**What is a divorce or separation instrument?**

**Divorce or Separation Instrument Defined.**

**For purposes of the Federal Income Tax laws, the following qualify as a "divorce or separation instrument:"**

**--a decree of divorce or separate maintenance. IRC $ 71(b)(2)(A).**

**A decree or judgment of divorce is one that dissolves the marriage. A decree or judgment of separate maintenance or separation is one where the parties live separate and apart, although still married. It has been held, for purposes of determining the treatment of alimony payments, that an annulment has the same effect as a divorce decree. G.F. Reisman, 49 TC 570, Dec. 28, 865 (acq); A.M. Newberger, 61 TC 457, Dec 32, 411 (acq).**

**--a written instrument incident to a decree of divorce or separate maintenance. IRC $ 71 (b)(2)(A).**

**--a decree or order that requires one spouse to make payments for the support or maintenance of the other spouse, IRC $ 71 (b)(2)(c).**

**even if the taxpayer is living with that spouse. IRC $ 71 (b)(1)(c).**

**Payments made under a support order include maintenance pendente lite, Reg $ 1.71-IT Q4. support paid under an interlocutory divorce judgment Reg $ 1.71-(b)(3).**

**or amounts paid pursuant to a support statute. Rev Rul 71-390, 1971-2 CB 82.**