

EIPs, Tax Returns, and Judicial Orders in the context of Domestic Violence during the COVID-19 Era

**Co-sponsored by the ABA Tax Section's Pro Bono
and Tax Clinics Committee and the ABA's
Commission on Domestic & Sexual Violence**

Panel

Jamie Andree, Indiana Legal Services, Inc. Low Income Taxpayer Clinic,
Bloomington, IN

Judge Bernadette D'Souza, Orleans Civil District Court, New Orleans, LA

Jill MacNabb, Senior Attorney Advisor, Taxpayer Advocate Service

Nancy Rossner, Senior Attorney, The Community Tax Law Project,
Richmond VA

James Smith, Legal Services Alabama/One Place Family Justice Center,
Montgomery, AL

Gina Ahn, Koreatown Youth & Community Center LITC, Los Angeles, CA
(moderator)

I. Domestic Violence in COVID19

- A. Current Situation & Services

II. Filing Status & Sources of Evidence from Family Court

- A. Filing Status – Choices facing divorcing spouses

- B. Family Court Orders

- C. Family Court Records for EITC audit defense

III. EIP primer, Portal Returns, Stolen Refunds & Superseding Returns

IV. Innocent Spouse Relief & Disclosure

V. Advice for Clients

I. Domestic Violence: How nothing and everything has changed.

Judge Bernadette D'Souza Orleans Civil District Court, New Orleans, LA

James Smith, Legal Services Alabama/One Place Family Justice Center, Montgomery, AL

1. Pattern and deliberate course of conduct
2. Designed to obtain and maintain **power and control**
3. Over a current or former intimate partner or family member in a domestic relationship
4. Through a variety of tactics designed to instill fear and intimidation through the exercise of coercion and dominion
 - Physical abuse
 - Verbal abuse
 - Emotional and psychological abuse
 - Economic abuse
 - Child abuse and abuse of third parties
 - Physical, social, and familial isolation

Power and Control

<http://www.ncdsv.org/images/PowerControlwheelNOSHADING.pdf>

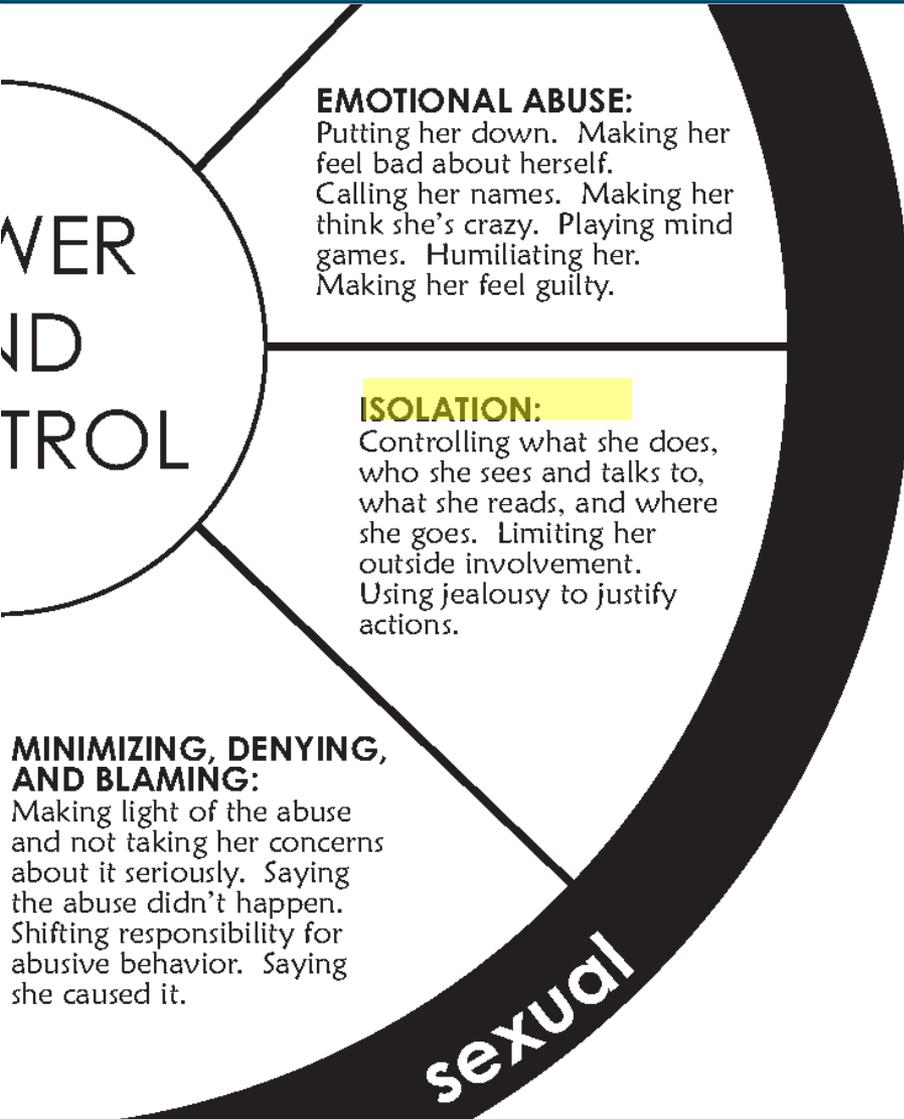


Developed by:
Domestic Abuse Intervention Project
202 East Superior Street
Duluth, MN 55802
218.722.4134



NATIONAL CENTER
on Domestic and Sexual Violence
training • consulting • advocacy
4612 Shoal Creek Blvd. • Austin, Texas 78756
512.407.9020 (phone and fax) • www.ncdsv.org

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Stay at home order may *enable, amplify and become* its own tool of **power & control**.

