

The Tax Cuts and Jobs Act of 2017

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The Tax Cuts and Jobs Act of 2017 (“Act”) repealed the deduction for alimony and maintenance payments and made other changes to the Internal Revenue Code which will affect the negotiation of separation agreements as well as maintenance and child support awards made after January 1, 2018. The provisions of the Act which effect the tax aspects of maintenance and child support, and are of interest to matrimonial lawyers are discussed in this brief summary of the changes.

Alimony Deduction

The most significant change is that the (“Act”) repealed the deduction for alimony payments for any divorce or separation instrument executed or modified after December 31, 2018.¹

Under existing law² alimony and separate maintenance payments made pursuant to a divorce or separation instrument are deductible by the payor spouse and includible in income by the recipient spouse.³

The Tax Cuts and Jobs Act of 2017,⁴ eliminated the deduction by the payor spouse for alimony and separate maintenance payments. The Internal Revenue Code provisions that specify that alimony and separate maintenance payments were included in income were repealed.

The repeal is effective for any divorce or separation instrument executed after December 31, 2018, or for any divorce or separation instrument executed on or before December 31, 2018, and modified after December 31, 2018, if the modification expressly provides that these amendments apply to the modification.⁵ Alimony payments made pursuant to a divorce or separation instrument made on or after December 31, 2018, are no longer deductible by the payor or includable in the income of the recipient. Payments under existing orders continue to be deductible to the payor and are includable in the income of the recipient.

IRC. § 215, “Alimony, etc., payments” was repealed.⁶ It formerly provided, in part: “ In the case of an individual, there shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual’s taxable year.”⁷ For purposes of this section, the term “alimony or separate maintenance payment” was defined to mean any

¹ IRC §24

² IRC §§ 61, 71, and 215.

³ IRC §§ 215(a), 61(a)(8) and 71(a).

⁴ Public Law No: 115-97.

⁵ Sec. 11051. Repeal of Deduction for Alimony Payments.

⁶ Former 26 U.S.C.A. § 215

⁷ Former I.R.C. § 215 (a)

alimony or separate maintenance payment (as defined in section 71(b)) which is includible in the gross income of the recipient under section 71.8

Some of the conforming amendments are discussed below.

IRC § 71 9 “Alimony and separate maintenance payments” was repealed. It formerly provided the general rule that gross income includes amounts received as alimony or separate maintenance payments.”¹⁰ It defined “alimony or separate maintenance payments” as any payment in cash if--(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument, (B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section 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.¹¹ A “divorce or separation instrument” was defined as (A) a decree of divorce or separate maintenance or a written instrument incident to such a decree, (B) a written separation agreement, or (C) a decree (not described in subparagraph (A)) requiring a spouse to make payments for the support or maintenance of the other spouse. ¹²

IRC § 6113 “Gross income defined” which contains the general definition of “gross income” was amended by striking paragraph (a) (8) titled “Alimony and separate maintenance payments” and by redesignating paragraphs (9) through (15) as paragraphs (8) through (14), respectively. It had provided: “(a) General definition. -- Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: (8) Alimony and separate maintenance payments;

IRC § 62 14 “Adjusted gross income defined” was amended by striking paragraph (a) (10) which defined “adjusted gross income” in the case of an individual, to mean gross income minus the following deductions: ... (10) Alimony.--The deduction allowed by section 215.”¹⁵

Child Support

Child support payments pursuant to a divorce or separation instrument are not treated as

8 Former I.R.C. § 215 (b)

9 Former 26 U.S.C.A. § 71, I.R.C. § 71.

10 Former I.R.C. § 71(a).

11 Former IRC § 71 (b)(1)

12 Former IRC § 71 (b)(2)

13 Former 26 U.S.C.A. § 61, I.R.C. § 61

14 Former 26 U.S.C.A. § 62, I.R.C. § 62 (a)

15 Former 26 U.S.C.A. § 62, I.R.C. § 62 (a) (10)

alimony.¹⁶ The treatment of child support has not changed under the Act.

