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COVID-19 Update— IRS Guidance on Social Security Payroll Tax Delay

The Secretary of the Treasury (Secretary) has authority in the case of certain disasters (such as the one that has been declared for the COVID-19 pandemic crisis) to postpone certain due dates under the Tax Code. On **August 8, 2020**, President Donald Trump prepared a memorandum directing the Secretary to use this authority to defer due dates under the Tax Code to provide “temporary relief ... to support working Americans.”

Specifically, the President directed the Secretary to defer the dates for payment of the employee portion of Social Security payroll taxes¹ for the period **September 1, 2020 to December 31, 2020**, at least for employees making less than \$4,000 in wages or compensation every two weeks. These taxes are normally paid by means of employers withholding and depositing with the Internal Revenue Service (IRS) the amount of such taxes (6.2% of wages or compensation). The President directed the Secretary to issue guidance to explain how this would work.

IRS Guidance

On **August 28, 2020**, the IRS issued guidance ([Notice 2020-65](#)) deferring the due date for employers to withhold and deposit these employee payroll taxes. If an employer decides to take advantage of this deferral, it could delay what the employer would otherwise withhold from employee wages from **September 1 to December 31, 2020** and instead withhold and remit such amounts during the period of **January 1 to April 30, 2021**. Thus, these employers would essentially be withholding double the usual amount during the first four months of 2021.² Other things being equal, this would mean employees’ net wages would be *6.2% more than usual* for the last four months of 2020, and then would be (roughly) *6.2% less than usual* for the first four months of 2021.

Normal payroll tax withholding would resume as of **May 1, 2021**.

¹ While 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 Memorandum and IRS Notice 2020-65 only defer the due date of the 6.2% Social Security tax.

² Presumably, the additional withholding required due to the decision to defer would be based on the employee’s wages during the last four months of 2020. If a specific employee’s annual compensation changes as of January 1, 2021, the employer would then have to make separate calculations on the appropriate amounts to withhold. Similarly, an employer would not be able to simply double the amount of wages paid to an employee during those first four months of 2021 if the employee’s pay varies from pay period to pay period.

Outstanding Considerations

The U.S. Chamber of Commerce, on behalf of a number of businesses, has published a criticism of this proposal, saying it would do more harm than good by subjecting employees to such a swing in income. Regardless, an employer considering deferral may want to limit it to employees that request it.

There are potential issues for employers that take advantage of this deferral. For example:

- Whether the deferral would help employees?
- How could participating employers collect the tax if an employee leaves the employer at the end of 2020 (or before the deferred amount is repaid)?
- Would state wage laws setting a minimum wage be violated if collection of the deferred tax would bring an employee under the minimum?

Thus, many employers have announced that they likely will *not* take advantage of the deferral and will simply continue to withhold and deposit Social Security taxes as normal.

While there has been some discussion of these deferred payments ultimately being eliminated, it is important to understand that Congressional action would be needed for that to occur. At this point, it is unknown if Congress will take such action. (One impact of forgiving the taxes that Congress would likely consider is the hastening of the date when the Social Security trust fund would run out of money.)

Wespath and GCFA continue to closely monitor developments related to COVID-19. Please check these webpages for periodic updates:

- [General Council on Finance and Administration](#)
- [Wespath Benefits and Investments](#)

The information above should not be considered legal or tax advice. Plan participants, annual conferences, local churches, or other employers or parties affiliated with The United Methodist Church (UMC) should consult with counsel in considering whether to apply legislative or regulatory updates to their own circumstances.