Travel restrictions may restrict a survivor's escape or safety plan – it may not be safe them to use public or commercial transportation.

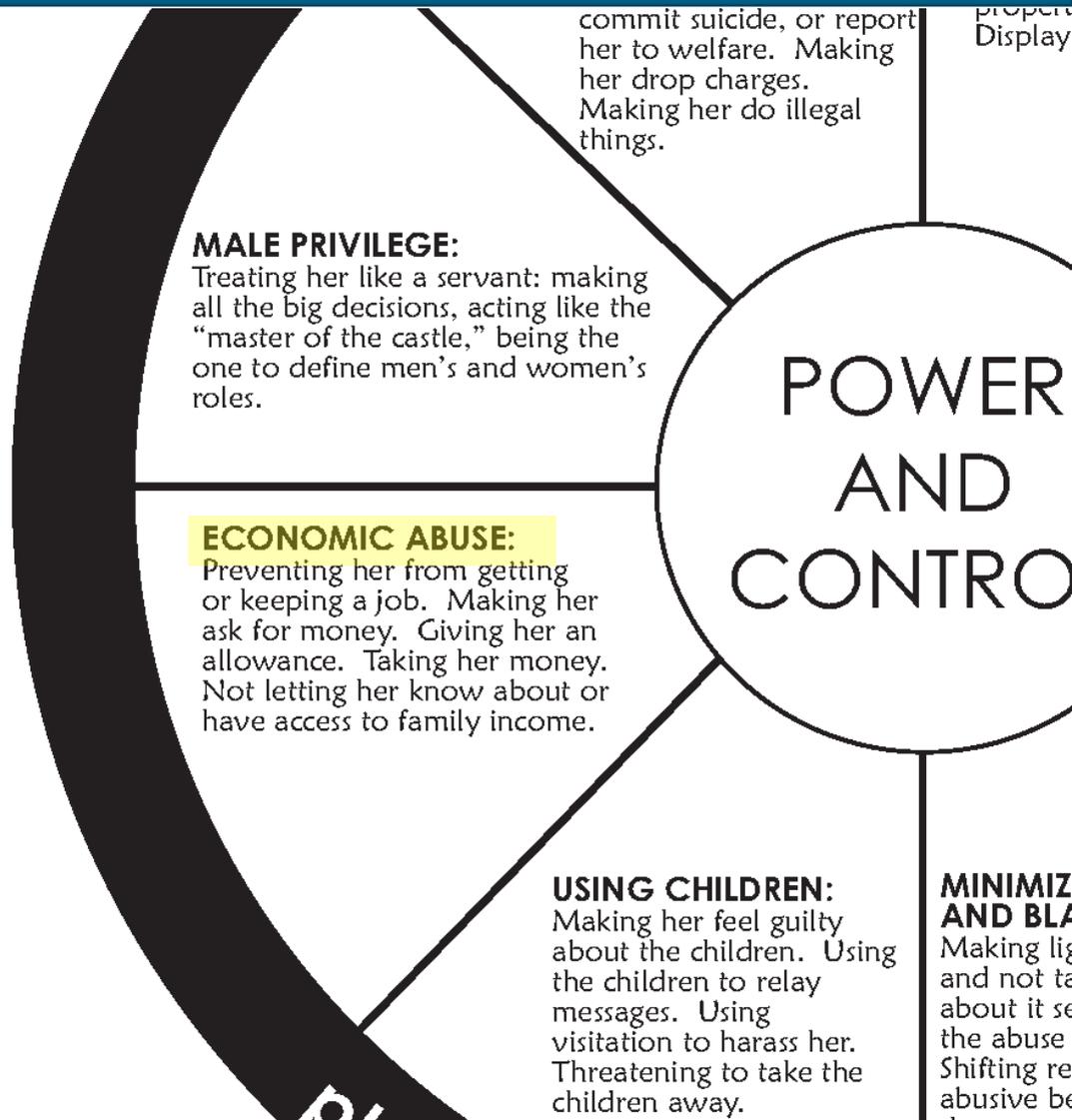
Isolation of victim has become unwittingly sanctioned by the authority of the state

Economic Abuse

Controlling the finances; making DV victim ‘beg for money’; or **not allowing access to funds** [stimulus check]”

May also include forcing the survivor to personally incur all debts of the relationship to make the survivor even more dependent upon the abuser

Entangle the survivor’s financial life with that of the abuser to the extent that they appear inseparable.



commit suicide, or report her to welfare. Making her drop charges. Making her do illegal things.

Property Display

POWER AND CONTROL

MINIMIZE AND BLAME
Making her feel guilty about the children. Using the children to relay messages. Using visitation to harass her. Threatening to take the children away.

- Disseminate misinformation about the pandemic to control or frighten the survivor, or to prevent them from seeking appropriate medical attention if they have symptoms.
- Withhold insurance cards, threaten to cancel health insurance, and restrict or prevent access to needed medical services.
- Control the deposit of EIP rebates and Unemployment Compensation benefits
- Rationalize and escalate their isolation tactics.

