



Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA*
28441 Highridge Road, Suite 110 • Rolling Hills Estates, CA 90274
Phone: (310) 378-6606 • E-mail: rja@anfusocpa.com
Website: www.anfusocpa.com • Blog: blog.anfusocpa.com



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Serving all of California

Ron's Corner

I hope you had a successful 2018 and the New Year is shaping up even better for you.

I would like to remind you that I am available to speak to bar associations and family law study groups on a variety of forensic accounting related subjects including:

- Moore Marsden
- Marital standard of living
- Support needs analysis
- Financial specialists and collaborative law
- Gross cash flow available for support
- Divorce tax issues
- DissoMaster™
- Divorce: What to expect
- Business valuations

I also offer a presentation on the Tax Cuts and Jobs Act of 2017, which focuses on how the tax law affects marriage dissolution. During my talk, I discuss the latest version of DissoMaster and how the elimination of the deduction for spousal support has affected the use of this software. Other aspects related to the new tax law and divorce I review include itemized deductions, mortgage interest, property taxes, child tax credits, and several issues that impact businesses, such as qualified business income and tax matters.

If you wish to contact me to address your group, I welcome you to do so.

Ron

* For an explanation of these titles, please visit our website or request a copy of Issue 3 of *Forensic Accounting Today*.

Spousal Support Changes and the New Tax Code

By Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA

The most crucial change established under the Tax Cuts and Jobs Act of 2017 (TCJA) related to family law went into effect on January 1, 2019. Previously, under section 215 of the tax code, paying spouses could deduct their alimony payments from their taxable income while recipient spouses were required to pay taxes on the alimony they received. This provided an advantage to the spouses to pay less tax because spouses with lower income would typically fall within a lower tax bracket.

Section 11051(C)

Section 11051 of the Tax Cuts and Jobs Act of 2017 reads as follows:
The amendments made by this section shall apply to:

1. *Any divorce or separation instrument (as defined in section 71(b)(2) of the Internal Revenue Code of 1986 as in effect before the date of the enactment of this Act) executed after December 31, 2018, and*
2. *Any divorce or separation instrument (as so defined) executed on or before such date and modified after such date if the modification expressly provides that the amendments made by this section apply to such modification.*

As of January 1, spousal support payments are no longer tax deductible for the paying spouse while recipients are relieved from having to pay income tax on alimony received. Thus, the benefit of spousal support being taxed at the lower rate is gone. This leads to more money going to the IRS while leaving less to be shared between the parties.

Many forensic accountants interpret the law to mean that if an agreement providing for the payment of spousal support is signed prior to January 1, 2019, the paying spouse will retain the allowance to deduct alimony. However, it is possible that the IRS may eventually provide guidance that for the previous law to continue to apply, separation agreements would need to be incorporated into the final divorce order by the December 31 deadline, and divorces would have to be finalized by that same date. In such cases, a paying spouse

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- Ron handles nearly all of the expert witness testimony for the firm, having made more than 425 court appearances.
- Ron projects exactly how far in advance he must plan his testimony for each case and carefully defines every step he needs to perform. The result is thorough preparation, including for the *unexpected*.
- Judges consider Ron an honest witness. He has been appointed by judges more than 40 times pursuant to Evidence Code §730.
- Ron keeps referring attorneys informed, promptly returns phone calls and meets his deadlines unless something out of his firm's control causes a delay.
- Ron offers family law attorneys the complete package. He is Accredited in Business Valuation, Certified in Financial Forensics, is a Certified Divorce Financial Analyst and is a Fellow of the American Board of Forensic Accounting.

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would no longer be able to claim the deduction if judgment was not procured by December 31, 2018. Should the IRS eventually take this stance, this would cause significant repercussions for individuals who claimed continuance of the spousal support deduction. This likely would lead to re-negotiations or further litigation of spousal support amounts.

Support Modifications

According to the new law, if a modification of an existing order entered on or before December 31, 2018 takes place between January 1, 2019 and December 31, 2025, the spousal support payments would remain tax deductible to the payor and would be taxed as income to the recipient. This mandate would hold true unless the parties had opted-in to the new law in their modification order.

Impacts on the Changes in Spousal Support

- Spouses will receive less money because the cost of paying support will increase and payments received will no longer be subject to taxes.
- Judgments finalized as of December 31, 2018 modified after January 1, 2019 can retain the deductibility.

An Example of How the New Tax Code Works

Let us say the payor of spousal support earns \$250,000 a year and falls within the 35-percent tax bracket. The recipient earns \$30,000 a year, falls into the 12-percent bracket, and annually receives \$50,000 in spousal support. Thus, the alimony payment each year is 20 percent of the payor spouse's gross income. Under the previous law, the payor would save taxes in the amount of \$17,500 from the \$50,000 support payment, lowering the payor's after-tax cost of alimony to \$32,500. The payee would have had a tax liability of \$6,000 based on twelve percent of the support received, leaving the recipient with \$44,000 after-tax alimony. Accordingly, the family saved \$11,500 in taxes in this hypothetical example.

Using the same scenario under the new law, the payor would have to pay an additional \$17,500 in taxes and the payee would receive an extra \$6,000 in income after taxes. As a result, the IRS's revenue would increase by \$11,500 under the new tax law. The new support calculations adjust this so each party is equally impacted.

You are welcome to contact me if you have questions about spousal support changes or any other issue concerning the Tax Cuts and Jobs Act of 2017.