Tax Implication of Alimony for the Elder Divorcee

By
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I. Introduction

Considering that "a State court or the intention of a State court judge in rendering a divorce decree does not determine the Federal income tax consequences of the divorce judgment he renders,"[1] practitioners who represent clients in divorce must be aware of the tax implications.[2] Those who represent clients who are considered as elders must particularly be sensitive to tax issues that affect their older clients. Attorneys should provide for tax consequences either in the marital settlement agreement or request the court to consider them in the final decree or judgment for divorce (or dissolution of marriage). Certainly "fashioning a divorce agreement in accordance with tax consequences is an appropriate and legitimate practice. After all, the parties may for tax purposes act as their best interest dictate . . . ."[3]

II. Deductible/Taxable Alimony

The payment of "alimony"[4] to or on behalf of a spouse (or former spouse) pursuant to a divorce or separation instrument[5]

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1 Coltman v. Commissioner, 61 T.C.M. (CCH) 2207 (1991).

2 *See* 10 J. Am. Acad. Matrim. Law. 65 (1993).

3 Lester v. Commissioner, 366 U.S. 299, 306 (1961).

4 Also sometimes referred to as "spousal support" or "maintenance." I.R.C. § 71, the "alimony" section of the Internal Revenue Code, is captioned "Alimony and separate maintenance payments." I.R.C. § 71 (2000).

5 I.R.C. § 71(b)(2) defines a "divorce or separation instrument 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.

will be includable in the income of the payee[6] and deductible from the income by the payor[7] if five requirements are met: First, the payment must be in cash. Second, the payment must not be designated as a payment which is nondeductible by the payor and nonincludable in income by the payee. Third, if the parties are separated under a decree of divorce or legal separation, they must not be members of the same household at the time payment is made. Fourth, the payor must not have any liability to make any such payment (or any substitute for such payment) after the death of the payee. Fifth, the payment must not be treated as child support.[8]

A. *Excess Front Loading (Recapture)*

Although not a provision that disqualifies a stream of payments as "alimony" under the Internal Revenue Code, thus still taxable/deductible, if there is impermissible[9] front loading of the alimony amount, such amount will be included[10] in the gross income for the payor (or former) spouse's taxable year beginning in the third post-separation year.[11] The payee (or former) spouse shall be allowed a deduction in computing adjusted gross income for the amount of such excess payments in the third post-separation year.[12]

The term "First post-separation year" means the first calendar year in which the payor (or former) spouse paid the payee (or former) spouse alimony or separate maintenance payments that meet the provision of I.R.C. § 71 other than *pendent lite* or a

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6 "Gross Income includes amounts received as alimony or separate maintenance payments." I.R.C. § 71(a).

7 "In the case of an individual, there shall be allowed as a deduction an amount equal to alimony or separate maintenance payments [as defined in I.R.C. § 71(b)] paid during such individual's taxable year." I.R.C. § 215(a).

8 Prefatory remarks to Temporary Regulations on Domestic Relation Tax Reform Act (of 1984), as modified by the Tax Reform Act of 1986, P. L. # 99-514, 100 Stat. 2085.

9 I.R.C. § 71(f) speaks in terms of "excess front-loading of alimony payments."

10 Such amounts will be "recaptured" or as some say, will be treated as "phantom taxable income."

11 I.R.C. § 71(f)(1)(A).

12 I.R.C. § 71(f)(1)(B).

temporary order for support.[13] "The second and third post-separation years. . . [are] the first and second succeeding calendar years, respectively."[14]

The determination of the amount of includable income under the recomputation rule is as follows: Recapture will occur in only one year, in year three. Only two calculations for recapture will be necessary. The first calculation compares the second post-separation year payments to the third-post separation year payments. If the amount paid in the third post-separation year plus $15,000 is less than the amount paid in the second post-separation year, the excess amount will be recaptured. The second calculation compares the first post-separation year to the adjusted average of the second and third post-separation years. Payments in the second and third post-separation years will be reduced by any recapture from the first calculation. The second and third post-separation years payments will be averaged. If this average plus $15,000 is less than the payments in the first post-separation year, the excess amount will be recaptured.[15]

