DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

February 25, 2014

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Dear :

This responds to your letter of September 12, 2012, to the Office of the Associate Chief Counsel (International) concerning the tax treatment of certain amounts paid to a US citizen pursuant to a marital settlement agreement. This area of the Internal Revenue Code falls under the jurisdiction of the Office of the Associate Chief Counsel (Income Tax and Accounting). For this reason, your letter was forwarded to this office for reply.

Your letter states that the marital settlement agreement may provide, in part, that payments of spousal support made are expressly designated as payments that are not includable in gross income of the payee under IRC §71 and not allowable as a deduction for the payor under IRC § 215.

Section 71(a) of the Internal Revenue Code provides that gross income includes amounts received as alimony or separate maintenance. Section 71(b)(1) defines "alimony or separate maintenance" 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 includable in gross income under § 71 and not allowable as a deduction under § 215; (C) in the case of an individual legally separated from his spouse under a decree of divorce or 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. In addition, the payor and payee spouses cannot file a joint return. Under § 71(b)(2), a "divorce or separation instrument" means, in part, a decree of divorce or separate maintenance or a written instrument incident to such decree or a written separation agreement.

Section 215(a) provides that 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. Section 215(b) provides that the term "alimony or separate maintenance payment" means any alimony or separate maintenance payment (as defined in § 71(b)) which is includable in the gross income of the recipient under § 71.

If a divorce or separation instrument designates that a payment otherwise qualifying as alimony shall be excludable from the gross income of the payee and nondeductible by the payor, then that payment does not satisfy § 71(b)(1)(B). In that case, the payment does not meet the statutory definition of "alimony" under § 71(b) includable in gross income. Correlatively, the payment is not deductible under § 215. See Q and A-8 of §1.71-1T(b) of the Income Tax Regulations.

This letter has called your attention to certain general principles of the law. It is intended for information purposes only and does not constitute a ruling. See section 2.04 of Rev. Proc. 2014-1, 2014-1 I.R.B. 7 (January 2, 2014). If you need any additional assistance, please contact , an attorney of my staff .

Sincerely,

Lewis K Brickates
Chief, Branch 1
Office of the Associate Chief Counsel
(Income Tax and Accounting)