

Deferring Withholding SS Taxes From Employees Pay

One of President Trump's Memorandums issued August 8, 2020, directs the Secretary of the Treasury to provide guidance permitting employers to defer withholding and paying Social Security taxes from employees' paychecks.

Notice 2020-65 provides guidance, although the Notice does leave questions unanswered. The Notice is very brief. Instead of giving a summary of the Notice, we have decided to copy the Notice below.

Notice 2020-65

On August 8, 2020, the President of the United States issued a Presidential Memorandum directing the Secretary of the Treasury (Secretary) 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. Accordingly, the Secretary has 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 and this notice (Affected Taxpayers). For Affected Taxpayers, 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, as defined herein, (collectively Applicable Taxes) is postponed until the period beginning on January 1, 2021, and ending on April 30, 2021.

Applicable Wages – For purposes of this notice, Applicable Wages means wages as defined in section 3121(a) or compensation as defined in section 3231(e)3 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. The determination of Applicable Wages is made on a pay period-by-pay period basis. If the amount of wages or compensation payable to an employee for a pay period is less than the corresponding pay period threshold amount, then that amount is considered Applicable Wages for the pay period, and the relief provided in this notice applies to those wages or that compensation paid to that employee for that pay period, irrespective of the amount of wages or compensation paid to the employee for other pay periods.

Payment of Deferred Applicable Taxes – An Affected Taxpayer must withhold and pay the total Applicable Taxes that the Affected Taxpayer deferred under this notice ratably from wages and compensation paid between January 1, 2021 and April 30, 2021 or interest, penalties, and additions to tax will begin to accrue on

May 1, 2021, with respect to any unpaid Applicable Taxes. If necessary, the Affected Taxpayer may make arrangements to otherwise collect the total Applicable Taxes from the employee.

Drafting Information – The principal authors of this notice are attorneys of the Office of Associate Chief Counsel, Employee Plans, Exempt Organizations, and Employment Taxes, with the participation of staff from other offices. For further information regarding the guidance under this notice, please call the Notice 2020-65 Hotline at (202) 317-5436 (not a tollfree number).

Footnote 1 The Presidential Memorandum is available at <https://www.federalregister.gov/d/2020-17899>.

Footnote 2 The deposit obligation for employee social security tax does not arise until the tax is withheld. Accordingly, by postponing the time for withholding the employee social security tax, the deposit obligation is delayed by operation of the regulations. Thus, this notice does not separately postpone the deposit obligation.

Comments: As we stated up front in this email, the Notice does leave some questions unanswered. Such as:

- It looks like the withholding is optional. Maybe it would be a good idea for the employer to let each employee decide if withholding should take place or be deferred. Some employees may prefer to have the withholding as normal instead of having smaller paychecks after the first of the year.
- What happens if the employee is not working during the period from January 1- April 30, 2021? How can the employer withhold if the employee is not receiving paychecks?
- If an employer hires a new employee, is the employer required to withhold taxes that were deferred while the employee worked for a prior employer?

This text has been shared courtesy of: David & Mary Mellem, EAs & Ashwaubenon Tax Professionals, 920-496-1065, fax 920-496-9111, ataxprof.com.

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