

# Electronic Alert

Volume 23, Issue 51

September 3, 2020

## **Payroll Tax Deferral: What Is Required & How Does It Work?**

By Jeff Robertson

We have received many questions over the past weeks about the Payroll Tax Deferral ordered by President Trump that went into effect September 1, 2020. The Treasury Department released limited guidance Notice 2020-65 outlining the mechanics of the Payroll Tax Deferral.

To understand what is required, one must understand the general rules and what has changed.

### **Payroll Tax Remittance**

Employers are required to withhold and pay the employee share of Social Security Tax pursuant to Section 3102(a).

The dollars withheld must be remitted to the Department of the Treasury (IRS) by certain timeframes along with reporting forms (941 and 943). Timeframes are determined by the size of the payroll – semi-weekly or monthly.

### **Delayed Remittance Date by Guidance**

The Treasury Department guidance has delayed the deadline for remittance of certain portions of the otherwise to be withheld and remitted payroll taxes from the period beginning September 1, 2020 thru December 31, 2020, to the period beginning January 1, 2021 thru April 30, 2021. This is referred to in the guidance as the “Applicable Taxes.”

### **Does This Apply To All Employees?**

The guidance does not define employees but does define “Applicable Wages” as those wages in a bi-weekly pay period from September 1, 2020 thru December 31, 2020 below a threshold amount of \$4,000 on a pay period by pay period basis.

### **Are Employers Required To Offer This To Employees?**

There is nothing in the guidance requiring employers to offer this Payroll Tax Deferral and employers should not read into the guidance any affirmative responsibilities. The guidance simply delays the required remittance date, but it does not change or enact any other requirements to the payroll process.

## **What If an Employer Allows the Deferral but Employee Leaves Before Withholding & Remittance of Deferred Taxes?**

This is not clear from the guidance, however, looking to a situation where an employer may make a mistake in withholding may provide the clearest evidence of how this situation would be reconciled. When an employee files their yearly 1040, the wages and taxes withheld usually accurately reflect the required percentage remittance. In the rare case when these numbers do not match, an employee would generally be required to remit as part of his or her tax return 1040 process the under-withheld employee side amounts. The employer may face a penalty for under-withholding for that time period separately as part of the 941 process.

Therefore, in this Payroll Tax Deferral situation, it is likely that at an outer date, the employee would be required to reconcile the withholding on the Form 1040 process, but we have no information as to whether the Treasury Department would assess penalties on the Form 941 process related to January 1, 2021-April 30, 2021 in the event of the employee's early departure. The Notice 2020-65 does indicate the possibility and intent of penalties and interest to accrue from May 1, 2021 forward for unpaid taxes.

## **Can Employers Force Employees To Agree To Repay?**

State laws can vary on the enforceability of agreements with employees to repay taxes. The Notice 2020-65 does indicate that employers may make arrangements with an employee to repay. Each employer would need to weigh the enforceability risks with the potential perceived force of an agreement to repay such payroll taxes. Even in the situation where an employee stays with the employer, they may not fully understand that as currently written, the employee will have fewer taxes today and potentially double taxes in the future. State laws as to the percentage/amount of withholding dollars at certain wage levels will also have to be considered.

For help preparing agreements and disclosures to employees regarding payroll tax deferrals, contact your Barran Liebman benefits team for assistance.

The full scope of guidance on this topic includes a Presidential memorandum, as well as the information in Notice 2020-65. Therefore, we are limited in the guidance and analysis we can provide. However, we can look at the actual provisions and extrapolate the likely impact of choices related to the Payroll Tax Deferral. We also recommend working with your payroll department on how to note the wages related to the deferred taxes and how to defer them in a manner that can be reconciled in your 2021 payroll process.

*For questions related to Payroll Tax Deferral, or for any other employment benefits questions, contact Jeff Robertson at 503-276-2140 or [jrobertson@barran.com](mailto:jrobertson@barran.com).*