and its consequences in many cases. One issue related to spousal support in almost every California Divorce: the tax implications for spousal support payments. In most cases, the higher-earning spouse is required to pay the lower earner a certain amount, although there are exceptions to this. However, the tax rules are not the same for all types of support – some types are reportable as income while others are not. That said, the rules for each kind of support are relatively simple to learn. This article explores the factors that determine how spousal support is classified and subsequently taxed.

Types of Spousal Support

There are two main types of support that are awarded in a California divorce case: One is known as alimony and the other is called child support. In some states, alimony has become relatively less common over time and has largely been replaced with child support for divorcing couples with children. California allows for alimony in appropriate cases. Both alimony and child support can be awarded by either a divorce decree, written agreement of separation or decree of support. This article focuses on taxation of alimony

Alimony

This type of spousal support is often awarded in divorces where children are not involved. In most cases, alimony payments are tax deductible by the payor and reportable as taxable income by the recipient. However, the following requirements must be met to receive this tax treatment:

Alimony must be clearly specified in the divorce, annulment or separation agreement. No payments that are made under any circumstances outside this agreement can be labeled as such.

Alimony must be specified as a mandatory payment in the agreement. Any voluntary payments that are made to one ex-spouse by the other cannot be considered alimony and are not deductible or taxable for the payor or receiver respectively.

Alimony payments must be made in cash, or through such liquid payments as checks and money orders. All transfers of noncash property fall outside this category.

Deductions of aggregate alimony payments of more than $15,000 that are made in the first or second year may be recaptured in the second or third year if a lesser payment is

made that year. (The rules pertaining to this provision are somewhat complicated and those to whom they apply should seek counsel from their tax or financial advisor.)

Any provision that payments made to an ex-spouse for the purpose of supporting children or dependents automatically disqualifies the payments as alimony.

Payments made by one ex-spouse to another cannot be considered alimony if both spouses still live in the same household when the payments are made.

Alimony payments cannot last beyond the death of the paying spouse. If payments are continued into the recipients active accounts, none of the payments can be deducted for tax purposes.

Alimony can also be nondeductible and therefore nontaxable if both spouses agree to specify this in the divorce decree.

Alimony paid is reportable as an above-the-line deduction, which means that the payor is not required to itemize in order to deduct these payments. Taxpayers who pay alimony must include the Social Security number(s) of any and all ex-spouses to whom payments are made in order to deduct the payments. Failure to do so will result in disallowance of the deduction. Those receiving payments must provide their Social Security numbers to the paying spouse or face a penalty from the IRS**.**

About Matthew Crider, J.D.

Matthew Crider formed **Crider Law PC** in 1999 so he could help individuals through the California divorce process by providing creative solutions as their trusted advisor and legal counselor. His divorce and family law practice focuses on assisting people in dissolution matters, including divorce, child custody and visitation, child and spousal support, spousal support and alimony, and parental rights.