



Payroll Tax Deferrals Related to COVID-19

October 1, 2020

On August 8, 2020, President Trump directed the Secretary of the Treasury to defer the payment dates for the employee portion of Social Security payroll taxes¹ for the period between September 1, 2020 and December 31, 2020. This type of action is possible under the Tax Code in the case of certain natural disasters, like COVID-19, and in this case applies only to employees making less than \$4,000 in compensation or wages every two weeks on a pre-tax basis. This tax is normally paid by employers withholding the tax from employees' wages and depositing it with the Internal Revenue Service ("IRS"). The IRS issued the following guidance on how the tax deferral would be implemented.

IRS Guidance

On August 28, 2020, the IRS issued **Notice 2020-65**, which provides guidance for the payroll tax deferral. The Notice states that if an employer uses this deferral it can delay the amount the employer would otherwise withhold from the employees' wages from September 1 through December 31, 2020. However, those amounts would then need to be withheld and paid to the IRS from the period January 1 through April 30, 2021.

Under this scenario, employers would essentially be withholding double the amount of the employee's portion of the Social Security payroll tax during the first four months of 2021 (assuming there were no changes in compensation). If all other things remained the same, this would mean employees' net wages would be 6.2% *more than usual* for the last four months of 2020, and then would be 6.2% *less than usual* for the first four months of 2021. The following chart demonstrates the potential tax bill due in 2021 compared to the deferral amount.

Income	Bi-Weekly Pay	Tax Deferred Pay Period for 2020	Tax Due for 1st Nine Pay Periods in 2021 (2021 payroll tax + 2020 deferred tax)	Total Tax Bill Due in 2021 of Amounts Deferred in 2020 (based on 9 pay periods)
\$35,000	\$1,346.15	\$83.46	\$166.92	\$751.15
\$50,000	\$1,923.08	\$119.23	\$238.46	\$1,073.08
\$75,000	\$2,884.62	\$178.85	\$357.69	\$1,609.62
\$104,000	\$4,000.00	\$248.00	\$469.00	\$2,232.00

Payroll tax withholding would return to normal as of May 1, 2021.

¹While payroll taxes include the Social Security tax (Old Age, Survivors and Disability Insurance) of 6.2% and the Medicare tax of 1.45% of wages, the President's Executive Order and IRS Notice 2020-65 only defer the due date of the 6.2% Social Security tax.

Factors for Consideration

There are potential issues and considerations for employers in determining whether or not to take advantage of this deferral. For example:

- Would the deferral help employees?
 - Would employees be able to withstand the swing in income?
 - Will employees be angry if they do not receive the deferral?
- How would the employer collect the tax if the employee leaves the employer before the deferred amount is repaid? Notice 2020-65 makes clear that it is the ultimate responsibility of the employer to make sure the IRS is repaid the deferred tax if Congress does not act to forgive the amount of the deferral.
- Would state wage laws that set a minimum wage be violated if collection of the deferred tax would bring an employee under the minimum wage amount?

Many employers have announced that they will not take advantage of the deferral and will simply continue to withhold and deposit Social Security taxes as normal. See a letter from the U.S. Chamber of Commerce [here](#) explaining that position.

Some have speculated that these deferred payments may be eliminated or forgiven. That would only be possible if Congress were to take action, and at this point, it is unknown if Congress will do so. In taking action, Congress must consider that forgiving the tax would be seen as moving up the date on which the Social Security trust fund would run out of money.

The information contained above should not be considered legal or tax advice. You should consult with counsel in considering whether to apply legislative or regulatory updates to your own circumstances.