The examples given by the Congressional Conference Committee Report[16] regarding how the recapture works under the 1986 Tax Reform Act are as follows:

> [I]f the payor makes alimony payments of $50,000 in the first year and no payments in the second or third year, $35,000 will be recaptured.[17] If instead the payments are $50,000 in the first year, $20,000 in the second year and nothing in the third year, the recapture amount will consist of $5,000 from the second year (the excess over $15,000) plus $27,500 for the first year (the excess of $50,000 over the sum of $15,000 plus $7,500). (The $7,500 is the average payments for years two and three after reducing the payments by the $5,000 recaptured from year two.)[18]

The recapture rule is indented to prevent payors whose divorces occur near the end of the year from making deductible property settlements at the beginning of the next year.

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13 I.R.C. § 71(f)(5)(B).

14 I.R.C. § 71(f)(6).

15 A formula for the determination is at the end of this article in Appendix One.

16 Conf. Rept. No. 99-841, 99th Congress, 2nd Sess. Vol. II, p.849

17 This is demonstrated in Appendix Two.

18 This is demonstrated in Appendix Three.

Only three exceptions exist to the recapture rule, discussed further below:

> (1) where payments cease because of the death of either party or remarriage of the payee,[19]
> (2) where payments are pursuant to a temporary order for support,[20] or
> (3) where payments fluctuate outside of the payor's control because they are a percentage or a fixed portion or portions of income or compensation received by the payor[21]

Thus, there can be a serious potential danger in dealing with an elderly payor of alimony during the first two post-separation years. There is no question that illness and accidents befall the elderly.[22] For example, falls are a serious public health problem among older adults. In the United States, one of every three people 65 years and older falls each year.[23] Older adults are hospitalized for fall-related injuries five times more often than they are for injuries from other causes.[24]

To illustrate the problem, if the payor spouse, an elder person still fully employed earning a substantial amount, for example $20,000 a month is required to pay as taxable/deductible alimony $10,000 a month, after one and a half years from the entry of the final decree of divorce he falls, gravely injuring himself requiring cessation of his employment and thus also his income, under the laws of most states he would be entitled to a modification of his alimony obligation because of the material change in his financial ability.[25] If the payor had no other income, the state divorce judge would most probably grant a cessation in his $10,000 per month alimony obligation. The state court's action can, however, have no effect on the recapture

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19 I.R.C. § 71(f)(5)(A).

20 I.R.C. § 71(f)(5)(B).

21 I.R.C. § 71(f)(5)(C).

22 M.E. Tinetti, M. Speechley & S.F. Guinter, *Risk Factors For Falls Among Elderly Person Living In The Community*, 319 New Eng. J. Med. 1701 (1988).

23 R.W. Sattin, *Falls Among Older Persons: A Public Health Perspective*, 13 Ann. Rev. Pub. Health 489 (1992).

24 B.H. Alexander, F.P. Rivara, M.E. Wolf, *The Cost and Frequency of Hospitalization for Fall-Related Injuries in Older Adults,* 82 Am. J. Pub. Health 1020 (1992).

25 Fla. Stat. § 61.14 (1999), Md. Code Ann. Fam. Law; § 11-107(b) (1999), Neb. Rev. Stat § 42-365 (1999), Tex. Fam. Code. § 8.008 (1999).

rules. In the third post-separation year, in the above illustration, the payor will have to report $142,500 as recaptured, or phantom income.[26] Of course, the payee former spouse will have a taxable deduction of $142,500 in the third post-separation year, but if the payee former spouse has no income, the ability to deduct will avail her naught. Such unused deduction cannot be carried forward since this deduction is not taken into account in computing a net operating loss, which can be carried forward.[27]

Neither a lawyer nor a divorce court can do anything if the payor eventually suffers a devastating recapture of income unless the parties make appropriate provisions in the marital settlement agreement or the court takes action at the time of entry of the judgment requiring the payment of alimony. Neither the parties nor the trial court can change the tax law, nor the effect of the law, but they can and should consider insuring that a payor does not become subject to the potentially devastating results of the tax law.

