

2020 TAX LEGISLATION: ADVANCE PAYMENTS OF RECOVERY REBATE CREDITS

Summary

Recovery Rebate Credits for 2020 will be advanced as immediate cash payments of up to \$1,200 for an eligible individual plus \$500 for a qualifying child. Almost everyone is an eligible individual, but the credit is phased out for higher-income taxpayers.

Background

Income tax credits normally reduce a taxpayer's income tax liability. Credits are generally claimed on the tax return for the year they arise; for example, a credit for 2020 is claimed on a 2020 tax return to reduce 2020 tax liability. A few credits that exceed tax liability, such as the Code Sec. 24 child tax credit, may be at least partially refundable.

New Law Explained

Immediate cash payments will distribute Recovery Rebate Credits of up to \$1,200 per adult, \$500 per child.

Eligible individuals are entitled to a Recovery Rebate Credit for their first tax year beginning in 2020 (Code Sec. 6428, as added by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136)). However, the government will make advance payments of the credit as soon as possible, with eligibility and credit amounts based on information from 2019 or 2018. The Recovery Rebate Credit is fully refundable, but it is phased out for higher-income taxpayers.

Credit Amounts and Phase-Outs

The maximum credit is:

- \$1,200 for each eligible individual (so \$2,400 for two eligible individuals who file a joint return), plus
- \$500 for each qualifying child (Code Sec. 6428(a), as added by the CARES Act).

The maximum credit amount is reduced (but not below zero) by five percent of the taxpayer's AGI that exceeds:

- \$150,000 for joint filers—so the \$2,400 credit phases out completely at \$198,000
- \$112,500 for a head of household—so the \$1,200 credit phases out completely at \$136,500
- \$75,000 for any other taxpayer—so the \$1,200 credit phases out completely at \$99,000 (Code Sec. 6428(c), as added by the CARES Act).

Once the credit for an eligible individual phases out, the \$500 credit for a qualifying child phases out with another \$10,000 in AGI over the threshold. For example, the total credit for an unmarried eligible individual with one qualifying child is \$1,700, which phases out completely once AGI hits \$109,000.

Example

Pat and Terry are eligible individuals who file a joint return and have two qualifying children.

- If Pat and Terry's AGI is \$198,000 or less, they are entitled to a \$3,400 advance payment
- (\$2,400 for the couple, plus \$500 for each child).
- If Pat and Terry's AGI is at least \$218,000, their advance payment is completely phased out.
- If Pat and Terry's AGI is more than \$198,000 but less than \$218,000, their \$3,400 advance payment is partially phased out. For example, if their AGI is \$205,000, their \$3,400 credit is reduced by \$350 $((205,000 - 198,000) \times 5\%)$.

The Recovery Rebate Credit is a fully refundable personal credit (Code Sec. 6428(b), as added by the CARES Act).

Eligible Individuals and Qualifying Children

Eligible individuals are all individuals other than:

- an individual who qualifies as another taxpayer's dependent for a tax year beginning during the
- calendar year in which the individual's tax year begins;
- a nonresident alien; or
- an estate or trust (Code Sec. 6428(d), as added by the CARES Act).

A qualifying child is the taxpayer's qualifying child for purposes of the Code Sec. 24 child tax credit (Code Sec. 6428(a)(2), as added by the CARES Act). Thus, a qualifying child:

- must be the taxpayer's child (including a stepchild, adopted child, or foster child) or sibling (brother, sister, stepbrother, or stepsister), or a descendant of the taxpayer's child or sibling;
- must be under age 17 at the end of the tax year;

- must be a U.S. citizen, national, or resident;
- must live with the taxpayer for more than half of the year;
- cannot provide over half of his or her own support for the year;
- cannot file a joint return for the year other than to claim a refund; and
- must be claimed as the taxpayer's dependent (Code Sec. 24(c)).

