

Penalty for Failure to Deposit Deferred Taxes Really Hurts

A part of the Covid relief provisions permitted employers to defer the deposit of the matching Social Security taxes applicable to payroll during most of the 2020 calendar years. The provision requires the employers to deposit ½ of these deferred taxes by December 31, 2021; and the other ½ of these deferred taxes by December 31, 2022.

Now IRS Office of Chief Counsel has released PMTA 2021-07: Penalty for Failure to Deposit Taxes Deferred Under CARES Act Section 2302(a)(2).

Briefly this PMTA states the failure of the taxpayer to make the full deposits timely will cause the taxpayer to be subject to the normal “failure-to-deposit” penalties. The penalties will apply from the date the deposit would have NORMALLY been due if the deferral had not taken place under the normal deposit rules.

The failure to deposit 100% of the deferred taxes by their applicable date (½ by 12/31/21, and ½ by 12/31/22) means the entire deferred taxes were required to be deposited by their original deposit dates as if the deferral did not take place.

For example - Taxpayer A is a monthly depositor. Taxpayer deferred \$10,000 of applicable taxes. Taxpayer paid \$4,900 by December 31, 2021, instead of the required \$5,000. RESULTS -

Taxpayer A did NOT deposit the required ½ of these taxes by December 31, 2021. Taxpayer A is in default of the provisions of the deferral option. Therefore, Taxpayer A is subject to penalties for failure to deposit. Deferred taxes from March 2020 that were due April 15, 2020, are now subject to the failure-to-deposit penalty for not being deposited by April 15, 2020. And for not depositing the April 2020 taxes by May 15, 2020, the April deferred taxes are now subject to the failure-to-deposit penalty for not being deposited by May 15, 2020. Etc. In other words, the penalty will apply to every amount that was deferred.

This same result applies if the any of the second ½ of the deferral is not deposited by December 31, 2022; the entire deferred amounts are deemed due on their original deposit dates and are subject to penalties for not being made timely, going back to the original dates.

This is a reason some employers may want to pay the first ½ of the deferred taxes soon, instead of waiting until December 31, 2021. And some may want to pay the second ½ of the deferred taxes as soon as they have the funds available instead of waiting until December 31, 2022. Missing the deadline by any amount could make the taxpayer subject to serious failure-to-deposit penalties on the ENTIRE deferred taxes.

HOW DO EMPLOYERS MAKE THE REQUIRED PAYMENTS? Here is the information found on irs.gov when we typed “deferral of reemployment tax deposits” in the SEARCH box:

“Q&A 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 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.

For more information, visit [EFTPS.gov](https://www.eftps.gov), or call 800-555-4477 or 800-733-4829 (TDD).”

This text has been shared courtesy of: David & Mary Mellem, EAs & Ashwaubenon Tax Professionals, 920-496-1065 (920-496-9111).

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