Deductible alimony

The following outlines the rules for deducting alimony payments. Alimony payments are deductible only if they meet the requirements outlined below. It is important to have your divorce decree or separation agreement reviewed for tax purposes before it becomes effective to make sure these requirements are met. Even if the decree or agreement specifies that the payments are alimony they won't be treated as alimony *for tax purposes* unless these requirements are satisfied. Please call me to arrange for such a review before signing off on the arrangement. Here are the alimony requirements:

• No voluntary payments: For an alimony payment to be deductible, it must be required by a divorce or support decree or a written separation agreement.

• Cash only: Only payments of cash qualify as deductible alimony. The cash can be paid either directly to the spouse or can be paid on the spouse's behalf under the terms of the instrument to cover an expense such as rent or the mortgage.

• Payments to stop at death: For the payments to qualify as alimony, the payments must be required (under the instrument or by law) to stop when the spouse dies. Many individuals seek to have the payments stop at the remarriage of the spouse as well. This won't prevent deductibility, but isn't a requirement for deductibility. (Note: if the payments are to continue after the spouse dies, then none of the payments—including those made while the spouse is alive—are deductible.)

• Separate living arrangements: If you're making payments under a divorce decree, you must be living apart from your spouse for the payments to qualify as alimony.

• Distinguish child support: Payments made for child support are not deductible. This includes payments clearly fixed in the instrument as child support. It also includes, however, payments which the instrument calls alimony but which are linked to a contingency relating to the child. For example, if the "alimony" required to be paid monthly is $1,500, but drops to $1,000 in (or near) the month in which the child becomes 18, the "extra" $500 a month will be treated as nondeductible child support.

Getting your spouse to agree to take alimony instead of child support can cut your taxes substantially. However, the alimony is included in the spouse's taxable income while the child support isn't. Thus, you must first determine how much the deduction will save you in taxes. Then, in your negotiations, you can offer your spouse a portion of your savings in the form of additional alimony, to get your spouse to agree. For example, you can offer $1,000 a month in child support, but be willing to pay, say, $1,200 a month if she consents to have the payments qualify as alimony.