



CARES Act Provides No Cost Loan by Allowing Employers to Defer Employment Tax Deposits

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One of the provisions included in the Coronavirus, Aid, Relief and Economic Security Act (CARES Act) allows an employer and self-employed individuals to defer the payment of the employer's share of social security taxes (not Medicare taxes) or the corresponding portion of self-employment taxes. The option is available for payments that would otherwise be required to be made between March 27, 2020 and December 31, 2020. No special election is required and deferred amounts will be reported on a forthcoming revised Form 941 (future guidance will address how to report deferrals for the 1st quarter of 2020).

The deferral option is available for all employers, regardless of size or industry. However, employers who receive a Paycheck Protection Program loan (another incentive under the CARES Act) are not eligible for the deferral option after the employer receives a decision from the lender that the loan was forgiven (but may take advantage of the deferral until the loan is forgiven).

Employers who choose to take advantage of the deferral option are required to repay the 50% of the deferred amount on December 31, 2021, and the balance by December 31, 2022. No penalties or interest apply to the repayments.

Recent IRS guidance confirms that employers can defer the employer's share of social security tax prior to determining whether the employer is entitled to paid leave credits under the Families First Coronavirus Relief Act or the employee retention credits under the CARES Act. Employers can generally reduce the employment taxes they are otherwise required to make in order to claim those tax credits in advance. Based on the IRS guidance, for those employers who choose to take advantage of the deferral option, they should retain those amounts first, and then offset their remaining tax deposits by the other credits (which can be claimed in advance against the employee and employer share of social security and Medicare taxes that would otherwise be required to be deposited). If the remaining deposits are not sufficient to absorb the other credits the employer can file a request for an advance payment of the credits.

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