



# Deferral Of Employer Social Security Taxes: Section 2302 Of The CARE Act

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## Executive Summary:

- Section 2302 of the CARES Act allows employers and self-employed individuals to postpone deposits of their share of federal Social Security tax on employees' wages paid as of the enactment date through and including December 31, 2020.
- Employers are generally responsible for paying a 6.2% Social Security tax on employees' wages. The CARES Act allows employers to deposit 50% of the deferred taxes on or before December 31, 2021, and the remaining 50% by December 31, 2022.
- If taxpayers received loans under the Small Business Act and such loans were forgiven under section 1106 of the CARES Act, then such taxpayers are not eligible for this relief.
- The IRS is expected to revise Form 941, Employer's Quarterly Federal Tax Return, to track the employer's decision to defer tax deposits.
- Employers must be mindful that wage payments late in 2020 might trigger a deposit requirement based on the employer's usual deposit schedule, because the deferral is not triggered by the liability date (*e.g.*, a payroll date on December 31) but instead by the deposit deadline (*e.g.*, January 2, 2021). In other words, the deadline for depositing the employer share of social security tax for wage payments made in late December 2020 is not deferred if the deposit deadline occurs in early 2021.

## What Changed Since President Trump Signed the CARES Act?

Section. 2302(a)(1) of the CARES Act allows taxpayers to defer paying the employer's portion of the Social Security taxes for 2020. Specifically,

- 50% of the deferred amount will be due at the end of 2021.
- 50% will be due at the end of 2022.

The *Payroll tax deferral period* means the period beginning on the date of the enactment of the CARES Act (March 27, 2020) and ending December 31, 2020. (CARES Act Section. 2302(d)(2)).

## What Are The Applicable Dates And Taxes?

Notwithstanding any other provision of law, the payment for applicable employment taxes for the payroll tax deferral period will not be due before the applicable date (CARES Act Section 2302(a)(1)).

## Applicable Employment Taxes:

Let's look at the definition of *Applicable employment taxes*:

1. The taxes imposed under IRC Section 3111(a) (social security taxes).
2. So much of the taxes imposed under IRC Section 3211(a) as are attributable to the rate in effect under IRC Section 3111(a), and
3. So much of the taxes imposed under IRC Section 3221(a) as are attributable to the rate in effect under IRC Section 3111(a) (RRTA taxes). (CARES Act Section. 2302(d)(1)).

## The Definition Of The Above-Mentioned Internal Revenue Codes:

1. **Internal Revenue Code (IRC) Section 3111(a)** = Most private employers are required to withhold social security taxes from wages paid to employees.
2. **IRC Sections 3211(a) and 3221(a)** = Railroads have similar obligations to withhold tax under the Railroad Retirement Tax Act (RRTA).
3. **IRC Section 1401(a)** = Self-employed individuals are subject to self-employment (SECA) tax, effectively paying both the employer and employee share of social security taxes.

**NOTE:** Applicable employment taxes do not include the employer portion of Medicare taxes imposed under IRC Section 3111(b).

## The Applicable Date(s):

1. December 31, 2021, with respect to 50% of the amounts deferred.
2. December 31, 2022, with respect to the remaining 50% deferred (CARES Act Section. 2302(d)(3)).

Remember, payment for half of these taxes will NOT be due until the end of 2021, and the other half will not be due until the end of 2022. This interest-free loan is accomplished by providing that, notwithstanding IRC Section 6302 (which authorizes IRS to set deadlines for tax deposits), an employer will be treated as having made all deposits of applicable employment taxes deferred by the CARES Act if all such deposits are made no later than the applicable date (CARES Act Section 2302(a)(2)).

In effect, employers will be treated as having timely paid these taxes retroactive to their due date so long as they are ultimately paid by the extended due dates.

Similar rules (both deferral and risks) apply to half of the SECA taxes paid by self-employed individuals related to social security tax (but not Medicare tax). CARES Act Section 2302(b)(1).

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