



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

April 27, 2021

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Expiration Date: 01/03/2022  
Affected IRMs: 5.7.3; 5.7.4; 5.7.6

**MEMORANDUM FOR DIRECTOR, FIELD COLLECTION**

**FROM:** Deborah Harriott, Acting Director, Collection Policy  
Deborah L. Harriott

**SUBJECT:** Update to Procedures for Mitigating the Impact of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and Notice 2020-65, as Modified by Notice 2021-11, on the Trust Fund Recovery Penalty (TFRP) Program

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During these unprecedented times, the Service is committed to providing support to employers affected by COVID-19. The Coronavirus Aid, Relief, and Economic Security (CARES) Act and [Notice 2020-65](#) provide assistance to employers by permitting the deferral of certain employment taxes.

The purpose of this memorandum is to implement a temporary deviation in accordance with Internal Revenue Manual (IRM) 1.11.2.2.4, When Procedures Deviate from the IRM, to provide guidance to Field Collection employees working Trust Fund Recovery Penalty (TFRP) cases impacted by the CARES Act and Notice 2020-65, as modified by [Notice 2021-11](#).

**Effective Date:** This guidance is effective 04/30/2021 through 01/03/2022.

**Source of Authority:** The source of authority for the TFRP is 26 U.S. Code § 6672(b), Failure to Collect and Pay over Tax, or Attempt to Evade or Defeat Tax. This memorandum was written to address the payroll tax deferral relief provided for in the CARES Act and Notice 2020-65, as modified by Notice 2021-11.

**Background (CARES ACT)**

On 03/27/2020, the CARES Act was signed into law. Section 2302 of the CARES Act allows employers to defer the deposit and payment of the employer portion of social security taxes and certain railroad retirement taxes. The payroll tax deferral period began on 03/27/2020 and ended on 12/31/2020. Employers must timely deposit fifty percent of the eligible deferred amount of tax by 12/31/2021 and deposit the remaining amount of deferred tax by 12/31/2022. However, if an employer pays any amount before the applicable dates, any such payment is first applied to reduce the employer's

liability for an amount due on 12/31/2021 and then to the amount due on 12/31/2022. The amount of deferred tax will appear on the employer's account in the form of a false credit. The false credits will be reversed after the expiration of each respective repayment date, if not previously paid. Early repayments in excess of the module amount will trigger a systemic transaction code (TC) 767 to prevent the module from refunding or offsetting. The transaction date will generally match the cycle which generated the overpayment.

### **Background (Notice 2020-65 and Notice 2021-11)**

On 08/08/2020, a Presidential Memorandum was issued, directing the Secretary of the Treasury to use his authority pursuant to section 7508A of the Internal Revenue Code to defer the withholding, deposit, and payment of certain payroll tax obligations.

In response to the Presidential Memorandum, Treasury and the IRS issued Notice 2020-65 on 08/28/2020. The Notice allowed employers the option to defer the employee portion of social security tax imposed on wages paid from 09/01/2020 through 12/31/2020 for eligible employees who earn less than \$4,000 per bi-weekly pay period (or the equivalent threshold amount with respect to other pay periods) on a pay period-by-pay period basis. To comply with the requirements of Notice 2020-65, in order to pay the deferred amount of the employee portion of social security tax, employers who took advantage of the relief were originally required to ratably withhold and pay the amount of social security tax deferred from the employees' paychecks from 01/01/2021 through 04/30/2021.

Employers who did not take advantage of the relief provided for in Notice 2020-65 were required to timely withhold the employee portion of social security tax on any wages paid from 09/01/2020 through 12/31/2020 and to timely deposit the withheld amounts.

On 01/19/2021, the IRS issued Notice 2021-11. Notice 2021-11 modified Notice 2020-65 by extending the time period during which employers must ratably withhold and pay the deferred employee portion of social security tax. The due date for the withholding and payment of the deferred employee portion of social security tax has been postponed until the period beginning on 01/01/2021 and ending on 12/31/2021. Payments made by 01/03/2022 will be considered timely because 12/31/2021 is a federal holiday.

### **Affected Tax Periods**

The guidance in this memorandum applies to the following tax periods:

- Form 941 series for the quarterly return period ending 06/30/2020 (01/202006)\*
- Form 941 series for the quarterly return period ending 09/30/2020 (01/202009)
- Form 941 series for the quarterly return period ending 12/31/2020 (01/202012)
- Form 943 series for the annual return period ending 12/31/2020 (11/202012)
- Form 944 series for the annual return period ending 12/31/2020 (14/202012)
- Form CT-1 for the annual return period ending 12/31/2020 (09/202012)

**\*Note:** Form 941 series for the quarterly return period ending 06/30/2020 is impacted as a result of the deferral of the employer portion of social security tax under the CARES Act **only**. Notice 2020-65 and Notice 2021-11 do not apply to the quarterly return period ending 06/30/2020. While the Form 941 series for the quarterly return period ending 03/31/2020 is also impacted as a result of the deferral of the employer portion of social security tax under the CARES Act, this quarter return period is not included as an affected tax period for this memorandum.

