

## When is Spousal Support Tax Deductible and When is it Taxable?

By John T. Syrtash and Ronald Zaldin

When a couple separates, the payor of “periodic” spousal support is entitled under the Income Tax of Canada Act, to deduct the amounts he pays his spouse from his taxable income, and, the support recipient must include this spousal support in her income. However, to qualify for the deduction, the spouses must sign a Separation Agreement or obtain a Court Order for periodic support. “Periodic” simply means that the spousal support is payable on a weekly, monthly or yearly basis. If the support is paid in one “lump sum”, then the amount is neither tax deductible nor taxable. As a precaution, a payor should ensure that the Separation Agreement provides that the support recipient must provide a receipt for such payments at the end of each calendar year, since some CRA officials refuse to allow the deduction without such a receipt, even though no law or regulation gives CRA officials that authority. Accordingly, the Separation Agreement or Court order should provide that if no receipt is given, spousal support terminates or is suspended until receipts are given.

A different problem often comes up when people pay their spouses support periodically for a period of time long before the spouses sign a Separation Agreement or before they litigate and a “Court” Order for support is granted (which would make the spousal support payments “tax deductible”). Once again, until such agreements or Orders exist, the support payments are *not* deductible.

So what should a responsible payer do? Not pay anything to his or her dependent spouse for months until this issue is settled or resolved in Court, just because he or she will not be receiving a tax deduction?

Fortunately the *Income Tax Act* provides a partial solution for this problem. The ITA provides that payments are deductible that are made in the same year that an Order was made or an agreement was signed ***or in the immediately full preceding full calendar year***. So the Separation Agreement or Court order can recite periodic spousal support payments made by the payor, *going back* as far as January 1<sup>st</sup> in the year *preceding* the year in which the Separation Agreement is signed or the Court Order for support is granted. So if you are a “payor”, try to get your dispute resolved within this time frame (in order to qualify for the deduction retroactively).

But what happens if a payer has not only been paying directly to his or her spouse, but also paying other periodic amounts called “third party payments” for his or her benefit (e.g. the mortgage, the utilities, car leasing/financing, medical expenses, insurance, etc.) and continues to do so for some time post-separation. Well, *Sections* s. 56.1(2) and 60.1(2) of the *Income Tax Act* allow such periodic third party payments to be deducted if, in a Separation Agreement or Court order, there is a *specific* reference to these Subsections of the Act and it is accurately worded. Again, such payments are only deductible and taxable going back to no *later* than January 1<sup>st</sup> of the year *preceding* the year in which the Order was made or the Separation Agreement was signed.

No *child* support payments are taxable in the support recipient’s hands or tax deductible by the support payor.

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