# IRS Guidance Allows Workers’ Payroll Tax ‘Holiday’

Companies would repay deferred Social Security taxes next year

By Stephen Miller, CEBS August 31, 2020

On Aug. 28, the IRS issued Notice 2020-65, allowing employers to suspend withholding and paying to the IRS eligible employees' Social Security payroll taxes. But many questions employers have raised were left unanswered.

The payroll tax "holiday," or suspension period, runs from Sept. 1 through Dec. 31, 2020, and applies only to employees whose wages are less than $4,000 for a biweekly pay period and to salaried workers earning less than $104,000 per year.

Companies that suspend collection of employees' payroll tax would collect additional amounts from workers' paychecks from Jan. 1 through April 30 next year to repay the tax obligation.

## Bare Bones Guidance

At just 2 1/2 double-spaced pages, Notice 2020-65 provides a minimum amount of information and leaves many questions to be answered, presumably in follow-up guidance.

The notice, for instance, does not indicate penalties for employers that choose not to defer withholding of employees' Social Security taxes. The guidance also "doesn't explicitly address how employers should treat the deferred taxes of employees who later quit, and it doesn't say whether employees can opt out of the program," reported *Tax Notes*.

It remains uncertain how many private-sector employers will suspend collection of their employees' Social Security taxes, and, if they decide to do so, when they could reasonably adjust their payroll systems to stop withholding these taxes.

## Employers Responsible for Repaying Taxes in 2021

Employers that do not withhold eligible employees' share of Social Security payroll taxes during the four-month suspension period must repay the deferred taxes to the IRS during the first four months of 2021, unless legislation is enacted to forgive the uncollected taxes.

After April 30, 2021, penalties, interest and "additions to tax" will begin to accrue on employers for tax amounts that have not been repaid, according to the guidance.

President Donald Trump sent a memorandum on Aug. 8 to the Treasury Department to defer collection of the employee portion of Social Security from Sept. 1 through the end of 2020.

White House economic advisor Larry Kudlow has said, "We will take any steps possible to forgive this deferral" so employees would not be required to pay back tax amounts deferred through Dec. 31, *The Hill* reported. However, doing so would require new legislation.

Democratic presidential nominee Joe Biden and other Democrats have raised concerns that if these taxes are not eventually repaid, it could imperil the Social Security fund.

*[SHRM members-only content: Workers' Payroll Tax Deferral Express Request]*

## Departing Employees

Employers, referred to as "affected taxpayers" in the guidance, "may make arrangements to otherwise collect the total applicable taxes from the employee," the IRS said. For instance, employers would withhold extra amounts from employees' paycheck from January through April 2021 to make up for taxes unpaid during the suspension period.

But if an employer suspends collection of an employee's Social Security tax—which is 6.2 percent of his or her pay—during the last four months of this year, to be repaid by doubling the employee's Social Security tax to 12.4 percent during the first four months of 2021, what happens if an employee leaves at the end of the year?

The employer remains liable for the employee's share of Social Security taxes; the due date is just extended to next year, according to the guidance. The employer can make repayment arrangements with the employee, such as deducting the amount owed from the final paycheck. Otherwise, the employer would have to pay the balance owed.

There is nothing more specific in the guidance "about what happens when an [employee] quits, and there's no way to get that deferral back," tweeted Adam Markowitz, vice president at Howard L Markowitz PA CPA, in Casselberry, Fla. "The fact that this guidance is 3 pages leaves way more questions than answers. For that reason alone, this is a hard pass."

Lisa Galletti, owner of LMG Bookkeeping & Payroll Services in Ukiah, Calif., tweeted "don't defer, carry on as usual and save yourself the headache."

Still, some companies whose employees have struggled to make ends meet due to reduced wages or hours may think it worthwhile to give their workers a bit more in their paychecks now, to be repaid next year.

## Form 941 Revised

The IRS also released a draft version of a revised Form 941, Employer's Quarterly Federal Tax Return, to take into account Social Security withholding that is deferred from Sept. 1 to Dec. 31. "The key change is found on page 3 … which asks for the 'Deferred amount of the employee share of Social Security tax included in line 13b,' " wrote Ed Zollars, a tax CPA in Phoenix and author of the Current Federal Tax Developments website.

## Employer and Employee FICA Tax Relief

Social Security and Medicare payroll taxes are collected together as the Federal Insurance Contributions Act (FICA) tax. Social Security is financed by a 12.4 percent payroll tax on wages up to employees' taxable earnings cap—$137,700 for 2020—with half (6.2 percent) paid by workers and the other half paid by employers. There is no earnings cap on the Medicare portion of FICA, for which employers and employees separately pay a 1.45 percent wage tax.

The COVID-19-related payroll tax relief applies only to the Social Security portion of FICA.

Separately, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted in March and implemented through IRS Notice 2020-22 and a series of IRS FAQs, allows eligible employers to defer the deposit and payment of the *employer's* share of Social Security FICA taxes from March 27, 2020, through Dec. 31, 2020. The deferred payments must be paid back to the Treasury Department, with half due by Dec. 31, 2021, and the other half by Dec. 31, 2022.

The CARES Act provision and related guidance did not apply to *employees'* share of the Social Security tax, which was the focus of the president's directive and the new IRS guidance.