

IRS explains how individuals who don't have to file for 2007 should file for a rebate

Notice 2008-28, 2008-10 IRB

IRS has issued a notice explaining what individuals not otherwise required to file an income tax return for 2007 must do to receive an economic stimulus payment or rebate as it is commonly called. Basically, the individual must file a return containing certain information, as explained below.

Background. The Economic Stimulus Act of 2008 amended Code Sec. 6428 to provide economic stimulus payments to eligible individuals. For this purpose, an eligible individual is any individual other than a nonresident alien, an estate or trust, or an individual who can be claimed as a dependent under Code Sec. 151 for the tax year. Code Sec. 6428(g) authorizes advance refunds and credits of the economic stimulus payments to be made in 2008.

In general, the amount of the 2008 economic stimulus payment is the lesser of: (1) the individual's net income tax liability for 2007, or (2) \$600 (\$1,200 in the case of a joint return). However, as provided in Code Sec. 6428(b), an individual (or married couple filing jointly) with at least \$3,000 of "qualifying income" in 2007 may receive a minimum payment of \$300 (\$600 in the case of a joint return), even though the individual (or married couple) has no net income tax liability for 2007. Qualifying income for this purpose means:

- ... earned income includible in gross income for federal income tax purposes;
- ... social security benefits (including monthly retirement, survivor and disability benefits, but not including supplemental security income (SSI) payments) and Tier 1 railroad retirement benefits described in Code Sec. 86(d); and
- ... any compensation or pension received under chapter 11 (compensation for service-connected disability or death), chapter 13 (dependency and indemnity compensation for service-connected deaths), or chapter 15 (pension for non-service-connected disability) of title 38, U.S. Code.

Filing mandatory to get rebate. In order to receive an economic stimulus payment in 2008, an eligible individual must file an income tax return for 2007. Most eligible individuals are required by Code Sec. 6012(a) to file an income tax return because their gross income for 2007 exceeds the sum of their exemption amount plus the applicable standard deduction, or are required by Code Sec. 6017 to file an income tax return with respect to self-employment tax on net earnings from self-employment of \$400 or more. Additionally, some eligible individuals who are not required by Code Sec. 6012(a) or Code Sec. 6017 to file an income tax return nevertheless file to obtain refunds of tax withheld on wages.

Eligibility for a rebate and its amount are based on information reported on the taxpayer's filed income tax return for 2007. (Code Sec. 6428(g)) Thus, individuals who are required to file an income tax return, or who file to obtain a refund of withheld tax, will not need to file any extra forms or call IRS to request the payment in 2008.

RIA caution: An individual who already filed to claim a refund of withheld tax may have to file an amended return if the original return didn't show at least \$3,000 of qualifying

income. For example, assume an individual collecting social security benefits already filed to get a refund of tax withheld on \$2,900 of wages. If he did not show social security benefits on the original return, he should file an amended return showing the social security benefits to ensure that he will get the minimum stimulus payment.

Many individuals with low earned income or other qualifying income (as defined above) may not be required to file an income tax return and may not need to file an income tax return to receive a refund of withheld taxes. Notice 2008-28 tells these individuals how they must file a 2007 return in order to get their economic stimulus payment in 2008.

Why is filing required. IRS observes that Code Sec. 6428(g)(1) treats an eligible individual as having made a payment in 2007 against the income tax in an amount equal to the amount of the economic stimulus payment. Thus, the amount of the 2008 economic stimulus payment is treated as an overpayment of tax for 2007 which, as provided in Code Sec. 6428(g)(3), IRS is directed to refund or credit to the eligible individual.

Code Sec. 6402 and Reg. § 301.6402-3 authorize taxpayers to seek a refund or credit of overpaid income tax by filing a properly executed individual income tax return.

Simplified filing requirement. For eligible individuals (or married couples filing jointly) who are not required to file an income tax return, but who had qualifying income in 2007 that equals or exceeds \$3,000, IRS will treat a Form 1040A for 2007 prepared in the manner shown below as a valid claim for refund in the amount of the 2008 economic stimulus payment. Eligible individuals should:

... Write the words "Stimulus Payment" in the blank space at the top of page 1 of Form 1040A above the title of the form.

... Enter names, mailing address, and social security numbers on the appropriate lines of Form 1040A and enter filing status and exemption information on lines 1 through 6d of the form.

RIA observation: Entering exemption information for children is extremely important because the payment amount is increased by \$300 for each qualifying child. This and other aspects of the stimulus payments, such as the rule that reduces or eliminates payments for higher income individuals, are discussed in detail at Weekly Alert ¶ 14 2/14/2008 .

... Enter wages and other compensation (including net earnings from self-employment) received in 2007 on line 7 of Form 1040A.

... Enter qualifying income received in 2007 in the form of social security benefits, Tier 1 railroad retirement benefits and certain veterans' disability or survivor benefits on line 14a of Form 1040A. Individuals who do not have documentation of the exact amount of these government-provided benefits may estimate their annual benefit by multiplying their monthly benefit, before any deductions for withheld taxes or Medicare premiums, by the number of months during 2007 that they received the benefit.

... If they are members of the U.S. Armed Forces, enter any nontaxable combat zone compensation received in 2007 that they elect to treat as earned income on line 40b of Form 1040A.

... Complete lines 44b through 44d of Form 1040A if they want to request direct deposit of their economic stimulus payment into their account at a bank or other financial institution.

... Sign and date the form under the penalties of perjury statement, and enter the identifying information of any third party designee or paid preparer, if applicable, at the bottom of page 2 of Form 1040A.

Based on the information provided on Form 1040A, IRS will compute the amount of the stimulus payment that will be refunded or credited.

RIA observation: Many practitioners may have clients with parents, aunts, uncles or other elderly relatives or friends who aren't required to file a return for 2007 but who had qualifying income of at least \$3,000 for that year. As a goodwill gesture, practitioners may want to point out to their clients that their parent or other elderly relative or friend must file to get a stimulus payment.

RIA observation: There may be a good number of elderly individuals who normally don't file and who will qualify for a stimulus payment, but due to illness and confinement in a nursing home or other institution, may not have the mental capacity to prepare and submit a return to get a payment. In such cases, a relative or friend may have to file the return for the elderly person. Presumably, the relative or friend would need a power of attorney to file the special Form 1040A.

RIA observation: An individual without a regular filing obligation who had at least \$3,000 of qualifying income in 2007 may have since died in 2007 or this year. It should be possible to get a rebate for that individual's estate by filing a Form 1040A for 2007 in the manner described above. Generally, a person who is filing a return for a decedent and claiming a refund must file Form 1310 with the return. However, if the person claiming the refund is a surviving spouse filing a joint return with the decedent, or a court-appointed or certified personal representative filing an original return for the decedent, Form 1310 is not needed. The personal representative must attach to the return a copy of the court certificate showing that he or she was appointed the personal representative.
