

September 1, 2020

President Trump issued a memorandum on August 8 titled “Memorandum on Deferring Payroll Tax Obligation in Light of the Ongoing COVID-19 Disaster” requesting a delayed due date for employee’s share of Social Security tax for the remainder of 2020 (September 1 – December 31). On August 29, Treasury released the long awaited Notice (Notice 2020-65) in response to President Trump’s memorandum. Note, the Cares Act is currently allowing for the deferral of the employer’s portion of Social Security tax for 2020; this newest item being addressed is regarding the employee’s portion of Social Security tax (not employer’s portion and not federal income or Medicare tax).

Highlights from the Notice:

- Tax Deferral, Not Forgiveness
 - Taxes may be deferred for payrolls paid on and after September 1, 2020 through December 31, 2020.
 - Taxes are paid back “ratably” as deductions from wages paid to employees during the period January 1, 2021 through April 30, 2021.
 - An employer is ultimately required to cover the deferred taxes if the employee does not (i.e. terminated, on a leave, or lower wages before the end of the April 30, 2021 period).
- Employer or Employee participation NOT mandatory
 - Employers are not required to participate and can choose to continue to withhold and remit the tax.
 - Employees are not required to have a say in participation (if Employer chooses to participate) but most observed discussions to date suggests that employees should not be burdened with the future repayment unless they specifically agree to that burden.
- Employee eligibility
 - The Order states that deferral of employee taxes is limited to employees with bi-weekly pay less than \$4,000 on a pre-tax basis – with appropriate adjustment made for other payroll cycles. There is no phase-out – at \$3,999.99 employee is eligible, at \$4000.00 not eligible.
 - This maximum wage limitation is separately determined for each employee in each payroll period – thus if you have fluctuating wages, an analysis will need completed with each payroll to verify individual eligibility.
- Other issues/concerns
 - Some payroll systems may not be ready to address stopping, recording, etc. just the Employee portion of social security taxes as well as the program adds other administrative time requirements.
 - A larger paycheck now will turn into a smaller paycheck after January 1 as employees pay back the deferred taxes (gain 6.2% now but loss 6.2% Jan-April).

- Employer is ultimately liable for repayment of all deferred taxes (I already mentioned earlier but worthy of mentioning again).
 - Responsible person penalty applies – even if the employer is not able to repay (i.e. no longer in business), the individual who is responsible (i.e. CFO, owner, etc.) can be help personally liable.
- To protect against employee default (not employed Jan-Apr 2021, etc.), consider having employees sign giving permission to withhold any balance from last check or other means incase not employed later (have this verbiage as part of the deferral request form).
- Present Trump has asked Congress to consider the forgiveness of any deferral amounts. There has not been much mentioned since the President's initial request but this definitely throws a huge unknown into the decision to allow employee deferrals. Obviously largest factor being if Congress does ultimately forgive the deferral amount but a deferral option was not offered to your company's employees and they missed out. This is currently viewed as highly unlikely to happen.
- There is no timeline regarding when you implement the program so there technically is no reason why a business cannot wait a payroll or two and see if more guidance is released, especially as it relates to a possible forgiveness.
- There are several other open items mostly around the mechanics, practical and legal concerns. Hopefully we will see more Treasury or Congressional guidance shortly.

I have read over a dozen articles written by subject experts and none are recommending implementing this program. I strongly recommend reviewing all the facts and circumstances related to your individual business before making a decision to offer this program or to pass. It is recommended that employers strongly consider letting its employees know whether deferral will be an available option or not, as many individuals are aware of the President's action and may be expecting increased paychecks.

The above guidance are still subject to additional interpretations and government regulations. .

Hopefully the above information has been useful. Please contact your payroll or tax advisor at LattaHarris if you have additional questions regarding the above Memorandum and related Notice or any other items or issues we can be of assistance.

Thank you for giving us the privilege to be your trusted professional services provider.

Best Regards,



Jeff Rummel, MBA, CPA
Director of Operations
LattaHarris, LLP