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IRS

Deferral of employment tax deposits and payments through December 31, 2020

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, as well as coordination with the credits for paid leave under sections 7001 and 7003 of the Families First Coronavirus Response Act (FFCRA) and the employee retention credit under section 2301 of the CARES Act. These FAQs will continue to be updated to address additional questions as appropriate.

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").

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

All employers (including government entities) may defer the deposit and payment of the employer's share of Social Security tax.

3. What's the difference between a deposit and a payment towards an employment tax liability? (added July 30, 2020)

Generally, employers with an employment tax liability in excess of $2,500 must deposit employment taxes due for a return period on a semi-weekly, monthly, or next-day basis depending on the amount of their employment tax liability. (The return period is the period covered by each employment tax return, which for most employers is each calendar quarter.) Employers that fail to deposit employment taxes timely will generally owe a failure to deposit penalty and must pay those taxes with their return. Similarly, deposits in excess of employers' employment tax liability may be refunded only with the employment tax return filed by the employer, which for most employers is the Form 941, Employer's QUARTERLY Federal Tax Return, but may be the Form 943, Employer's Annual Tax Return for Agricultural Employees, Form 944, Employer's Annual Federal Tax Return, or Form CT-1, Employer's Annual Railroad Retirement Tax Return, depending on the type and size of the employer.

Certain employers do not have to make deposits during a return period but must pay their employment tax liability with a timely filed Form 941, Form 943, Form 944, or Form CT-1. Employers that do not have to make deposits and fail to pay their employment taxes timely will generally owe a failure to pay penalty. Employers that fail to meet employment tax deposit obligations timely and that fail to pay their taxes with a timely filed Form 941, Form 943, or Form 944 will generally owe both failure to deposit and failure to pay penalties.

4. What is the period for which employers can defer deposit and payment of the employer's share of Social Security tax without incurring failure to deposit and/or failure to pay penalties?

Under sections 2302(a)(1) and (a)(2) of the CARES Act, employers may defer deposits of the employer's share of Social Security tax due during the "payroll tax deferral period" and payments of the tax imposed on wages paid during that period. The payroll tax deferral period begins on March 27, 2020 and ends December 31, 2020.

Section 2302(a)(2) of the CARES Act provides that *deposits* of the employer's share of Social Security tax that would otherwise be required to be made during the payroll deferral period may be deferred until the "applicable date." For more information, see 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)?

Section 2302(a)(1) of the CARES Act provides that **payments** of the employer's share of Social Security tax for the payroll tax deferral period may be deferred until the "applicable date." For more information, see 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)?

The deferral also applies to **deposits** of the employer's share of Social Security tax that would otherwise be due after December 31, 2020, as long as the deposits relate to the tax imposed on wages paid (a) during the quarter ending on December 31, 2020, for employers filing quarterly employment tax returns, or (b) during the payroll tax deferral period for all other employers. This is to align with the payroll tax deferral period for the payment of the employer Social Security tax on the same wages

For more information, see How does an employer defer the employer's share of Social Security tax? For more information for employers that file the Form 941, quarterly returns, see If an employer deferred the deposit of the employer's share of Social Security tax due on or after March 27, 2020, for the first calendar quarter of 2020, or the payment of the employer's share of social security tax for wages paid between March 27, 2020 and March 31, 2020, how does the employer report the deferral to the IRS? For more information for employers that file annual employment tax returns, see May employers that file annual employment tax returns (Form 943, Form 944, and Form CT-1) defer deposit and payment of the employer's share of Social Security tax?

