



AMERICAN CITIZENS ABROAD

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March 29, 2020

VIA EMAIL

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, United States Capitol
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20002

The Honorable Chuck Grassley
Chairman
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232, United States Capitol
Washington, DC 20515

We are writing on behalf of Americans Citizens Abroad, Inc. (ACA), a qualified section 501(c)(4) non-profit membership organization, and its sister-organization, American Citizens Abroad Global Foundation (ACAGF), a qualified section 501(c)(3) charity. ACA is a volunteer organization representing Americans living abroad. ACA and ACAGF are headquartered in Washington, DC. ACA has members in 70 countries and chapters in Geneva and London.

ACA is nonpartisan. It is not related to any political party or other political organization. Over 40 years, it has grown to be a premier advocate for Americans abroad, providing practical solutions and making sensible proposals. We advocate on a wide range of subjects that benefit our members, including proposals relating to nationality, voting, taxation, and social services. ACA seeks to educate and inform Congress and the Executive Branch on these issues and, more generally, developments affecting Americans abroad. Also, it disseminates a large amount of information to Americans living outside the U.S.

As a follow up to our [letter to your offices dated March 23, 2020](#), ACA would like to provide your offices with a memorandum discussing the tax provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES), which was signed into law last week. It is intended to inform Americans residing abroad and professional advisors, such as tax return preparers, who help



them. In addition, this memorandum is intended to assist Treasury Department, IRS and congressional staffs as they dig into the detailed workings of the new provisions and turn their efforts to implementation.

ACA is available to help the Congress and the Treasury Department, including all levels of the IRS, to make the coronavirus and economic stimulation legislation, and implementation of that legislation, work in the best possible way for Americans abroad and everyone else.

We would be pleased to answer any questions with regard to these subjects, and we would be pleased to provide whatever additional information might be helpful.

Kind regards.

Marylouise Serrato, Executive Director, American Citizens Abroad, Inc.

Jonathan Lachowitz, Chairman, American Citizens Abroad, Inc.

Charles Bruce, Chairman, American Citizens Abroad Global Foundation

CC: Carolyn Maloney, Co-Chair of the Americans Abroad Caucus

Mark Meadows, 2019 Co-Chair of the Americans Abroad Caucus/Current White House Chief of Staff

Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation

Mark Warren, Majority Staff, Senate Committee on Finance

Tiffany Smith, Chief Tax Counsel, Minority Staff, Senate Committee on Finance

Jonathan Goldman, Senior Tax Counsel, Minority Staff, Senate Committee on Finance

Andrew Grossman, Chief Tax Counsel, Majority Staff, House Ways and Means Committee

Randell J. Gartin, Chief Tax Counsel, Minority Staff, House Ways and Means Committee

Krishna Vallabhaneni, Tax Legislative Counsel, Department of the Treasury



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AMERICAN CITIZENS ABROAD, INC.

PAYMENT OF 2020 RECOVERY REBATES TO INDIVIDUALS ABROAD

March 27, 2020

This memorandum discusses the tax provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES), signed into law today. It is intended to inform Americans residing abroad and professional advisors, such as tax return preparers, who help them. In addition, this memorandum is intended to assist Treasury Department, IRS and congressional staffs as they dig into the detailed workings of the new provisions and turn their efforts to implementation.¹

ACA² is very well acquainted with the population of Americans abroad, which it has represented for 40 years. It is also intimately familiar with the expat tax preparer community, having published for over six years the ACA Expat Tax Preparer Directory. <https://acareturnpreparerdirectory.com/>.

Overview of Recovery Rebates

2020 Recovery Rebates, mandated by the Coronavirus Aid, Relief, and Economic Security Act (“CARES” Act; P.L. 116-136), are to be allowed as a credit against income tax.³ The amount is \$1200 (\$2400 in the case of eligible individuals filing a joint return), plus \$500 per qualifying child. The credit is treated as a refundable amount under subpart C, part IV, subchapter A, chapter 1. Subpart C (Refundable Credits) contains sections 31-37 of the Internal Revenue Code. The credit is available on an advance basis, that is, a tax return for the applicable period need not have been filed.⁴ CARES adds to the Internal Revenue Code new section 6428 (2020 RECOVERY REBATES FOR INDIVIDUALS).

There are limitations based on adjusted gross income (AGI). These function to phase out the credit (payment) as adjusted gross income climbs above \$150,000, in the case of a joint return, \$112,500, in

¹ This Memorandum was written by Charles M. Bruce, Chairman, American Citizens Abroad Global Foundation, and Legal Counsel, American Citizens Abroad, Inc. Contributions were made by Marylouise Serrato, Jonathan Lachowitz, Glen Frost, Julie Sanford, and Guillaume Grisel. Mr. Bruce is solely responsible for any errors. Comments, questions and corrections, all of which will be greatly appreciated, should be directed to him at charles.bruce@americansabroad.org.