Reduced access to support and exacerbated risks

- Programs that serve survivors may be significantly impacted (shelters may be full or intake may have stopped altogether).
- Survivors may fear entering shelter because of being in close quarters with groups of people.
- Survivors who are older or have chronic health conditions may be at increased risk in public places where they would typically get support (shelters, senior or counseling centers, emergency rooms, legal aid offices, or courthouses).
- Reduced access to the Courts for pro se petitioners
 - All states have pro se forms for filing protection order petitions
 - With reduced access to courthouses, DV survivors have trouble filing pro se protection order cases

Montgomery County, Alabama – Alacourt.com/Alabama State Judicial Information System

- In Alabama, attorneys are restricted to e-filing only and may not paper file with the court
- Pro se litigants may only paper file (usually in person at the courthouse)
- Domestic Relations initial filings - 1/1/2020 to 3/16/2020
 - By attorneys – 175 cases
 - By pro se litigants – 192 cases
- Domestic Relations initial filing – 3/16/2020 to 6/1/2020
 - By attorneys – 164 cases (reduction of 6%)
 - By pro se litigants – 74 cases (reduction of 62%)

“In Chicago, the number of people seeking help has increased significantly in recent weeks. During the first week of March, 383 people called a domestic violence hotline in the city. By the end of April, the weekly number had soared to 549.” ...

“The pandemic has put the pressure on,” Ms. Pyron said. “No one can go stay somewhere for a few days, have family come over, have the kids go stay with grandparents. Those safety supports aren’t accessible in a meaningful way.”

<https://www.nytimes.com/2020/05/15/us/domestic-violence-coronavirus.html>

Domestic Violence is not caused by

- NOT the product of a bad or failing relationship
- NOT the result of poor communication
- NOT the consequence of divorce, separation, or a custody dispute
- NOT an anger or substance abuse problem
- NOT caused by poverty
- NOT caused by the behavior of the victim
- NOT something that the victim can change or fix

IT **IS** internalized in the character and belief system of the abuser and is something that only abusers can change in their own lives.

Why stay / get married in Abusive relationship?

14

- **FEAR**
- Denial or Believing Abuse is Normal
- Fear of Being Outed
- Embarrassment or Shame
- Imposed Low Self-Esteem
- Culture / Religious Reasons
- Language Barriers / Immigration Status
- Lack of Money / Resources
- Disability
- Concern for safety of children
- Nowhere to go and no way to get there

What can you do?

- Listen, believe, and bear witness
- Do not pass judgment
- Resist the urge to try to make the abuser's crazy behavior make sense and do not blame the victim when it does not
- Maintain eye contact regardless of your personal discomfort
- Express concern for victim's safety
- Recognize that you do not have to have all of the answers but do know to whom you can refer victim to for the assistance you cannot provide

How has the process to assist DV victims changed?

- Legal aid programs have ramped up their call centers and enlisted the services of their staff attorneys to help field the calls as access to local offices has been limited.
- Client interviews and appointments have been conducted through video conferencing
- Courts have relaxed signature and notarizing requirements to enable the use of electronically signed documents and notarization via video conferencing.
- Courts have moved to video trials and legal aid programs have provided the technology for clients to participate from secure locations at local legal aid offices.
- Referrals can be made through the call centers that most legal aid offices maintain; however, nothing works quite as well as establishing a personal direct relationship that can be called upon in times of crisis. If you do not have one, now is the time to start.

<https://www.greenbaypressgazette.com/story/news/local/oconto-county/2020/06/10/rainbow-house-domestic-abuse-services-get-grant-amid-covid-19-pandemic/5330563002/>

Grant helps Oconto, Marinette-area domestic abuse survivors by funding separate housing

Kent Tempus, Green Bay Press-Gazette Published 8:53 a.m. CT June 10, 2020 | Updated 8:55 a.m. CT June 10, 2020

OCONTO - A grant from the Bond Foundation of Oconto is helping pay the higher costs of sheltering domestic abuse survivors in separate housing units.

The \$11,440 award to Rainbow House Domestic Abuse Services will pay for 90 days of stays for clients, whose options for escape have been limited by the coronavirus pandemic, said Executive Director Courtney Olson.

"Family and friends who might have provided a safe place to stay may now be sheltering in place themselves, often with limited resources and an insistence on maintaining social distancing," Olson said. "Many survivors may feel as though they have no place to turn."

While more expensive, she said separate housing increases the safety for both survivors and Rainbow House staff by reducing the risk for communicable disease transfer.

Since the pandemic began, three different families have been sheltered separately, and Olson anticipates the need to do so will continue.

II. Filing Status Issues & Sources of Evidence from Family Court

Jamie Andree, Indiana Legal Services, Inc. Low Income Taxpayer Clinic, Bloomington, IN

James Smith, Legal Services Alabama/One Place Family Justice Center, Montgomery, AL

- Spouses may be required to file tax returns while case is pending
 - Judge in the family law case may try to dictate filing status.
 - If so, the judge can be educated as to why that is not appropriate.
- There may also be prior years when tax returns were not filed.
- Selected filing status has implications for which child-related tax benefits are available, how much tax is owed, and/or how much of a refund is due.
- Choosing the wrong filing status may result in an audit, liability for increased tax, or a smaller refund

Married Taxpayers Do Not Have To File Joint Returns!

