

Penalty Relief for Failure to Deposit Employment Taxes for Employers Eligible for COVID-Related Tax Credits

IRS Notice 2020-22 provides penalty relief for businesses that fail to deposit employment taxes, to the extent a business is entitled to refundable tax credits provided under the Families First Coronavirus Response Act (“Families First Act”) and the Coronavirus Aid Relief and Economic Security Act (“CARES Act”).

Businesses paying qualified sick leave wages, qualified family leave wages, and health plan expenses allocable to the qualified sick and family leave wages required by the Families First Act are eligible for tax credits under the Act.

Under the CARES Act, employers experiencing full or partial business suspension due to the orders of a governmental authority, or experiencing a statutorily specified decline in business, may be paying qualified retention wages. Employers who pay these wages are eligible for a refundable tax credit of up to 50% of the qualified retention wages, including allocable qualified health expenses, limited to \$10,000 per employee over all calendar quarters combined.

Under Notice 2020-22, the employment taxes that would have been deposited can be used to pay these wages without incurring a penalty under IRS Code Section 6656.

In order to qualify for 6656 relief pursuant to Notice 2020-22:

- the employer must have paid qualified wages to employees in the calendar quarter prior to the time of the required deposit;
- the amount of employment taxes that the employer does not timely deposit is less than or equal to the amount of the employer’s anticipated refundable credits under the Families First Act for the calendar quarter as of the time of the required deposit; and
- the employer must not have sought payment of an advance credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to the anticipated credits in relied upon to reduce its deposits.

The penalty waiver provisions apply to employment tax deposits reduced in anticipation of refundable tax credits pertaining to qualified sick leave wages, family leave wages, and qualified health care expenses for the period beginning April 1, 2020 and ending December 31, 2020. With respect to employment taxes reduced in anticipation of refundable tax credits pertaining to qualified retention wages, the penalty waiver applies to the period beginning on March 13, 2020 and ending December 31, 2020.