



ERNIE FLETCHER  
GOVERNOR

DEPARTMENT OF REVENUE  
FINANCE AND ADMINISTRATION CABINET  
200 FAIR OAKS LANE  
FRANKFORT, KENTUCKY 40620  
www.kentucky.gov

ROBBIE RUDOLPH  
SECRETARY

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2004-13  
June 15, 2004

Individual income tax assessments  
for the tax years 1998 through 2001

**FINAL RULING**

The Department of Revenue of the Finance and Administration Cabinet, the successor agency to the Revenue Cabinet, adjusted your Kentucky individual income tax returns for 1998 through 2001 for the disallowance of alimony payments taken as a deduction from taxable income. You paid the tax assessment portion under protest, leaving a balance due for interest. The following table provides a breakdown of the amount of tax due, the tax paid, as well as accrued interest.

Tax Year	Tax Due	Interest	Tax Paid	Total
1998	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1999	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2000	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2001	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Totals</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

At issue is whether you are allowed to deduct from your gross income certain amounts paid to your ex-wife as alimony or whether they represent a non-deductible division of marital property. The amounts at issue in this final ruling can be attributed to your pension, which is also listed in Appendix II of your Judgment for Dissolution of Marriage ("your Judgment"), as part of the marital estate valuation. [REDACTED], from which you receive a pension benefit, made the payments to your ex-wife, as required by your Judgment.

Under KRS 141.010(10), an individual is allowed to deduct from adjusted gross income any of the deductions allowed individuals in IRC §62, in order to arrive at his or her Kentucky adjusted

gross income. IRC §62(10) allows a deduction for alimony as set out in IRC §215, which refers to IRC §71(b) for the definition of alimony. That provision states in relevant part:

**(b) Alimony or separate maintenance payments defined.** -- For purposes of this section --

**(1) In general.**--The term "alimony or separate maintenance payment" means 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.

IRC § 71.

Therefore, to be considered as alimony and deductible by the payer under IRC §71, the payments must meet four requirements. The first, that the payment be received by a spouse under a divorce or separation instrument, is present here, as these payments were ordered under your Judgment. Further, your Judgment notes in its Finding E on Page 2 that you and your ex-wife had at that time lived apart for at least six months. No information has been provided to suggest that you have returned to the same household. Your Judgment does designate this payment as one that is not includible in gross income and is not allowable as a deduction under IRC § 215 (personal property). Further, no indication is made in your Judgment that should your ex-wife die before you paid the entire \$ [REDACTED], the payment would not be owed to her estate.

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The Sixth Circuit has said "[w]hether such payments were made to satisfy an obligation to support or to satisfy property rights is a question of intent[.]" See Porter v. Commissioner of Internal Revenue, 388 F.2d 670, 671 (6th Cir., 1968). Clearly the intent in your Judgment was to divide this pension as part of the marital property as it lists the amounts in question in Section III (4)(a), one of the paragraphs devoted to personal property. The United States Tax Court, noting that the line between alimony and marital property distribution can be a blurry one, listed a number of other factors to be considered in determining whether a distribution is one of marital property. These are:

- That the recipient exchanged valuable property rights for the payments;
- That the payments are fixed in amount and not subject to contingencies;
- That the payments are secured;
- That the payments plus other property received approximates one-half of the property accumulated during the marriage;
- That recipient's need was not a factor in determining the amount; and
- That a separate support provision is made elsewhere in the divorce decree.

See Beard v. Commissioner of Internal Revenue, 77 T.C. 1275, 1285 (1981).

Several of these factors are readily apparent in your case. Your Judgment lists a separate section for "Maintenance." The disputed amount takes the form of a fixed lump sum or fixed payments with interest. Payment is not contingent on the need of your ex-wife. You are ordered to secure these payments with a \$ [REDACTED] life insurance policy with your ex-wife named as the beneficiary. After careful consideration, the Department of Revenue has determined the payments in question did not qualify as alimony under IRC §71 and therefore are not allowed as a deduction. Accordingly, the tax payments made under protest were legitimate liabilities due the Commonwealth along with the outstanding accrued interest. This is the final ruling of the Revenue Cabinet, and its successor agency, the Department of Revenue of the Finance and Administration Cabinet.

This letter is the final ruling of the Department of Revenue.

### APPEAL

You may appeal this ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this ruling, you must file your complaint or petition of appeal with the Clerk, Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601, within thirty (30) days from the date of this letter. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the complaint or petition of appeal must

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. State the petitioner's position regarding the law, facts or both; and
4. Include a copy of this final ruling letter with each copy of the complaint or petition.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings

officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,  
FINANCE AND ADMINISTRATION CABINET



GEORGE D. RENFRO  
Assistant Director  
Division of Protest Resolution

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

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