

Part III - Administrative, Procedural, and Miscellaneous

Additional Relief with Respect to Employment Tax Deadlines Applicable to Employers Affected by the Ongoing Coronavirus (COVID-19) Disease 2019 Pandemic

Notice 2021-11

I. PURPOSE

Pursuant to section 274 of the COVID-related Tax Relief Act of 2020, which was enacted as Subtitle B of Title II of Division N of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat.1182 (Dec. 27, 2020), this notice modifies Notice 2020-65, 2020-38 I.R.B. 567 (September 14, 2020), by extending the time period during which employers must withhold and pay Applicable Taxes (as defined in Notice 2020-65 and described herein). Specifically, this notice provides that the end date of the period during which employers must withhold and pay Applicable Taxes is postponed from April 30, 2021, to December 31, 2021, and associated interest, penalties, and additions to tax for late payment with respect to any unpaid Applicable Taxes will begin to accrue on January 1, 2022, rather than on May 1, 2021.

II. BACKGROUND

On August 8, 2020, the President of the United States issued a Presidential Memorandum directing the Secretary of the Treasury to use his authority pursuant to

section 7508A of the Internal Revenue Code (Code) to defer the withholding, deposit, and payment of certain payroll tax obligations. Section 7508A provides the Secretary of the Treasury or his delegate (Secretary) with authority to postpone the time for performing certain acts under the internal revenue laws for a taxpayer determined by the Secretary to be affected by a Federally declared disaster as defined in section 165(i)(5)(A). Pursuant to section 7508A(a), a period of up to one year may be disregarded in determining whether the performance of certain acts is timely under the internal revenue laws.

In Notice 2020-65, the Secretary determined that employers that are required to withhold and pay the employee share of social security tax under section 3102(a) or the railroad retirement tax equivalent under section 3202(a) are affected by the COVID-19 emergency for purposes of the relief described in the Presidential Memorandum (Affected Taxpayers). For Affected Taxpayers, Notice 2020-65 postponed the due date for the withholding and payment of the tax imposed by section 3101(a), and so much of the tax imposed by section 3201 as is attributable to the rate in effect under section 3101(a), on Applicable Wages (collectively Applicable Taxes) until the period beginning on January 1, 2021, and ending on April 30, 2021. Notice 2020-65 also provided that for purposes of the notice, Applicable Wages means wages as defined in section 3121(a) or compensation as defined in section 3231(e) paid to an employee on a pay date during the period beginning on September 1, 2020, and ending on December 31, 2020, but only if the amount of such wages or compensation paid for a bi-weekly pay period is less than the threshold amount of \$4,000, or the equivalent threshold amount

with respect to other pay periods, determined on a pay period-by-pay period basis.

Section 274 of the COVID-related Tax Relief Act of 2020 requires the Secretary to ensure that Notice 2020-65, and any successor or related regulation, notice, or guidance, is applied by substituting “December 31, 2021” for “April 30, 2021” and by substituting “January 1, 2022” for “May 1, 2021” in each place it appears.

III. MODIFICATION TO NOTICE 2020-65

In response to section 274 of the COVID-related Tax Relief Act of 2020, the relief provided by Notice 2020-65 is modified as follows: for Affected Taxpayers, the due date for the withholding and payment of Applicable Taxes is postponed until the period beginning on January 1, 2021, and ending on December 31, 2021.¹

An Affected Taxpayer must withhold and pay the total Applicable Taxes deferred under Notice 2020-65 ratably from wages and compensation paid between January 1, 2021 and December 31, 2021, or interest, penalties, and additions to tax will begin to accrue on January 1, 2022, with respect to any unpaid Applicable Taxes. If necessary, an Affected Taxpayer may make arrangements to otherwise collect the total Applicable Taxes from an employee.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2020-65 is modified.

¹ Section 7503 of the Code provides that “when the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday.” The term “legal holiday” includes a legal holiday in the District of Columbia. Because December 31, 2021 is a legal holiday, payments made on January 3, 2022, the next day that is not a Saturday, Sunday, or legal holiday, will be considered timely by operation of section 7503 of the Code. Because section 7503 of the Code does not operate to extend the due date for payment, interest and penalties still begin to accrue on January 1, 2022 if payments are not made by January 3, 2022.

V. DRAFTING INFORMATION

The principal authors of this notice are attorneys of the Office of Associate Chief Counsel, Employee Benefits, Exempt Organizations, and Employment Taxes, with the participation of staff from other offices. For further information regarding the guidance under this notice, please call (202) 317-4774 (not a toll-free number).