Courts usually do not speculate as to tax considerations[28] but arguments that adverse effects from the recapture rules are too speculative for the court to consider are fallacious. The devastating consequences of recapture are real, automatic and must be dealt with in advance in the marital settlement agreement or by the divorce court at the time of the entry of the final judgment to avoid disastrous results. Despite the fact that the exposure period for recapture is only three years, the consequences are still as ominous.

Two solutions are possible to the recapture problem in the elder divorce. Either provide for: "(1) fluctuating payments not within the control of the payor spouse";[29] that is "to pay a fixed portion or portions of income from a business or property or from compensation from employment or self employment;"[30] or

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26 See Appendix Four for computation of the recapture.

27 I.R.C. § 172.

28 Hoving v. Hoving, 541 A.2d 1378, 1380 (Pa. 1988) (noting that where there is merely a likelihood or possibility that a taxable event will occur, the court is left to speculate as to the tax consequences).

29 I.R.C. § 71(f)(5)(C).

30 *E.g.*, "fixed portion", "50% of the payor spouse's earnings or income." Also, *e.g.*, "fixed portions", "50% of the first $100,000 of income, 30% of the next $100,000 of earnings, 10% of the next $100,000 of earnings, or fraction thereof."

(2) designate the maintenance payments as nontaxable/ nondeductible.[31]

As to solution (1), a court can obviate the recapture problem by ordering that the alimony payments equal a fixed portion or portions (i.e., percentage) of the payor's income rather than a fixed amount (the usual periodic alimony is for a specific amount). Under I.R.C. § 71(f)(5)(A), such fluctuating payments are specifically excluded from the recapture provision. Payments of a fixed amount (as opposed to a fixed or "portions") of alimony which decreases (i.e., fluctuates) as a result of a modification by court order or ceases as a result of various contingencies (except only death of either party or remarriage of the payee) are not excluded from the recapture provision.

In the above example, initially if the court ordered "alimony" in the amount of 50% of the husband's income, she would have received the same $10,000 per month. Yet, at modification, the payor would have no recapture. If such a plan is devised, the obligation for payments must stretch out for at least a full three years (a full 36 months), not to cover just a three calendar year period.[32]

Many safeguards can be devised to protect the payee from any question of the payor controlling the level of his salary or other income to which the percentage is pegged. For self-employed persons (including those who control their own corporate employer) the court may order that the payor be required to draw a level of salary calculated upon the same criteria used to determine the annual amount of his salary prior to the dissolution of marriage. For example, courts could require annual reports from accountants to verify proper adherence to the formula that is chosen.

> If verification of income shown on a return is a concern, a possible solution would be to have the payor's return certified by an independent accountant. A provision for arbitration might also be included. Expressly leaving the matter to the divorce court may not be appealing, because of the possibility of delay and because of a likely lack of judicial enthusiasm for the task.[33]

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31 I.R.C. § 71(b)(1)(B).

32 I.R.C. § 71(f)(5)(C). The payments must be for "a continuing liability (over a period of not less than 3 years) to pay a fixed portion or portions of the income. . . ."

33 Commerce Clearing House's *Family Law Tax Guide* § 6007 (1985).

Of course, the payee spouse and the spouse's attorney must be vigilant in requiring the receipt of all documentation to which they are entitled. Counsel must urge courts to include protective language in the alimony judgment, order or decree requiring production of tax returns, financial statements and other appropriate documentation and financial reports. The Internal Revenue Service will not and cannot provide that information for a former spouse. As enunciated in *Olson v. Egger*,[34] the Internal Revenue Service can disclose a former spouse's tax return only to such person as the taxpayer may designate by written request for or consent to such disclosure. Such consent must be received by the Service within 60 days following the date upon which the taxpayer signed the request or consent. Therefore, such consent cannot be granted in advance. However, the divorce court can require production of the specified documents.

