

Great Plains guidance to churches on payroll tax deferment

Based upon a review of the guidance from tax and legal professionals, Great Plains Conference Administrative Services recommend that local churches should NOT offer their lay employees the payroll tax deferment made available by President Trump's August 8, 2020, executive order.

Background

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 Trump issued a memorandum directing the Secretary of the Treasury 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 withholding a portion of employees' wages and depositing with the Internal Revenue Service (IRS) the amount of such taxes (6.2% of wages or compensation).

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 withhold from an employee's pay in the period from September 1 to December 31, 2020 until the January 1 to April 30, 2021 period instead. Essentially, this delay of withholding in 2020 would double up on the employee's withholding in the first four months of 2021 (i.e., paying normal withholdings for January-April 2021 *plus* the delayed withholdings from September-December 2020).

Other things being equal, this would mean employees' take-home pay would be increased for the last four months of 2020 and then decreased for the first four months of 2021. This could lead to a fairly dramatic reduction in take-home pay at the start of 2021, equal to 12.4% of the individual's gross pay. Normal payroll tax withholding would resume as of May 1, 2021.

Please note that this executive order is not related to the payroll tax credits offered to employers through the Coronavirus Relief Act or the CARES Act. You can find more information on those programs provided by the legal experts at Wespeth at <https://www.wespeth.org/about-wespeth/Coronavirus/legislation>.

Analysis

Based upon the guidance of a number of different tax and legal experts, we recommend that churches do not offer this deferment to your lay employees as any payroll taxes not paid now by employees through their withholdings now will still have to be paid in 2021.

As Wespeth recently noted in its guidance:

Only Congress has authority to eliminate taxes. Thus, if Congress were to eliminate the taxes the President wants to postpone, that would eliminate the swing in take-home pay that the President's order would otherwise impose. However, it is not known whether Congress will do this. (For example, one impact of forgiving the taxes that Congress would likely consider is the hastening of the date when the Social Security trust fund will run out of money.)

And there are still several outstanding questions related to this order. For employers who are willing to participate in the program, how could they collect the tax if an employee leaves the employer at the end of 2020 (or before the deferred tax 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?

Considering the negative impact individual employees could experience in 2021 and the questions that still remain to be answered, many businesses and organizations (including the Great Plains Conference) have decided they will *not* take advantage of the deferral and will simply continue to withhold and deposit Social Security taxes as usual. We believe that this a sound practice for all Great Plains churches to follow as well.

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 defer only the due date of the 6.2% Social Security tax.

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