

ID: CCA_2009090216082418

Number: **200945043**

Release Date: 11/6/2009

Office:

UILC: 6428.00-00

From:

Sent: Wednesday, September 02, 2009 4:08:27 PM

To:

Cc:

Subject: FW: Stimulus Question

I'm responding to the question you emailed to . You requested that if we answer in the negative that we provide "a detailed explanation why beyond saying it could not be paid after 12/31/08." I will try to provide as detailed an explanation as I can, but it fundamentally comes down to the cutoff date you mention and the absence off certain critical events occurring before that date.

Section 6428 provides for the 2008 economic stimulus payments to individuals and sets the terms for those payments. Section 6428(g), in particular, authorizes advance refunds and credits of 2008 payments for taxable year 2007 and in paragraph (3) mandates, "*No refund or credit shall be made or allowed under this subsection after December 31, 2008.*" For individual taxpayers who did not receive their ESPs in 2008 (as either an advance refund or credit), they were allowed to claim a credit under § 6428(a) on their taxable year 2008 returns, filed in 2009. For some taxpayers, such as "TPW" in your email, their circumstances changed from TY 2007 to TY 2008, with the result that while the taxpayers were initially entitled, based on 2007 circumstances, to an ESP in 2008 in a certain amount, they were entitled to a credit on their 2008 return in a lesser amount or to no credit at all, due to changed circumstances. For any of various reasons, many of the 2008 ESPs to taxpayers in these situations were not issued, not received, or received but returned to the Service. For example, your email indicates that the TPW and her deceased husband were entitled to a joint ESP in 2008 (one half for each spouse) based on their jointly filed income tax return for TY 2007. The Service did not issue the joint ESP in 2008, however, evidently because of errors and delays by the Service in processing the 2007 return. TPW's filing status changed for purposes of TY 2008 with the TPH's death in 2007, such that the amount of the credit that the TPW could correctly claim on her separate 2008 return was limited to just one half of the 2007 amount.

has previously advised that the availability of relief to taxpayers caught by changed circumstances, including taxpayers in the same situation as TPW, depends entirely on whether a credit or refund of an ESP was *allowed* and *made* on or before December 31, 2008, even though the credit was later reversed or the refund was somehow ineffective (because it was incorrectly routed, lost, returned, etc.). If the allowed-and-made requirement is met, the Service can, after December 31, 2008, re-credit a taxpayer's 2007 account (and issue any refund accordingly) or issue a replacement refund, in an amount based on the taxpayer's TY 2007 status. If the requirement is not met, the Service cannot by law provide an ESP to which a taxpayer was entitled in 2008 (based on 2007 facts) in the form of a credit or refund post-December 31, 2008. The determination must be made case by case, but the restriction in § 6428(g)(3) applies regardless of the circumstances of a given case or the particulars of cause and effect.

To illustrate, if the Service issued an ESP check to a taxpayer in 2008 that the Postal Service returned to the campus as undeliverable, and assuming the taxpayer was ineligible in 2009 to claim the credit on the taxpayer's 2008 return, then the Service may send a replacement check to the taxpayer at the right address, because the ESP was in fact allowed and made prior to the deadline. Altering the facts to a credit scenario, suppose the Service posted an ESP to a taxpayer's account in 2008 and simultaneously set it off against a liability of the taxpayer for TY 2004. The Service later erroneously reversed the ESP credit out of the taxpayer's TY 2007 account, resulting in a balance due for 2007. If the taxpayer was entitled only to a reduced ESP for TY 2008 and so did not claim the credit on the taxpayer's 2008 return, the Service may remedy the problem by reinstating the full 2007 credit (and presumably abating any interest or penalties that accrued on the underpayment). Again, the Service may do so because of the timing of the original credit. By contrast, if a freeze code on a taxpayer's account, for instance, blocked an advance payment in 2008, and no check was cut or credit transfer made, then a replacement check or reinstated credit is barred.

In the case you're dealing with, the ESP was *not* allowed and made in 2008, albeit because of the Service's apparent mishandling of the 2007 return. There was neither a refund nor credit setoff by the last day of 2008. Therefore, despite whatever fault lies with the Service, there is nothing that can permissibly be done for the taxpayer. From the taxpayer's perspective, the outcome is unfortunate and must seem profoundly unfair, but it is compelled statute.

Please contact me if you have questions or to discuss.