Dear Commissioner Rettig:

Enclosed please find initial recommendations regarding the delivery of the economic impact payments authorized in the CARES Act to low-income and vulnerable individuals. These comments are submitted on behalf of the Section of Taxation and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

The Section of Taxation would be pleased to discuss these comments with you or your staff.

Sincerely,

Tom Callahan
Chair, Section of Taxation

Enclosure
INITIAL RECOMMENDATIONS ON DELIVERING ECONOMIC IMPACT PAYMENTS TO LOW-INCOME INDIVIDUALS

These comments (“Comments”) are submitted on behalf of the American Bar Association Section of Taxation (the “Section”) and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Christine Speidel. Substantive contributions in drafting these Comments were made by Maria Dooner. These Comments were reviewed by Lisa Zarlenga of the Committee on Government Submissions, Sheri Dillon, the Vice Chair for Pro Bono and Outreach for the Section, and Eric B. Sloan, Vice Chair for Government Relations for the Section.

Although members of the Section may have clients who might be affected by the federal tax principles addressed by the Comments, no member who has been engaged by a client (or who is a member of a firm or other organization that has been engaged by a client) to make a government submission with respect to, or otherwise to influence the development or outcome of, one or more specific issues addressed by the Comments has participated in the preparation of the portion (or portions) of the Comments addressing those issues. Additionally, while the Section’s diverse membership includes government officials, no such official was involved in any part of the drafting or review of the Comments.

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Date: April 13, 2020
These Comments respond to the request by the Department of Treasury (“Treasury”) and the Internal Revenue Service (the “Service”) for input regarding tax-related issues arising as a result of the coronavirus disease 2019 (“COVID-19”) emergency. Specifically, these Comments highlight time-sensitive actions that we believe would help a large number of intended beneficiaries of the economic impact payments (“EIP”) to access stimulus funds. We applaud the Service’s efforts to reach out to low-income individuals and members of vulnerable groups most likely to benefit from the EIP provided by Congress in the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”).\(^1\) The Section is committed to using its networks and those of its members to help the Service advise the public on how to access these EIPs. We also stand ready to motivate our national network of volunteers and tax practitioners to assist these groups in accessing the EIPs.

We understand the immense challenge of reaching and assisting the various categories of low-income individuals who do not have a filing requirement. Increasing the number of these low-income individuals receiving the EIP automatically – as they do other federal benefits – will reduce the number of intended beneficiaries who fail to claim this crucial economic assistance. Therefore, we write to encourage Treasury and the Service to exercise their authority under the CARES Act to issue payments directly to more beneficiaries of federal government assistance programs.

We intend to provide additional comments in separate letters, including comments on implementation of the stimulus legislation, as well as comments regarding procedural challenges and barriers facing specific groups of individuals, such as people who have experienced domestic violence.

I. Background

A. Current Law on Issuance of 2020 Recovery Rebates

Section 2201 of the CARES Act allows a credit against tax for taxable year 2020 that will be issued to eligible individuals in the form of an advanced refund or EIP. The amount and eligibility for this refund will be based on a taxpayer’s 2019 tax return. If, however, a tax return has not been filed for taxable year 2019, the Secretary may base the issuance of a refund on a taxpayer’s 2018 tax return, and, if a 2018 tax return has not been filed, then the Secretary may utilize information in the 2019 Form SSA-1099 (Social Security Benefits Statement) or 2019 Form RRB-1099 (Social Security Equivalent Benefits Statement). This covers recipients of old-age, survivors, and disability insurance (“OASDI”) benefits from the Social Security Administration (“SSA”), as well as recipients of railroad retirement benefits (“RRB”), who may not have a filing obligation.

B. Impact of Law on Specific Vulnerable Individuals

Although the CARES Act facilitates the receipt of the EIP for many taxpayers, it presents challenges to some individuals who are most in need of economic assistance, have not filed a 2018 or 2019 return, and do not receive OASDI or RRB benefits. This may include individuals:

1. Who receive Supplemental Security Income (SSI) or assistance through the Veterans Benefits Administration (VA benefits);
2. Who subsist on state-administered benefits such as Temporary Assistance to Needy Families; or
3. With earned income less than the filing threshold.

These individuals are among the most vulnerable to the COVID-19 pandemic and potential fraud and scams. The challenges faced by these individuals have been compounded by the fact that most Volunteer Income Tax Assistance (“VITA”) sites and all AARP Tax Aide sites have closed, are attempting to transition to a virtual model, and will be struggling to serve all those with a filing requirement this tax season.

We appreciate the tremendous effort that the Service undertook to quickly establish an online portal to allow non-filers to request the EIP. However, there are some remaining issues that the portal does not address; specifically, many of these individuals may: (1) not have access to the internet or assistance to claim the EIP; (2) be victimized by unscrupulous tax preparers who charge high fees (diluting the effect of the EIP in offering assistance to this population); and/or (3) have to pay exorbitant fees imposed by check cashing services (also diluting the effect of the EIP). As discussed below, to address these issues, we respectfully recommend that Treasury and the Service:

• Automatically issue the EIP to SSI and VA beneficiaries;
• Allow SSI and VA beneficiaries to update their information via the online portal for non-filers after issuance of the EIP;
• Encourage the use of no-fee debit card deposits for individuals who do not have bank accounts;
• Take further steps to ensure the EIP reaches vulnerable individuals; and
• Provide guidance and additional support to VITA sites and other volunteers.

These recommendations are discussed below.

II. Recommendations

A. Automatically Issue the EIP to SSI and VA Beneficiaries

We recommend that the Service automatically issue the $1,200 EIP to SSI and VA beneficiaries (after coordinating with its sister federal agencies). These beneficiaries are already
required by Treasury to receive federal benefits electronically; therefore, we recommend that the Service use the beneficiary’s existing payment method to deliver the EIP as quickly as possible.

