CARES Act Allows Employers to Defer Payroll Taxes

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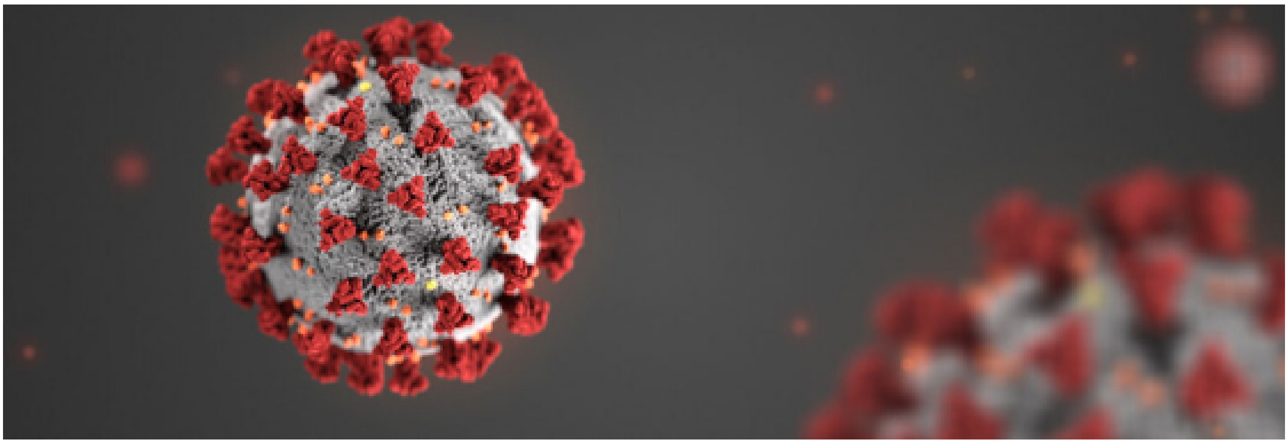

By: Amanda Wilson & Ferran Arimon

The Coronavirus Aid, Relief, and Economic Security Act (CARES) Act was signed into law by President Trump last week. In an attempt to address cash flow concerns of businesses, Section 2302 of the CARES Act gives employers and self-employed individuals the ability to defer certain payroll taxes.

Specifically, the following taxes can be deferred:

- The 6.2% employer´s share of Social Security tax due under Section 3111(a) of the Internal Revenue Code;
- The Tier 1 Railroad Retirement Tax Act tax due under Sections 3211(a) and 3221(a) of the Internal Revenue Code, which corresponds to the 6.2% Social Security tax due; and
- For self-employed individuals, 50% of the 12.4% tax due under Section 1401(a) of the Internal Revenue Code on self-employed net earnings.

This deferral is allowed for payroll taxes incurred between March 27, 2020, (the date of enactment of the CARES Act) and December 31, 2020. The deferred amounts will be treated as timely paid if half of the deferred taxes are paid by December 31, 2021, and the other half are paid by December 31, 2022. There is no cap on the amount of payroll taxes that may be deferred under this provision.

Employers and self-employed individuals should be careful before electing to defer payroll taxes if they are considering taking out a Small Business Act loan. The payroll tax deferral is not available, and thus penalties and interest would likely apply, if the employer or self-employed individual obtains a Small Business Act loan under the Paycheck Protection Program portion of the CARES Act and that loan is later forgiven (a discussion of the Paycheck Protection Program can be found here).

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