

Alimony, Trust Tax Changes Make 2018 ‘Year of Divorce’

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By Jonathan Curry

The Tax Cuts and Jobs Act’s delayed repeal of the deductibility of alimony payments and a provision governing trusts in cases of divorce may add some urgency to couples looking to separate.

“As a tax policy matter, we encourage divorce in 2018,” Steve R. Akers of Bessemer Trust Co. NA said April 26 at an American Law Institute Continuing Legal Education estate planning conference in Austin, Texas.

Repeal of the two provisions is effective only for divorces or separations executed after December 31, 2018. Some practitioners [predicted shortly after passage of the tax law](#) that the delayed repeal would put pressure on couples to finalize divorces, putting a strain on family law courts.

Family law groups are already seeing the “real impact” of repealing the alimony deduction, Akers said. And the repeal of [section 682](#), which makes trust income includable in a divorced wife’s income, amounts to a “significant change with respect to divorce negotiations,” he added.

Akers explained that section 682 had ensured that a husband who creates a grantor trust for the benefit of his wife would not, after a divorce, have to pay taxes on the trust’s income while his wife is receiving distributions from the trust. That meant that the wife had to pay income tax on distributions she received, but now that treatment has been eliminated, he noted.

Akers’s presentation materials further explained the significance of repealing the two divorce-related provisions, noting that many divorce agreements included alimony agreements that took advantage of a recipient spouse’s lower income tax bracket.

The inability to shift income tax responsibility for either alimony payments or grantor trust income could now affect the negotiated amount of alimony or create an incentive for a spouse contemplating divorce to follow through before the end of the year, the presentation indicated.

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