

ADJUSTMENTS TO GROSS INCOME

¶255 Alimony and Separate Maintenance Payments

NEW LAW EXPLAINED

Alimony deduction and exclusion repealed for instruments executed or modified after 2018.—The deduction of qualified alimony and separate maintenance payments by a payor, the exclusion of the payments from gross income by a payee, and the special rules for alimony trusts are generally repealed after 2018 (Code Sec. 71, 215, and 682 stricken by the Tax Cuts and Jobs Act). However, the repeal is only effective for any divorce or separation instruments:

- executed after December 31, 2018; and
- executed before January 1, 2019, and modified after 2018 provided that the modification expressly provides that the repeal of the qualified alimony and separate maintenance rules of the Internal Revenue Code apply (Act Sec. 11051(c) of the 2017 Tax Cuts Act).

COMMENT

A taxpayer may continue to deduct qualified alimony and separate maintenance payments made, or exclude such payments received from gross income after 2018 if his or her divorce or separation instrument is: (1) executed before 2019; or (2) is modified after 2018 so long as it does not expressly provide that the that the repeal of the qualified alimony and separate maintenance rules of the Internal Revenue Code apply. The special rules applicable to alimony trusts will also continue to apply after 2018 under the same conditions as for the deduction and the exclusion.

CAUTION

Since the rules applicable to alimony or separate maintenance payments still apply to certain divorce or separation instruments after 2018, other rules which are amended or repealed by the 2017 Tax Cuts Act will also continue to apply. Examples include rules related to additional withholding allowances, requirements to include taxpayer identification numbers (TIN), and the definition of compensation for the purpose of IRA contributions deductions.

Effective date. The amendments made by this section apply to: (1) any divorce or separation instrument (as defined in Code Sec. (b)(2) as in effect before December 22, 2017, the date of the enactment) and executed after December 31, 2018; (2) any divorce or separation instrument executed on or before December 31, 2018, and modified after that date if the modification expressly provides that the amendments made by this section apply to the modification (Act Sec. 11015(c) of the Tax Cuts and Jobs Act).