

## Family Law Tax Update

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### **Picou v. Commissioner (TC Summary Opinion 2006-82):**

#### Alimony

1. Wife moved out of the family residence in May, 1997 – Husband remained in the residence.
2. In May, 1998, the parties entered into a divorce agreement which stated, among other things:
  - a. “Maintenance” was denied each party.
  - b. Husband was awarded the family residence.
  - c. Husband was ordered to pay the mortgages on the family residence.
  - d. These mortgage payments were “in the nature of support” to Wife and therefore, non-dischargeable in bankruptcy.
3. The purpose of 2d was to protect Wife from collection by the bank in the event of Husband’s bankruptcy.
4. Wife signed a quitclaim deed but it appears her name remained on the loan.
5. Husband attempted to deduct the mortgage payments as alimony while also taking the full deduction for the mortgage interest.
6. The court denied the alimony deduction:
  - a. While they were labeled “in the nature of support” in the agreement, “maintenance” was denied each party as stated in the same agreement.
  - b. Wife had no ownership interest in the home and did not live there – thus, the payments were not made on her behalf.
  - c. While Wife legally continued to be liable on the mortgage, Husband guaranteed to pay that liability in the property settlement.

### **Johanson v. Commissioner (TC Memo 2006-105):**

#### Alimony

1. Divorce agreement provided for child custody and child support.
2. Agreement also provided for spousal support for Wife:
  - a. Support was non-modifiable after 2010.
  - b. Support was modifiable before 2010 only if Husband died, suffered a disability or suffered prolonged unemployment.
  - c. The agreement was silent regarding what happens if Wife dies.
3. The court ruled that California FC §4337, automatically terminating spousal support at the payee’s death, applied:
  - a. The payments were called “spousal support”.
  - b. They were not child support.
  - c. Wife’s argument that the payments constituted an equalizing payment did not persuade the court, the amounts did not “add up” and the agreement specifically stated that no equalizing payment was to be made.

**Technical Advice Memorandum 200624065 (6/16/06):**

**Stated Interest**

1. Husband executed a note to Wife for the equalizing payment due on the parties' property settlement.
2. While the note did not contain stated interest, it provided for an increase for inflation each year.
3. The court ruled the inflation adjustment is the same as stated interest and therefore, ordinarily taxable to the recipient when paid.
  - a. An inflation adjustment and interest provide the same economic benefit, compensating for the time value of money.
  - b. While interest will not be imputed on an equalizing note, if it is stated, it is taxable when received.
  - c. Substance over form – the fact that the note contained a provision that it will not be interest bearing was not relevant.

**Chief Counsel Advice 200621018 (5/26/02):**

**Bankruptcy and Innocent Spouse Relief**

1. Husband and Wife divorce and Wife files for innocent spouse relief on previously filed joint returns.
2. Wife was denied innocent spouse relief and the matter is brought to tax court.
3. Husband files for bankruptcy.
4. Husband receives notice to participate (intervene) in Wife's innocent spouse proceeding.
5. IRS concluded that Husband's ability to intervene is not prohibited by the automatic stay:
  - a. Whether Wife receives innocent spouse relief or not does not directly affect Husband's continued joint and several liability for the joint taxes.