

Subject: Taxation of Damage Awards 3:04

MORE ALIMONY DISPUTES

As was noted in this discussion group before, there are frequently disputes about the tax treatment of various payments made pursuant to a divorce. Several recent decisions confirm that these disputes continue unabated.

In *Mary K. Heckaman v. Commissioner*, T.C. Memo 2000-85, Tax Analysts Doc. No. 2000-7516, 2000 TNT 50-7 (2000), the payments a spouse received under a provisional maintenance order were held to constitute alimony even though the order did not specify how the payments should be treated for tax purposes, or whether the payment terminated on the spouse's death. The court found that the maintenance payments Ms. Heckaman received were includable in income as alimony, basing its decision on Indiana state law which provided that maintenance payments terminate on either spouse's death. The court also found that applicable state law provided that maintenance was strictly for support of the spouse (not in the nature of a property settlement). Thus, the payments were held taxable as alimony even though the separate maintenance agreement did not specifically call for the traditional indices of alimony.

In *Hermine Levinthal v. Commissioner*, T.C. Memo 2000-92, Tax Analysts Doc. No. 2000-8552, 2000 TNT 55-14, housing costs that were paid on behalf of a spouse were held to be alimony. This case concerned the deduction side of the equation. The Tax Court held that the man could deduct as alimony housing payments that he made on behalf of his wife. The court found that a series of letters qualified as a written separation agreement, dealing with the maintenance and operation of the couple's two residences.

The letters were exchanged between the lawyers for Harvey and Hermine Levinthal, proposing separate living and maintenance arrangements. No form of settlement agreement between the man and woman was executed until some years later. In the earlier years, though, Harvey lived in the couple's apartment and Hermine lived in the marital home. Then, after two months of this, they would switch addresses (talk about weird!). Harvey paid the rent, the mortgage and other expenses associated with the two addresses. Harvey treated the amounts for housing payments as alimony, deducting them, but Hermine did not include them in income.

When the matter went to Tax Court, the court held that most of the amounts Harvey claimed as alimony did not qualify because there was no written separation agreement. However, the court found that the exchange of attorney letters did qualify as a written separation agreement calling for Harvey to pay all maintenance and operation expenses for the apartment and for the marital home. The court reduced the apartment payments by half, because Harvey benefited by living there half of the time. Because Hermine owned the marital home herself (it was titled in her name), the court found that all maintenance

payments on the home benefited her and were therefore alimony.