



# Tax Reform Legislation Eliminates Deduction for Alimony Payments

The bill informally known as the Tax Cuts and Jobs Act was signed into law by President Trump on December 22, 2017. Of primary interest to family law practitioners is Section 11051 of the legislation, which repeals the alimony deduction provided under Section 215 of the Internal Revenue Code, and the requirement under Sections 61(8) and 71 that alimony income be included in the payee's income. This provision will have a profound effect on divorcing couple's negotiations over spousal support obligations, as these discussions often focus on the tax deductibility of alimony by the payor spouse (often the higher-earning spouse) and inclusion of the taxable income of the payee spouse (often the lower-earning spouse).

In addition, the new law repeals Section 682 of the Internal Revenue Code, which deals with alimony trusts. Alimony trusts allow divorcing spouses to avoid some of the restrictions imposed by Section 71. Section 71, prior to its repeal by the new law, required that alimony cease on the death of the payee spouse, imposed recapture requirements on excess alimony payments, and imposed restrictions on alimony payments related to contingencies related to a child. Alimony trusts, prior to repeal by the new law, were exempt from these restrictions.

The repeal of the provision relating to alimony and Section 682 trusts apply to any divorce or separation instrument (as defined by Section 71(b)(2) prior to its repeal), executed after December 31, 2018. Thus, implementation of the repeal is delayed for one year.

Divorce and separation agreements executed on or before the law's December 31, 2018 effective date will be grandfathered. Grandfathered agreements modified after the December 31, 2018 effective date will also be grandfathered unless the modification expressly provides that the modified agreement be governed by the new law.

Section 11041 of the new law also suspends the deduction for personal exemptions for the taxable year beginning after December 31 2017 and before January 1, 2026. Prior to the enactment of the new legislation, the custodial parent (the parent with the physical custody of the child for the most nights during the year) was entitled to the personal exemption for a child unless that parent released the exemption to the non-custodial parent. Under the new law, the parties will no longer have to negotiate which parent will be eligible to take the personal exemption.

Family law attorneys must be aware of how the new law will affect the alimony and child support negotiations. With a one-year delay of the implementation of the divorce-related provisions, family law practitioners now have some lead time to finalize divorce and separation agreements and utilize current tax advantages before the new law takes effect. Regardless, the enactment of this new law will be a game changer for how divorce and separation agreements are structured.

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