Another problem must be faced - the reluctance of many courts to order automatic, fluctuating alimony payments based on the ability of the payor spouse to make the payments. Modification of these payments should depend upon various criteria including not only the ability of the payor spouse but also the then needs of the payee spouse. The courts of many jurisdictions, where the requirement for the payment of spousal support is by court order rather than by agreement of the parties, are bound by old rules which decry such automatic future increases or decreases.[35]

Such decisions discouraging the formula approach to increases or decreases, however, predate the passage of the 1984 Tax Reform Act and must now be considered in light of these tax laws. The words of the Honorable Richard D. Simons, Justice of the New York Court of Appeals are applicable:

> The law develops by analogy. Changes come incrementally as old rules are applied to new situations. The judicial process is moved by a traditional element and an active element. The traditional element provides stability. The active element urges us to change. When a new set of facts is considered by a court, these two forces act upon and correct

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34 Olsen v. Egger, 594 F. Supp. 644 (S.D.N.Y. 1984).

35 *See, e.g.*, Lebowitz v. Lebowitz, 326 N.Y.Supp.2d 22 (N.Y. App. Div. 1971); McClung v. McClung, 465 So.2d 637 (Fla. Dist. Ct. App. 1985) (We do not favor the use of a formula to determine the amount of alimony for the future when, as here, there is no evidentiary basis for the present determination of relevant future events.)

> each other so that when either, from occupying the field too long, becomes too fixed and rigid, the needed flexibility is usually restored to the law by the other.[36]

All courts, however, are not reluctant to award alimony in an amount of a percentage of income. In Wooters v. Wooters,[37] the factual pattern considered the "potential dangers." There, the husband was about to undergo a serious operation, and it was uncertain how much he would be able to work. Second, the husband's compensation from his law firm fluctuated considerably. Counsel for the husband pointed out in the opening statement "that the case has some unusual factors which the court would have to consider, one of which is the 'uncertainty as to the degree of continuity of Mr. Wooters' income in the future' because of his health."[38] In affirming an award to the wife of one-third of the husband's gross annual employment income, the tax considerations were not mentioned (although were quite germane). The appellate court stated that

> Rather than having a closed mind, the judge recognized that difficulties in this case of a fixed dollar award . . . . It is obvious that the health of the husband and the fluctuations in his income were the reasons why the judge made a percentage award. These circumstances presented a special case that well might have suggested the use of a self-executing formula.[39]

As to the second solution, if the payments are designated either by the parties in the marital settlement agreement or by the court in the decree[40] as "not includible in gross income under section 71 and not allowable as a deduction under section 215",[41] the payments would not be alimony as defined in I.R.C. § 71 and,

36 Simons, Richard D., *The Nature of the Judicial Process in Family Law,* 6 N. J. Fam. Law. 21, 38 (August 1986).

37 Wooters v. Wooters, 677 N.E.2d 704 (Mass. App. Ct. 1997).

38 *Id*. at 705.

39 *Id*. at 705-06.

40 Neither I.R.C. § 71 nor the temporary regulations promulgated to explain I.R.C. § 71 specifically states that either the parties or the court has the authority to so designate out of the Code making payments nontaxable, nondeductible. The Code does, however, refer to the designation in "the divorce or separation instrument," which includes an agreement of the parties and a final decree by the court.

41 It is alimony and thus taxable/deductible if all criteria of I.R.C. § 71 are met, including that "the divorce or separation instrument does not designate such payment as a payment which is not includable in gross income under this

therefore, not subject to the recomputation (recapture) rule of I.R.C. § 71(f).

In the above example, if the payee spouse is in the 31% tax bracket, and instead of the payor being required to pay taxable/deductible alimony of $10,000 per month, he is required to pay only $6,900 per month, the payee would be in the same financial position, yet the payor could not have the potential of recapture if circumstances warrant a modification. The payor spouse in the example would not fare as well as he possibly would if here were in the 39.6% tax bracket. Nevertheless, it might be worth the small price to have to be free from a potential disastrous recapture problem.