5. How does an employer defer the employer's share of Social Security tax? (added July 30, 2020)

An employer defers the employer's share of Social Security tax by reducing required deposits or payments for a calendar quarter (or other employment tax return period) by an amount up to the maximum amount of the employer's share of Social Security tax for the return period to the extent the return period falls within the payroll tax deferral period. This reduction does not need to be applied evenly during the return period. For example, if an employer will have $20,000 in total liability for the employer's share of Social Security tax for the third calendar quarter of 2020, has not yet reduced its deposits for the deferral, and has one deposit of $20,000 remaining for that calendar quarter, the employer may defer the entire $20,000 deposit. Although employers depositing taxes using the Electronic Fund Transfer Payment System (EFTPS) identify the subcategory of deposits for the different employment taxes (e.g., Social Security tax, Medicare tax), those entries are for informational purposes only; the IRS generally does not use that information in determining whether payroll tax was deposited for purposes of the payroll tax deferral.

Employers may also be entitled to credits against the employer's share of Social Security tax, including refundable tax credits for paid leave under FFCRA or for qualified wages under the employee retention credit. These credits, in addition to the deferral, would reduce the employer's required deposits. Employers that are entitled to the credits and deferral may leave the employment tax subcategory amounts (e.g., Social Security tax, Medicare tax, income tax withholding) attributable to this further reduction blank on the EFTPS worksheet. As stated above, in EFTPS, these entries are for informational purposes, and the IRS generally does not use that information in determining whether payroll tax was deposited for purposes of the payroll tax deferral. For more information see Is the ability to defer deposit and payment 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 FFCRA paid leave credits and the employee retention credit?

In no case will employers be required to make a special election to be able to defer deposits and payments of these employment taxes. However, the employer should report the deferred taxes on the appropriate line on its employment tax return, such as line 13b on Form 941.

6. If an employer deferred the deposit of the employer's share of Social Security tax due on or after March 27, 2020, for the first calendar quarter of 2020, or the payment of the employer's share of Social Security tax for wages paid between March 27, 2020 and March 31, 2020, how does the employer report the deferral to the IRS? (added July 30, 2020)

The Form 941 was not revised for the first calendar quarter of 2020 (January – March 2020) to reflect the deferred deposits otherwise due on or after March 27, 2020, for that quarter or to reflect the deferred payments on wages paid between March 27, 2020 and March 31, 2020. The Form 941 and the accompanying instructions have been revised for the second, third, and fourth calendar quarters of 2020 to reflect the employer's deferral of the employer's share of Social Security tax.

In accordance with the instructions for the Form 941 for the first calendar quarter of 2020 (which, as noted, was not revised) the employer would have reported the full amount of its employment tax liability due for that quarter, including the liability for which deposits would have been due on or after March 27, 2020. Employers that deferred deposits of the employer's share of Social Security tax for the first calendar quarter of 2020 will have a discrepancy on their first quarter Form 941 between the amount of the liability reported and the deposits and payments made for that quarter. The IRS will send a notice to these employers identifying the difference between the liability reported on Form 941 for the first calendar quarter and the deposits and payments made for the first calendar quarter as an unresolved amount. The notice will include additional information instructing the employer how to inform the IRS that it deferred deposit or payment of the employer's share of Social Security tax due after March 27, 2020, for the first calendar quarter of 2020 under section 2302 of the CARES Act.

7. May employers that file annual employment tax returns (Form 943, Form 944, and Form CT-1) defer deposit and payment of the employer's share of Social Security tax? (added July 30, 2020)

Yes. Employers that file annual employment tax returns may defer deposit of the employer's share of Social Security tax due in the payroll tax deferral period and the payments of the tax imposed on wages paid during the payroll deferral period. This deferral also applies to deposits of the employer's share of Social Security tax that would otherwise be due after December 31, 2020, as long as the deposits relate to the tax imposed on wages paid on or before December 31, 2020 during the payroll tax deferral period.

Employers that file annual employment tax returns and that are not required to deposit employment taxes may defer payment of the employer's share of Social Security tax imposed on wages paid during the payroll deferral period.

