



14 Where can I get additional tax information?

Website: ftb.ca.gov
Telephone: 800.852.5711

Or, contact your tax preparer.

Assistance for persons with disabilities:
We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments, please call TTY/TDD 800.822.6268.

15 How can I request tax forms and publications?

Website: ftb.ca.gov
Telephone: 800.338.0505
Mail: TAX FORMS REQUEST UNIT MS D120
FRANCHISE TAX BOARD
PO BOX 307
RANCHO CORDOVA CA 95741-0307

16 What will happen if I do not respond to the letter from FTB?

We will revise your tax liability to include alimony income based on information available to us. Interest will also be assessed. In addition, you may be subject to the Accuracy-Related Penalty at 20 percent of the underpayment of tax (CR&TC Section 19164).

FAQs

ALIMONY

Frequently Asked Questions

1 What is alimony?

Alimony is money paid from one spouse to another, typically for day-to-day support of the spouse with fewer financial resources (alimony is sometimes referred to as “spousal” or “family support” under Family Law). The law allows courts to award alimony or spousal support to one of the former spouses when a married couple divorces.

2 What are other examples of alimony payments?

Payments made to a third party can be considered alimony. Indirect alimony may include cash payments to a third party to satisfy the obligations of a former spouse, such as to provide a residence for a former spouse, e.g., rent, mortgage, utilities, etc., medical cost payments, or other such expenses incurred by the payor’s former spouse.

3 What types of payments do NOT qualify as alimony?

- Property settlement payments, even if required by the divorce decree or other written instrument or agreement.
- Retirement benefits that the other spouse is entitled to receive based on division of community property.
- Any voluntary payments made before they are required by a divorce decree or written agreement.
- Child support payments.

4 Can I deduct alimony paid?

The law requires alimony payments to be reported as income by the recipient. The person who pays the alimony may take a deduction for these payments. Alimony payments you make are deductible if **all** of the following requirements are met:

- You pay in cash, checks, or money orders.
- The divorce or separation instrument does not say that the payment is **not** alimony.
- You and your former spouse are not members of the same household when you make the payment.
- You have no liability to make any payment after the death of your spouse or former spouse.
- Your payment is not treated as child support.

Generally, alimony deductions appear on line 31 of the federal Form 1040.

5 Are alimony payments considered taxable income?

Alimony from your spouse or former spouse is taxable to you in the year received. Taxpayers report alimony income on line 11 of the federal Form 1040, and this figure carries through to the California return.

6 I get family support from my former spouse. Is that considered taxable income?

If the divorce decree or separation instrument provides for “family support” but no amount of the family support is designated as child support, then the entire payment is considered alimony.

7 Can I deduct child support payments?

No. Child support is not considered alimony. If your divorce decree or other written instrument or agreement calls for alimony and child support, and you pay less than the total required, the payments apply first to child support. Any remaining amount is then considered alimony.

8 How can I distinguish alimony versus child support?

Distinguishing whether payments are alimony or child support may be difficult. Consult a tax advisor if you are uncertain. Payments that are fixed, in terms of an amount of money or a part of a payment as payable for the support of the payor's children are not alimony, but rather non-deductible child support.

9 What are common mistakes made by taxpayers?

Many taxpayers mistakenly consider all payments made to their former spouses as deductible alimony payments. For example, taxpayers frequently include non-deductible child support payments as alimony deductions. On the other hand, many alimony recipients do not consider the payments from their former spouses as taxable income, and fail to report them. Some recipients make the common mistake of not reporting income designated as "family support" by the divorce decree. This type of support is considered alimony income in most cases. See number 6.

10 Can Registered Domestic Partners (RDPs) claim alimony payments on their federal and state returns?

Internal Revenue Code (IRC) Section 71 defines "alimony" or "separate maintenance payment" as any payment in cash if such payment is received by (or on behalf of) a spouse under a divorce or separation agreement. Because federal law specifically identifies alimony as a payment to a spouse under a divorce and a separation agreement, for federal purposes IRC Section 71 may not apply to RDPs. How the Internal Revenue Service (IRS) will treat alimony payments between RDPs remains unclear. Therefore, please contact the IRS, a federal tax practitioner, or competent counsel for the proper treatment of this issue on your federal returns.

California treats an RDP the same as a spouse. Consequently, we treat alimony payments between RDPs the same as alimony payments between spouses.

11 Why did Franchise Tax Board (FTB) contact me?

We contacted you because you claimed an alimony deduction as a payor, or because you underreported income from alimony payments as a recipient.

12 Will I be assessed any penalties if I owe additional taxes?

You may be subject to the Accuracy-Related Penalty on the portion of any understatement of tax that should be shown on the return (California Revenue and Taxation Code (CR&TC) Section 19164). The penalty is equal to 20 percent of the portion of the underpayment caused by one or more of the following:

- Negligence or disregard of rules or regulations.
- Substantial understatement of income tax.
- Substantial valuation misstatement.

The law provides relief provisions or exceptions for each of these situations. We will consider the relief provisions for each situation prior to assessing the penalty. A taxpayer may raise three common defenses (relief provisions) to avoid assessment of the penalty, depending upon the basis of the penalty. The defenses are:

1. **Substantial authority** – Substantial authority exists for the tax treatment of an item on the return.
2. **Adequate disclosure** – The original return contains adequate disclosure of the transaction, and a reasonable basis exists for the position taken.

3. **Reasonable cause** – Treasury Regulations Section 1.6664-4 also states that no penalty shall be imposed under IRC Section 6662 with respect to any portion of an understatement if the taxpayer shows that there was a **reasonable cause** for such portion and that the taxpayer acted in **good faith** with respect to such portion. We determine whether a taxpayer acted with reasonable cause and in good faith on a case-by-case basis, taking into account all pertinent facts and circumstances.

Substantial understatement of income tax exists if the amount of the understatement for the taxable year exceeds the greater of: (a) 10 percent of the tax required to be shown on the return for the taxable year, or (b) \$5,000. If you file the original return late, you also owe a late-filing penalty.

13 What happens if I move out of California?

A nonresident who receives alimony does not owe tax to California even if a California resident pays the alimony and claims a deduction for the payment.