III. Termination on Death of Payee Spouse

One of the five requirements to qualify a stream of payments as includible in the income of the payee (or former) spouse and deductible from the income by the payor (or former) spouse is that "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."[42] Not only must the liability on the part of the payor cease upon the death of the payee, but as the temporary regulations[43] provide:

> To the extent that one or more payments are to begin to be made, increase in amount, or become accelerated in time as a result of the death of the payee spouse, such payments may be treated as a substi-

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section and not allowable as a deduction under Section 215." I.R.C. § 71(b)(1)(B).

42 I.R.C. § 71(b)(1)(D).

43 Temporary Regulations on the "Domestic Relations Tax Reform Act" were promulgated by the Treasury Department on August 30, 1984. Notwithstanding their promulgation in 1984, the Internal Revenue Service is still operating under the Temporary Regulations. Although labeled "Temporary," that is what there presently is, and when, if ever, they will be superseded by "permanent" (final) regulations is anyone's guess. Note that some of the Temporary Regulations are no longer applicable as being superseded by subsequent legislation. For example, since 1986 TRA changed the "front loading" rules, making same a Three Year Recomputation Rule, Temp. Treas. Regs. § 1.71-1T(b) Q & A 19, 20, 22 (except as it defines "post separation years"), 23 and 24 are no longer applicable.

> tute for the continuation of payments terminating on the death of the payee spouse which would otherwise qualify as alimony or separate maintenance payments. The determination of whether or not such payments are a substitute for the continuation of payments which would otherwise qualify as alimony or separate maintenance payments, and of the amount of the otherwise qualifying alimony or separate maintenance payments for which any such payments are a substitute, will depend on all of the facts and circumstances.[44]

The termination on death requirements affect all payments that do not cease upon the payee's death. If such payments do not so terminate then none of those payments before or after the death of the payee spouse qualify as taxable/deductible alimony.[45]

What then of the older payee spouse whose death creates a need for funds after his or her demise, the only or substantial source of funds previously was alimony that the person had been receiving?[46] Burial expenses will have to be paid, debts will need to be satisfied, and remembrances fulfilled. Since there can be no substitute for the "alimony" payments after the payee's death, what provision can be made, if any?

A statement in the Supplemental Report[47] on the Committee on Ways and Means, U.S. House of Representatives on the Tax Reform Act of 1984 provides a solution. There, it admonishes that "amount payable under a life insurance contract on the life of the payee spouse will not be treated as a liability which would affect the status of other payments made by the payor spouse."[48] Thus the payor may provide life insurance payments on the life of the payee and still qualify same as alimony under the Code.

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[44] Temp. Treas. Reg. A-14 of § 1.71-1T.

[45] Temp. Treas. Reg. A-10 of § 1.171-1T.

[46] This assumes, of course, that there are no other source of funds available in the form of cash or property.

[47] Supplemental Report of the House Comm. on Ways and Means on H.R. 4170, H.R. Rep. No. 98-432 (1984).

[48] *Id.*

IV. Temporary (Pendente Lite) Alimony-Cessation on Death Requirements

As stated early on in this article, the provisions of the Internal Revenue Code[49] contain five requirements to generally enable a payor to deduct payments[50] to or for a spouse or former spouse and to require the payee to include such payments as part of gross income. All of the requirements are not applicable to support for a spouse which is made pursuant to a "a decree (not described in subparagraph (A))[51] requiring a spouse to make payments for the support or maintenance of the other spouse," that is, to an order for temporary or *pendente lite* support for the impecunious spouse. The exception that applies to an order for temporary or *pendente lite* support is that the parties can remain as members of the same household.[52] Furthermore the recomputation rule[53] does not apply.[54] The requirement that "there is no liability to make such payment for any period after the death of the payee spouse"[55] is as applicable to a *pendente lite* support order as it is to any other stream of payment to qualify under the provisions of I.R.C. § 71.

When the alimony provision of the 1954 Code was first amended by the Tax Reform Act of 1984[56] the rule for inclusion of a stream of payments in the gross income of the payee required, among the other four rules, that not only there be no liability to make such payment after the death of the payee spouse but also that "the divorce or separation instrument state that there is no such liability."[57] In 1986[58] the requirement that the divorce or separation instrument state that there is no such

49 I.R.C. § 71. *See supra* text accompanying note 8.

50 I.R.C. § 215.

51 Subparagraph (A) of I.R.C. § 71(b)(2) is with reference to "a decree of divorce or separate maintenance or a written instrument incident to such a decree."