We recognize the challenges involving household composition and making qualifying child (“QC”) classifications under the Internal Revenue Code when it comes to determining whether an eligible individual is entitled to an additional EIP under the CARES Act. However, delivering the basic EIP to these individuals, without any affirmative action required on their part, is crucial for reaching these vulnerable populations. If individuals who do not normally file a tax return must affirmatively request an EIP, the intended beneficiaries may have to wait a long time to receive the EIP, and others may never receive it. The automatic issuance of the EIP to the SSI and VA beneficiaries will allow VITA and other volunteers to focus their limited resources on individuals who are required to file a tax return. It will also ease the burden on the Service to conduct a public outreach campaign about the EIP to these populations.

While this is not a perfect system because some SSI and VA beneficiaries might have QCs and not realize they could get more stimulus assistance by claiming them, we believe it is the most efficient way to deliver an influx of cash to people who might have new expenses resulting from the COVID-19 pandemic. These individuals would at least be sure to get $1,200 and can later request the additional payments for their QCs via the online portal like OASDI and RRB beneficiaries have been instructed to do in the instructions accompanying the new non-filer portal.

B. Encourage the Use of No-Fee Debit Card Deposits for Unbanked Individuals

Having the ability to receive an EIP via direct deposit is particularly important during the COVID-19 pandemic, and we appreciate that the Service is encouraging individuals for whom the Service has no banking information to provide this information via the Service’s online portal. However, low-income and vulnerable individuals who do not have bank accounts might have no choice but to receive the EIP via paper check. Not only will this delay the receipt of the EIP, but it will also result in increased travel to check cashing services for the unbanked, which presents a health and safety risk during the pandemic.

To the extent possible, we recommend that the Service promote and encourage eligible individuals to receive the EIP on no-fee debit or cash cards, which they can use directly for necessary items like groceries or prescriptions. If the deposits could be made to a government benefits card, like Direct Express or unrestricted electronic benefit transfer (EBT) cards, the intended recipients would receive the benefits immediately, and this approach would also avoid unintended recipients from intercepting receipt of the EIP.\(^2\) Regardless of the delivery mechanism, it should be accessible and favorable to this population.

\(^2\) As the Center for Budget and Policy Priorities has noted, Section 6248(f)(3)(B) of the CARES Act authorizes the electronic delivery of EIPs into any account to which the payee authorized the delivery of any federal payment under 31 U.S.C. 3332(j)(3)(C). The term “federal payment” could be read naturally to include SSI, VBA, and benefits paid on an EBT card.
C. Take Further Steps to Ensure EIP Reach the Intended Beneficiaries

Individuals facing homelessness, housing instability, or domestic violence will struggle to receive stimulus checks through the mail. As mentioned in section B above, avoiding paper checks is the most reliable way to reach these individuals. When that is not possible, we recommend the Service take special steps to ensure vulnerable individuals receive the EIP. First, we applaud the Service’s plan to create a separate online process for stimulus recipients to provide their direct deposit bank information to receive their EIP.\(^3\) We encourage the Service to expand this system to accept mailing address changes for those who have filed tax returns in 2018 or 2019, or who receive federal government benefits but cannot receive the payment electronically. While most taxpayers who have already filed a tax year 2019 return will likely have the same address, the population we are concerned about often have sudden address changes and the pandemic has caused many people to change locations. This is particularly true for people facing domestic violence and housing instability.

Second, some vulnerable individuals will not be aware of or able to access the online option to enter direct deposit information or change an address. While the Section and many other volunteers intend to assist as many of these individuals as possible by helping them to utilize the online tools the Service has established, volunteers will not be able to reach everyone. Also, the online tools currently require taxpayers to provide an email address, which some low-income individuals lack, particularly in the elderly and homeless communities. Therefore, we encourage the Service to utilize the various approaches outlined in Internal Revenue Manual Section 5.1.18.11\(^4\) to locate taxpayers, including accessing the U.S. Postal Service Address database, before mailing an EIP. An address change on an account for which the EIP is to be issued by check would alert the Service that more information is needed before the check is mailed. Further, the Service could issue specific guidance for taxpayers who submitted Form 8822, Change of Address to the Service prior to April 1, 2020 indicating whether the form will be processed and what the taxpayer can do to ensure the Service has the proper address on file.

Finally, the Service could consider the feasibility of a dedicated telephone line for taxpayers without internet or email access to call and report a change of address or direct deposit information through oral testimony, as prescribed in the Internal Revenue Manual Section 3.13.5.29.\(^5\)

D. Provide Guidance and Additional Support to VITA Sites and Other Volunteers

VITA sites throughout the country are well-positioned to assist low-income and vulnerable taxpayers with accessing the EIP, as well as refunds from 2019 and prior tax years. The Service recently issued guidance on operating virtual VITA sites, which has been helpful, but this has resulted in a range of responses from sites. And no matter what solution a VITA site

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\(^3\) The Get My Payment application was announced in IR-2020-60 (Apr. 10, 2020).
\(^4\) I.R.M. 5.1.18.11 (09-17-2010).
\(^5\) I.R.M 3.13.5.29 (09-16-2019).
chooses, some taxpayers who do not have access to or the ability to use the internet likely will be left behind.

The virtual VITA models would benefit from further guidance to enhance participation among volunteers and reduce variance of procedures across the country. For example, service providers, legal aid attorneys, and other community volunteers would benefit from clear step-by-step instructions to help eligible individuals claim the EIP when a complicated tax analysis is not involved. Likewise, a clear decision tree on who is eligible for a simple EIP claim, who should file a normal tax return, and who should talk to a more seasoned tax professional or VITA volunteer would be useful in determining how to proceed.

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