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IMPORTANT: PLEASE READ

Temporary Order Tax Matters

Dear Attorney:

We currently have several tax cases in which the Internal Revenue Service has incorrectly disallowed temporary support payments based upon the IRS misunderstanding Oklahoma law. The purpose of this letter is to propose procedures so you can craft a Temporary Order which avoids all of the improper interpretation by the IRS concerning the taxability of temporary support.

The basis of the IRS attack is found in IRC § 71(b)(1)(D). For temporary spousal support to be deductible, the support must terminate upon the death of the recipient spouse either by operation of law or by specific language in the Order. The IRS has misused 43 O.S. 134 B. This statute requires you to state in the final decree that support alimony either terminates under the statute or terminates upon the death of the recipient, etc. The IRS does not realize the provision for temporary support found in 43 O.S. 110 B results in spousal support terminating under operation of law upon the death of the payee spouse. See *Swick v. Swick*. I recommend the following:

1. Include language in the Temporary Order that the spousal support will terminate upon the death of the recipient spouse even though you are not required to do so under Oklahoma statute or case law.

Note: Also include termination on death language in your handwritten Minute Orders as many times formal Temporary Orders are not created and filed.

2. State in the Temporary Order the exact amount of temporary spousal support and the exact amount of temporary child support. This avoids confusion.

3. Do not use the provision I often see in which the Judge is to determine at the Trial on the Merits whether or not prior temporary spousal support paid is either taxable or nontaxable. The IRS will correctly challenge this provision as it is improper under the Code for the taxability of an item to be determined on a look back basis.

If you have any questions or need additional information, please contact me.

Sincerely,



Kenneth W. Klingenberg