² American Citizens Abroad, Inc. (“ACA”) is a membership organization incorporated as a nonprofit organization under the laws of the State of Delaware. It is an exempt social welfare organization (I.R.C. § 501(c)(4)). Alongside it is American Citizens Abroad Global Foundation (“ACAGF”), which is a publicly-supported charity (I.R.C. § 501(c)(3)). ACA and ACAGF favor a balanced approach to subjects, supporting efforts that provide tangible results. Both are nonpartisan. They do not support or campaign for any candidates. Neither provides tax, legal, accounting, or investment advice.

³ Title II, Subtitle B deals with rebates and other individual provisions. Subtitle C deals with many important business provisions. Both subtitles are embedded within an 880-page Act.

⁴ There is precedence for this type of refundable advance credit in the health coverage tax credit provisions. See Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107-16, enacting I.R.C. section 6428 (repealed effective December 19, 2014). Procedurally Taxing Blog, <https://procedurallytaxing.com/about-the-blog/>.



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the case of a head of household, and \$75,000 with respect to other taxpayers. The amount of the credit is reduced by 5% of so much of the taxpayer's adjusted gross income as exceeds the stated amounts. It follows that the credit is completely phased-out for a single filer when AGI exceeds \$99,000 and, for joint filers with no children, when AGI exceeds \$198,000. For a head of household with one child, the credit is completely phased out when AGI exceeds \$146,500.

"Eligible individual" means any individual other than a nonresident alien individual, an individual treated as a dependent, and an estate or trust. A so-called US "green card holder", whether or not living in the US, should be eligible. Individuals who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs such as SSI benefits, are eligible for the credit and the advance rebate. If an individual was not eligible in 2019 but became eligible in 2020, it is believed the IRS will not send an advanced rebate to such individual because advance rebates are generally based on information in the 2019 return. The individual, however, should be able to claim the credit when filing his or her 2020 return.

In order to make the advance refund and credit mechanism function properly, each individual who was an eligible individual for 2019 will be treated as having made a tax payment equal to the advance refund amount, whether or not this is in fact the case. The advance refund amount is that amount that would have been allowed as a credit if these rules applied to that year, say, 2019. The Act states that Treasury Department/IRS shall make the refund or credit as rapidly as possible but no later than December 31, 2020. Interest will not accrue on any payment.

Put simply, the coronavirus recovery rebate or credit is technically for 2020, but the new provisions treat it as an overpayment for 2019, which will be rebated as soon as possible during 2020.

In the case of an individual who at the time a determination of the advance refund payment is made has not filed a tax return for 2019, 2018 will be substituted for 2019. If an individual has not filed a tax return for 2018, information provided in Form SSA-1099s (Social Security Benefits Statement) can be used to determine the payment.

Not later than 15 days after date of distribution (by electronic funds transfer or check), the recipient should be sent by mail to his or her last known address a notice of method of payment, amount of payment, and an IRS contact phone number, which can be used to report any failure to receive payment.

This notice requirement will be almost impossible to meet for notices sent to Americans abroad in many locations. A written notice mailed to someone, for example, living in Istanbul or Addis Ababa is unlikely to arrive within 15 days. A mechanism for giving notice via secure electronic means can be expected. The IRS has wide experience with this type of thing, for example, with exchange of information in conformance with FATCA procedures.

No credit (payment) will allowed to an eligible individual who does not include on his or her tax return such individual's valid identification number (Social Security Number). Generally speaking, a Social Security number is issued by the Social Security Administration to a US citizen or to an alien who is



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eligible to be employed in the US. The Social Security number (“SSN”) must have been issued by the due date of the return. A credit (payment) made without a valid SSN will be treated the same as an erroneous refund, which can be recouped as if the recipient were wrongfully in possession of government funds.

Other special rules apply to, among other things, certain retirement account funds and minimum distributions from certain retirement plans and accounts. For example, the provision which requires a retirement plan or IRA owner to take required minimum distributions annually once the owner reaches age 72 is waived. Careful attention must be paid to the details.

Background

American citizens abroad, it is estimated, include approximately 5 million U.S. taxpayers. Many of these, while they might have some adjusted gross income, do not pay tax because they have large foreign tax credits. Or, as in the case of many retired individuals living abroad, their income may not rise to the level that requires the filing of a tax return. There is a significant population of Americans abroad who receive Social Security payments.⁵ Many Americans abroad do not maintain a US residence. They might file using their foreign address or, rightly or wrongly, they might use the address of their U.S. return preparer or another family member. Some utilize a mail forwarding or virtual office service.

There is a significant number of non-filers living abroad, estimated to be approximately 1.6 million.

