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Delays For Injured Spouses' Checks Compound Virus Woes

By **David van den Berg**

Law360 (May 18, 2020, 9:19 PM EDT) -- Taxpayers whose spouses have past-due child support obligations could face a long wait to get their share of virus relief payments, which could worsen already tenuous financial conditions strained by the COVID-19 pandemic.

Past-due child support is the only reason the Internal Revenue Service can offset the economic impact payments that Congress approved in the [Coronavirus Aid, Relief and Economic Security Act](#). In some cases, however, the IRS has garnished payments that should have gone to so-called injured spouses, or spouses who filed a joint tax return with a partner who has past-due child support obligations and had their share of the payment withheld by the agency.

Some payments have been garnished even though an injured spouse claim was filed with the joint tax return that the economic impact payment is based on, according to the IRS. The agency has said it is aware of the issue and is working to resolve it.

Even under normal circumstances, however, it can take several months for the IRS to process an injured spouse refund claim. That delay will dampen the efficacy of the payments, which are meant to provide immediate relief from the economic fallout from the pandemic. The agency hasn't said how long it will take to resolve the problem.

"This is a pressing issue: Rent and other expenses continue to come due," said Samuel Brunson, a tax law professor at Loyola University Chicago School of Law. "While it's good that the IRS is working to ensure that taxpayers get their payments, it's important to know the time frame, both for the IRS to start splitting payments and for the IRS to correct problems where it has already offset child support against payments to the injured spouse."

The CARES Act **directed** the IRS to send economic relief payments of \$1,200 to individuals and \$2,400 to couples filing joint tax returns, with payment reductions starting for those with incomes above \$75,000, or \$150,000 for couples. Payments are increased by \$500 for **each qualifying child** younger than 17. Technically, the payments are an advance of a new temporary tax credit eligible taxpayers can claim on their 2020 returns.

Earlier this month, in a set of answers to FAQs on the economic impact payments, the IRS said that those whose payments were withheld by the agency because of a spouse's past-due child support and who filed an injured spouse claim on Form 8379 with their 2019 tax return — or their 2018 tax return if the 2019 return hasn't been filed yet — need take no further action and will receive their share of the payment when the garnishment issue is resolved.

The agency's statement, however, leaves unanswered the question of what to do if no injured spouse claim was filed with the original joint tax return, according to Caleb Smith, director of the University of Minnesota Law School Ronald M. Mankoff Tax Clinic.

Those who didn't file a Form 8379 with their original return for whatever reason, such as they weren't originally expecting to get a refund, have no real way to file an injured spouse claim after the return has already been filed, Smith said. The delay in receiving the payment will be a financial blow for some, Smith said.

"The people who need it instantly are going to be the ones that are hurt the most," he said.

Karen Ward, director of the Low-Income Taxpayer Clinic at Indiana Legal Services, said her clinic has seen 10 to 15 clients about the issue, several of whom didn't file Form 8379 with their 2018 or 2019 returns, though they did file it separately. Ward said the main unresolved question for her is what will happen with the forms that either weren't filed with 2018 or 2019 returns or weren't filed because the taxpayer wasn't due a refund in those years.

"Do they have to wait until [tax year] 2020 and they file their returns to reconcile it, or is there any way to get the money beforehand?" Ward asked.

An IRS spokesman told Law360 on Monday that those who filed their tax returns without the injured spouse claim should go ahead and file Form 8379 on its own. The spokesman also said that the \$500-per-child portion of the economic relief payments would be treated the same as the underlying base payments, with injured spouses receiving half of the payments.

Bob Probasco, director of the low-income tax clinic at Texas A&M University School of Law, said the problems with the economic impact payments are a result of the IRS not identifying all potential issues and working out solutions for them ahead of time. However, it would have been unreasonable to expect the IRS to come up with solutions to every conceivable problem in the short amount of time it had to start sending the payments after they were approved by Congress, Probasco said.

"It's to the IRS' credit that they were able to get money out so quickly after the CARES Act was passed," he said.

--Editing by Tim Ruel and John Oudens.