8. May employers defer a balance due of the employer's share of Social Security taxes if the balance due was a tax liability imposed on wages paid prior to the payroll tax deferral period and for which the deposit of the tax was originally due prior to the payroll tax deferral period? (added July 30, 2020)

No. Employers may defer only the employer's share of Social Security tax that is equal to or less than their liability for the employer's share of Social Security tax that was due to be deposited during the payroll tax deferral period or was for payment due on wages paid during the payroll tax deferral period. Thus, employers may not defer a balance due when they file their employment tax returns if the amount is neither attributable to a deposit due during the payroll tax deferral period or a payment of the tax imposed on wages paid during the payroll tax deferral period.

9. Assume an employer does not defer the employer's share of Social Security tax by reducing its deposits during a quarter and that when the employer files its Form 941, the employer's liability for all employment taxes for the quarter has been fully paid as a result of deposits made during the quarter. Can the employer then choose to defer the payment of the employer's share of Social Security tax already deposited by claiming a refund or credit on its Form 941? (added July 30, 2020)

No. Employers that have already deposited all or any portion of the employer's share of Social Security tax during the payroll tax deferral period may not subsequently defer payment of the tax already deposited and generate an overpayment of tax, including for the first calendar quarter. However, to the extent the employer reduces its liability for all or part of the employer's share of Social Security tax based on credits claimed on the Form 941, including the Research Payroll Tax Credit, the FFCRA paid leave credits, and the employee retention credit, and has an overpayment of tax because the employer did not reduce deposits in anticipation of these credits, the employer may receive a refund of Social Security tax already deposited.

10. May an employer that receives a loan under the Small Business Administration Act, as provided in section 1102 of the CARES Act (the Paycheck Protection Program (PPP)), defer the deposit and payment of the employer's share of Social Security tax even if the loan has been forgiven (or partially forgiven) in accordance with paragraph (g) of section 1106 of the CARES Act, as amended by section 3 of the Paycheck Protection Program Flexibility Act of 2020 (PPP Flexibility Act)? (updated June 26, 2020)

Yes. The PPP Flexibility Act, enacted on June 5, 2020, amends section 2302 of the CARES Act by striking the rule that would have prevented an employer from deferring the deposit and payment of the employer's share of Social Security tax after the employer receives a decision that its PPP loan was forgiven by the lender. Therefore, an employer that receives a PPP loan is entitled to defer the payment and deposit of the employer's share of Social Security tax, even if the loan is forgiven.

Prior to the enactment of the PPP Flexibility Act, an employer that received a PPP loan was not permitted to defer deposit and payment of the employer's share of Social Security tax after the receipt of the lender's decision forgiving all or a portion of the employer's PPP loan.

11. May an employer that has control of the payment of wages within the meaning of section 3401(d)(1) of the Internal Revenue Code (Code) (including a Code section 3512(b)(1) motion picture project employer) defer deposit and payment of the employer's share of Social Security tax without incurring failure to deposit and/or failure to pay penalties? (added July 30, 2020)

Yes. An employer described in section 3401(d)(1) or section 3512(b)(1) of the Code may defer deposit and payment of the employer's share of Social Security tax for which it is liable under the Code. The employer for whom services are provided who does not have control of the payment of wages may not defer deposit and payment of the employer's share of Social Security tax.

12. Is the ability to defer deposit and payment 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 FFCRA paid leave credits and the employee retention credit?

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

However, if an employer reduces its deposits by an amount in excess of the allowable FFCRA paid leave credits, employee retention credit, and deferral, then the failure to deposit penalty may apply to the excess reduction.

13. May an employer that is eligible to claim FFCRA 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 FFCRA paid leave credits or the employee retention credit, 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.

