



September 30, 2020

The Honorable David J. Kautter
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Employer Payroll Tax Deferral Provision of the Coronavirus Aid, Relief, and Economic Security (CARES) Act

Dear Messrs. Kautter and Rettig:

The American Institute of CPAs (AICPA) appreciates the efforts by the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) to provide guidance to taxpayers affected by the Coronavirus Disease 2019 pandemic (commonly known as “Coronavirus” or “COVID-19”) through various notices, news releases, and accompanying frequently asked questions.

In response to the pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act.¹ Section 2302 of the CARES Act permits employers to defer the deposit and payment of their portion of the 6.2% Social Security tax on wages paid after March 27, 2020, through December 31, 2020 (“deferral period”). Fifty percent of the deferred portion of the payroll taxes is due by December 31, 2021, and the remaining 50% is due by December 31, 2022. Some employers want to pay some or all of the deferred amounts before the due dates. However, there is currently no process in place for employers to pay the amounts. In addition, in the case of mergers and other acquisition related activity, employers will be required to account for the transfer or assumption of the deferred portion of the payroll tax liability.

Recommendation

The AICPA recommends that Treasury and the IRS add a line to Form 941, *Employer’s QUARTERLY Federal Tax Return*, for employers to report the payment of the deferred amount of the employer’s share of Social Security taxes in a quarterly filing before the December 2021 and December 2022 due dates. We also recommend adding an equivalent line to Form 943, *Employer’s Annual Federal Tax Return for Agricultural Employees*, and Form 944, *Employer’s ANNUAL Federal Tax Return*. We suggest making these changes and providing related guidance, as soon as possible, but no later than December 31, 2020.

¹ P.L. 116-136.

Analysis

Currently, there is no process for employers to pay (and report the payment of) the employer portion of Social Security taxes deferred under Section 2302 of the CARES Act. While an employer is not required, until December 2021, to make the first 50% payment of the deferred amounts, the CARES Act does not prohibit employers from paying the deferred amounts prior to the 2021 and 2022 due dates. Some employers want to pay the amounts earlier than the due dates, including in calendar year 2020 for various tax planning and/or financial reporting purposes. For example, employers may want to: 1) in the case of cash method employers, deduct the expense in the current income tax year; 2) allocate the expense in 2020 to the partners and S corporation shareholders that incurred the payroll tax liability for the wages paid in 2020; 3) eliminate all or a portion of the liability; and 4) distribute their cash-flow outlays more evenly than annually. Therefore, we suggest providing employers with the flexibility to pay deferred payroll tax amounts earlier than the 2021 and 2022 due dates.

Recommendation

The AICPA recommends that Treasury and the IRS provide a reporting process on Form 941 (e.g., Form 941 Schedule D) and related instructions for an employer to report the transfer or assumption of a deferred payroll tax liability by an entity other than the entity that deferred the taxes (e.g., entities involved in a merger or acquisition).

Analysis

When an acquiring entity purchases an entity with employer payroll tax deferrals, the related liability may be assumed by the acquirer. It is important that these entities have the ability to report these amounts on Form 941. Form 941, Schedule D *Report of Discrepancies Caused by Acquisitions, Statutory Mergers or Consolidations*, is used to report certain differences on Forms 941 and W-2. However, neither Form 941 nor the Schedule D currently accommodate the reporting of the payroll tax deferrals when there is an acquisition or merger. It is important that employers involved in these transactions are able to report and track which entity is responsible for the on-going liability for the deferred taxes since the deferrals will cross over quarters and calendar years.

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We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please feel free to contact Deborah Walker, Chair, AICPA Employee Benefits Taxation Technical Resource Panel at (202) 257-5609, or dwalker@cbh.com; Kristin Esposito, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9241, or kristin.esposito@aicpa-cima.com; or me at (612) 397-3071, or chris.hesse@CLAconnect.com.

Sincerely,



Christopher W. Hesse, CPA
Chair, AICPA Tax Executive Committee

cc: The Honorable Michael J. Desmond, Chief Counsel, Internal Revenue Service
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