- Married taxpayers can choose one of 3 filing statuses:
 - Married Filing Jointly (MFJ)
 - Married Filing Separately (MFS)
 - Head of Household (but must meet specific legal requirements to choose HOH)
- MFJ & MFS do not depend on living arrangement, but HOH does
- Married taxpayer **cannot** file using Single filing status
- Marital status is determined as of 12/31 of the tax year
- Filing a 2019 tax return in 2020? Marital status at end of 12/31/19 is what matters.

- Higher standard deduction (reduces income subject to tax)
- Certain benefits are not available using MFS
 - Earned income tax credit (reduces tax owed and is refundable)
 - Student loan interest and other deductions and credits related to education
 - Child and dependent care credit
 - Premium tax credit (except for some victims of domestic abuse & abandonment)
- If you lived with your spouse at any time during tax year, MFJ allows you to exclude more Social Security income from taxation
- Usually pay less tax/due bigger refund than using other filing statuses

- Spouses filing MFJ are jointly and severally liable for info on the return. Even if only one spouse had income or made errors, both are liable for any resulting tax due whether shown on the return or added from a later audit.
- IRS may pursue either one or both spouses to collect the tax.
- IRS may offset (take) entire joint refund to apply to one spouse's sole debt (such as spouse's tax, student loan, child support debt.)
 - Can be fixed by requesting Injured Spouse Relief
- Spouses' and dependents' 2020 EIPs will be made in one payment
- Survivor may not want to share private information with abuser

- MFS advantage – taxpayer is responsible only for own tax debt and will not be jointly and severally liable for a tax debt arising from return filed with their spouse.
- Can you change your mind?
 - Switch from MFJ to MFS – only have until tax return due date (usually 4/15) to switch from MFJ to MFS.
 - Due date of 2019 return has been extended to 7/15/20.
 - Married taxpayers who file separately generally have 3 years from return's due date to switch to MFJ
- MFS – if one spouse itemizes deductions, then the other spouse must itemize rather than using the standard deduction.

- Is spouse secretive about finances?
- Does client have access to household bank and financial records?
- Does client know how much spouse earns?
- Is spouse abusive?
- Is spouse self-employed?
- If so, does spouse keep good records?
- Does spouse control household financial decisions?
- Does spouse owe tax or have unfiled returns?
- Sometimes it's better for one or both spouses to keep separate tax lives.

- Unlike MFJ, avoids problem of joint and several liability
- Has higher standard deduction (which reduces taxable income) than MFS
- Permits taxpayer to claim Earned Income Tax Credit (EITC) – a significant monetary benefit for low to moderate income working taxpayers with children.
- It is available to filers who meet certain rules, even if still married.

- Must provide principal place of abode for at least 1 dependent, and
- Provide more than half the annual support for the household (e.g. rent, utilities, insurance, food) and
- Be “unmarried” – includes a married taxpayer who lived apart from their spouse for at least the last 6 months of the tax year.
- Definition of HOH is at IRC §2(b)
- For detailed information see IRS Publications 17, 501, 504
- IRS forms and publications are on www.irs.gov

Head of Household is Generally Not Available When . . .

- The taxpayer was married to their spouse when the tax year ended and lived with that spouse at any time during the last 6 months of the year
 - But under IRC 2(b)(2) a taxpayer is considered unmarried if legally separated under a decree of separate maintenance or if the taxpayer's spouse is a nonresident alien;
- Or when the taxpayer did not provide the main home of a qualifying person for more than half the tax year;
- Or when the taxpayer did not pay more than half the cost of keeping up the home for the tax year.

Can the Judge Order Divorcing Spouses to File Joint Return?

- Reasons why a judge might consider doing so:
 - Spouse with most of the income would prefer to file a joint return in order to reduce tax owed or get a bigger refund.
 - Abuser might see MFJ as opportunity to exercise control over survivor or gain information concerning survivor's private information such as income, bank account.
 - Appears that parties will get a bigger refund or owe less tax.
 - It's simpler.
- Reasons why one spouse may resist filing jointly with the other:
 - Fear of joint and several liability for errors made by other spouse in reporting income, deductions, etc.
 - Privacy concerns.
 - Due bigger refund without the other spouse, particularly if eligible to file HOH

- Married couples are not required to file joint returns but may elect to do so. IRC 6013(a)
- Cases holding judges may not dictate filing status of married couple:
 - Leftwich v. Leftwich, 442 A.2d 139, 144 (D.C. App. 1982)
 - Matlock v. Matlock, 750 P.2d 1145, 1146 (Okla.App. 1988)
 - Bock v. Dalbey, 815 N.W.2d 530 (Neb. 2012)
- Cases holding judges may order parties to file MFJ
 - Bursztyn v. Bursztyn, 879 A.2d 129, 137 (NJ Super. SD 2005)
 - Theroux v. Boehmler, 410 N.W.2d 354, 356 (Minn.App. 1987)

- Melvyn B. Frumkes & Robert S. Steinburg, ***Can and Should a State Court Order and Unwilling Spouse to File a Joint Federal Tax Return?***, 25 J. Am. Acad. Matrim. Law. 115 (2012).
- Autumn Kraus & J. Kermit Hill, ***States Where the Court has Discretion to Compel Parties to Sign and File a Joint Return***, TXCLE Advanced Family Law (2016).

Divorce pleadings and judgments are normally public records

- Pleadings may typically contain the date and place of the marriage and the date and place of the separation
- If children are involved, the UCCJEA (Uniform Child Custody Jurisdiction and Enforcement Act) - except MA - require each party to file a custody affidavit with his or her initial pleading
 - List each of the addresses at which the child has resided and with whom during the preceding five years. Section 209 of the Uniform Law.
 - Cases may contain child support calculation documents sworn to by each of the parties
- Judgments/Decrees may have a detailed recitation of the testimony and contain specific findings of fact and conclusions of law supporting the final judgment; however, they may also be very conclusory.
- If the case was settled, the settlement agreement may contain useful declarations agreed to by both parties.

