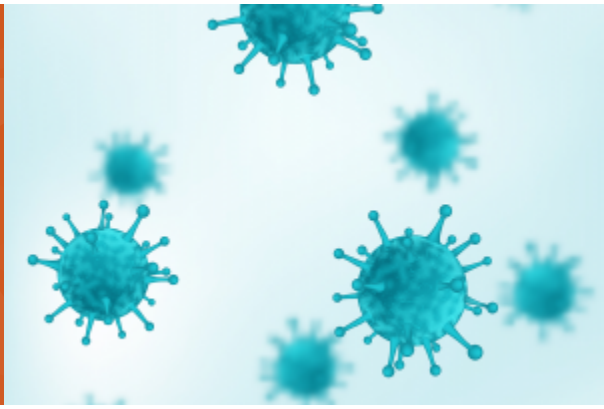
COVID-19 Alert: Payroll Tax Obligations

Deferring Payroll Tax Obligations in Light of the Ongoing Pandemic

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On August 8, 2020, President Trump signed an executive memorandum (the "Payroll Tax Memo") with the subject of "Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster." The Payroll Tax Memo seeks 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. The payroll tax deferral may be made retroactive to taxes due on August 1, 2020, but that has not yet been finalized.

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.

The Trump Administration claims that its authority derives from section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207, a law that lets the Treasury Secretary postpone tax deadlines after a presidentially declared disaster. This is the same law that allowed the government to delay the April 15 tax-filing deadline to July 15, 2020.

The President directs the Secretary of the Treasury to issue guidance to implement the Payroll Tax Memo, and shall explore avenues, including legislation, to eliminate the obligation to pay the taxes deferred pursuant to the implementation of the Payroll Tax Memo. However, as it currently stands, it is important to note that 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.

Formal rules regarding implementation of the Payroll Tax Memo are forthcoming from the Secretary of the Treasury and the Internal Revenue Service, and those rules should factor heavily into companies' decision-making process about whether and how to implement payroll tax deferral.

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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