A significant number of Americans abroad are in the process of becoming compliant, typically by making a streamlined voluntary disclosure.

ACA estimates that a greater percentage of Americans abroad file paper returns than file electronically, when compared to their resident-in-the-US counterparts. This is believed to be partly because many of those that utilize the services of a professional, such as an enrolled agent, experience difficulty having the enrolled agent make an electronic filing on their behalf. This might be the case if the enrolled agent is not a US individual and therefore does not have a US Social Security number.

The IRS’s dealing with Americans abroad by means of the mail, and vice versa, is fraught with difficulties.⁶ Mail service to many foreign jurisdictions is unreliable. It can take a great deal of time. Things can get lost. Mailings are subject to security risks. In the midst of a pandemic, mailings can carry with them health risks. Mailings are also expensive.

⁵ Reportedly, over half a million people who live outside the United States receive some kind of Social Security benefit, including retired and disabled workers, as well as spouses, widows, widowers, and children. This information is dated 2016.

⁶ Problems with the IRS mailing items overseas to US taxpayers have cropped up in a number of contexts including collection activities and enforcement. Taxpayers are sometimes unaware the fact that the IRS is taking actions directed at them.



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Issue

How can payment of 2020 recovery rebates be made absent the mailing of paper checks?

1. Electronic transfers made in the same way as payment of refund amounts. If an individual files a tax return and requests that the amount of overpayment be refunded by means of Direct Deposit, this is typically done quickly and efficiently. The taxpayer designates on his or her Form 1040 or Form 1040 EZ or Form 1040-SR Direct Deposit as a refund method. The taxpayer provides information about routing number, account number and type of account, such as, checking or savings. See 2018 Form 1040, Lines 20a-d. If the taxpayer wants to split the payment among accounts, Form 8888 (Allocation of Refund (Including Savings Bond Purchases)) must be filed. The IRS, in effect, can identify the taxpayer from his or her tax return. It can see in his or her tax file the individual's name, tax ID number, address, and other pertinent information, such as, filing status and adjusted taxable income. With this, the Service can easily look at his or her tax transcripts or, if necessary, actual returns.

If it is required that the individual filed a tax return in 2019 or 2018 and, on that tax return, that he or she requested electronic refund by Direct Deposit (by necessity, this would have had to have been directed to a US account), a very small percentage of Americans abroad would be able to utilize this approach. The "speed bumps" are: The requirement that there be a tax return that set up Direct Deposit and, embedded in the first "speed bump", the requirement that the taxpayer have a US bank account.

If the US citizen abroad is facing the second "speed bump" – no US bank account, ACA recommends that he or she quickly open an ACA-enabled SDFCU account. First step is to join ACA and pay a tiny membership fee: \$70 regular; \$55 senior. As an ACA member, he or she can immediately click over and open a SDFCU account. There is no account-opening fee or minimum deposit for the SDFCU account. Everything can be done online. It can be done in one session. Note: If his or her return preparer is listed in the ACA Expat Tax Preparer Directory, the ACA membership fee may be discounted. Most importantly, by joining ACA, she is helping support the push to switch from citizenship-based taxation to residency-based taxation. This subject is 100 times more important than claiming the coronavirus tax rebate/credits.

2. The taxpayer, an American citizen abroad, could quickly file his or her 2019 return and on that return request direct deposit of a refund amount to his or her US account. However, many US taxpayers do not file a US tax return, typically because they do not have an amount of income which necessitates filing a return. Nonetheless, even if for whatever reason they do not owe tax, they might quickly, before the IRS makes a determination of advance refund payments, file a Form 1040 showing amount owed of zero and coronavirus recovery rebate/credit of whatever it is, say, \$1,200. Taxpayers choosing this route probably should act as quickly as possible. It might be made clear that taxpayers will have until, say, the extended due date for 2020 returns, July 15, to do this.⁷ Taxpayers intending to use a professional preparer might be well advised to communicate with that preparer sooner rather than later, as preparers are finding themselves jammed with work.

⁷ IR-2020-58, March 21, 2020. <https://www.irs.gov/newsroom/tax-day-now-july-15-treasury-irs-extend-filing-deadline-and-federal-tax-payments-regardless-of-amount-owed>.



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ACA publishes an online Directory of return preparers. Taxpayers can search for a qualified preparer, look at the preparer's qualifications and location, perhaps "shop around", and get contact information. Other helpful information is posted on the Directory website. <https://acareturnpreparerdirectory.com/>. Some professional advisors listed in the Directory offer discounted membership in ACA and, through this membership, quick and easy access to an SDFCU account. The SDFCU account, which can be opened entirely online in one session, might then be used to receive coronavirus recovery rebates.⁸ A qualified professional advisor can help do all this. *See above*. Go to <https://www.americansabroad.org/sdfcu-account/>.

