

DV and Tax in the Pandemic: COVID Relief Payments, Advanced CTC, and Beyond

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Domestic Violence, Tax, and COVID-19

- **Misappropriation of Economic Impact Payments (EIPs) aka Stimulus - Round 1**
 - EIPs were being deposited into accounts of abusive spouses/ex-spouses, to which the survivor did not have access. The abusers then refused to return the portion of the EIP belonging to the survivor.
 - EIP Round 1 was based on 2018 or 2019 tax return – whichever was most recent tax return on file with IRS.
 - May have been filed married filing jointly with abuser
 - Payment of EIP
 - IRS issued the EIP to the bank account listed on the tax return; in situations in which there was more than one account listed EIP was issued only to the first account listed; OR
 - EIP issued by check payable to both spouses if based on joint tax return

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- **Misappropriation of Economic Impact Payments (EIPs) aka Stimulus - Round 2**
 - Same issues as with Round 1
 - EIP Round 2 was based on 2019 tax if one was on file with IRS.
 - Again, may have been tax return filed married filing jointly with abuser

CARES Act & EIP – Helpful Statutory Language

- “In the case of a refund or credit made or allowed under subsection (f) with respect to a joint return, half of such refund or credit shall be treated as having been made or allowed to each individual filing such return.” IRC Section 6428(e)(2)
- EIP is property of each joint filer, if one spouse withholds from other: crime of conversion.
- Possible to resolve through divorce or civil proceedings such as in small claims court?

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- Domestic violence survivors have less SAFE options available to them to resolve the situation.
- Dangerous to communicate with abuser
- Abuser can use EIP to manipulate
- Abuser retaliation if domestic violence victim tries to pursue abuser in civil court
- Vulnerable, possibly living in shelter, address protection

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• Recovery Rebate Credit: 2020 Tax Return

- File 2020 tax return claiming any missed EIP as the Recovery Rebate Credit (RRC)
- IRS may challenge if EIP already issued under SSN
- Challenge through IRS “math error” process
 - Respond to IRS notices denying RRC within 60 days
- Establishing Invalid Joint Election
 - <https://www.taxpayeradvocate.irs.gov/news/nta-blog-If-You-Didnt-Get-Your-EIP-Your-Joint-Return-May-Be-the-Reason-Why/>
 - IRM 21.6.1.5.7 was updated on November 16, 2020, and again on January 19, 2021, to include procedures specific to EIP
 - See DV / EIP Flyer

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- **Economic Impact Payments (EIPs) aka Stimulus - Round 3**
 - Authorized by American Rescue Plan
 - Based on 2020 or 2019 tax return whichever was most recent on file with IRS

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- **Advanced Child Tax Credit**

- Authorized by American Rescue Plan (ARP)
- Allows for advance payment of 1/2 of the Child Tax Credit for which the taxpayer would be eligible for the current year
 - Prior to ARP, Child Tax Credit could only be received at the end of the year via credit claimed on the tax return for the year
- Credit amount increased from \$2,000 to \$3,600 for children under 6 and to \$3,000 for children under 18.
- Credit expanded to include 17 year olds
- Based on 2019 or 2020 tax return, whichever is most recent return on file with IRS
- IRS is creating an online portal for taxpayers to update family size and other limited information
 - But what about conflicting claims?

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- **Eligibility for the Child Tax Credit**

1. The child is your son, daughter, stepchild, eligible foster child, brother, sister, stepbrother, stepsister, half brother, half sister, or a descendant of any of them (for example, your grandchild, niece, or nephew).
2. The child was under age 17 at the end of 2020.
3. The child did not provide over half of his or her own support for 2020.
4. The child lived with you for more than half of 2020 (some exceptions may apply, including situations in which the custodial parent grants the non-custodial parent permission to claim the child, usually via IRS Form 8332).
5. The child is claimed as a dependent on your return.
6. The child does not file a joint tax return for the year.
7. The child was a U.S. citizen, U.S. national, or U.S. resident alien.

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- **Changes to the Earned Income Tax Credit under the American Rescue Plan**
- Sec. 9623 provides that an otherwise married individual separated from the individual's spouse is treated as not married for purposes of the EITC if a joint return is not filed. The provision applies only if the taxpayer lives with a qualifying child of the taxpayer for more than one-half of the taxable year and either:
 - (1) Does not have the same principal place of abode as the individual's spouse during the last six months of the taxable year, or
 - (2) Both
 - Has a decree, instrument, or agreement (other than a decree of divorce) described in Code section 121(d)(3)(C)145 with respect to the individual's spouse, and
 - Is not a member of the same household with the individual's spouse by the end of the taxable year.

