



### Big Changes to Alimony Under the Tax Cuts and Jobs Act

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**What just happened?** On November 2, the “Tax Cuts and Jobs Act” (H.R. 1) was published by the U.S. House of Representatives’ Committee on Ways and Means. Among other important changes to the federal tax system, this GOP bill provides for the complete elimination of the alimony deduction, which would also eliminate the deduction for spousal support and alimony pendente lite (“APL”). The bill also eliminates the deductions for real estate taxes, for mortgage interest on loans up to \$500,000, and extraordinary medical expenses.

**What does it mean?** If this bill becomes law, the alimony recipient will no longer pay tax on spousal support, APL, and alimony income. The spouse making the payments, however, will no longer be able to deduct them from his or her income.

**Why does it matter?** This change is expected to completely destroy the incentive for the income superior spouse to pay alimony to the income dependent spouse. Let’s look at one simplified example: Wife earns \$350,000 per year running her company and her federal tax bracket is 30%. Husband earns \$25,000 per year and has virtually no taxable income. Husband cannot support himself, he plans to keep their home, and Wife wants to keep her company intact, so she offers to pay alimony to Husband of \$6,000 per month for a certain number of years. She does that because she can deduct each alimony payment: the actual cost to her is \$4,200 per month. Under current law, Husband pays federal tax on that \$72,000 as well as his wages, but because he can deduct the real estate tax and mortgage interest payments, he is better off. In cases with a particularly high income disparity, Wife might even reimburse Husband for the taxes on the alimony, which she deducts as additional alimony.

**Who would be affected?** The change would affect divorce agreements entered into after December 31 of this year. Existing alimony agreements would not be affected, except for those agreements that expressly provide for modification in future years. These would be case by case determinations.

**Is there an intended impact on Pennsylvanians?** Pennsylvania’s spousal support/APL guidelines provide that a dependent spouse can receive up to 40% of the payor spouse’s after tax income. These guidelines assume that the payor

deducts the payments and the payee takes them into income, unless the parties file jointly. Existing orders may require modification so as to prevent hardship or windfall. These guidelines are updated and reexamined every four years. The next update is not scheduled until February 2021.

**What's the bottom line?** In many, if not most, divorce cases, the tax deductibility of alimony payments is the golden key to making a deal that is equitable for both parties. Tax deductible alimony is usually the only way to bring about an equitable result when the assets are not subject to easy division, such as when the main asset in the case is a closely held business, a home, or a pension. Some litigation may be placed on hold while this situation plays itself out. Parties who reach agreements now should consider including provisions that address any future changes in tax law.

**We are closely watching this situation as it develops. We have not seen this level of major tax reform since 1986.**

**UPDATE:**

**December 19, 2017 - Per the statement of the House and Senate conference committee, the alimony deduction will be repealed for all Agreements entered on or after December 31, 2018 as well as modifications to such alimony provisions after that date, but only if the modification provides expressly that the parties intended this amendment to apply.**

**November 9, 2017 - The Senate Republicans issued their markup, which does not repeal the alimony deduction.**

**About the Author:** Ms. De Shong is one of Pennsylvania's leading family law attorneys. She has counseled hundreds of men and women on all aspects of divorce, child custody, distribution of assets, support, and alimony, as well as property settlement agreements, prenuptial agreements, cohabitation and partnership agreements, family business agreements, protection from abuse matters, and more. She is a Fellow of the American Academy of Matrimonial Lawyers, a national organization of approximately 1600 highly skilled litigators and negotiators who represent individuals in all areas of family law. If you would like further information concerning family law or if you have a family law matter that you would like to discuss with our lawyers, please email Ms. De Shong at [adeshong@wispearl.com](mailto:adeshong@wispearl.com).

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