Example: Employer F is eligible for the paid sick leave credit and employee retention credit. In its first payroll period of the second quarter of 2020, Employer F pays $10,000 in qualified wages and $3,500 in qualified sick leave wages under the FFCRA, among other wages for the payroll period. Employer F has a federal employment tax deposit obligation of $9,000 for the first payroll period of the second quarter of 2020 (of which $1,500 relates to the employer's share of Social Security tax) prior to (a) any deferral of the deposit of the employer's share of Social Security tax under section 2302 of the CARES Act and (b) any amount of federal employment taxes not deposited in anticipation of credits for qualified sick leave wages under the FFCRA. Employer F reasonably anticipates a $5,000 employee retention credit (50 percent of qualified wages) and a $3,500 credit for paid sick leave (100 percent of qualified sick leave wages) thus far for the second quarter.

Employer F first defers deposit of the $1,500 employer's share of Social Security tax under section 2302 of the CARES Act. This preliminarily results in a remaining federal employment tax deposit obligation of $7,500. Employer F then reduces this federal employment tax deposit obligation by the $3,500 anticipated credit for qualified sick leave wages, leaving a federal employment tax deposit obligation of $4,000. Finally, Employer F further reduces the deposit of all remaining federal employment taxes by $4,000 for the $5,000 anticipated employee retention credit for qualified wages. Employer F will not incur a failure to deposit penalty under section 6656 of the Code for reducing its federal employment tax deposit for the first payroll period of the second quarter to $0.

The amount of the excess $1,000 in employee retention credit available is refundable as an overpayment. Employer F may file a Form 7200 to request a credit or refund of this amount in advance of the close of the quarter (but not for any amount of the employee retention credit that was already used to reduce the deposit obligation). If Employer F does not request an advance, it may request that the $1,000 overpayment be credited or refunded when it files its second quarter Form 941.

Employer F may defer payment of the $1,500 employer's share of Social Security tax (along with any other employer Social Security tax imposed under section 3111(a) for the quarter) on its Form 941 for the second quarter of 2020. Employer F will not be required to pay any portion of the deferred amount until December 31, 2021, at which time 50 percent is due ($750), with the remaining amount ($750) due December 31, 2022. If

Employer F fails to pay the required amounts at those times, Employer F's deferred deposits will lose their deferred status and may be subject to failure to deposit penalties. Employer F may also be subject to failure to pay penalties accruing from the deferred due date for payment.

14. May an employer that is eligible to claim the Research Payroll Tax Credit defer 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 the credit? (added July 30, 2020)

Yes. An employer is entitled to defer deposit and payment of the employer's share of Social Security tax prior to applying the Research Payroll Tax Credit against the employer's liability for the employer's share of Social Security tax. Furthermore, an employer may claim the Research Payroll Tax Credit without regard to whether the employer has deferred deposit and payment of some or all of the employer's share of Social Security tax.

If the amount of the Research Payroll Tax Credit the employer is entitled to exceeds the employer's liability for the employer's share of Social Security tax for the calendar quarter (or other employment tax return period), including any amount of the employer's share of Social Security tax that the employer has deferred for the calendar quarter, the employer may carry over to subsequent calendar quarters the excess remaining at the end of the calendar quarter that has not been used completely because it exceeds the amount of the employer's share of Social Security tax liability. Employers claiming the Research Payroll Tax Credit must file Form 8974, Qualified Small Business Payroll Tax Credit for Increasing Research Activities and must attach it to their employment tax return (typically Form 941). When completing line 8 of Form 8974, employers should not include any qualified sick leave wages reported on line 5a(i), or qualified family leave wages reported on line 5a(ii), of Form 941.

15. May a tax-exempt employer that is eligible to claim the Work Opportunity Tax Credit defer 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 the credits? (added July 30, 2020)

Yes. A tax-exempt 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 Work Opportunity Tax Credit. Furthermore, a tax-exempt employer may claim the Work Opportunity Tax Credit on Form 5884-C, Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans, without regard to whether the employer has deferred deposit and payment of the employer's share of Social Security tax. Since the Work Opportunity Tax Credit is processed on Form 5884-C separately from its employment tax return (typically Form 941), the amount reported on line 11 of Form 5884-C may not be refunded in full if the employer also deferred the employer's share of Social Security tax on its Form 941.

