

COBRA Subsidy Update: IRS provides penalty relief and instructions for applying Employment Tax credits



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On Tuesday, the IRS published [Notice 2021-24](#), which provides penalty relief for an employer's failure to timely deposit Employment Taxes^[1] related to the American Rescue Plan Act's (ARPA) [COBRA subsidy credits](#). The Notice includes instructions to employers on how to apply COBRA Credits in conjunction with the paid sick and family leave credits originally enacted in the families First Coronavirus Response Act (FFCRA) and the employee retention credits originally enacted in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Penalty Relief

Section 6656 of the Internal Revenue Code imposes penalties on employers who fail to timely deposit Employment Taxes. In March 2020 the IRS issued [Notice 2020-22](#), which provided relief from Section 6656 penalties for employers entitled to the refundable tax credits provided under the FFCRA and CARES Act (FFCRA Credits and CARES Credits, respectively). Notice 2021-24 extends that relief to employers entitled to tax credits under the ARPA for COBRA premium payments made on behalf of assistance eligible individuals (COBRA Credits).

Employers should be aware that if they seek an advance tax credit using [Form 7200](#), the availability of penalty relief may be limited as described below.

How to Apply Employment Tax Credits

Under Tuesday's Notice, an employer will not be subject to a Section 6656 penalty for any calendar quarter in which:

1. The employer is a "person to whom premiums are payable" under Section 6432(b) of the Internal Revenue Code (added by the ARPA)A;
2. After accounting for the amount of Employment Taxes not deposited in anticipation of the employer's FFCRA and CARES Credits, the amount of Employment Taxes that the employer does not timely deposit is less than or equal to the amount of the employer's anticipated COBRA Credits for the calendar quarter as of the time of the required deposit; **and**
3. The employer did not file Form 7200 to obtain advance payment of the same anticipated FFCRA, CARES, or COBRA Credits it used to reduce its deposit for that quarter.

After deducting anticipated FFCRA and CARES Credits, an employer can file [Form 7200](#) to request an advance of any amounts by which the employer's anticipated COBRA Credit exceeds the employer's

remaining Employment Tax deposit amount. Alternatively, the employer can wait and claim a refund on its employment tax return to avoid the potential for penalties.

[\[1\]](#) "Employment Taxes" refers to withheld income taxes, and taxes under the Federal Insurance Contribution Act (FICA) and Railroad Retirement Tax Act (RTTA)).