

Employers have questions and concerns about deferring employees' Social Security taxes

Published on September 8, 2020

The IRS has provided guidance to employers regarding the recent presidential action to allow employers to defer the withholding, deposit and payment of certain payroll tax obligations.

The three-page guidance in Notice 2020-65 was issued to implement President Trump's executive memorandum signed on August 8.

Private employers still have questions and concerns about whether, and how, to implement the optional deferral. The President's action only defers the employee's share of Social Security taxes; it doesn't forgive them, meaning employees will still have to pay the taxes later unless Congress acts to eliminate the liability. (The payroll services provider for federal employers announced that federal employees will have their taxes deferred.)

Deferral basics

President Trump issued the memorandum in light of the COVID-19 crisis. He directed the U.S. Secretary of the Treasury to use his authority under the tax code to defer the withholding, deposit and payment of certain payroll tax obligations.

For purposes of the Notice, "applicable wages" means wages or compensation paid to an employee on a pay date beginning September 1, 2020, and ending December 31, 2020, but only if the amount paid for a biweekly pay period is less than \$4,000, or the equivalent amount with respect to other pay periods.

The guidance postpones the withholding and remittance of the employee share of Social Security tax until the period beginning on January 1, 2021, and ending on April 30, 2021. Penalties, interest and additions to tax will begin to accrue on May 1, 2021, for any unpaid taxes.

"If necessary," the guidance states, an employer "may make arrangements to collect the total applicable taxes" from an employee. But it doesn't specify how.

Note that under the CARES Act, employers can already defer paying their portion of Social Security taxes through December 31, 2020. All 2020 deferred amounts are due in two equal installments — one at the end of 2021 and the other at the end of 2022.

Many employers opting out

Several business groups have stated that their members won't participate in the deferral. For example, the U.S. Chamber of Commerce and more than 30 trade associations sent a letter to members of Congress and the U.S. Department of the Treasury calling the deferral "unworkable."

The Chamber is concerned that employees will get a temporary increase in their paychecks this year, followed by a decrease in take-home pay in early 2021. "Many of our members consider it unfair to employees to make a decision that would force a big tax bill on them next year... Therefore, many of our members will likely decline to implement deferral, choosing instead to continue to withhold and remit to the government the payroll taxes required by law," the group explained.

Businesses are also worried about having to collect the taxes from employees who may quit or be terminated before April 30, 2021. Because some employees are asking questions about the deferral, many employers are also putting together communications to inform their staff members about whether they're going to participate. If so, they're informing employees what it will mean for next year's paychecks.

How to proceed

Please contact us if you have questions about the deferral and how to proceed at your business.

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