16. How does the $100,000 next-day deposit rule apply to an employer that defers deposit of the employer's share of Social Security tax? (added July 30, 2020)

An employer that accumulates liability for $100,000 or more in employment taxes on any day during a monthly or semiweekly deposit period must deposit the employment taxes the next business day. The regulations under sections 3111 and 6302 of the Internal Revenue Code provide that liability for the employer's share of Social Security tax is accumulated as wages are paid. The deferral under section 2302(a)(2) of the CARES Act is a deferral of deposits, not a deferral of the tax liability. Accordingly, the $100,000 next-day deposit rule must be applied without regard to the deferral of the employer's share of Social Security tax. However, the amount deposited may be reduced by the deferred portion of the employer's share of Social Security taxes. For example, if an employer accumulates $110,000 of employment tax liabilities (including federal income tax withholding and the employees' share of Social Security tax) and defers deposit of $20,000 for the employer's share of Social Security tax, the employer must still deposit the next day under the $100,000 rule but is only required to deposit $90,000 ($110,000 minus $20,000).

17. How does the $100,000 next-day deposit rule apply to an employer that reduces deposits in anticipation of the FFCRA paid leave credits and the employee retention credit in accordance with Notice 2020-22? (added July 30, 2020)

An employer that accumulates $100,000 or more in liability for employment taxes on any day during a monthly or semiweekly deposit period must deposit the employment taxes the next business day. The regulations under sections 3111 and 6302 of the Internal Revenue Code (Code) provide that liability for the employer's share of Social Security tax is accumulated as wages are paid. The FFCRA paid leave credits and the employee retention credit are applied against the employer's share of Social Security tax imposed on wages paid for the calendar quarter and the excess is treated as an overpayment that is refunded under section 6402 of the Code. Accordingly, the credits are applied against the tax imposed. They do not reduce an employer's tax liabilities for purposes of determining the employer's deposit schedule overall or applying the $100,000 next-day deposit rule specifically. However, in accordance with Notice 2020-22, an employer may reduce its deposits in anticipation of the credits.

For example, if an employer accumulates $110,000 of liabilities and anticipates a $20,000 employee retention credit, the employer must still deposit the next day under the $100,000 next-day deposit rule but is only required to deposit $90,000. If the employer also defers the employer's share of Social Security taxes, the next-day deposit will also be reduced by the amount of the employer's share of Social Security taxes deferred.

18. 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):

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

However, if an employer pays any amount before the applicable dates, any such payment is first applied to reduce the employer's liability for an amount due on December 31, 2021 and then to the amount due on December 31, 2022.

For example, if an employer was eligible to defer $20,000 for the payroll tax deferral period, paid $0 of the $20,000, and deferred $20,000 for the payroll tax deferral period, the employer needs to pay $10,000 no later than December 31, 2021 and the other $10,000 on December 31, 2022 using EFTPS.

However, if an employer was eligible to defer $20,000 for the payroll tax deferral period, but it paid $15,000 of the $20,000, and deferred $5,000 for the payroll tax deferral period, the employer does not need to pay any additional amount by December 31, 2021, since 50% of the eligible deferred amount (or $10,000) has already been paid and is first applied against the employer's amount due on December 31, 2021. The employer must pay the remaining $5,000 by December 31, 2022.

19. 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)?

The deferred payment of the employer's share of Social Security tax must be paid by the "applicable dates" as described in 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)?

20. Will the IRS issue reminder notices to taxpayers reflecting the total amount of deferred taxes and the payment due dates? (added July 30, 2020)

The IRS intends to issue a reminder notice to employers before each applicable due date. Because each return period is treated separately for purposes of determining the amount of tax due for the period, Form 941 filers that deferred in all four quarters of 2020 may receive four reminder notices stating the deferred amounts that are due on the applicable dates in 2021 and 2022, even though the amounts for all four quarters will have the same due dates of December 31, 2021 and December 31, 2022.

