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How Employers May Defer Social Security Tax Payments Under Section 2302 of the CARES Act

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On April 10, 2020, the IRS issued a set of frequently asked questions ("FAQ") with more detailed guidance on how employers may defer Social Security tax payments under Section 2302 of the Coronavirus Aid, Relief and Economic Security Act ("CARES" Act). The FAQ confirms that the deposit of the employer share of Social Security taxes can be deferred for the period beginning March 27, 2020 and ending December 31, 2020. Half of the deferred payroll tax deposits are due on December 31, 2021 and the other half are due on December 31, 2022. It is important to remember that the deferral does not apply to the employee share of Social Security tax, nor does it apply to any Medicare taxes.

The IRS is updating Form 941, Employers Quarterly Federal Tax Return, employers will file for the second quarter of 2020 to provide instructions as to how employers should reflect deferred deposits and payments otherwise due. It will not be necessary for an employer to elect or apply for the benefit of the deferral.

Employers that have Paycheck Protection Program ("PPP") loans from the Small Business Administration forgiven will not qualify for Social Security tax deferral for tax due after the PPP loan is forgiven. However, an employer that has applied for or received a PPP loan may continue to defer Social Security deposits until a determination is made that the PPP loan is forgiven. After that point, the employer may no longer continue to defer deposit of Social Security taxes, but amounts deferred prior to the date of forgiveness may continue to be deferred until the December 31, 2021 and December 31, 2022 due dates.

The FAQ also makes it clear that the ability to defer FICA deposits is a benefit provided in addition to the credits against the employer share of Social Security taxes for paid leave benefits available to certain employers under the Families First Coronavirus Act and the employee retention payments under the CARES Act.

Finally, the FAQ confirms that self-employed individuals may defer deposit of 50 percent of the Social Security tax on net earnings from self-employment, which would otherwise be included in their estimated tax payments due during the deferral beginning March 27, 2020 and ending December 31, 2020. No penalty will be imposed for failing to deposit the 50 percent portion of tax eligible for deferral.

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For the most up-to-date legal and legislative information related to the coronavirus pandemic, please visit our Shumaker COVID-19 Client Resource Center at shumaker.com. We have also established a 24/7 Legal & Legislative Helpline at 1.800.427.1493 monitored by Shumaker lawyers around the clock.

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