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James Fagan - Payroll Taxes

The Coronavirus, Aid, Relief and Economic Security Act (CARES Act) allows employers to defer the deposit and payment of the employer's share of Social Security taxes and self-employed individuals to defer payment of certain self-employment taxes. These FAQs address specific issues related to the deferral of deposit and payment of these employment taxes. These FAQs will be updated to address additional questions as they arise.

1. What deposits and payments of employment taxes are employers entitled to defer?

Section 2302 of the CARES Act provides that employers may defer the deposit and payment of the employer's portion of Social Security taxes and certain railroad retirement taxes. These are the taxes imposed under section 3111(a) of the Internal Revenue Code (the "Code") and, for Railroad employers, so much of the taxes imposed under section 3221(a) of the Code as are attributable to the rate in effect under section 3111(a) of the Code (collectively referred to as the "employer's share of Social Security tax"). Employers that received a Paycheck Protection Program loan may not defer the deposit and payment of the employer's share of Social Security tax that is otherwise due after the employer receives a decision from the lender that the loan was forgiven. (See FAQ 4).

2. When can employers begin deferring deposit and payment of the employer's share of Social Security tax without incurring failure to deposit and failure to pay penalties?

The deferral applies to deposits and payments of the employer's share of Social Security tax that would otherwise be required to be made during the period beginning on March 27, 2020 and ending December 31, 2020. (Section 2302 of the CARES Act calls this period the "payroll tax deferral period.")

The Form 941, Employer's QUARTERLY Federal Tax Return, will be revised for the second calendar quarter of 2020 (April - June 2020). Information will be provided in the near future to instruct employers how to reflect the deferred deposits and payments otherwise due on or after March 27, 2020 for the first quarter of 2020 (January -

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March 2020). In no case will Employers be required to make a special election to be able to defer deposits and payments of these employment taxes.

3. Which employers may defer deposit and payment of the employer's share of Social Security tax without incurring failure to deposit and failure to pay penalties?

All employers may defer the deposit and payment of the employer's share of Social Security tax. However, employers that receive a loan under the Small Business Administration Act, as provided in section 1102 of the CARES Act (the Paycheck Protection Program (PPP)), may not defer the deposit and payment of the employer's share of Social Security tax due after the employer receives a decision from the lender that the PPP loan is forgiven under the CARES Act. See FAQ 4.

4. Can an employer that has applied for and received a PPP loan that is not yet forgiven defer deposit and payment of the employer's share of Social Security tax without incurring failure to deposit and failure to pay penalties?

Yes. Employers who have received a PPP loan may defer deposit and payment of the employer's share of Social Security tax that otherwise would be required to be made beginning on March 27, 2020, through the date the lender issues a decision to forgive the loan in accordance with paragraph (g) of section 1106 of the CARES Act, without incurring failure to deposit and failure to pay penalties. Once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposit and payment of the employer's share of Social Security tax due after that date. However, the amount of the deposit and payment of the employer's share of Social Security tax that was deferred through the date that the PPP loan is forgiven continues to be deferred and will be due on the "applicable dates," as described in FAQs 7 and 8.

5. Is this ability to defer deposits of the employer's share of Social Security tax in addition to the relief provided in Notice 2020-22 for deposit of employment taxes in anticipation of the Families First Coronavirus Relief Act (FFCRA) paid leave credits and the CARES Act employee retention credit?

Yes. Notice 2020-22 provides relief from the failure to deposit penalty under section 6656 of the Code for not making deposits of employment taxes, including taxes withheld from employees, in anticipation of the FFCRA paid leave credits and the CARES Act

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employee retention credit. The ability to defer deposit and payment of the employer's share of Social Security tax under section 2302 of the CARES Act applies to all employers, not just employers entitled to paid leave credits and employee retention credits. (But see the limit described in FAQ 4 for employers that have a PPP loan forgiven.)

6. Can an employer that is eligible to claim refundable paid leave tax credits or the employee retention credit defer its deposit and payment of the employer's share of Social Security tax prior to determining the amount of employment tax deposits that it may retain in anticipation of these credits, the amount of any advance payments of these credits, or the amount of any refunds with respect to these credits?

Yes. An employer is entitled to defer deposit and payment of the employer's share of Social Security tax prior to determining whether the employer is entitled to the paid leave credits under sections 7001 or 7003 of FFCRA or the employee retention credit under section 2301 of the CARES Act, and prior to determining the amount of employment tax deposits that it may retain in anticipation of these credits, the amount of any advance payments of these credits, or the amount of any refunds with respect to these credits.

7. What are the applicable dates by which deferred deposits of the employer's share of Social Security tax must be deposited to be treated as timely (and avoid a failure to deposit penalty)?

The deferred deposits of the employer's share of Social Security tax must be deposited by the following dates (referred to as the "applicable dates") to be treated as timely (and avoid a failure to deposit penalty):

1. On December 31, 2021, 50 percent of the deferred amount; and
2. On December 31, 2022, the remaining amount.

8. What are the applicable dates when deferred payment of the employer's share of Social Security tax must be paid (to avoid a failure to pay penalty under section 6651 of the Code)?

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The deferred payment of the employer's share of Social Security tax is due on the "applicable dates" as described in FAQ 7.

9. Are self-employed individuals eligible to defer payment of self-employment tax on net earnings from self-employment income?

Yes. Self-employed individuals may defer the payment of 50 percent of the Social Security tax on net earnings from self-employment income imposed under section 1401(a) of the Code for the period beginning on March 27, 2020, and ending December 31, 2020. (Section 2302 of the CARES Act calls this period the "payroll tax deferral period.")

10. Is there a penalty for failure to make estimated tax payments for 50 percent of Social Security tax on net earnings from self-employment income during the payroll tax deferral period?

No. For any taxable year that includes any part of the payroll tax deferral period, 50 percent of the Social Security tax imposed on net earnings from self-employment income during that payroll tax deferral period is not used to calculate the installments of estimated tax due under section 6654 of the Code.

11. What are the applicable dates when deferred payment amounts of 50 percent of the Social Security tax imposed on self-employment income must be paid?

The deferred payment amounts are due on the "applicable dates" as described in FAQ 7.