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Dear Client:

Under the current rules, an individual who pays alimony or separate maintenance may deduct an amount equal to the alimony or separate maintenance payments paid during the year as an "above-the-line" deduction. (An "above-the-line" deduction, i.e., a deduction that a taxpayer need not itemize deductions to claim, is generally more valuable for the taxpayer than an itemized deduction.) And, under current rules, alimony and separate maintenance payments are taxable to the recipient spouse (includible in that spouse's gross income).

However, new rules are coming soon. Under the Tax Cuts and Jobs Act rules, there is no deduction for alimony for the payer. Furthermore, alimony is not gross income to the recipient. So for divorces and legal separations that are executed (i.e., that come into legal existence due to a court order) after 2018, the alimony-paying spouse won't be able to deduct the payments, and the alimony-receiving spouse won't include them in gross income or pay federal income tax on them.

These new rules don't apply to existing divorces and separations. It's important to emphasize that the current rules continue to apply to already-existing divorces and separations, as well as to divorces and separations that are executed before 2019.

Some taxpayers may want the Tax Cuts and Jobs Act rules to apply to their existing divorce or separation. Under a special provision, if taxpayers have an existing (pre-2019) divorce or separation decree, and they have that agreement legally modified after Dec. 31, 2018, the new rules apply to that modified decree if the modification expressly so provides. There may be situations where applying these new rules voluntarily is beneficial for the taxpayers, such as a change in the income levels of the alimony payer or the alimony recipient.

If you wish to discuss the impact of these rules on your particular situation, please give me a call.

Very truly yours,

John E Stevens CPA PC