52 I.R.C. § 71(b)(1)(C).

53 I.R.C. § 71(f).

54 I.R.C. § 71 (f)(5)(B).

55 I.R.C. § 71(b)(1)(D).

56 Pub. L. No. 98-369, § 422, 98 Stat. 494, 795-98.

57 *Id*. § 1843(b)

58 Pub. L. No. 99-514, 100 Stat. 2085 (1986).

liability" for payment after the payee's death" was deleted.[59] The cessation of liability upon the payee's death can now be provided either in the divorce or separation instrument itself, or pursuant to the law of the state in which the court is located that enters the temporary or *pendent lite* order or decree for support.[60]

Since the specter of death is of course even more imminent among the elderly, it is certainly possible that the older payee spouse may expire during the pendency of the proceedings. If the order for support contained words to the effect that "the alimony obligation ceases upon the death of the payee," there is no question that the Code provision is met. But, what of a temporary or *pendente lite* order or decree that is silent as to cessation of the alimony obligation upon the payee spouse's death? Will the payments be taxable/deductible? The answer will then depend upon the law of the state in which the temporary or *pendente lite* order was entered.

In most jurisdictions, a pending divorce proceedings abates upon the death of either party.[61] If the proceedings abate, the temporary or *pendente lite* order or decree has no further effect. Therefore payments pursuant to a temporary or *pendente lite* order or decree in such proceeding, in fact, ceases upon the death of the payee.

Such was the ruling of the U.S. Tax Court in *Heckaman v. Commissioner*.[62] There, the Indiana divorce court order for temporary maintenance did not indicate how the payments made pursuant to it should be treated for tax purposes or whether the payments would terminate at the wife's death. The decision noted that "Indiana statutory law does not specifically speak as to whether temporary maintenance shall terminate upon the death of the payee spouse. However, in an Indiana divorce proceedings, any cause of action terminates with the death of either

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59 The court in *Hoover v. Commissioner*, 102 F.3d 842, 846 (6th Cir. 1996), observed that the deletion of the requirement for the instrument to so state "was apparently intended to mitigate the effect of sloppy lawyering."

60 *E.g.* pursuant to "local law."

61 24 Am. Jur. 2d, Divorce & Separation §§ 176, 177 (1999); 27 A.C.J.S. Divorce § 128, *See also* Anthony W. Bologna, *The Impact of the Death of a Party to a Dissolution Proceeding on a Court's Jurisdiction over Property Rights*, 16 J. Am. Acad. Matrim. Law. 507 (2000).

62 Heckaman v. Commisisoner, 79 T.C.M. (CCH) 1643 (2000).

spouse."[63] The tax court observed that there are certain exceptions in Indiana to the general rule that divorce proceedings terminate in their entirety upon the death of one of the parties, however, the tax court held:

> Under Indiana law only three narrow exceptions exist to the general rule that all divorce proceedings terminate on the death of one of the parties. None of those exceptions is present in [wife's] case. It follows therefore, that the. . . order here in issue would have ceased to have any effect in the event of [wife's] death and that [husband's] obligation to make any payments pursuant to it would have necessarily terminated.
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> * * * *
>
> Therefore, it follows that any obligation for support of the payee spouse ceases with the death of such spouse. Thus, we think that an Indiana court would hold that Mr. Heckaman's obligation to make the payments here in issue would have ceased in the event of [wife's] death because [the wife] would not have required any maintenance after her death. . . . The payments therefore are taxable to [wife] pursuant to section 71.[64]

Notwithstanding *Heckaman,* if the payments are intended to be taxable/deductible it is tax safe to request a court to include language in the temporary or *pendente lite* order that the liability for the support payments will cease upon the payee spouse's death. Such language will also avoid a confrontation with the Internal Revenue Service since it will dispel the necessity to rely upon the law of the state from which the order or decree was entered and thus will not entail "Heckamanesque" type of tax court involvement.

