

The Coronavirus Aid, Relief, and Economic Security Act:

Employer Payroll Tax Deferral **WARNING**

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On March 27, 2020, President Trump signed into law the third piece of the Coronavirus relief package known as the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The CARES Act contains Business Provisions which provide in part for a "delay of payment of employer payroll taxes." The IRS recently issued Notice 2020-22 titled Relief from Penalty for Failure to Deposit Employment Taxes. This update outlines the penalty relief regarding the employer tax delay provisions but offers this admonition for those employers that are seeking and obtain debt forgiveness for a Paycheck Protection Program ("PPP") loan pursuant to Section 1106 of the CARES Act:

EMPLOYMENT TAX DEFERRAL DOES NOT APPLY TO TAXPAYERS THAT RECEIVE PPP LOAN FORGIVENESS

The Internal Revenue Code imposes an employment tax liability on employers requiring deposits on a monthly or semimonthly basis. For most employers, this liability is reported on the quarterly Form 941. Section 2302 of the CARES Act offers one form of COVID-19 relief to employers which provides that the payment and deposit of the employer's share of the social security portion of FICA tax (and RRTA) for deposits that are due to be made during the period beginning on March 27, 2020, and ending before January 1, 2021, is not due before December 31, 2021 (for the first 50 percent of the liability), and December 31, 2022 (for the remaining 50 percent of the liability). *However, the CARES Act provides and Notice 2020-22 affirms that this deferral "shall not apply to any taxpayer if such taxpayer has had indebtedness forgiven under section 1106 [the loan forgiveness provisions] of this Act[.]"*

Quixotically, an employer will not know whether it will receive PPP loan forgiveness until sometime after June 30, 2020, even though it may otherwise be entitled to take advantage of the deferral provisions prior to that date. Noteworthy is the fact that the CARES Act does not preclude deferral for a taxpayer that applies for a PPP loan. **Accordingly, until further authoritative guidance is issued by the IRS, taxpayers should be mindful of deferring the payment of employment taxes if they are applying for a PPL loan.** While this writer hopes that the CARES Act will be interpreted by the IRS in a manner which provides a waiver of any penalties and interest associated with the deferral period prior to any PPL loan forgiveness, this is not a forgone conclusion.

This article as well as further updates in regard to tax matters and other legal implications related to Coronavirus pandemic can be found on our COVID-19 Response webpage, <https://www.skarlatoszonarich.com/covid-19>.

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