Enhancement of child tax credit through 2025 and new family credit

Under 2017 law an individual may claim a tax credit for each qualifying child under the age of 17. The amount of the credit per child is \$1,000. A child who is not a citizen, national, or resident of the United States cannot be a qualifying child.¹⁷

IRC § 24 (h) was added effective January 1, 2018¹⁸ and is titled “Special Rules for Taxable Years 2018 through 2025”.¹⁹ Under the Act the aggregate amount of child credits that may be claimed is phased out for individuals with income over certain threshold amounts.²⁰ The otherwise allowable child tax credit is reduced by \$50 for each \$1,000 (or fraction thereof) of modified adjusted gross income (“AGI”) over \$75,000 for single individuals or heads of households, \$110,000 for married individuals filing joint returns, and \$55,000 for married individuals filing separate returns. For purposes of this limitation, modified AGI includes certain otherwise excludable income earned by U.S. citizens or residents living abroad or in certain U.S. territories.²¹

The credit is allowable against both the regular tax and the alternative minimum tax (“AMT”). To the extent the child credit exceeds the taxpayer’s tax liability, the taxpayer is eligible for a refundable credit (the “additional child tax credit”) equal to 15 percent of earned income in excess of \$3,000 (the “earned income” formula).²²

Families with three or more children may determine the additional child tax credit using the “alternative formula,” if this results in a larger credit than determined under the earned income formula. Under the alternative formula, the additional child tax credit equals the amount by which the taxpayer’s Social Security taxes exceed the taxpayer’s earned income credit (“EIC”).²³

Earned income is defined as the sum of wages, salaries, tips, and other taxable employee compensation plus net self-employment earnings. At the taxpayer’s election, combat pay may be treated as earned income for these purposes. Unlike the EIC, which also includes the preceding

¹⁶ IRC § 71(c).

¹⁷ Public law No. 115-97. (2017) See Conference Report at <http://docs.house.gov/billsthisweek/20171218/CRPT-115HRPT-466.pdf>

¹⁸ Act Sec. 11022 (b).

¹⁹ Act Sec. 11022 (a).

²⁰ Act Sec. 11022 (a). Increase in And Modification of Child Tax Credit, amending IRC § 24 by adding at the end new subsection “(h) SPECIAL RULES FOR TAXABLE YEARS 2018 THROUGH 2025; Applicable in case of a taxable year beginning after December 31, 2017, and before January 1, 2026. Act Sec. 11022 (b) provides that the amendment made by this section shall apply to taxable years beginning after December 31, 2017.

²¹ Public law No. 115-97 (2017). IRC §24(h). See Conference Report at <http://docs.house.gov/billsthisweek/20171218/CRPT-115HRPT-466.pdf>

²² Public law No. 115-97 (2017). IRC § 24(h)(6).

²³ Public law No. 115-97 (2017). IRC § 24(h).

items in its definition of earned income, the additional child tax credit is based only on earned income to the extent it is included in computing taxable income. For example, some ministers' parsonage allowances are considered self-employment income, and thus are considered earned income for purposes of computing the EIC, but the allowances are excluded from gross income for individual income tax purposes, and thus are not considered earned income for purposes of the additional child tax credit since the income is not included in taxable income. 24

Any credit or refund allowed or made to an individual under this provision (including to any resident of a U.S. possession) is not taken into account as income and is not be taken into account as resources for the month of receipt and the following two months for purposes of determining eligibility of the individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds. 25

The child tax credit is temporarily increased from \$1000 to \$2,000 per qualifying child.26

The credit is further modified to temporarily provide for a \$500 nonrefundable credit for each qualifying dependent, 27 other than a qualifying children. The provision generally retains the present definition of dependent. 28

