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# Legal Matters®

## IRS cracks down on alimony

If you're paying alimony, you can declare the amount you've paid each year on your income tax return and receive a deduction. Similarly, if you receive alimony, you're required to report the amount you receive during the year on your tax return as income.

Unfortunately, it appears many taxpayers are being less than completely precise when they report these amounts on their returns.

A recent government report identified a huge national gap between the alimony deductions claimed by payers and the alimony income claimed by receivers. And as a result, the Internal Revenue Service is cracking down.

The report analyzed nearly 600,000 tax returns involving alimony that were filed for the year 2010, and found that reported deductions exceeded reported income by more than \$2 billion. In fact, *nearly half* of all returns in the study showed discrepancies between the amount the payers claimed as a deduction and the amount the recipients claimed to have received.

In addition, a large number of alimony

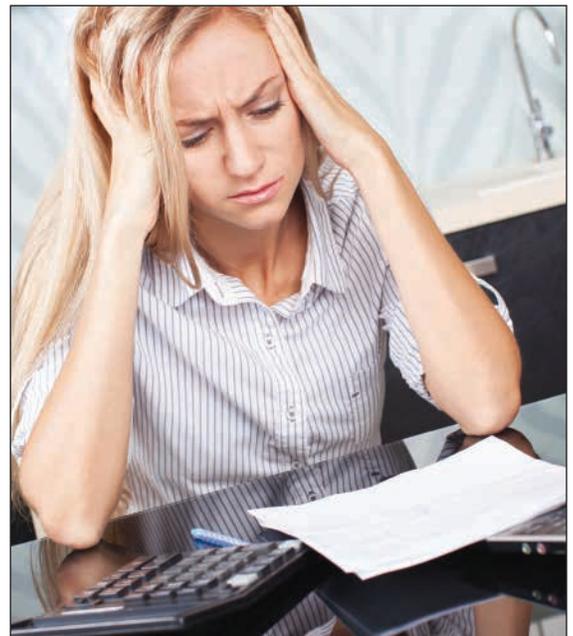
payers didn't provide a tax ID for the recipient on their tax return – despite the fact that they're legally required to do so.

In response, the IRS has announced that it is changing the way it selects tax returns for audits in order to catch more suspicious returns involving alimony, and it will more thoroughly investigate taxpayers who might be misreporting their payments.

The agency is also planning to increase the penalties for taking an alimony deduction without providing the recipient's tax ID.

Of course, not everybody who over-reports payments or under-reports receipts is doing so maliciously. A lot of the discrepancies stem from legitimate disagreements and misunderstandings between spouses about what counts as alimony in the first place.

For instance, alimony is treated differently from child support for tax purposes – there's



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no tax deduction for child support payments. But sometimes people combine payments of alimony and child support, and then get mixed up over how much was for each.

There have been cases where spouses have bought items for an ex or made payments to a third party in lieu of making direct alimony

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## Mother who turned children against father loses custody

Parents are frequently angry with each other during the divorce process, but it's important to remember that children need both parents and that it's not a good idea to express your anger through your children. Not only can this be harmful to your children, but it can affect your own legal rights as well.

In one recent case in Pennsylvania, a mother's actions resulted in her losing custody altogether.

In that case, a judge determined that the mother had coached her children – ages 9 and 12 – to hate their father. She told the children to refuse to eat food he served, to kick him, to spit on him, and to actively disrespect him in numerous other ways.

The judge ruled that the mother's behavior had psychologically damaged the children, and took custody away from her.

In order to regain custody, the mother agreed to go through intensive counseling. After showing some progress, she was given custody back for 60 percent of the time.

But nine months later, the judge held new hearings and discovered that the mother had returned to her old ways – she had quit therapy and was trying to alienate the children from their father once again.

The judge ordered the children returned to the father full-time. The mother appealed, but the appeals court agreed that given her behavior, she shouldn't have custody at all.

## Switch to working night shift might affect custody rights

A mother could get primary custody of her children after the father was put on the night shift at work, the Michigan Court of Appeals recently decided.

The parents had previously shared joint custody. The father argued that this arrangement should continue, since a different shift at work didn't amount to a significant change in circumstances.

But the court disagreed, and said that given the facts of this case, the overall change in the children's home environment as a result of the shift change had a substantial impact on their well-being.

## 'Wrongful death' payment can't be tapped for child support

A woman whose ex-husband was killed in a motorcycle accident couldn't collect back child support from the proceeds of a "wrongful death" lawsuit filed by the man's estate, the West Virginia Supreme Court recently decided.

The estate negotiated a \$300,000 settlement from the other driver's insurance company. The mother argued that some of that money should be used to pay off the \$60,000 in back child support the ex-husband owed her but never paid.

But the court said that under state law, a wrongful death lawsuit is intended to benefit a deceased person's beneficiaries, and not his or her creditors.

You should note that the law varies on this issue from state to state, and that a lawsuit for an *injury* might have a very different result from a lawsuit where someone has died.

## Divorced mom sued for lying about who was the father

A man who claimed his ex-wife lied to him when she told him he was the father of her child can sue for damages, the Tennessee Supreme Court recently ruled.