Identification Requirements

The tax return must include a valid identification number for each eligible individual and qualifying child. A valid ID number is generally a social security number (SSN) issued before the return due date to a U.S. citizen or a person authorized to work in the United States (see Code Sec. 24(h)(7)). However, an adoption taxpayer identification number (ATIN) may be used for a qualifying child who is adopted or is placed for adoption. A joint return generally must include SSNs for both spouses, but an SSN for just one spouse is sufficient if, at any time during the tax year, at least one spouse was serving in the Armed Forces of the United States (Code Sec. 6428(g), as added by the CARES Act). Any omission of a correct SSN is treated as a mathematical or clerical error for purposes of applying the definition of "mathematical or clerical error" to the omission (Code Sec. 6428(g)(4), as added by the CARES Act). It is also a mathematical or clerical error if a qualifying child is treated on the return as being an age that is different than the age indicated by the child's taxpayer identification number (TIN) (Code Sec. 6213(g)(2)(L), as amended by the CARES Act).

Comment

When a tax underpayment is due to a mathematical or clerical error, the IRS may summarily assess the liability without going through the usual deficiency notice procedures (Code Sec. 6213(b)(1)).

Advance Refunds of Credit

Although the Recovery Rebate Credit applies to the 2020 tax year, the government will issue advance refunds of the credit as quickly as possible, based on pre-2020 information.

The Treasury Secretary may certify and disburse advance credits electronically to any account that the payee authorized on or after January 1, 2018, to receive federal tax refunds or other federal payments via direct deposit. Disbursing officials may modify this information as necessary to facilitate the accurate and efficient delivery of the advance credits (Code Sec. 6428(f)(3), as added by the CARES Act).

The advance Recovery Rebate Credits are generally based on 2019 tax returns. A taxpayer who was an eligible individual for 2019 is treated as having made a tax payment for 2019 equal to the amount of his or her advance refund (Code Sec. 6428(f)(1), as added by the CARES Act). The advance refund amount is the amount that would have been allowed as a credit for 2019 if the Recovery Rebate Credit had applied to the 2019 tax year (Code Sec. 6428(f)(2), as added by the CARES Act).

Comment

Thus, the advance credit is based on AGI reported and qualifying children claimed on an eligible individual's 2019 return. In addition, if the taxpayer requested the direct deposit of a 2019 refund, the IRS may also make a direct deposit of the advance credit into that same bank account.

However, if an eligible individual has not filed a 2019 return by the time the advance credits are determined, the advance credit is based on the individual's 2018 tax return. If the individual has not filed a 2018 return by the time the advance payments are determined, the advance payment is based on information provided for calendar year 2019 in Form SSA-1099, Social Security Benefit Statement, or Form RRB-1099, Payments by the Railroad Retirement Board (Code Sec. 6428(f)(5), as added by the CARES Act).

Comment

Form SSA-1099 reports the amount of Social Security benefits an individual received, and Form RRB-1099 reports Social Security equivalent benefits that a railroad worker received. However, neither of these forms report Supplemental Security Income (also known as social security disability benefits). Thus, it appears that most retirees who did not file tax returns for 2018 or 2019 will receive advance payments, but nonfilers who received only SSI benefits in those years will not.

Although the advance credit is based on earlier tax returns, the Recovery Rebate credit actually applies to the taxpayer's first tax year beginning in 2020. The advance credit reduces the amount of the taxpayer's credit for the 2020 tax year, but not below zero. One-half of any advance payment or refund made on a joint return is treated on having been made or allowed to each spouse. Any failure to properly reduce the credit on a 2020 return is treated as a mathematical or clerical error and, thus, may be summarily assessed outside the normal deficiency procedures (Code Sec. 6428(e), as added by the CARES Act).

Caution

A failure to properly subtract the advance refund from the credit claimed on a 2020 return is a mathematical or clerical error assessed under Code Sec. 6213(b)(1) (Code Sec. 6428(e), as added by the CARES Act).

Gray Area

Since the credit on a 2020 return cannot be reduced below zero, it does not appear that taxpayers have to repay any of the advance credit if they would be entitled to a lesser credit based on their 2020 circumstances. For example, if a taxpayer receives a \$500 advance credit for a qualifying child based on a 2019 return, and the child turns 17 during 2020, it does not appear that the taxpayer has to repay any of the advance credit.

Similarly, it appears no repayment is required if the credit based on 2020 AGI is reduced or phased out, but the phaseout did not apply to the advance credit based on 2019 (or 2018) AGI.

No Recovery Rebate refund or credit may be made or allowed after December 31, 2020 (Code Sec. 6428(f)(3)(A), as added by the CARES Act).