The maximum amount refundable increases to and may not exceed \$1,400 per qualifying child.29 Additionally, in order to receive the child tax credit (i.e., both the refundable and non-refundable portion), a taxpayer must include a Social Security number for each qualifying child for whom the credit is claimed on the tax return. For these purposes, a Social Security number must be issued before the due date for the filing of the return for the taxable year. This requirement does not apply to a non-child dependent for whom the \$500 non-refundable credit is claimed.30

The present age limit for a qualifying child is retained. Thus, a qualifying child is an individual who has not attained age 17 during the taxable year. 31

Finally, the adjusted gross income phaseout thresholds are modified. The credit begins to phase out for taxpayers with adjusted gross income in excess of \$400,000 (in the case of married taxpayers filing a joint return) and \$200,000 (for all other taxpayers). These phaseout thresholds are not indexed for inflation. 32

24 Public law No. 115-97 (2017). IRC § 24(h).

25 Public law No. 115-97 (2017). IRC § 24(h).

26 Public law No. 115-97 (2017). IRC § 24(h)(2).

27 As dependent is defined in IRC § 152,

28 Public law No. 115-97 (2017). IRC § 24(h)(4).

29 Public law No. 115-97 (2017). IRC § 24(h)(5). The Act uses an indexing convention that rounds the \$1,400 amount to the next lowest multiple of \$100.

30 Public law No. 115-97 (2017). IRC § 24(h)(7). Additionally, a qualifying child who is ineligible to receive the child tax credit because that child did not have a Social Security number as the child's taxpayer identification number may nonetheless qualify for the non-refundable \$500 credit.

31 Public law No. 115-97 (2017). IRC §24(h).

In 2026 the rules for the child tax credit revert to the rules in effect in 2017 with a maximum credit of \$1000 for a qualifying child and lower phaseouts. The provision for enhancement of child tax credit and new family credit is effective for taxable years beginning after December 31, 2017 and expires for taxable years beginning after December 31, 2025. 33

Personal and Dependent Exemptions

The personal exemption for tax year 2017 remains as it was for 2016: \$4,050. However, the exemption is subject to a phase-out that begins with adjusted gross incomes of \$261,500 (\$313,800 for married couples filing jointly). It phases out completely at \$384,000 (\$436,300 for married couples filing jointly.) 34

The Act suspended the personal and dependent exemptions from 2018 through 2025.35 Taxpayers will be able to claim personal and dependent exemptions again in 2026.

Standard Deduction

The standard deduction for married filing jointly is \$12,700 for tax year 2017, up \$100 from the prior year. For single taxpayers and married individuals filing separately, the standard deduction rises to \$6,350 in 2017, up from \$6,300 in 2016, and for heads of households, the standard deduction will be \$9,350 for tax year 2017, up from \$9,300 for tax year 2016. 36

The Standard deduction is increased from 2018 through 2025. The standard deduction amounts are \$12,000 (single person), \$18,000 (head of household) and \$24,000 (married filing jointly).37

Medical Expense Deduction

Medical expenses remain deductible. For 2017 and 2018, medical expenses are deductible to the extent they exceed 7.5% of AGI. In 2019, the threshold will increase to 10% of Adjusted gross income (AGI).38

32 Public law No. 115-97 (2017). IRC §24(h)(3).

33 Act Sec. 11022 (b). Public law No. 115-97 (2017). IRC §24(h)(7).

34 See <https://www.irs.gov/newsroom/in-2017-some-tax-benefits-increase-slightly-due-to-inflation-adjustments-others-are-unchanged>

35 See Act Sec. 11041. Suspension of Deduction for Personal Exemptions.

36 <https://www.irs.gov/newsroom/in-2017-some-tax-benefits-increase-slightly-due-to-inflation-adjustments-others-are-unchanged>

37 Public law No. 115-97 (2017). See Conference Report at <http://docs.house.gov/billsthisweek/20171218/CRPT-115HRPT-466.pdf>

38 Act Sec. 11022 (a). Public law No. 115-97 (2017). See Conference Report at <http://docs.house.gov/billsthisweek/20171218/CRPT-115HRPT-466.pdf>