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

Yes. Self-employed individuals may defer the payment of 50 percent of the Social Security tax imposed under section 1401(a) of the Internal Revenue Code on net earnings from self-employment income 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.") Self-employed individuals determine their net income from self-employment and deductions based on their method of accounting. Most self-employed individuals use the cash method of accounting and will therefore include all income actually or constructively received during the period and all deductions actually paid during the period when determining their net income from self-employment.

22. Is there a penalty for failure to make estimated tax payments for 50 percent of Social Security tax on net earnings from self-employment for 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 attributable to the payroll tax deferral is not used to calculate the installments of estimated tax due under section 6654 of the Internal Revenue Code. This means that self-employed individuals that defer payment of 50 percent of Social Security tax on their net earnings from self-employment attributable to the period beginning on March 27, 2020, and ending on December 31, 2020, may reduce their estimated tax payments by 50 percent of the Social Security tax due for that period.

23. 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 must be paid by the "applicable dates" as described in 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)?

24. How can a self-employed individual determine 50 percent of the Social Security portion of self-employment tax attributable to net earnings from self-employment earned during March 27, 2020 through December 31, 2020? (added July 30, 2020)

Self-employed individuals may use any reasonable method to allocate 50 percent of the Social Security portion of self-employment tax attributable to net earnings from self-employment earned during March 27, 2020, through December 31, 2020. For example, an individual may allocate 22.5% of the individual's annual earnings from self-employment to the period from January 1, 2020, through March 26, 2020, and 77.5% of the individual's annual earnings to the period from March 27, 2020, through December 31, 2020. Similarly, an individual may use any reasonable method in applying the Social Security wage base or taking into account partnership income in determining the portion of 50 percent of the Social Security portion of self-employment tax attributable to net earnings from self-employment for the period from March 27, 2020, through December 31, 2020.

25. May a household employer that files Schedule H with its individual income tax return defer payment of the employer's share of Social Security tax due with regard to the wages paid to household employees? (added July 30, 2020)

Yes. Household employers that file Schedule H may defer payment of the amount of the employer's share of Social Security tax imposed on wages paid during the payroll tax deferral period. Under section 3510 of the Internal Revenue Code, the employment taxes on wages paid to household employees are paid annually, are not subject to deposit requirements, and are treated as self-employment taxes for purposes of the estimated tax payment penalty provision. Accordingly, under section 2302 of the CARES Act, the household employer's share of Social Security tax imposed for the payroll tax deferral period is not treated as a tax to which the estimated tax provisions apply and payments of the deferred tax are due on the applicable dates as described in 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)?

26. Can an employer that uses a third party to report and pay employment taxes to the IRS defer deposits and payments of the employer's share of Social Security tax? (added July 30, 2020)

Yes. A common law employer that is otherwise eligible to defer deposits and payments of the employer's share of Social Security tax is entitled to do so, regardless of whether it uses a third party payer (such as a reporting agent, payroll service provider, professional employer organization (PEO), certified professional employer organization (CPEO), or 3504 agent) to report and pay its federal employment taxes. If an employer uses a third party to file, report, and pay employment taxes, different rules will apply depending on the type of third-party payer the employer uses.

If a common law employer uses a reporting agent to file the Form 941, the common law employer will report the deferred amount of the employer's share of Social Security tax on the Form 941 that the reporting agent files on the employer's behalf.

If a common law employer uses a CPEO or a 3504 agent that received its designation as agent by submitting Form 2678, Employer/Payer Appointment of Agent, to report its federal employment taxes on an aggregate Form 941, the CPEO or 3504 agent will report the deferred amount of the employer's share of Social Security taxes on its aggregate Form 941 and Schedule R, Allocation Schedule for Aggregate Form 941 Filers, that it already files.