### **Identifying Affected Tax Periods**

Employers will report their deferral of the employer and/or employee portion of social security tax on the appropriate line item(s) on their applicable employment tax return(s). Collection employees should review Integrated Data Retrieval System (IDRS) command codes TXMODA, BRTVUE, and TRDBV to identify these deferrals when a copy of the employment tax return is not available. Deferral of the employer and/or employee portion of social security tax will appear on IDRS via a false credit that will appear as TC 766 with credit reference number (CRN) 280. The TC 766 false credits will be systemically reversed with a TC 767 after the expiration of each respective repayment date, if not previously paid. Early repayments in excess of the module amount will also trigger a systemic TC 767 to prevent the module from refunding or offsetting.

### **Revenue Officer (RO) Procedural Changes**

If an employer has elected to defer withholding and payment of the employee portion of social security tax under Notice 2020-65, as modified by Notice 2021-11, then the RO may **not**, under any circumstances, assess the TFRP against a potentially responsible party for the affected tax periods listed above until **after 01/03/2022**.

If the employer has not elected to defer withholding and payment of the employee portion of social security tax, then the Service will still postpone assessment of the TFRP until **after 01/03/2022** on any tax period affected by Notice 2020-65, as modified by Notice 2021-11 (see above for affected tax periods), unless:

- An exigent circumstance exists, and the RO secures Area Director (AD) approval; **or**
- The employer filed an Offer-in-Compromise (OIC); **or**
- The employer filed for bankruptcy

The Service will also postpone assessment of the TFRP until **after 01/03/2022** on any tax period in which the employer is eligible to elect a deferral under section 2302 of the CARES Act (see above for affected tax periods) unless:

- An exigent circumstance exists, and the RO secures AD approval; **or**
- The employer filed an OIC; **or**
- The employer filed for bankruptcy

If the RO needs to postpone assessment of the TFRP on an **affected tax period** (see above), then the RO will:

1. Create an incoming Other Investigation (OI) on the Integrated Collection System (ICS) to conduct the TFRP investigation.
2. Contact the local Automated Trust Fund Recovery (ATFR) coordinator to move the applicable employment tax period to a new case on the system.

**Note:** The RO should complete the TFRP investigation up to and including assessment on all tax periods **not affected** by the CARES Act or Notice 2020-65, as modified by Notice 2021-11 (i.e., not an affected tax period), according to normal procedures outlined in IRM 5.7.3, IRM 5.7.4, and IRM 5.7.6.

3. Conduct the TFRP investigation **up to** the point of requesting managerial approval of the Form 4183 for periods affected by the CARES Act and Notice 2020-65, as modified by Notice 2021-11 (this includes conducting the Form 4180 interview, issuing the Letter 3164-A, summoning for bank records, etc.). Do **not** request approval of the Form 4183 and do **not** issue the Letter 1153. As a reminder, in no instance should a Letter 1153 ever be issued before securing group manager (GM) approval/signature of the Form 4183.

**Note #1:** ROs may secure approval of the Form 4183 for the **sole purpose** of including an affected tax period with an in-business trust fund installment agreement (IBTF-IA) closing determination. However, if the installment agreement defaults, and if IRM deviation memorandum SBSE-05-0421-0021 is still in effect, then the RO may **not** issue the Letter 1153 and assess the TFRP until the time noted in this IRM deviation memorandum.

**Note #2:** If the RO is making a nonassertion determination (Form 9327) on **all** related responsible parties (RRPs) listed on the Form 4183, then the RO may submit the Form 4183 approval request to their GM for approval on the affected 2020 tax period(s). However, if the Form 4183 also includes an RRP where the RO is proposing assessment of the TFRP on the affected 2020 tax period(s), then the RO may **not** submit the Form 4183 approval request to their GM for approval.

4. Hold the case in inventory and document the ICS and ATFR case histories with reference to IRM deviation memorandum, SBSE-05-0421-0021.
5. Schedule a follow-up between 02/14/2022 and 02/21/2022 to allow time for payments and credit reversals to post.
6. Secure managerial approval of the Form 4183 at the scheduled follow-up date (between 02/14/2022 and 02/21/2022) and complete the TFRP investigation if the RO otherwise resolves the case.

**Note:** Do **not** request managerial approval of the Form 4183 if the TC 767 CRN 280 credit reversals for the deferred portion of **employee** social security tax have **not** posted to the account. Wait for the TC 767 CRN 280 credit reversals for the deferred portion of employee social security tax to post prior to requesting managerial approval of the Form 4183.

