

## Loss Denied on Transfer of Property to Spouse

In the process of obtaining a divorce Christina Mehriary and Bradley Williams entered into a marital settlement agreement on January 11, 2010. Part of the agreement gave Mr. Williams their marital home on Morton Road and Ms. Mehriary received the residence on Sweet Briar Rd, both in New Bern, North Carolina.

The agreement further provided Mr. Williams with \$4,000 per month for 60 months commencing February 1, 2010, as nonmodifiable lump-sum alimony. [Editor note: Would a nonmodifiable lump-sum alimony arrangement be deductible as alimony? The case does not mention if Ms. Mehriary took a deduction for the \$4,000/month payments.] The payments went directly to Wells Fargo Bank to make the mortgage payments on the Morton property. When the mortgage was paid off, the payments would go directly to Mr. Williams.

The agreement included a statement that each party should seek the opinion of a tax professional as to the tax ramifications of the agreement.

The divorce was granted on February 19, 2010. Sometime after this date Ms. Mehriary and Mr. Williams agreed to a modification of the marital agreement by Ms. Mehriary transferring the Sweet Briar Road property by quit claim deed to Mr. Williams in exchange for relief of \$80,000 of alimony payments. This transfer took place on February 15, 2001, just shy of one year from the divorce date. Ms. Mehriary claimed an \$80,000 loss on Schedule A for the transfer of the property to Mr. Williams. She stated this was allowed since her insurance company characterized the property as investment property.

IRS denied the loss citing IRC Section 1041 which basically says there is no gain or loss recognized for property transferred between spouses while married or incident to divorce. This includes transfers:

- 1) To a spouse while married,
- 2) To an ex-spouse within one year of the termination of the marriage,
- 3) To an ex-spouse within six years of the termination of the marriage when the transfer is a requirement of the divorce or separation agreement, or
- 4) In some limited cases to an ex-spouse more than six years of the termination of the marriage.

The transfer of the property from Ms. Mehriary took place within one year of the termination of the marriage, clearly meeting the provision in #2 above. As such the transfer falls into a Section 1041 transfer which means there is no gain/loss recognized on the transfer.

Ms. Mehriary then argued the transfer should be deductible as alimony since the transfer was in exchange for \$80,000 of future alimony payments. IRS denied this treatment as well since alimony must be in cash or cash equivalent and the transfer of real estate is not cash. [Editor note – a deduction is also not allowed for “future alimony”.]

Tax Court agreed with IRS. The 20% accuracy-related penalty under Section 6662(a) also applied.

We wrote this as a short summary as a reminder of the rules regarding gain/loss on transfers between spouses and ex-spouses.

Christina M. Mehriary, TC Memo 2015-126. This case can be found by going to [www.ustaxcourt.gov](http://www.ustaxcourt.gov), clicking on Opinion Search, and entering Mehriary in the “Case Name Keyword” box and find the case from 2015.

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