
Client Alert: Economic Impact Payments & The IRS' Return Policy

7 May 2020

In the past several weeks the IRS has issued millions of checks to certain individuals, compliments of a Congress which is desperately trying to keep our economy running.

On May 6, 2020, the IRS issued several new Q&A's on its website addressing what recipients should do if an Economic Impact Payment ("EIP") is received and the name on the check is not someone who qualifies for the payment. The [IRS Q&A's](#) regarding the economic impact payments are frequently updated, but are not official Treasury guidance. The Q&A's reflect the position of the Internal Revenue Service and indicate the agency's interpretation of the referenced legislation recently passed by Congress.

Death of Recipient: Q&A 10

If the name on the EIP is someone who died prior to receipt of the payment, the funds must be returned, according to the IRS' Q&A 10. This is true even if the individual died from COVID-19. If the individual died after receiving the check, then the funds may be retained. When the EIP is sent to a married couple and one of the spouses has died prior to receipt, only the portion of the payment attributable to the deceased spouse needs to be returned. The amount to be returned by the surviving spouse will be \$1,200 unless the couple's 2019 adjusted gross income was greater than \$150,000.

The process to return the funds is detailed in Q&A 41, which specifies that if the paper check was received and not cashed, the word "VOID" should be written on the back-side of the check where the endorsement would normally be written, the check should not be folded, stapled, or otherwise altered, and it should be mailed to an address provided in Q&A 41, depending upon state of residence. If the EIP was direct-deposited to an account or the check has been cashed, then the funds should be returned via personal check, money order or similar type of payment, with a note explaining the reason for the return. In addition, the payee's Social Security Number should be notated on the check, which should be made out to "U.S. Treasury" with a notation of "2020EIP".

Immigration Status of Recipient: Q&A 11

If the recipient is a non-resident alien, that recipient must return the EIP. If the recipient has been a qualifying resident alien but did not qualify in 2020 or can be claimed by another taxpayer as a dependent, the EIP must be returned. Only qualifying resident aliens in 2020 with valid Social Security Numbers are eligible for the payments. The EIP should be returned as set forth in Q&A 41 and described above.

Incarcerated Recipients: Q&A 12

If the recipient is incarcerated, the recipient must return the EIP. If the payment is to a married couple and one spouse is incarcerated, only the amount attributable to the incarcerated spouse is required to be returned. The IRS did not specify the date of incarceration, and so presumably if the individual receiving the EIP was released due to COVID-19, or for other reasons, prior to receipt of the EIP a return of the payment is not required. The EIP should be returned as set forth in Q&A 41 and described above.

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The IRS has not yet provided guidance regarding enforcement of these rules, or the amount of any penalties that may be due if the ill-gotten EIP is not returned. However, it can be anticipated that penalties and interest will accumulate if the EIP is not timely returned. In particular, if the check is credited to the Social Security Number of an individual who has died and subsequently files a “final return” for the partial year 2020, and/or an estate tax return is filed which reflects the date of death, it is likely that the individual’s estate will receive a computer generated letter requesting a return of the EIP plus interest and possibly penalties.

On the other hand, these Q&A’s are issued by the Internal Revenue Service and do not have the effect of law or even the authority of formal guidance issued by the Department of Treasury. The Q&A’s do, however, provide notice to Congress of the IRS’ position on these issues. It is now Congress’ option to respond by passing new legislation that would allow a currently ineligible recipient’s surviving heir, the incarcerated individual, or a nonresident alien to retain the funds. In particular, it is especially cruel to require the grieving family of a COVID-19 victim to return funds that are even more essential to a family’s well-being. That does not seem consistent with congressional intent.

This summary is not intended to contain legal advice or to be an exhaustive review. If you have any questions regarding this article, please contact the author [Nancy Ortmeyer Kuhn](#) or another member of Jackson & Campbell’s [Insurance Coverage Practice Group](#).

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