Although child support rules vary from state to state, you can access the rules in your state at

<https://www.ncsl.org/research/human-services/guideline-models-by-state.aspx>

- Access to Court data and documents varies widely from state to state and sometimes from county to county
 - Some states have abandoned paper files completely and gone to an almost fully digital file and filing system (like the federal courts)
- If access is online, it may be as simple as the click of a mouse to obtain documents (assuming one has access)
 - Presumably most legal aid lawyers will have that access
- There might be nominal per page fees, but those may be waived for legal aid lawyers
 - Obtaining certified copies might be a little more involved and expensive
- Symbiotically, in the first instance, tax lawyers can provide advice and consultation to legal aid family law lawyers
 - Can aid in obtaining TDS transcripts online (with release)

- Every state and territory has a Civil Protection Order statute that generally allows a domestic violence victim to seek a protection order against his or her batterer.
 - While VAWA (Violence Against Women Act) expressly provides that certain victim specific identifying information must be redacted from the public record and databases, final orders and other documents may be publicly available to help prove incidents of domestic violence.
 - Furthermore, depending upon the varying laws in different jurisdictions, Protection Orders may also contain awards of child custody and child support.

- Criminal domestic violence offenses generally are denominated specifically as domestic violence crimes
 - The criminal records of batterers generally are public records, except for juvenile offenses.
 - Depending upon the jurisdiction, they may be available online in the same manner as civil domestic relations court records.
 - Although victim sensitive identifying information should be redacted in domestic violence, sexual violence, and child abuse cases

III. EIP Primer, Nonfiler Portal, Misappropriated EIP, Stolen Returns, and Superseding Returns

Nancy Rossner, Senior Attorney, The Community Tax
Law Project, Richmond VA

WHAT IS THE EIP?

An **advance** payment of a 2020 tax credit. EIPs not received before December 31, 2020 will need to be claimed on 2020 tax returns due in 2021.

IRS will first use existing data from 2019 tax returns to determine eligibility, then refer to 2018 if there is no 2019 return filed. If no return for either year, IRS will look to Social Security and VA Benefits for further information to issue EIPS.

4 REQUIREMENTS:

1. Valid identification number
2. Cannot be a Non-Resident Alien 6428(d)
3. Income under certain amounts (75K, 112.5K, 150K)
4. Filer may not be claimed as a dependent on another taxpayer's return

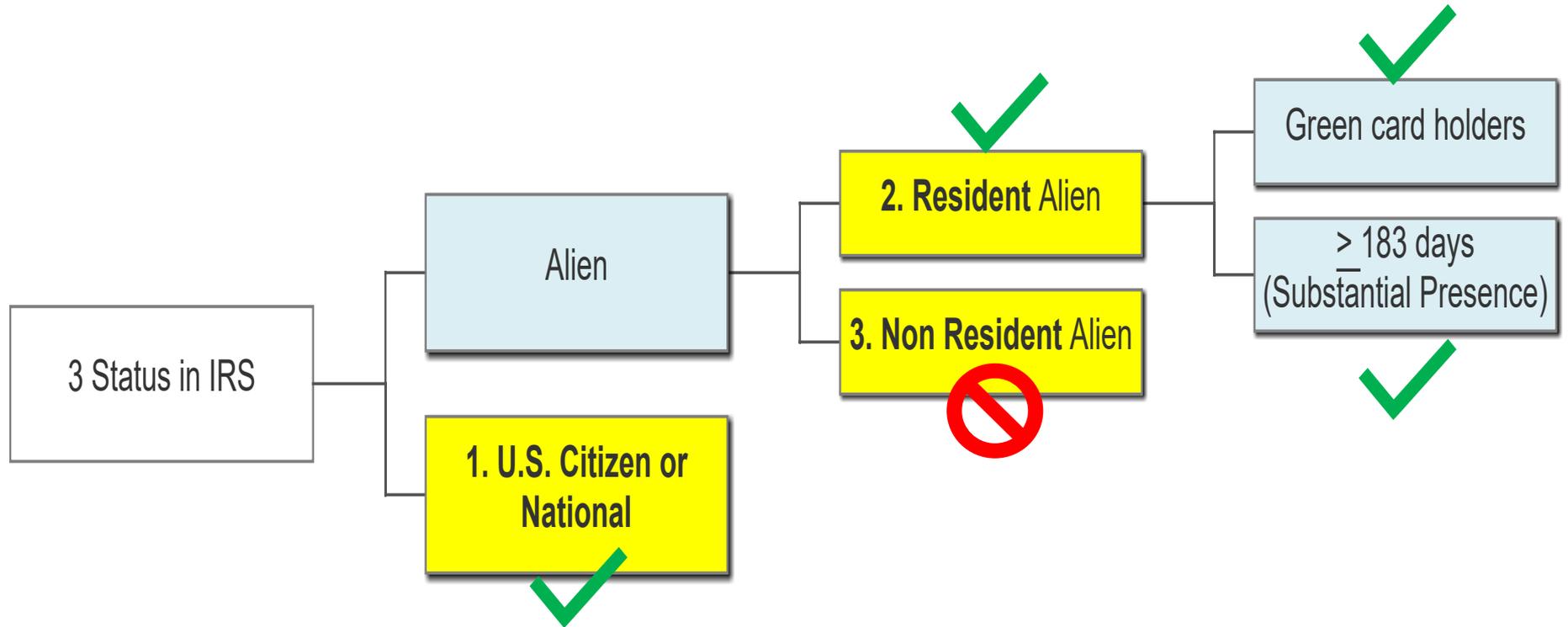
1. Valid Identification Number (SSN or ATIN)