If a common law employer uses a non-certified PEO or other third party payer (other than a CPEO or section 3504 agent that submitted Form 2678) that reports and pays the employer client's federal employment taxes under the third party's Employer Identification Number (EIN), the PEO or other third party payer will need to report the deferred employer's share of Social Security taxes on an aggregate Form 941 and separately report the deferred taxes allocable to the employers for which it is filing the aggregate Form 941 on an accompanying schedule R. The PEO or other third party payer does not have to complete Schedule R with respect to any employer for which it is not deferring the employer's share of Social Security tax (as long as the employer is not required to be included on Schedule R for any other reasons, such as for claiming the FFCRA paid leave credits or an employee retention credit).

If the common law employer directs the CPEO or 3504 agent (including a non-certified PEO or other third party payer that is designated as an agent by submitting Form 2678 or otherwise under the regulations under section 3504) to defer payment of any portion of the employer's share of Social Security tax during the payroll tax deferral period, then the common law employer will be solely liable for the payment of the deferred taxes for any wages paid by the CPEO or 3504 agent on behalf of the common law employer during the payroll tax deferral period. However, the CPEO or 3504 agent may pay the deferred amount on the common law employer's behalf, consistent with its reporting and payment of other employment taxes for the common law employer.

CPEOs, 3504 agents, and other third party payers filing aggregate returns must attach Schedule R with their aggregate Forms 941 listing their clients that are deferring deposits of the employer's share of Social Security tax irrespective of whether the clients are also claiming FFCRA paid leave credits or the employee retention credit.

27. If an Employee Representative that files Form CT-2, Employee Representative's Quarterly Railroad Tax Return, defers payment of the portion of Tier 1 tax that is equivalent to the employer portion of Social Security tax, how does the Employee Representative report the deferral to the IRS? (added July 30, 2020)

The Form CT-2 for tax year 2020 will not be revised to reflect the deferral of payment of the applicable portion of the Tier 1 tax. Therefore, the employee representative should include a statement with each Form CT-2 that identifies the amount of Tier 1 tax equivalent to the employer portion of Social Security tax for which deposit and payment is deferred under section 2302 of the CARES Act.

28. What are the procedures that should be followed by an employer that is either a monthly or semi-weekly depositor that initially defers any portion of the employer's share of Social Security tax and later decides to deposit that same portion within the same calendar quarter to avoid a failure to deposit penalty? (added July 30, 2020)

An employer that is either a monthly or semi-weekly depositor and that defers the employer's share of Social Security tax from one deposit in the second, third or fourth calendar quarter of 2020, but deposits it in a subsequent deposit during the same calendar quarter, should not complete line 13b of Form 941. The employer should report the amount deposited as the liability on Form 941 (for a monthly depositor) or on Form 941, Schedule B, Report of Tax Liability for Semiweekly Depositors (for a semiweekly depositor) on the date of the deposit to avoid assessment of failure to deposit penalties.

Form CT-1 filers and Form 943 filers that defer the employer's share of Social Security tax (or equivalent share of the Tier 1 employer tax) and subsequently deposit that deferred amount during 2020 should report the amount deposited as the liability on Form CT-1 (for monthly depositors), Form 945-A, Annual Record of Federal Tax Liability (for semiweekly depositors), Form 943 (for monthly depositors), or Form 943-A, Agricultural Employer's Record of Federal Tax Liability (for semiweekly depositors). These employers should not report any portion of the deferred amount of the employer's Social Security taxes (or equivalent share of the Tier 1 employer tax) on the CT-1 or Form 943 itself, if the employer is a semi-weekly depositor. If the employer is a monthly depositor, the employer should report the amount of the deposit on the date of the deposit and not the liability in the Monthly Summary of Railroad Retirement Tax Liability for monthly railroad depositors or in the Monthly Summary of Federal Tax Liability for agricultural employers, as applicable.

