

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of [REDACTED] UTI # [REDACTED] <hr style="border: 1px solid black; margin-top: 10px;"/>)))))	DECISION OF HEARING OFFICER Case No. 201100302-I
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A hearing was held on February 21, 2012 in the matter of the protest of [REDACTED] (Taxpayer) to an assessment of income tax and interest by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) for tax year 2006.

This matter is now ready for ruling.

FINDINGS OF FACT

1. Taxpayer filed a resident Arizona income tax return for tax year 2006.
2. The Section reviewed Taxpayer's return and issued a proposed deficiency assessment dated March 9, 2011 increasing Taxpayer's alimony income by \$[REDACTED].
3. The proposed assessment calculated interest at the statutory rate. No penalties were assessed.
4. Taxpayer timely protested the assessment stating that the payments she received in the amount of \$[REDACTED] for January, February and March 2006 were for family support. Payments for the months of April through December were for spousal support.
5. The Maricopa County Superior Court entered a minute entry order dated December 8, 2005 that awarded Taxpayer temporary "family support" in the amount of \$[REDACTED] per month.
6. The order did not state that the payments would stop upon Taxpayer's death and did not specifically allocate any part of the payment to child support.

7. The Maricopa County Superior Court entered a minute entry order dated March 17, 2006 that awarded Taxpayer temporary spousal maintenance of \$[REDACTED] per month.
8. The March 17, 2006 order also awarded Taxpayer child support in the amount of \$[REDACTED] per month effective retroactively to October 1, 2005.
9. Taxpayer included in her income the payments of \$[REDACTED] per month she received for the months of April through December 2006 in the total amount of \$[REDACTED].
10. Taxpayer received \$[REDACTED] per month for the months of January, February and March 2006.
11. The Section contends that \$[REDACTED] of each monthly payment of \$[REDACTED] was alimony subject to Arizona income tax.
12. Taxpayer contends the entire payment of \$[REDACTED] per month was for family support and not spousal maintenance and was therefore not taxable to her.

CONCLUSIONS OF LAW

1. Arizona Revised Statutes (A.R.S.) § 43-1001(2) defines Arizona gross income of a resident individual as the individual's federal adjusted gross income for the taxable year, computed pursuant to the Internal Revenue Code (I.R.C.).
2. A.R.S. § 43-102(A)(1) provides that it is the intent of the Arizona legislature to adopt the provisions of the federal Internal Revenue Code relating to the measurement of adjusted gross income for individuals so that adjusted gross income reported to the Internal Revenue Service (IRS) shall be the identical sum reported to Arizona, subject only to modifications set forth in Title 43 of the Arizona Revised Statutes.
3. I.R.C. § 71(a) provides that gross income includes amounts received as alimony or separate maintenance payments.

4. I.R.C. § 71(b)(1) defines alimony or separate maintenance payments as:
 - (A) payments received by (or on behalf of) a spouse under a divorce or separation instrument,
 - (B) the divorce or separation instrument does not designate payment as a payment which is not includible in gross income under section 71 and not allowable as a deduction under section 215,
 - (C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and
 - (D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.
5. I.R.C. § 71(c)(1) provides that I.R.C. § 71(a) does not apply to that part of any payment which the terms of the divorce or separation instrument fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of children of the payor spouse.
6. Neither the Arizona Revised Statutes nor the Internal Revenue Code define the term “family support” or specify whether for income tax purposes an amount awarded as “family support” is to be considered alimony, child support or a combination of alimony and child support.
7. A.R.S. § 25-327(B) provides that unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated on the death of either party or the remarriage of the party receiving maintenance.
8. Payments made to a spouse pursuant to an effective support decree, without a fixed sum for child support, are deductible as alimony. *Kean v. C.I.R.*, 407 F.3d 186 (3rd Cir. 2005); *Cosby v. Commissioner*, TC Summary Opinion 2007-8 (2007); *Berry v. Commissioner*, TC Memo 2005-91 (2005).

9. The proposed assessment issued by the Section for tax year 2006 was proper.

DISCUSSION

Arizona taxpayers are required to report to Arizona their federal adjusted gross income as determined pursuant to the Internal Revenue Code. Under I.R.C. § 71(a), federal gross income includes amounts a taxpayer receives as alimony or separate maintenance payments.

I.R.C. § 71(b)(1) defines alimony or separate maintenance payments as:

(A) payments received by (or on behalf of) a spouse under a divorce or separation instrument,

(B) the divorce or separation instrument does not designate payment as a payment which is not includible in gross income under section 71 and not allowable as a deduction under section 215,

(C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

(D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.

However, I.R.C. § 71(c)(1) excludes from alimony or separate maintenance payments that part of any payment which the terms of the divorce or separation instrument fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of children of the payor spouse.

The Maricopa County Superior Court entered a minute entry order that awarded Taxpayer temporary “family support” in the amount of \$[REDACTED] per month without specifying how much, if any, of the payments were for child support. Neither the Arizona Revised Statutes nor the Internal Revenue Code specify whether “family

support” payments are alimony or child support. The question thus presented is whether the family support payments Taxpayer received were properly characterized as alimony or should the payments be considered child support.¹

The order at issue did not state the payments would stop upon Taxpayer’s death and no part of the payment was specifically allocated to child support. In determining whether such an unallocated “family support” payment is alimony, courts have noted a tension between I.R.C. § 71(b)(1)(D) (liability for payment ceases on the death of the payee spouse) and I.R.C. § 71(c)(1) (alimony does not include a payment or portion of payment specifically designated as child support).

Courts that have looked at this issue have held both ways, sometime based on specific state law provisions. However, in cases where no part of the payment was designated as child support and state law provided that support or maintenance payments ceased upon the death of the payee, courts have generally held that the payments were alimony, deductible in full by the payor and taxable in full to the payee. Here, based on A.R.S. § 25-327(B), we conclude that the full family support payment would not have been considered a continuing obligation upon the death of Taxpayer.

The proposed assessment did not include the full amount of the payment of \$[REDACTED] as alimony taxable to Taxpayer. Based on a subsequent order by the court that specifically awarded Taxpayer spousal maintenance in the amount of \$[REDACTED], the Section only included the \$[REDACTED] per month as alimony. Including only that amount in the proposed assessment as taxable alimony was reasonable.

The assessment included interest. A.R.S. § 42-1123(C) provides that if the tax "or any portion of the tax is not paid" when due "the department shall collect, as a part

¹ Taxpayer’s ex-husband was audited by the IRS for the payments at issue. The IRS made no changes to the ex-husband’s federal income tax return that deducted the amounts at issue as alimony payments. While this is informative, it is not determinative of the outcome of this case.

of the tax, interest on the unpaid amount" until the tax has been paid. The accruing interest included in the proposed assessment was proper.

Based on the foregoing, the Section's proposed assessment dated March 9, 2011 is upheld.

DATED this 17th day of April, 2012.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Original of the foregoing sent by
certified mail to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section