3. Taxpayers can e-file, that is, file electronically. This can be done using IRS Free File if the individual's adjusted gross income is \$69,000 or less or by using Free File Fillable Forms. Following either of these routes, the taxpayer can request Direct Deposit. The workings of this if the taxpayer shows zero amount overpaid, and thus nothing to be refunded, should be tested, as the workings of the 2020 coronavirus recovery rebates are spanking new.

It may be that the online processes balk with a "zero" return. If this is the case, ACA submits that the problem should be immediately fixed by the Service to permit filing a zero return as a means of setting up Direct Deposit for recovery rebates/payments. Such a "fix" should be possible.

4. It might be possible to modify commercial tax preparation software to facilitate the filing of 2019 or 2018 tax returns which designate Direct Deposit. This may be possible, but it almost certainly would require the existence of a US bank account.

Additional Thoughts

1. The Service should immediately review its data on American taxpayers overseas. ACA believes that Treasury Department does not have good baseline data on, *e.g.*, number of Americans residing abroad, number of these who are taxpayers; number of these who are filing income tax returns and FBARS; number of these filing paper returns as opposed to electronic filing; number of these utilizing Direct Deposit for refund payments; number of these using professional return preparers; number of professional return preparers used who are able to assist with electronic filing/electronic refunds. Without accurate, up-to-date baseline information, it is difficult to design programs and make plans.

At a hearing before the House Ways and Means Committee in May 2019, in response to a question by Congressman Holding (R-NC), the Chief Research and Analytics Officer of the IRS, Benjamin Herndon, said that the IRS does not know the number of filers and non-filers who are resident abroad and it does not have data on these people. It seems likely that the Service, in the interim, has dug into this subject.

⁸ See Expat Tax Services Directory FAQ (<https://acareturnpreparerdirectory.com/faq>), in particular "Choosing an overseas tax return preparer – what do expats need to know?" Also, more generally, look at IRS website landing page – "Things to think about when choosing a tax preparer." <https://www.irs.gov/newsroom/things-to-think-about-when-choosing-a-tax-preparer>.



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2. ACA believes that a significant majority of Americans abroad facing the new rules, including extended filing dates, and wanting to receive their 2020 recovery rebates/credits as soon as possible, will use professional advisors to help them. As noted, ACA is very familiar with this population of advisors. This population includes return preparers – CPAs, other accountants, enrolled agents, others. There is probably no better or more targeted means for reaching preparers working with American taxpayers abroad than through this Directory. (Just in the short time since work on the coronavirus legislation began, many individuals have come to ACA, via its main website and the website for its Directory, looking for information.)

3. ACA believes that it has the most complete set of data concerning Americans abroad apart, from Joint Committee on Taxation-Congress, Office of Research, Analysis and Statistics-Internal Revenue Service and Office of Tax Analysis-Treasury Department. In 2017, ACA, with its independent contractor, District Economics Group, compiled data, much of it unique, to allow an analysis of the effects of switching from citizenship-based taxation to a residency-based taxation. This data included, among other things, estimates of all US citizens resident overseas, such residents on tax returns reporting foreign earnings, such residents not reporting foreign earnings, and US non-filers. This work was done in mid-2017 and based primarily on 2011 data. Some estimates were constructed by DEG from information about US citizens resident abroad sourced from 2010 census information, European Commission Eurostat and European governments.

4. Internet searches disclose a large number of persons offering help opening US bank accounts. Many of these, in our view, are questionable. This is an area that is subject to abuse. Some sites have been closed.

5. Taxpayers frequently confuse Direct Deposit with Direct Pay and Electronic Federal Tax Payments System (EFTPS). As for EFTPS, an individual can use this service, or a return preparer might use it on behalf of the individual. EFTPS requires that the payor preregister, that is, enroll as an individual. Enrollment can take up to five business days to process. It is a service provided by the US Department of Treasury. The payor must enroll. Information provided by the payor must be validated by the IRS. Online registration is followed by physical mail sent to the address provided during registration. The mail includes verification of the bank account for the debiting of payments and a unique personal identification number (PIN). After this process is completed, the payor will receive a PIN via US mail. Payments can be made by the individual taxpayer or a tax professional can make tax payments on behalf of the taxpayer. Note this is a system for making payments, not receiving payments. EFTPS users have been targeted by phishing scams attempting to obtain the user's PIN. Concerning Direct Pay, it is a service used to make tax payments. This is done through an IRS website determining the reason for your payment and then, where appropriate, leading you through a series of steps. The payment will come out of your designated account. The IRS will use information from one of your prior six processed tax returns to identify you, the payor. Payments cannot be made using a so-called international bank account; it requires a US bank routing number. As opposed to EFTPS, Direct Pay does not require a separate registration process. ACA believes that neither EFTPs nor Direct Pay are well suited for Americans abroad.