

Hi, Viewers!

Though I'm no longer moderating Tax Talk Today, I still keep up with tax law and on occasion write locally. With all the questions about COVID-19 and the CARES Act I decided to put the following together and would like to share it with you. Hope everyone is doing okay and looking forward to the next Tax Talk Today program!

- Les Witmer



## **What to Tell Clients If A Deceased Person Received A Stimulus Check**

I see dead people—well, their stimulus checks!

Okay, people are not asking as many questions about when am I getting my stimulus check. Many have received them or received information going to the IRS site that they're on the way. The thing the media and folks are wondering about now is why is the IRS sending checks to dead people?

The IRS recently revised their posted Frequently Asked Questions to include a comment on this. It states:

**Q:** Does someone who has died qualify for the Payment?

**A:** No. A Payment made to someone who died before receipt of the Payment should be returned to the IRS by following the instructions in the Q&A about repayments. Return the entire Payment unless the Payment was made to joint filers and one spouse had not died before receipt of the Payment, in which case, you only need to return the portion of the Payment made on account of the decedent. This amount will be \$1,200 unless adjusted gross income exceeded \$150,000.

This is very interesting. I remember hosting Tax Talk Today programs back in 2008 and 2009 when we regularly talked about the Economic Stimulus Act which was part of the American Recovery and Reinvestment Act. (Gosh that brings back some memories—Cash for Clunkers and the TARP bailouts programs.) But

without going thru everything that was done to stimulate the economy after the financial collapse in 2008, the main things I remember were checks for \$250 were immediately sent out to some recipients and the majority of Americans received immediate relief in that less was withheld from their paychecks. But some deceased did received stimulus checks back then too. And unlike this time, they (their heirs or spouses) were told to keep them!

Here was a retrieved IRS FAQ from 2008:

Q. If an individual dies, what happens to his or her direct deposit or stimulus check?

A. Stimulus payments will be issued in the name of the individual eligible for payment on a filed 2007 income tax return or to the account designated by the individual on that return. This includes situations where a person dies after filing a return or where the final 2007 income tax return was filed by a personal representative or surviving spouse. Any issues or concerns involving a decedent's filed return or the related stimulus payment should be addressed by the legal representative of the decedent's estate. See Publication 559 for more useful information for survivors and personal representatives.

So how did this happen in the first place? Surely the all-knowing all-seeing IRS knows who is dead. Actually, it's the Social Security Administration that usually knows that first and notifies the IRS. The IRS may get a final tax return—in general, the final individual income tax return of a decedent is prepared and filed in the same manner as when they were alive. All income up to the date of death must be reported and all credits and deductions to which the decedent is entitled may be claimed. So why then did the IRS send out checks to the dead?

It's the computer. In the rush to get the checks out, the IRS goes back to 2017 or 2018 tax returns and sends the checks to the person on record. It would undoubtedly take a separate processing adjustment to take them out and, in the rush, to get payments out, this apparently was not done. So why this time are they not saying to keep them? Well, the they are the President and the Secretary of Treasury. The Secretary of Treasury, initially said they should keep them but then a few days later he and the President said they need to send them back.

I'm not a tax attorney, but here's an interesting point. The wording the IRS uses in a FAQ is "should." Is that lawful and biding? It does not say you must? (And that brings up for another time a completely sperate argument of are FAQs a lawful authority?) What if you don't? Should you keep the money? This to survivors of loved ones who died in 2020, 2019, or 2018 and did nothing to receive this payment other than open the mail or check their bank accounts.

So, in 2008, as we discussed on Tax Talk Today, the IRS position was that payments would be correctly paid to a decedent based on information on the 2007 return. The IRS also directed taxpayers to their publication and to get with the estate's legal representative to figure out what to do with the payment as to how to divide it up.

So, now you "should" send the money back but take a look at another 2020 IRS FAQ.

Q. I received an additional \$500 payment in 2020 for my qualifying child. However, he just turned 17. Will I have to pay back the \$500 next year when I file my 2020 tax return?

A. No, there is no provision in the law requiring repayment of a payment. When you file next year, you can claim additional credits on your 2020 tax return if you are eligible for them, for example if your child is born in 2020. But you won't be required to repay any Payment when filing your 2020 tax return even if your qualifying child turns 17 in 2020 or your adjusted gross income increases in 2020 above the thresholds listed above.

Here the IRS acknowledged that the law does not require any repayment of the stimulus payment. It can get more bewildering when you think about it. By saying the payment should be returned if the person died before receipt of the stimulus payment, it includes people dying in 2020 from the COVID-19 who received a stimulus payment possibly before a 2019 tax return was filed. This means, if someone died in March, of COVID-19, and the payment was direct deposited to their account in April, the grieving surviving spouse or relatives should repay it!

So, what changed for the IRS in 12 years? Did they forget what they did in 2008? Interesting that we have not seen comment from the Congressional oversight committees over the IRS on this.

*Les Witmer retired from IRS as Wage and Investment Division Director of Communications and later for 16 years was the moderator of Tax Talk Today, a monthly webcast out of Washington DC.*