The woman was already pregnant when the couple married in 1991. The husband claimed that she assured him at the time that he was the father. When the couple divorced nine years later, the husband was ordered to pay child support.

But he sued his ex-wife after learning from DNA tests that he was not in fact the boy's biological father. He claimed his ex-wife knew all along that another man was actually the father.

The court approved a \$25,000 award to the husband for "intentional misrepresentation of paternity." It rejected the mother's claim that the award amounted to a retroactive change in child support.

# Student loan debt can complicate divorce settlements

As the cost of higher education continues to skyrocket, so does the amount of student loan debt that graduates are saddled with going forward. Some 70% of students who earned bachelor's degrees in 2012 had student loans, and these loans averaged a startling \$29,400. Many students who have also taken out loans for graduate or professional degrees are now leaving school with debts in six figures.

According to the Federal Reserve Board, Americans now owe more money on student loans than they owe on auto loans or credit cards.

So what happens when couples with significant student loan debt divorce? Who gets stuck having to pay off the bill?

You might assume the answer is simple – the spouse who borrowed the money for school has to pay it back. But seldom is anything simple in the world of family law. In fact, the answer depends a great deal on the unique circumstances of the couple, as well as on the law of the state where the divorce occurs.

While each case is different, here are some of the factors that may come into play:

**Were the loans taken out before the marriage, or after?** Generally speaking, you're more likely to be completely on the hook for a student loan if you took it out before you got married. In such a case, you undertook the obligation all on your own, before your spouse became your life partner.

**What was the money used for?** Student loans most commonly cover tuition, of course, and perhaps books, lab fees and the like. But loans can also cover your rent and other living expenses while you're a student. To the extent that a loan was used to pay your living expenses while you were married, it's more likely that a judge might think it's fair to let your spouse pay for part of the debt – since he or she was also helped by the funds.

**Who benefited from the degree?** If you incur a lot of loans for a professional degree and then file for divorce shortly after you graduate, it's more likely that you'll have to pay back all the debt yourself. That's because any benefit you get from the degree in terms of enhanced earning potential will generally accrue only to you; your spouse won't share in it.

On the other hand, if you graduated some years ago and your spouse has enjoyed a higher standard of living for some time as a result of your degree, a judge might consider the degree more of a mutual benefit, and the corresponding debt as more of a mutual obligation.

**Were the loans consolidated?** Sometimes, married couples consolidate their separate student loans into a single loan. If the couple later get divorced, this can make it complicated to figure out what part of the debt belongs to whom.

**Who can afford it?** Regardless of everything else, if one spouse has a much greater salary or earning potential than the other, a judge may take this fact into account in dividing up a couple's debts.

**What are the tax consequences?** Different ways of dividing up debts (and assets) can lead to very different tax results. These should also be taken into account when deciding who gets what part of the tab.

If you or someone you know has large student loans or other debts, it might be wise to address these in a pre-nuptial agreement (or, after a marriage, in a post-nuptial agreement). This can clarify what will happen in the event of a later break-up.



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## IRS cracks down on alimony payments

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payments. This can create a lot of confusion. There can also be confusion if a spouse falls behind on alimony in one tax year and then makes up the difference in another tax year.

And it's important to note that the tax deduction for alimony only applies to payments that are legally *required* under a divorce agreement. If you make a payment to an ex-spouse that isn't legally necessary,

it doesn't count as "alimony" even if you intended it for his or her support.

If you have any questions about how much alimony you should be reporting – especially if you believe your spouse is reporting a different amount – it would be wise to speak to a family lawyer to make sure you're handling your taxes correctly. That's a lot easier than having to straighten things out later with an IRS agent!



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Rapper T.I. is at the center of a family law dispute that raises issues common to many couples.

## Can parents be forced to show how child support is spent?

The rapper Clifford Harris – who performs under the stage name “T.I.” – had two sons with his girlfriend Lashon Dixon before the couple split up. Afterward, T.I. was ordered to pay \$2,000 per month in child support, plus private school tuition, medical expenses and other costs.

Dixon went back to court seeking an increase to about \$3,000 a month. T.I. objected, and argued that Dixon was misusing the payments by living off the money herself instead of actively seeking employment. He demanded an accounting of how exactly the money would be spent if she received an increase.

Disputes about how child support is being spent are fairly common. But whether and when a parent can be forced to explain how the money is actually being used depends a great deal on the circumstances, and varies from state to state.

For example, child support orders in Washington state and Oklahoma specifically warn recipients that they may have to account for their expenses.

In Delaware, Indiana, Louisiana and Missouri, parents can be forced to show what expenses they’ve paid on their child’s behalf if the other parent can demonstrate that it’s legitimately necessary to do so. And in Florida and Oregon, judges can generally require such a showing at any time if they choose.

Of course, nobody can be expected to account to the penny for how much of a grocery bill was used for a child’s meals. On the other hand, child support is meant to be used to support children, and it’s clearly wrong to grossly misuse these funds for other purposes.

In general, a child support order can be adjusted if a parent can show that the other parent’s circumstances have changed. If a parent can prove that the other parent isn’t using the child support payments for the purpose for which they were intended, that might be evidence that the parent’s circumstances have changed, and he or she doesn’t need such large payments.