

LEGAL UPDATES

PUBLISHED: APRIL 16, 2020

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FAQ: Employer Social Security Tax Deferral Under CARES Act

On April 10, 2020, the Internal Revenue Service (IRS) issued answers to FAQs relating to deferral of the payment of an employer's share of Social Security taxes under the Coronavirus, Aid, Relief, and Economic Security (CARES) Act. A complete list of the FAQs is available [here](#). Below is a highlight of some noteworthy provisions.

Q: What taxes can be deferred?

A: Employers may defer the payment of the employer's share of Social Security taxes (6.2%) that would otherwise be required to be made during the period beginning March 27, 2020, and ending December 31, 2020.

Q: Can an employer who receives a Paycheck Protection Program (PPP) loan take advantage of the deferred Social Security tax opportunity?

A: Yes. The guidance clarifies that employers receiving a PPP loan may defer payment that would otherwise be required to be made through the date the lender issues a decision to forgive the loan. Any amounts deferred up to that time are paid as provided below (i.e., 50% on each of December 31, 2021, and December 31, 2022).

Note: This rule applies to deferred Social Security tax payments only. We anticipate that additional guidance will be issued on PPP loans as well as when and how they impact an employer's ability to take the Employee Retention Credit, which is not tied to forgiveness but rather tied to merely obtaining a PPP loan.

Q: When must the deferred Social Security tax payments be remitted in order to be treated as timely and avoid penalties?

A: In all, 50% of the 2020 deferred Social Security tax amount is due on December 31, 2021, and the remaining amount is due on December 31, 2022. No interest is charged on the amounts deferred.

Q: Are self-employed individuals eligible to defer payment of self-employment taxes?

A: Yes. Self-employed individuals may defer 50% of the Social Security tax on net earnings from self-employment income. Additionally, no penalty will be imposed for failure to make estimated tax payments on 50% of Social Security tax on net earnings from self-employment income during the deferral period.

Q: Did the IRS provide any guidance on how to elect to defer or report the deferred taxes?

A: Employers are not required to make a special election to be able to defer payments of Social Security tax. A revised Form 941, Employer's Quarterly Federal Tax Return, will be issued for the second quarter of 2020, and the IRS will provide information instructing employers how to reflect the deferred deposits and payments that were otherwise due on or after March 27 for the first quarter of 2020.

Comprehensive CARES Act and COVID-19 Guidance

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.