Comment

A refund or credit is made or allowed on the date the IRS authorizes the scheduling of an overassessment (Code Sec. 6407). This generally occurs when the certifying officer signs Form 2188, Voucher and Schedule of Overpayments and Overassessments (S.J. Szopa, CA-7, 2000-1 *ustc* ¶150,284).

Coordination with the Code. Recovery Rebate credits and refunds may not be reduced or offset:

- under 31 USC Secs. 3716 or 3720A, which allow administrative offset and reduction of tax refunds to collect debts owed to federal agencies;
- under Code Sec. 6402(d), (e) or (f) (for debts owed to federal agencies, state income tax deficiencies,
- and unemployment compensation debts, respectively); or
- against other assessed federal taxes that would otherwise be subject to levy or collection (Act Sec.2201(d) of the CARES Act).

Comment

Thus, it appears that advance credits will be paid even if the eligible individual has an outstanding

tax deficiency. The Recovery Rebate credit is treated as a negative amount of tax for purposes of determining a tax deficiency, just like the Code Sec. 32 earned income credit and the refundable portion of the Code Sec. 24 child credit (Code Sec. 6211(b)(4)(A), as amended by the CARES Act).

Comment

Any overstatement of a negative tax results in a deficiency that is subject to the normal assessment procedures.

Gray Area

There does not appear to be any mechanism for treating the Recovery Rebate advance credits (or credits claimed on a 2020 return) as income.

Administration of Advance Credits. The Treasury Secretary is instructed to pay the advance credits as quickly as possible (Code Sec. 6428(f)(3)(A), as added by the CARES Act). No interest is allowed on any overpayment attributable to the credit (Code Sec. 6428(f)(4), as added by the CARES Act).

Within 15 days after the Secretary distributes an advance credit to an eligible taxpayer, notice of the payment must be mailed to the taxpayer's last known address.

The notice must:

- describe how the payment was made,
- specify the amount of the payment, and
- provide a phone number for an appropriate point of contact at the IRS for the taxpayer to report an unreceived payment (Code Sec. 6428(f)(6), as added by the CARES Act).

The Treasury Secretary (or delegate) is also instructed to conduct a public awareness campaign, in coordination with the Social Security Administration and other relevant federal agencies, to provide information regarding the credit and rebate, including information with respect to individuals who may not have filed a tax return for 2018 or 2019 (Act Sec. 2201(e) of the CARES Act).

The Treasury Secretary is instructed to provide regulations that are necessary to carry out the Recovery Rebate credit, including measures to avoid allowing multiple credits or rebates to a taxpayer (Code Sec. 6428(h), as added by the CARES Act).

U.S. Possessions. The U.S. Treasury will pay each mirror code possession an amount equal to that possession's loss caused by the Recovery Rebate Credit. The U.S. Treasury will also pay each non-mirror code possession the estimated amount of aggregate benefits that the Recovery Rebate credit would have provided to the possession's residents under a mirror code system, but the possession must have a U.S. Treasury-approved plan to promptly distribute the payments to residents (Act Sec. 2201(c)(1) of the CARES Act).

Comment

A mirror code possession determines the income tax liabilities of its residents as if the possession were the United States applying U.S. income tax laws (Act Sec. 2201(c)(3)). Mirror code possessions are the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands. Non-mirror code possessions are the Commonwealth of Puerto Rico and American Samoa.

Caution

A possessions resident who receives a credit, or a non-mirror code resident who is eligible for a payment under these rules cannot claim the Recovery Rebate credit on a U.S. income tax return (Act Sec. 2201(c)(2) of the CARES Act).

Comment

A prior version of IRC §6428, which provided a \$600 recovery rebate credit for 2008, was stricken by the Tax Technical Corrections Act of 2014 (P.L. 113-295).

Effective date. No effective date is provided by the Act. The provision is therefore considered effective on March 27, 2020, the date of enactment.

Law source: Law at ¶6220, ¶6230, ¶6250, and ¶7085.

Act Sec. 2201(a) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136)), adding Code Sec. 6428; Act Sec. 2201(b), amending Code Secs. 6211(b)(4)(A) and 6213(g)(2)(L).

Subject to Terms & Conditions: http://researchhelp.cch.com/License_Agreement.htm

