

IRM PROCEDURAL UPDATE

DATE: 09/14/2020

NUMBER: sbse-05-0920-1005

SUBJECT: CARES Act Section 2302 Deferment in Bankruptcy

AFFECTED IRM(S)/SUBSECTION(S): 5.9.13

IRM 5.9.13.1(4) Changed program owner to Collection Policy, SB/SE.

4. **Program Owner.** Collection Policy, SB/SE, Insolvency is the program owner of this IRM.

IRM 5.9.13.18.8 Added new section on procedures for identifying and addressing the new CARES Act Section 2302 deferment in bankruptcy.

1. **General Information.** Section 2302 of the CARES Act allows employers to defer the deposit and payment of the employer's portion of Social Security taxes and certain railroad retirement taxes. Employers are still responsible for timely payment of the employee's share of FICA tax, full amount of Medicare tax, and total withheld income tax. The payroll tax deferral period is 3/27/2020 – 12/31/2020. Impacted tax forms include:
 - o Form 941 series - MFT 01
 - o Form 943 series - MFT 11
 - o Form 944 series - MFT 14
 - o Form 1040 series - MFT 30

NOTE: Self-employed individuals may defer 50 percent of the social security tax imposed under Section 1401(a) of the Code on net earnings from self-employment income for the deferred period.

- o Form CT-1 MFT 09
2. **Payments.** Employers must timely deposit 50 percent of the eligible deferred amount of the tax by 12/31/2021 and deposit the remaining amount by 12/31/2022.

NOTE: These payment due dates are fixed dates for all impacted tax returns.

3. **Identifying Deferred Amount.** If the debtor elects to defer the deposit and payment of the employer's portion of Social Security taxes and certain railroad retirement taxes, IDRS will show a TC 766 Credit Reference Number (CRN) 280 with the deferred amount. When the debtor makes a payment towards the deferred amount, IDRS will show the transaction code of the

payment and a TC 767 CRN 280 with amount of the payment to reverse the false credit.

NOTE: Since the debtor is still responsible for timely depositing the employee's share of FICA tax, full amount of Medicare tax and total withheld income tax, an account can have a balance due and a deferred amount.

4. **Proof of Claim.** The full amount owed for the tax period needs to be included on the proof of claim. Caseworkers are required to manually review all 2020 periods that qualify for this deferment and calculate the total amount owed for the tax period. Use the following chart to calculate the amount of tax to add to the claim:

If	Then
The debtor has a balance due showing on IDRS,	<ul style="list-style-type: none"> ○ Use INTSTB to calculate the tax, interest and penalties due. ○ Calculate the deferred balance by using the TC 766 CRN 280 amount and subtracting any TC 767 CRN 280 amounts. This will be the total deferred amount owed. <p>NOTE: If the total TC 767 CRN 280 amounts equal the total TC 766 CRN 280 amounts, there is no deferred amount owed.</p> <ul style="list-style-type: none"> ○ Add the total deferred amount owed to the tax amount calculated from using INSTB. This will be your total tax.
The debtor has no balance due or credit balance showing on IDRS,	<p>Calculate the deferred balance by using the TC 766 CRN 280 amount and subtracting any TC 767 CRN 280 amounts. This will be the total deferred amount owed.</p> <p>NOTE: If the total TC 767 CRN 280 amounts equal the total TC 766 CRN 280 amounts, there is no deferred amount owed.</p>

5. **Interest and Penalties.** The debtor is required to pay the deferred tax in two equal payments that are due on 12/31/2021 and 12/31/2022, respectively. Interest and penalties do not accrue on the deferred tax unless the debtor defaults on making the required payments. If the debtor defaults on the making a payment, the false credit will be reversed for that payment only and the tax will show on INTSTB.