DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

SMALL BUSINESS / SELF-EMPLOYED DIVISION

November 4, 2020

Control Number: SBSE-05-1120-0085
Expiration Date: 04/30/2021
Affected IRMs: 5.7.3; 5.7.4; 5.7.6

MEMORANDUM FOR DIRECTOR, FIELD COLLECTION

FROM: Ronald Takakjy, Acting Director, Collection Policy *Ronald Takakjy*

SUBJECT: Procedures for Mitigating the Impact of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and Notice 2020-65 on the Trust Fund Recovery Penalty (TFRP) Program

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 payroll taxes.

The purpose of this memorandum is to implement a temporary deviation in accordance with 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. This guidance is effective 11/02/2020 through 04/30/2021.

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 begins on 03/27/2020 and ends 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 December 31, 2021 and then to the amount due on December 31, 2022. The amount of deferred tax will appear on the taxpayer's account in the form of a false credit. The false credits will be reversed after the expiration of each respective repayment date.

Background (Notice 2020-65)

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 allows 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 pay the deferred amount of the employee portion of social security tax, the employer will 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 withhold the employee portion of social security tax on any wages paid from 09/01/2020 through 12/31/2020 are required to deposit the withheld amounts. As a result, these withheld amounts are not entitled to the relief outlined in the Presidential Memorandum.

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 does 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 applicable line item(s) on their employment tax return. Collection employees should review IDRS command codes TXMODA, BRTVUE, and TRDBV to identify these deferrals when a copy of the employment tax return is not readily available. Deferral of the employer or employee portion of social security tax will appear on IDRS via transaction code (TC) 766 with credit reference number (CRN) 280. IDRS will apply a TC 767 with CRN 280 to reverse a deferral of either the employer or employee portion of social security tax.

Revenue Officer (RO) Procedural Changes

If a taxpayer has elected to defer withholding and payment of the employee portion of social security tax under Notice 2020-65, 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 04/30/2021. As specified in Notice 2020-65, the employer may ratably withhold the amount of social security tax deferred from the employees' paychecks from 01/01/2021 through 04/30/2021.

If the taxpayer 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 04/30/2021 on any tax period applicable to Notice 2020-65 (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 04/30/2021 on any tax period in which the taxpayer 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 OI on ICS to conduct the TFRP investigation.
2. Contact the local 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 (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 (This includes conducting the Form 4180 interview, issuing the Letter 3164-A, summonsing for bank records, etc. Do **not** request approval of the Form 4183 and do **not** issue the Letter 1153.).
4. Hold the case in inventory and document the ICS and ATFR case histories with reference to IG SBSE-05-1120-0085.
5. Schedule a follow-up for 06/01/2021 to allow time for payments and credit reversals to post.
6. Secure managerial approval of the Form 4183 at the scheduled follow-up date of 06/01/2021 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 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.

IF	AND	THEN
The employer elects to defer withholding and payment of the employee portion of social security tax under Notice 2020-65 on an affected tax period	• The employer has incurred a trust fund balance due **Note:** An employer could 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	• Postpone assessment of the TFRP until after 04/30/2021; **and** • Do **not** assess or propose assessment of the TFRP until after 04/30/2021 **under any circumstance**
The employer elects to defer withholding and payment of the employee portion of social security tax under Notice 2020-65 and the employer portion of social security under the CARES Act on the same affected tax period	• The employer has incurred a trust fund balance due	• Postpone assessment of the TFRP until after 04/30/2021; **and** • Do **not** assess or propose assessment of the TFRP until after 04/30/2021 **under any circumstance**

The employer elects to defer the employer portion of social security tax under the CARES Act on an affected tax period **only**	• The employer has incurred a trust fund balance due; **and**
	• The employer has **not** elected a deferral of the employee portion of social security tax under Notice 2020-65
		• Postpone assessment of the TFRP until after 04/30/2021;
		• Pursue assessment of the TFRP **only** if:
		  ○ Exigent circumstance with AD approval
		  ○ OIC
		  ○ Bankruptcy filed

The employer does not elect to defer withholding and payment of the employee portion of social security tax under Notice 2020-65 or the employer portion of social security under CARES Act on an affected tax period	• The employer has incurred a trust fund balance due	• Postpone assessment of the TFRP until after 04/30/2021;
		• Pursue assessment of the TFRP **only** if:
		  ○ Exigent circumstance with AD approval
		  ○ OIC
		  ○ Bankruptcy filed

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 04/30/2021, 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 of 06/01/2021.
3. Move the separate ATFR case for the affected modules to the queue.
4. Maintain possession of the physical TFRP case file.
5. Assign the case (on ICS and ATFR) back to the originating RO (where possible) to complete the TFRP investigation. GMs will return the physical TFRP case file to the RO at this time.

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, Collection
Director, Office of Servicewide Penalties
Taxpayer Advocate Service
Assistant Division Counsel, SB/SE
IRS.gov (https://www.irs.gov/)