



Tax Client Alert

Relief from Penalty for Failure to Make Employment Tax Deposits Due to Coronavirus Credits

April 2, 2020

The Internal Revenue Service (“IRS”) [has published guidance](#), in IRS Notice 2020-22, providing relief from failure to make employment tax deposits to employers entitled to the refundable tax credits provided under the [Families First Coronavirus Response Act](#), enacted on March 18, 2020 (“Families First Act”) and the [Coronavirus Aid, Relief, and Economic Security Act](#), enacted on March 27, 2020 (“CARES Act”).

Background

Federal tax law under the Internal Revenue Code (“Code”) imposes a penalty for any failure to timely deposit amounts as required by the Code or regulations on the date required, unless such failure is due to reasonable cause and not due to willful neglect.

An employer's failure to deposit certain Federal employment taxes, including deposits of withheld income taxes, taxes under the Federal Insurance Contributions Act (FICA), and taxes under the Railroad Retirement Tax Act (RRTA) (“Employment Taxes”) is generally subject to a penalty.

Families First Act and CARES Act Refundable Tax Credits

Employers paying qualified sick leave wages and qualified family leave wages required by the Families First Act (“Qualified Leave Wages”), as well as qualified health plan expenses allocable to Qualified Leave Wages (“Qualified Health Plan Expenses”) are eligible for refundable tax credits under the Families First Act.

The Families First Act provides a refundable tax credit against an employer's share of the social security portion of FICA tax and an employer's share of the social security and Medicare portions of RRTA tax for each calendar quarter, in an amount equal to 100% of Qualified Leave Wages paid by the employer plus Qualified Health Plan Expenses with respect to that calendar quarter.

The CARES Act provides certain employers experiencing a full or partial business suspension due to orders from a governmental authority due to the coronavirus disease 2019 (“COVID-19”), or experiencing a statutorily specified decline in business, are allowed a refundable tax credit under the CARES Act of up to 50% of the qualified wages, including allocable qualified health expenses; which credit is limited to \$10,000 per employee over all calendar quarters combined (“Qualified Retention Wages”).

An employer paying Qualified Leave Wages under the Families First Act or paying Qualified Retention Wages under the CARES Act may seek an advance payment of the related refundable tax credits by filing IRS Form 7200, Advance Payment of Employer Credits Due to COVID-19.

The IRS has [published](#) COVID-19 Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs, which contains an overview explanation and discussion, followed by an

informative list of detailed questions and answers about federal tax credits provided pursuant to the Families First Act. The IRS has also [published](#) FAQs: Employee Retention Credit under the CARES Act, which contains a list of questions and answers about the employee retention credit provided pursuant to the CARES Act.

Relief from Penalty for Failure to Deposit Employment Tax Due to Credits

The Families First Act, and the CARES Act instruct the Treasury Secretary to waive the penalty for failure to deposit the employer share of social security tax in anticipation of the allowance of the refundable tax credits allowed under the Families First Act and the CARES Act.

IRS Notice 2020-22 provides that an employer will not be subject to a penalty for failing to deposit Employment Taxes relating to Qualified Leave Wages or Qualified Retention Wages in a calendar quarter if certain specific requirements are met.

IRS Notice 2020-22 states that it provides employers relief from failure to deposit penalty for an employer's failure to timely deposit Employment Taxes to the extent that the amounts not deposited are equal to or less than the amount of refundable tax credits to which the employer is entitled. It further states this relief ensures that such employers may pay Qualified Leave Wages required by the Families First Act or Qualified Retention Wages under the CARES Act using Employment Taxes that would otherwise be required to be deposited without incurring a failure to deposit penalty.

IRS Notice 2020-22 appears to state as one of the requirements in it for waiver of penalty for failure to deposit Employment Taxes is that the employer did not seek payment of an advance credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to the anticipated credits it relied upon to reduce its deposits.

The provisions of Notice 2020-22 state it applies to deposits of Employment Taxes reduced in anticipation of the credits with respect to Qualified Leave Wages paid with respect to the period beginning April 1, 2020, and ending December 31, 2020, and in anticipation of the credits with respect to Qualified Retention Wages paid with respect to the period beginning March 13, 2020, and ending December 31, 2020.

IRS Notice 2020-22 is significant guidance for employers that anticipate paying Quality Leave Wages and/or Quality Retention Wages pursuant to the Families First Act and CARES Act. The information stated in it should be considered thoroughly when planning for such payments, applicable Employment Taxes and related refundable tax credits, and whether to seek an advance payment of such refundable tax credits.

If you have questions about the IRS guidance on penalty relief stated in Notice 2020-22, or any other matters related to the Families First Act or CARES Act, please contact any attorney at GableGotwals you know or those who work in that practice area named below.

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