Financial Abuse and Taxes

- Invalid jointly filed tax returns
- Fraudulent tax returns using a survivor's Social Security Number
- Abusers improperly claiming children on tax return
- Employment related identity theft
- Identity Theft
- Using a survivor's information to start a business
- Unexpected joint income tax balances

Possible Roads to Relief within Tax Realm

- Filing a separate tax return to correct fraudulent joint returns
- If your client loses the “race to e-file”, paper filing a superseding tax return before deadline
- Filing an Identity Theft Affidavit
- Applying for Identity Protection Personal Identification Number (IP PIN)
- Requesting relief from Joint and Several Liability
- Creating an IRS Online Services Account

Possible Roads to Relief within Tax Realm

- **Filing a separate tax return to correct a fraudulent joint return**
- A joint return is considered fraudulent if:
 - One spouse forges the other spouse's signature and files without their knowledge;
 - One spouse signs the joint return under duress; or
 - There was no tacit consent
 - See I.R.M. 25.15.19.2.4.1 (10-23-2019), Tacit Consent Factors

Possible Roads to Relief within Tax Realm

- **Superseding Tax Return upon losing the “race to e-file”**
 - A superseding tax return is a tax return filed subsequent to the originally-filed return, and filed within the filing period.
 - If processed, a superseding tax return results in both taxpayers' accounts being adjusted to separate filing status
 - **Treas. Reg. 1.6013-1(a)(1)** where joint return was filed, separate returns are not allowed after the time for filing the return of either spouse has expired.
 - **Note:** A return filed after the original due date but on or before the extended due date does not constitute a superseding return in this situation.

Possible Roads to Relief within Tax Realm

- **Filing an Identity Theft Affidavit**
 - Form 14309, Identity Theft Affidavit
 - Can be attached to a tax return or filed on its own to report potential or known identity theft.
 - IRS may also alert a taxpayer to possible identity theft. (I.R.C. § 7529)
 - IRS may issue one of the following: Letter 5071C, Letter 4883C, Letter 5747C in order to confirm a taxpayer's identity.
 - Taxpayer should promptly follow the instructions in the letter.

Possible Roads to Relief within Tax Realm

- **Applying for an Identity Protection Personal Identification Number (IP PIN)**
 - Starting in 2021, taxpayers may *voluntarily* opt into the IRS's IP PIN program as a proactive way to protect themselves from tax-related identity theft.
 - Must pass a rigorous identity verification process.
 - Spouses and dependents are eligible for an IP PIN if they can pass the identity proofing process.
 - Apply for an IP PIN online at IRS.gov, or by filing a Form 15227, Application for an Identity Protection Personal Identification Number.

Possible Roads to Relief within Tax Realm

- **Relief from Joint and Several Liability**
 - IRC § 6015(b): Innocent Spouse Relief
 - Understatement relief
 - Refunds possible
 - IRC § 6015(c): Separation of Liability Relief
 - Understatement relief
 - No longer married, legally separated, or not living together
 - No refunds
 - IRC § 6015(f): Equitable Relief
 - Understatement and/or underpayment relief
 - Rev. Proc. 2013-34 details the conditions and factors that the IRS uses to grant relief under § 6015(f).
 - Refunds possible
 - Only considered when relief under (b) and (c) not possible

Possible Roads to Relief within Tax Realms

- **Relief from Joint and Several Liability**
 - Privacy Concerns of Note
 - Taxpayer files Form 8857, Request for Innocent Spouse Relief.
 - Non-requesting Spouse receives notice and permitted to participate in administrative process (I.R.C. § 6015(h)(2)).
 - IRS will not disclose personal information unrelated to making determination about the relief request.

Possible Roads to Relief within Tax Realms

- **Create an IRS Online Services Account**
 - IRS will ask questions to verify the taxpayer's identity in order to sign up
 - Information requested may include financial account information linked to taxpayer's name
 - A taxpayer can use the account to access their IRS transcripts which are summaries of the information the IRS has on file for the taxpayer.
 - Transcripts include: Account, Tax Return and Wage & Income

<https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools>

Possible Roads to Relief Outside of Tax Realm

- Filing a Police Report
- Credit Report Checks
- Credit Report Monitoring
- Small Claims Court

Resources: IRS Forms

- **Form 3949-A, Informant Referrals**, used by third parties (including spouse) to report violations by other taxpayers. See IRM 3.28.2.3 (3) rev. 8/01/2019 e.g. false deductions, EIC, or “other”
- **Form 8888: Allocation of Refund, Joint Return** –2 bank accounts
- **Form 8379: Injured Spouse Relief**, Allows married couple to file joint returns without one spouse being forced to pay the other’s debts.
- **Form 8857: Innocent Spouse Relief**, Allows one spouse (or former spouse) relief from joint tax liability under certain conditions.
- **Form 8822: Change of Address**
- **Form 8332: Release of Claim of Exemption for Qualifying Child**, allows divorced spouses to take turns claiming dependent child (custodial parent signs 8332)
- **Form 3911: Taxpayer Statement Regarding Refund**, to start a refund trace
- **Form 14039: Identity Theft Affidavit**, to report possible tax-related identity theft

Other Resources

- Low Income Taxpayer Clinics:
<https://www.irs.gov/pub/irs-pdf/p4134.pdf>
- Taxpayer Advocate Service:
<https://www.taxpayeradvocate.irs.gov/>
- Volunteer Income Tax Assistance (Free Tax Return Preparation):
<https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers>