

Warning! Don't violate the Child Contingency Rule!

If any amount of alimony specified in the divorce decree is reduced (a) upon the happening of any contingency related to the child or (b) at a time that can be clearly associated with a contingency related to the child, then the amount of the reduction will be treated as child support, rather than alimony, from the start. Code Sec. 71(c)(2). Reg. §1.71-1T(c)

What is a contingency? A contingency relates to a child if it is dependent on an event relating to the child, regardless of whether the event is likely to occur. Some examples are:

- Reaches age 18, 21 or the age of majority in their state
- Gets married
- Graduates from school
- Leaves home
- Joins the military
- Gets a full-time job

Section 71 of the IRC provides two situations where payments would not qualify as alimony if they are reduced at a time clearly associated with a contingency relating to the child.

Six-month rule

The first situation occurs when the payments are to be reduced not more than **six months** before or after the date on which the child reaches age 18, 21 or the age of majority in their state. And this means all three ages!

Multiple reduction rule

The second situation is when there is more than one child. In this instance, if the payments are to be reduced on two or more occasions which occur not more than **one year** before or after each child reaches a certain age, then it is presumed that the amount of the reduction is child support. The age at which the reduction occurs must be between 18 and 24, inclusive, and must be the same for each of the children. The following example shows what many attorneys have incorrectly advised their clients to do:

Kevin and Karen are getting divorced and their son, Josh, is going to live with Karen. Kevin is going to pay Karen \$3,000 per month maintenance plus child support. Kevin's attorney says "Josh is graduating from high school in 5 years, so why don't you pay Karen maintenance for 5 years."

Or the attorney will say, “Since Josh is graduating in 5 years, why don’t you pay Karen maintenance of \$3,000 a month for 5 years and then reduce it to \$2,000 a month for an extra 3 years. Karen won’t have as great a need when Josh leaves home.”

This is creating a serious tax problem for Kevin. The IRS may consider the reduction of \$1,000 a month to be child support because it coincides with a child contingency. The IRS will then go after Kevin to collect the taxes he saved by calling it maintenance and they will make it retroactive from the beginning. Five years (60 months) times \$1,000 is \$72,000 that he will have to pay tax recapture on!

This is an area of possible malpractice for you if the IRS comes after Kevin and he then decides to come after you. So, don’t tie reduction of maintenance to anything relating to the children!