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63 *Id*.
64 *Id*.

Appendix One

		3rd Year	*2nd Year*	*1st Year*[1]
Alimony paid in each year		$_______	$_______	$_______
1st Calculation:				
Add $15,000 to 3rd year		15,000		
Compare 3rd year to 2nd year (i.e., subtract 3rd year, as adjusted, from 2nd year, unless in excess of second year)			< >	
Recapture from 1st calculation			$ [2]	
2nd Calculation:				
Add payments made in years 2 and 3	$			
	$			
Adjust by reducing any recapture from 1st calculation	< >			
	$			
Average (divide by 2)	$			
Add $15,000	15,000			
Compare to 1st year (i.e., subtract above from 1st year, unless in excess of first year)				< >
Recapture from 2nd calculation				$ [2]
Recapitulation:				
Recapture from 1st calculation				$
Recapture from 2nd calculation				< >[2]
Total recapture				$

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[1] Note that the applicable years are set forth in reverse order with the third year first.

[2] There will never be a negative recapture.

Appendix Two

		3rd Year	*2nd Year*	*1st Year*
Alimony paid in each year		$ 0	$ 0	$ 50,000
1st Calculation:				
Add $15,000 to 3rd year		15,000		
Compare 3rd year to 2nd year (i.e., subtract 3rd year, as adjusted, from 2nd year, unless in excess of second year)			<15,000>	
Recapture from 1st calculation			$ 0[2]	
2nd Calculation:				
Add payments made in years 2 and 3	$ 0			
	$			
Adjust by reducing any recapture from 1st calculation	< 0>			
	$			
Average (divide by 2)	$ 0			
Add $15,000	15,000			
Compare to 1st year (i.e., subtract above from 1st year, unless in excess of first year)				< 15,000>
Recapture from 2nd calculation				$ 35,000
Recapitulation:				
Recapture from 1st calculation				$ 0
Recapture from 2nd calculation				35,000
Total recapture				$ 35,000

Appendix Three

		3rd Year	*2nd Year*	*1st Year*
Alimony paid in each year		$ 0	$ 20,000	$ 50,000
1st Calculation:				
Add $15,000 to 3rd year		15,000		
Compare 3rd year to 2nd year (i.e., subtract 3rd year, as adjusted, from 2nd year, unless in excess of second year)			<15,000>	
Recapture from 1st calculation			$ 5,000 [2]	
2nd Calculation:				
Add payments made in years 2	$20,000			
and 3	0			
	$20,000			
Adjust by reducing any recapture from 1st calculation	< 5,000>			
	$15,000			
Average (divide by 2)	$ 7,500			
Add $15,000	15,000			
Compare to 1st year (i.e., subtract above from 1st year, unless in excess of first year)				< 22,500>
Recapture from 2nd calculation				$ 27,500
Recapitulation:				
Recapture from 1st calculation				$ 5,000
Recapture from 2nd calculation				27,500
Total recapture				$ 32,500

Appendix Four

		3rd Year	*2nd Year*	*1st Year*
Alimony paid in each year		$ 0	$ 60,000	$ 120,000
1st Calculation:				
Add $15,000 to 3rd year		15,000		
Compare 3rd year to 2nd year (i.e., subtract 3rd year, as adjusted, from 2nd year, unless in excess of second year)			<15,000>	
Recapture from 1st calculation			$ 45,000 [2]	
2nd Calculation:				
Add payments made in years 2	$ 60,000			
and 3	0			
	$ 60,000			
Adjust by reducing any recapture from 1st calculation	< 45,000>			
	$ 15,000			
Average (divide by 2)	$ 7,500			
Add $15,000	15,000			
Compare to 1st year (i.e., subtract above from 1st year, unless in excess of first year)				< 22,500>
Recapture from 2nd calculation				$ 97,500
Recapitulation:				
Recapture from 1st calculation				$ 45,000
Recapture from 2nd calculation				97,500
Total recapture				$ 142,500