- Joint Filer, if one spouse has ITIN, neither taxpayer is eligible for EIP.
- Tax filer and qualifying child both need valid ID number.
- Citizens and legal permanent residents get SSN card without “restrictive legends” printed
- SSN **with work authorization**

Practice Point: Look at the physical SSN card and check for restrictions.

2. Cannot be Non-Resident Alien



3. Income limits (however, no minimum earnings required)

No “minimum” earnings, reduced by \$5 for every \$100 over limit, phase out

| | 75K | 87K | 99K | 112.5K | 129.5K | 136.5K | 150K | 174K | 198K |
|---------|---------|---------|---------|---------|---------|---------|---------|-------|------|
| Single | \$1,200 | \$600 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| HoH | \$1,200 | \$1,200 | \$1,200 | \$1,200 | \$600 | \$0 | \$0 | \$0 | \$0 |
| Married | \$2,400 | \$2,400 | \$2,400 | \$2,400 | \$2,400 | \$2,400 | \$2,400 | \$600 | \$0 |

Single, MFS, Widow (1x) \$75K – 99K
Head of Household (1.5x) \$112.5K – 136.5K
MFJ (2x) \$150K - 198K

4. Not claimed as dependent §6428(d)

- Disabled Adult Children will not receive \$1200 themselves, – if parents claimed them as dependents. Parents who claimed them as dependents shall not receive \$500.
- Age 17 and over dependents will not receive \$500.
- Children born in 2020, can be claimed in TY2020 tax returns due 4/15/2021 and a \$500 credit will be given

What is “the Portal”?

The screenshot shows the IRS website interface. At the top, there is a navigation bar with the IRS logo and menu items: File, Pay, Refunds, Credits & Deductions, and Forms & Instructions. A search bar is located on the right side of the navigation bar. Below the navigation bar, there is a left sidebar with a list of links: The Tax Gap, Fact Sheets, IRS Tax Tips, e-News Subscriptions, IRS Guidance, Media Contacts, and IRS Statements and Announcements. The main content area is divided into two columns. The left column features a header image of stacks of US dollar bills and a section titled "Check Your Payment Status". Below this header, it instructs users to use "Get My Payment" to check their payment status and provides a list of actions: "Check your payment has been sent" and "Confirm your payment type: direct deposit or by mail". It also includes a section titled "Provide Direct Deposit Information" with text explaining that users can provide bank account information to receive payments by direct deposit. A blue button labeled "Get My Payment" is positioned at the bottom of this section. The right column features a header image of hands typing on a keyboard and a section titled "Non-Filers: Enter Your Payment Info Here". Below this header, it instructs users to use the "Non-Filers: Enter Payment Info Here" application if they are eligible for an Economic Impact Payment and lists eligibility criteria: "You are not required to file federal income tax returns for 2018 and 2019 for any reason including: Your income is less than \$12,200; You're married filing jointly and together your income is less than \$24,400; You have no income". It also includes "Do not" warnings: "Do not use this tool if you are required to file a 2018 or 2019 tax return; you should file your return electronically." and "Do not use this tool if you can be claimed as a dependent on someone else's return." A blue button labeled "Non-Filers: Enter Payment Info Here" is positioned at the bottom of this section and is circled in orange.

IRS File Pay Refunds Credits & Deductions Forms & Instructions Search

The Tax Gap

Fact Sheets

IRS Tax Tips

e-News Subscriptions

IRS Guidance

Media Contacts

IRS Statements and Announcements

Check Your Payment Status

Use "Get My Payment" to:

- Check your payment has been sent
- Confirm your payment type: direct deposit or by mail

Provide Direct Deposit Information

In certain situations, *Get My Payment* will give you the option of providing your bank account information to receive your Payment by direct deposit. For example, if your payment was sent by mail and the Post Office was unable to deliver it.

Use "Get My Payment" to enter your bank account information to get your payment through direct deposit.

[Get My Payment](#)

Non-Filers: Enter Your Payment Info Here

Use the "Non-Filers: Enter Payment Info Here" application if you are eligible for an Economic Impact Payment and:

- You **are not required to file** federal income tax returns for 2018 and 2019 for any reason including:
 - Your income is less than \$12,200
 - You're married filing jointly and together your income is less than \$24,400
 - You have no income

Do not use this tool if you are required to file a 2018 or 2019 tax return; you should file your return electronically.

Do not use this tool if you can be claimed as a dependent on someone else's return.

[Non-Filers: Enter Payment Info Here](#)

IRM 21.6.3.4.2.13 (8) – What is “the Portal”?

Individuals who don't normally file a return can use the Non-Filers Tool on irs.gov to register for an Economic Impact Payment.

The taxpayer will enter basic information, such as SSN, name, address, and number of dependents, which creates a basic 2019 Form 1040 filing. The Service will use this information to determine eligibility and calculate the payment.

