

IRS Guidance on Executive Order Postponing Withheld Social Security Taxes – Wages Paid from September 1, 2020 through December 31, 2020

The President recently issued an Executive Order (August 8, 2020) allowing employers to postpone the normal 6.2% Social Security tax withheld from certain employees' paychecks paid from September 1, 2020 through December 31, 2020. The IRS released Notice 2020-65 ("Notice") on Friday, August 28, 2020 to explain how the postponement or "deferral" works for employers and employees.

- **It is important to note the postponement of social security taxes is NOT mandatory for employers.** Employers can continue to withhold Social Security taxes and deposit them along with other payroll taxes.
- Employers who **choose** to apply the postponement rules to employee Social Security taxes withheld should follow the guidance in IRS Notice 2020-65 (explained below)
 - **Employers will be liable for any postponed taxes** that are not collected through withholding from employee paychecks between January 1, 2021 and April 30, 2021. See below regarding the ability to withhold unpaid amounts from final paychecks if employees leave the employer before April 30, 2021.

IRS Notice 2020-65 - Employers Who Choose to Apply Postponement ("Deferral") of Withheld Social Security Taxes

The Notice applies to employers who choose to defer the employee portion of Social Security taxes (6.2% of gross wages) to be withheld from wages paid to certain employees from September 1, 2020 through December 31, 2020.

The deferral of employee withheld Social Security taxes only applies to employees with bi-weekly social security wages of less than \$4,000 (\$104,000 on an annual basis) for a bi-weekly period. If wages are paid on a different basis than bi-weekly, the threshold would be different.

- For example, if wages were paid twice per month, the threshold amount would be \$4,333.33 (\$104,000 / 24 pay periods). For payrolls on a weekly basis, the threshold amount would be \$2,000 (\$104,000 / 52).
- The threshold is applied to each pay period. So, an employee may qualify for the deferral for one pay period, but not the next (for example, if wages are over the threshold - even by \$1.)

Any social security taxes for an employee deferred by an employer under the Notice are to be withheld ratably from wages paid to that employee from January 1, 2021 through April 30, 2021. This withholding will be in addition to other normal tax withholdings from those paychecks. The extra withholding will be timely deposited with other taxes from those payrolls.

- In essence, this deferral is really just a "loan" that must be paid back by the employee through payroll withholdings at a later date.