

# Tax Reform Changes Related to Family: Marriage, Divorce and Children



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The Tax Cuts and Jobs Act (TCJA)<sup>1</sup> changed the way both married and divorced couples will be treated for federal income tax purposes. Some things remain unchanged, however, such as marital status being determined as of the last date of the taxable year.<sup>2</sup> So long as couples are married on or before December 31 for income tax purposes, they will be considered married for the entire year.<sup>3</sup> The same goes for divorce—couples who receive a judgment of divorce on or before December 31 will be considered single for the entire year.<sup>4</sup> Married taxpayers may still elect to file a joint federal income tax return.<sup>5</sup>

## Increase in Standard Deduction and Decrease in Tax Rates

For the tax year ending December 31, 2018, the standard deduction for married couples filing jointly almost doubled from \$12,700 for 2017 to \$24,000 for 2018, while the standard deduction for married couples filing separately likewise increased from \$6,350 each for 2017 each to \$12,000 each for 2018.<sup>6</sup> While the standard deduction increased, tax rates correspondingly decreased. For the tax year ending December 31, 2018, the top tax rate for married couples filing jointly will be 37% for taxable income over \$600,000,<sup>7</sup> down from 39.6% for taxable income over \$470,700 for 2017.<sup>8</sup> The top tax rate for married couples filing separately will be 37% for taxable income over \$300,000<sup>9</sup> for 2018, down from 39.6% for taxable income over \$235,350 for 2017.<sup>10</sup>

## Taxable Payments Incident to Divorce

Monetary payments incident to a divorce usually fall into one of three categories: property settlements, child support and alimony. Property settlements are non-taxable.<sup>11</sup> Likewise, child support is non-taxable.<sup>12</sup> Alimony, on the other hand, was traditionally a deduction to the payor and income to the payee.<sup>13</sup>

The TCJA eliminates the tax deduction for alimony payments.<sup>14</sup> However, the new rules will not affect couples who either enter into a written separation agreement or obtain a judgment of divorce prior to January 1, 2019.<sup>15</sup> The pre-TCJA treatment of alimony will continue for those couples.<sup>16</sup>

For written separation agreement or judgments of divorce obtained subsequent to December 31, 2018, alimony will no longer be a deduction for the payor nor income to the payee.<sup>17</sup> This TCJA treatment of alimony payments may also apply to payments pursuant to pre-December 31, 2018, divorce or separation instruments if they are modified after December 31, 2018 and the modification specifically states



that the TCJA treatment of alimony payments now applies.<sup>18</sup>

## Pre-January 1, 2019 Alimony

For divorcing couples who wish to keep the pre-2109 rules in effect for alimony, first they must ensure that either a written separation agreement or judgment of divorce is finalized prior to January 1, 2019. Then they must ensure that payments pursuant to that agreement or judgment meet the statutory requirements for alimony.

Negotiations related to divorce will be affected by the TCJA. Unless couples can finalize their written agreements or obtain a judgment of divorce by December 31, 2018, the payor of alimony will be unable to tax any deduction for it. This will have a dramatic effect on the amount of alimony that the payor will agree to and will most likely result in lower amounts of alimony being paid. However, the lower payment amounts will be partially offset by a decrease in tax for the payee spouse. For those who wish to retain the deductibility of alimony, care must be taken in terms of both timing (finalizing their written agreements or obtain a judgment of divorce by December 31, 2018) and drafting (ensuring that all statutory requirements are met).

## Elimination of Dependency Exemptions and Increase in Child Tax Credit

The TCJA suspended dependency exemptions.<sup>19</sup> In 2017, taxpayers could reduce their taxable income by \$4,050 for each dependent which generally

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included children up to age 19 (or up to age 24 for full-time students).<sup>20</sup> Starting in 2018, taxpayers will no longer be allowed to take dependency exemptions on their income tax returns.

The TCJA increased the Child Tax Credit from \$1,000 per qualifying child to \$2,000 per qualifying child.<sup>21</sup> Unlike dependency exemptions, the Tax Credit is a dollar for dollar offset against income tax. The Child Tax Credit is available to taxpayers who have a child younger than age 17 at the end of the year if that child lived with them for at least one-half of the year.<sup>22</sup>

The maximum income you can earn and still take the Child Tax Credit is also higher for the 2018 tax year. If you are filing as either single or head of household, your Adjusted Gross

Income must be below \$200,000 to receive the full credit.<sup>23</sup> If you are married filing jointly, your AGI must be below \$400,000.<sup>24</sup>

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1. H.R.1 - 115th Congress (2017-2018).
2. 26 USC § 7703(a).
3. *Id.*
4. *Id.*
5. 26 USC § 6013(a).
6. 26 USC § 63(c).
7. 26 USC § 1(j)(2)(A).
8. Rev. Proc. 2016 § 3.01.
9. 26 USC § 1(j)(2)(D).
10. Rev. Proc. 2016 § 3.01.
11. *See, e.g., McIntee v. Comm'r*, T.C. Summary Opinion 2017-48.
12. 26 USC § 71(c).
13. 26 USC § 71; 26 USC § 215; *see also, McIntee*, T.C. Summary Opinion 2017-48.
14. H.R.1 - 115th Congress (2017-2018) § 11051.
15. H.R.1 - 115th Congress (2017-2018) § 11051(c)(1).
16. *Id.*
17. *Id.*
18. H.R.1 - 115th Congress (2017-2018) § 11051(c)(2).
19. H.R.1 - 115th Congress (2017-2018) § 11041.
20. "In 2017, Some Tax Benefits Increase Slightly Due to Inflation Adjustments, Others Are Unchanged" available at <https://www.irs.gov/newsroom/in-2017-some-tax-benefits-increase-slightly-due-to-inflation-adjustments-others-are-unchanged>
21. H.R.1 - 115th Congress (2017-2018) § 11022(a)(h)(2).
22. 26 USC § 24(c).
23. H.R.1 - 115th Congress (2017-2018) § 11051(c)(3).
24. *Id.*