For more info see:

<https://procedurallytaxing.com/what-is-this-thing-called-portal/> Nina Olson walks through the IRS portal and offers views on what it creates and what happens when taxpayers use it.

Marginalized & Vulnerable Disproportionately Left Out from EIP

43

IRS Has Paid 160 Million Stimulus Checks--but Marginalized and Vulnerable Americans Are Still Disproportionately Left Out

June 16,2020 by Gabriel Zucker, Tara Dawson McGuinness, and Nina Olson

<https://www.newamerica.org/public-interest-technology/blog/irs-has-paid-160-million-stimulus-checks-but-marginalized-and-vulnerable-americans-are-still-disproportionately-left-out/>.

Taxpayers are reporting that IRS is sending EIPs to illegitimate accounts, not belonging to the taxpayer.

These may be accounts of fraudulent filers who filed fraudulent 2018/2019 returns or unscrupulous tax return preparers who added preparer's direct deposit information to the return.

This is a form of financial abuse if perpetrated by a partner or former partner!

What to do if you think your EIP has been stolen as a result of identity theft:

- Complete and submit **Form 14039 to the IRS**
- Notate "EIP 2020" at top of form
- Problem: IRS campuses are not currently open which will delay the processing of these forms
- Initiate refund trace with the IRS, may require Form 3911, Taxpayer Statement Regarding Refund

- Tax clinics, legal aid organizations, and others are reporting situations in which domestic violence victims' EIPs are being deposited into accounts of abusive spouses/ex-spouses, to which the domestic violence victim does not have access. The abusers are refusing to return the portion of the EIP that belongs to the domestic violence victim.
- IRS, when using 2018 or 2019 returns to issue the EIP, may be issuing the EIP based on a joint return for a couple who is no longer together.
- IRS is issuing the EIP to the bank account listed on the tax return, and in situations in which there is more than one account listed (using Form 8888), IRS will issue EIP only to first account listed.
- IRS did not provide a way for taxpayers to edit banking information that IRS has on file, even in situations in which the taxpayers are now divorced.

- Domestic violence victims 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

If processed, results in both accounts adjusted to Married Filing Separately 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.

IRM 21.6.7.4.10 (July 22, 2019), Superseding Returns

- An amended (Form 1040-X) or corrected (duplicate) return filed on or before the due date or the extended due date is a superseding return.
- Correspondence postmarked on or before the due date or extended due date, requesting changes to tax returns, is processed as superseding information.
- Changes in irrevocable elections (e.g., Section 179, Joint to Separate)

How to file a Superseding Return?

- Superseding individual returns (Forms 1040) must be filed on paper and **mailed to an IRS processing center.**

[https://www.irs.gov/filing/where-to-file-paper-tax-returns-with-or-without-a-payment\](https://www.irs.gov/filing/where-to-file-paper-tax-returns-with-or-without-a-payment)

- Write in permanent marker ink on the top of the paper return **“Superseding Return”**
- Sample attachment language:

“Please be advised that this is my one and only true income tax return for tax year 2019. I have concerns that my husband may try to file a joint federal income tax return for tax year 2019 using my information without my consent.

Any joint federal income tax returns filed using my information for tax year 2019 should not be processed. It is not my intent to file a joint income tax return for tax year 2019.”

More Information on Superseding Returns

50

Keith Fogg outlines the basics of superseding original tax returns in the following blog post:

<https://procedurallytaxing.com/superseding-original-returns/>

Professor Bryan Camp's lessons from the Tax Court on the one return rule in his blog post here:

https://taxprof.typepad.com/taxprof_blog/2018/07/lesson-from-the-tax-court-the-one-return-rule.html

The National Taxpayer Advocate's Blog on the value of "superseding" returns and processing the additional \$500 benefit for certain non-filers here:

https://taxpayeradvocate.irs.gov/news/NTA_Blog_The_Value_of_a_Superseding_Tax_Return?category=Tax%20News

Nancy Rossner writes of another situation in which superseding returns might be considered.

<https://procedurallytaxing.com/this-tax-season-may-create-many-superseding-returns/>

Superseding Returns is not a Panacea

- A superseding return is generally a **paper return**. As a result of the IRS campus closures, if filed now it may sit in a truck until employees are able to open and process the mail.
- While it may be advantageous to the taxpayer to file the superseding return prior to July 15, its filing **may not generate a corrected stimulus payment to the taxpayer this year** unless the IRS agrees to issue a second round of payments.
- Consequences of filing a superseding return as MFS after a MFJ return is filed need to be considered carefully, it may not always be in the taxpayer's best interest to file a superseding return.
 - Example: MFJ return filed, refund issued including \$5,000 EITC. If superseding return filed MFS, no longer eligible for EITC. Both taxpayers may be held jointly liable for repayment of the EITC to the IRS.

Q26. 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?

A26. 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.

News release implies that 2 checks may be issued for the same child in different years.

Parents who are not married to each other and do not file a joint return cannot both claim their qualifying child as a dependent. The parent who claimed their child on their 2019 return may have received an additional Economic Impact Payment for their qualifying child. When the parent who did not receive an additional payment files their 2020 tax return next year, they may be able to claim up to an additional \$500 per-child amount on that return if they qualify to claim the child as their qualifying child for 2020.