ROs may refer to the “IF/THEN” chart below for easy reference regarding different case scenarios impacted by the CARES Act and Notice 2020-65, as modified by Notice 2021-11.

IF	AND	THEN
The employer elects to defer withholding and payment of the employee portion of social security tax under Notice 2020-65, as modified by Notice 2021-11, on an affected tax period	<ul style="list-style-type: none"> <li>• The employer has incurred a trust fund balance due on the affected tax period</li> </ul> <p><b>Note:</b> An employer may be liable for the TFRP if the employer did not deposit and pay the full amount of Medicare, withheld income tax, and employee portion of social security tax on wages not eligible for deferral under Notice 2020-65, as modified by Notice 2021-11.</p>	<ul style="list-style-type: none"> <li>• Postpone assessment of the TFRP on the affected tax period until after 01/03/2022; <b>and</b></li> <li>• Do <b>not</b> assess or propose assessment of the TFRP on the affected tax period until after 01/03/2022 <b>under any circumstance</b></li> </ul>
The employer elects to defer withholding and payment of the employee portion of social security tax under Notice 2020-65, as modified by Notice 2021-11, and the employer portion of social security under the CARES Act on the same affected tax period	<ul style="list-style-type: none"> <li>• The employer has incurred a trust fund balance due on the affected tax period</li> </ul>	<ul style="list-style-type: none"> <li>• Postpone assessment of the TFRP on the affected tax period until after 01/03/2022; <b>and</b></li> <li>• Do <b>not</b> assess or propose assessment of the TFRP on the affected tax period until after 01/03/2022 <b>under any circumstance</b></li> </ul>
The employer elects to defer the employer portion of social security tax under the CARES Act on an affected tax period <b>only</b>	<ul style="list-style-type: none"> <li>• The employer has incurred a trust fund balance due on the affected tax period; <b>and</b></li> <li>• The employer has <b>not</b> elected a deferral of the employee portion of social security tax under Notice 2020-65, as modified by Notice 2021-11, on the affected tax period</li> </ul>	<ul style="list-style-type: none"> <li>• Postpone assessment of the TFRP on the affected tax period until after 01/03/2022;</li> <li>• Pursue assessment of the TFRP on the affected tax period <b>only</b> if: <ul style="list-style-type: none"> <li>○ Exigent circumstance with AD approval; or</li> <li>○ OIC; or</li> <li>○ Bankruptcy filed</li> </ul> </li> </ul>

<p>The employer does not elect to defer withholding and payment of the employee portion of social security tax under Notice 2020-65, as modified by Notice 2021-11, or the employer portion of social security under CARES Act on an affected tax period</p>	<ul style="list-style-type: none"> <li>• The employer has incurred a trust fund balance due on the affected tax period</li> </ul>	<ul style="list-style-type: none"> <li>• Postpone assessment of the TFRP on the affected tax period until after 01/03/2022;</li> <li>• Pursue assessment of the TFRP on the affected tax period <b>only</b> if: <ul style="list-style-type: none"> <li>○ Exigent circumstance with AD approval; or</li> <li>○ OIC; or</li> <li>○ Bankruptcy filed</li> </ul> </li> </ul>
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### Group Manager (GM) Procedural Changes

If the RO resolves the case on ICS and needs to keep the case open to complete the TFRP investigation on an affected tax period after 01/03/2022, then the GM will:

1. Move the ICS case to the GM hold file (XXXX-XX00).
2. Keep the ICS case in the GM hold file until or after the scheduled follow-up date (between 02/14/2022 and 02/21/2022).
3. Move the separate ATFR case for the affected modules to the queue.

**Note:** If there is an open case on ATFR that includes both affected and non-affected modules, then contact your local ATFR coordinator to separate the affected modules onto a new case on ATFR. The case with the affected modules may **only** be returned to the queue after you secure approval of the Form 4183 on the ATFR case with the **non-affected** modules. As a reminder, please review IRM 5.7.4.2.1, Factors When Considering Trust Fund Balance Owed Amounts, prior to initiating disposal of a case on ATFR.

4. Maintain possession of the physical TFRP case file.
5. Assign the case (on ICS and ATFR) back to the originating RO (when possible) to complete the TFRP investigation. GMs will return the physical TFRP case file to the RO at this time.

**Contact:** If you have any questions, you may contact Andra Kullman, Employment Tax Program Manager, or a member of your staff may contact Kerri Hansen, Program Analyst.

**CC:** Director, Civil Enforcement Advice and Support Operations  
Director, Collection Operations – Quality and Technical Support  
Director, Specialty Collection – Offer in Compromise  
Director, Specialty Collection – Insolvency  
Director, Campus Collection  
Director, Appeals, Case and Operations Support  
Director, Office of Servicewide Penalties  
Taxpayer Advocate Service  
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