COVID-19 Alert: Payroll Tax Memo

IRS Issues Guidance on President's Payroll Tax Memo

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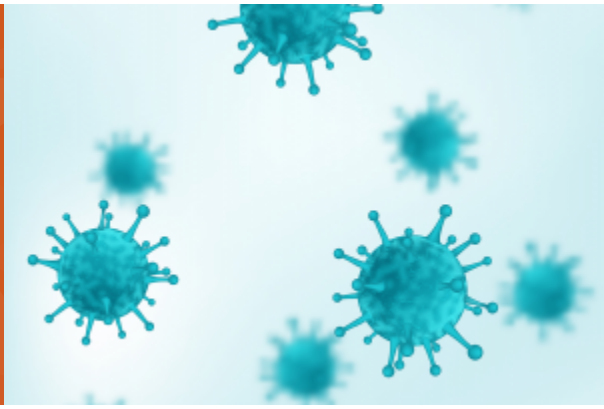

On August 8, 2020, President Trump signed an executive memorandum (the "Payroll Tax Memo") that sought to defer the due date for the employee portion of federal payroll taxes – 6.2% for Social Security and 1.45% for Medicare – originally due September 1, 2020, until December 31, 2020. Under the Payroll Tax Memo, employers are allowed (but not required) to defer payment of the employee portion of the payroll taxes noted above with respect to workers who earn less than $4,000 (pre-tax) on a biweekly basis – or approximately $104,000 annually.

On August 28, 2020, the Internal Revenue Service ("IRS") and the Secretary of the Treasury ("Treasury") issued guidance in Notice 2020-65 confirming that employers who pay wages or compensation to employees that meet the threshold noted above are able to defer the withholding and payment of payroll taxes on wages and compensation paid out during the period beginning September 1, 2020, and ending on December 31, 2020 (the "Deferral Period"), until the period beginning January 1, 2021, and ending on April 30, 2021.

Notice 2020-65 states that employers are entitled to determine whether an employee meets the wage or compensation threshold on a per pay period basis. As a result, if the amount of wages or compensation payable to an employee for a pay period during the Deferral Period are less than the corresponding pay period threshold amount, then the employer is entitled to payroll tax deferral with respect to payroll taxes associated with that pay period, irrespective of whether the employee's wage or compensation exceed the threshold amount in other pay periods during the Deferral Period.

As Notice 2020-65 clarifies, the obligation of an employer to deposit employee payroll taxes does not arise until the associated taxes are withheld. By deferring the obligation to withhold the employee portion of federal payroll taxes, the obligation to deposit those withholdings is automatically delayed. Employers who choose to defer the withholding of payroll taxes for employees who meet the threshold noted above for the Deferral Period must withhold and pay the total applicable taxes deferred at no later than April 30, 2021. The IRS will impose interest, penalties, and additions to tax beginning May 1, 2021, for employers who fail to withhold and deposit the deferred payroll taxes by April 30, 2021.

It is important to note that while Notice 2020-65 provides further guidance from the IRS and Treasury, this executive action amounts to a deferral of tax only; the Payroll Tax Memo doesn't change how much tax employees and employers actually owe – only Congress can do that.

The Morse Tax Practice Group is following this issue closely. Please feel free to contact Joe Hunt should you have any questions.

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