IR-2020-93, May 11, 2020“

IV. Innocent Spouse Relief & Disclosure

Jill MacNabb, Senior Attorney Advisor, IRS Taxpayer Advocate Service

- IRC 6013(a): Married taxpayers may file joint returns
- Each spouse **individually** responsible for
 - Accuracy and completeness of the return
 - Payment of the tax

§ 6015(b): understatement relief

- no knowledge or reason to know of understatement when signing return

§ 6015(c): understatement relief

- no longer married
- legally separated
- not living together > 12 months

§ 6015(f): understatement **or** underpayment relief

- inequitable to hold the Requesting Spouse (“RS”) liable for unpaid tax **or** deficiency
- relief not available under 6015(b) or (c)
- Rev. Proc. 2013-34

- Return signed under duress invalidates joint election.
- To establish duress:
 - the taxpayer was unable to resist demands to sign the return; and
 - the taxpayer would not have signed the return except for the constraint applied by the other party. See, e.g. *Stanley v. Commissioner*, 45 T.C. 555 (1966); *Brown v. Commissioner*, 51 T.C. 116 (1968).
- IRM 25.15.1.2.3 (June 26, 2017), Return Signed Under Duress

IRM 25.15.1.2.4 (June 26, 2017), Forged Signatures

IRM 25.15.19.2.4.1 (Oct. 23, 2019) Tacit Consent Factors
Relevant factors include:

- Did the Requesting Spouse “RS” participate in the preparation of the return by providing return information such as Forms W-2 and/or Forms 1099?
- Was there a tax benefit to filing jointly, such as reduced income tax or Earned Income Tax Credit?

- Judicial doctrine recognizing an exception to the requirement that both spouses sign a joint return.
See, e.g, *Hennen v. Comm’r*, 35 T.C. 747 (1961)
- Used mostly in situations where one spouse signs a return for the other, and the other spouse later disputes the issue of joint and several liability for the deficiencies and penalties arising out of a purportedly joint tax return.
- *Okorogu v. Comm’r*, T.C. Memo. 2017-53. Intervening spouse innocent spouse case. (The court found there was tacit consent, thus a joint return, but taxpayer obtained innocent spouse relief, which the IRS was not opposing.)

- Treas. Reg. 1.6013-4(d)
- Internal Revenue Manual 25.15.1.2.3 (06/26/2017)
- To establish duress, must establish:
 - Taxpayer was unable to resist demands to sign the return and
 - The taxpayer would not have signed the return except for the constraint applied by the other party. See, e.g. Stanley v. Commissioner, 45 T.C. 555 (1966); Brown v. Commissioner, 51 T.C. 116 (1968).
 - The same reasoning should apply to a taxpayer who has been coerced into signing a joint return by a judge issuing a court order to do so, as failure to comply may result in facing penalties for contempt.

Treas. Reg. § 1.6015-6:

- IRS must notify the other spouse of the request for relief. There are no exceptions, even for victims of spousal abuse or domestic violence.
- The other spouse may submit any information that should be considered in determining whether relief should be granted. Upon the request of either spouse, the IRS will share with one spouse the information submitted by the other spouse, unless such information would impair tax administration.
- The IRS must inform the other spouse of its preliminary and final determinations.

- IRC § 6103(e)(1)(B): Upon written request, IRS must make joint return available for inspection or disclosure to either joint filer.
- IRC § 6103(e)(7); Permits anyone who is authorized to inspect a return to also receive return information related to the return without written request under IRC 6103(e)(1)(B) if the disclosure would not seriously impair federal tax administration.
- IRC § 6103(e)(8): if a deficiency has been assessed and joint filers are no longer married or no longer reside together, the IRS must disclose, upon request, whether the IRS has attempted to collect such deficiency from the other joint filer, the general nature of such collection activities, and the amount collected.

Per IRM 21.6.8.3, IRM 25.15.1.9.2, the IRS will not disclose:

- The other spouse's location;
- The other spouse's name change;
- The other spouse's telephone number;
- Information about the other spouse's employment, income or assets;
- The income level at which a suspended tax debt (CNC module) will be reactivated

V. Advice/Options available for Clients

All Panelists

- E-file single or head of household
 - If your client loses the “race to e-file”, consider paper filing a superseding tax return before deadline
- IRS ID Theft Line 1-800-908-4490
 - <https://www.irs.gov/newsroom/taxpayer-guide-to-identity-theft>
- Become a whistleblower. File **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. 3/2/2019
 - eg. false exemptions, false deductions, EIC, or “other”
- Maximize family court record (DV survivors usually keep some copies)
- Maximize IRS forms (conflicting “dueling” tax returns is not uncommon)
- **Form 3911** Refund Trace, *Taxpayer Statement Regarding Refund*

**If there's 1 point to remember
from this webinar, what would
it be?**

All Panelists

THANK YOU

Legal Aid, Social Workers, LITC, Pro Bono!

We're grateful to the **American Bar Association** and the **Section on Taxation** for providing the support for this webinar as well as for the other COVID-19 webinars the Pro Bono and Tax Clinics Committee has been able to offer in this time of crisis. Their support has ensured that tax attorneys continue to provide the best-informed legal assistance to clients most in need.

- 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

Injured Spouse Relief (Form 8379)

- Useful to spouse who has filed a joint return and had their share of refund taken to pay toward other spouse's individual debt (child support, student loan, etc.)
- Not useful if refund was applied to a joint debt of spouses.
- Not applicable if tax return did not generate a refund.
- Form 8379 can be filed with the joint return or by itself.
- A spouse can still go back and get their share of joint refunds for last 3 years using Form 8379.

THANK YOU

70

Legal Aid, Social Workers, LITC, Pro Bono!

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