For example, assume an employer is a Form 941 filer and a semi-weekly depositor that has an employment tax liability of $10,000 every two weeks in the second calendar quarter. Also assume the employer defers $2,480 of the employer's share of Social Security tax from its first deposit but deposits the amount of $2,480 with its last deposit of $10,000 during the same calendar quarter. This employer would report $7,520 for its first tax liability on its Form 941, Schedule B ($10,000 minus $2,480) and $12,480 for its last liability on its Form 941, Schedule B ($10,000 plus $2,480).

29. How can an employer pay the deferred amount of the employer's share of Social Security tax it owes before the applicable date by which the deferred amount of the employer's share of Social Security tax must be deposited and paid? (added July 30, 2020)

The employer may pay the amount it owes electronically using EFTPS, by credit or debit card, or by a check or money order. The preferred method of payment is EFTPS. If an employer is using EFTPS, in order to pay the deferred amount, an employer that files Form 941 should select Form 941, the calendar quarter in 2020 to which its payment relates and payment due on an IRS notice in EFTPS. An employer that files annual returns, like the Form 943, 944, or CT-1, should select the return and 2020 tax year to make a payment. For more information, visit EFTPS.gov, or call 800-555-4477 or 800-733-4829 (TDD).

For example, if an employer that files Form 941 wants to pay $300 of its deferred employer's share of Social Security tax, $100 of which is attributable to the second calendar quarter of 2020, and the other $200 of which is attributable to the third calendar quarter of 2020, the employer must make two payments through EFTPS. Each payment should be made for the calendar quarter to which the deferral is attributable, and the entry in EFTPS must reflect it as a payment due on an IRS notice. Thus, the employer would pay $100 for the second calendar quarter of 2020 using EFTPS and select payment due on an IRS notice in EFTPS while doing so and would also separately pay $200 for the third calendar quarter of 2020 using EFTPS and make the same selection.

30. Is a self-employed individual who defers 50 percent of the Social Security tax on net earnings from self-employment income, or a household employer that defers the employer's share of Social Security tax under section 2302 of the CARES Act, eligible for a refund of the deferred amount of tax at the time the taxpayer files its Form 1040, Individual Tax Return? (added July 30, 2020)

Generally, no. A taxpayer who has deferred his or her payment of the employer's share of Social Security tax or 50% of the Social Security tax on net earnings from self-employment under section 2302 of the CARES Act is not eligible for a refund due to the deferral because the deferral amount is a deferral of payment, not a deferral of liability. Therefore, the deferral itself does not result in an overpayment of taxes reported on Form 1040. However, if a household employer is eligible for advanceable paid leave credits under the FFCRA and reports those credits on Schedule H, Form 1040, the taxpayer may receive a refund of the paid leave credits even while deferring the employer's share of Social Security tax. This does not apply to credits for sick leave and family leave equivalent amounts for self-employed individuals.

Self-employed individuals and household employers should consider deferrals under section 2302 of the CARES Act in determining their estimated tax payments and any income tax withholding from wages and other sources of income. Publication 505, Tax Withholding and Estimated Tax for use in 2020 provides more details on determining these amounts.

31. May an employer that pays the employer's share of Social Security tax for a calendar quarter during the payroll tax deferral period subsequently file a Form 941-X to claim a refund or credit of the employer's share of Social Security tax based on the deferral of the payment due date in section 2302(a) of the CARES Act? (added July 30, 2020)

No. Employers that have already paid the employer's share of Social Security tax on wages during the payroll tax deferral period may not subsequently defer the payment of the tax by filing a Form 941-X to claim a refund or credit of the tax, including for the first calendar quarter. However, the employer may file a Form 941-X to apply a credit (including the FFCRA paid leave credits and the employee retention credit) against some or all of the employer's share of Social Security tax and claim a refund or credit of the tax on that basis.

Page Last Reviewed or Updated: 30-Jul-2020