

# Employee Payroll Tax Holiday or Looming Tax Nightmare: Unanswered Questions on the Payroll Tax Deferral Executive Order

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August 17, 2020

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In response to the ongoing COVID-19 pandemic, President Trump recently signed an executive order directing the Treasury Secretary to use his authority to defer the withholding, deposit, and payment of the employee portion of Social Security taxes otherwise due on wages paid between September 1, 2020 and December 31, 2020. The deferral is only available for employees who earn less than \$4,000 per bi-weekly pay period (\$104,000 annually). The order raises a number of questions and potential issues that will hopefully be addressed in future guidance issued by the IRS. Some of those questions and issues include:

- Is the tax deferral mandatory? If it is, what about employees who want their employer to continue withholding Social Security taxes from their pay?
- If the tax deferral is not mandatory, and an employer chooses not to implement it generally, what about employees who want to take advantage of the tax deferral?
- Will the tax deferral have any impact on state employment tax requirements or be affected by state payday laws?
- How will deferred taxes be tracked and reported to the IRS?
- How and when must the deferred taxes be paid to the IRS: In a lump sum with an employer's first payroll in 2021, in installments over a designated period of time in 2021, or in a lump sum by some other fixed date in 2021?
- Who is responsible for remitting the deferred taxes to the IRS?
  - For current employees, the deferred taxes could be deducted from their pay in 2021.
  - For former employees, it will be more complicated. Employers are generally responsible for these withholding obligations under the tax code. Does that mean employers will have to remit an amount equal to a former employee's deferred taxes to the IRS and then try to recover that amount from the former employee? Could the deferred taxes be deducted from a terminating employee's final paycheck? Or would a former employee be able to remit the deferred taxes directly to the IRS or use it as an offset to any refund for which he or she may be eligible for the 2020 tax year?
- What happens if the deferred taxes to be deducted from an employee's paycheck in 2021 exceeds or nearly exceeds the total amount of that paycheck?

Due to the many unanswered questions and the potential for a significant financial impact to employers and their employees, many employers and employees have expressed a desire not to implement this temporary Social Security tax deferral. Employers should consult their tax and legal advisors to determine whether and how to implement this tax deferral for its eligible employees.

The executive order is available [here](#).

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