

PAYROLL TAX DEFERRAL effective September 1, 2020

On August 8, 2020 President Trump issued an Executive Memorandum ¹, deferring the collection of the employee portion of FICA, a 6.2% payroll tax that funds retirement and disability benefits for American workers. Only Congress has the authority to reduce or suspend the tax, thus President Trump chose to defer the tax, making it payable in full by April 30, 2021.

For reference, a full-time employee making \$15/hour for four months could have \$74 deferred from each paycheck (every two weeks), for a total of \$670. An employee earning \$52,000 per year could have \$992 deferred for the period September 1 – December 31.

However, there are multiple complicating factors due to the way this was written:

- The 6.2% tax on income paid Sep-Dec 2020 would be withheld from wages earned Jan-Apr 2021, in addition to the usual tax withholdings.
- If an employee's employment ends before the tax is fully collected in 2021, the employer must still pay the tax.
- Employers are not required to participate, according to Treasury Secretary Steven Mnuchin.
- It is unclear whether employees can individually choose to opt in or out of the deferral, or whether there is adequate time for employers to create and implement an opt-in notification system, and for payroll processors to incorporate this into their systems prior to September 1.
- It remains unclear whether the deferral will be collected as a 2020 or 2021 tax.
- IRS Form 941 will need to be amended for Q3 and Q4, as well as Q1 and Q2 of 2021.
- IRS Form W-2 will need to be amended for 2020 and 2021.

Consequently, the IRS guidance ² for this was not released until Friday, August 28, and is still limited and unclear. For now, we wait for further guidance. If you (as an employer) choose to defer the employee's 6.2% FICA payroll tax for your employees, you should be prepared to pay the amount if needed and be sure to let your employees know that they will have to pay the full amount during the first four months of 2021, in addition to their usual taxes.

For religious employers, note that this does *not* defer the ministers' obligation to remit SECA, the self-employment tax paid by self-employed persons and ministers. All ministers are exempt from FICA, but required to pay the 15.3% SECA tax. ³

President Trump has stated many times that if he is re-elected, he intends to end the payroll tax, which funds 89% of the SS retirement and disability benefits paid, although it should be noted that the President does not have the power to change tax law or to re-appropriate government funds. The chief actuary of the Social Security Administration calculated that the permanent elimination of the payroll tax would result in the disability payment program running out of funds in mid-2021 and the retirement payments in 2023, unless they are funded from other sources. ⁴

¹ <https://www.whitehouse.gov/presidential-actions/memorandum-deferring-payroll-tax-obligations-light-ongoing-covid-19-disaster/>

² <https://www.irs.gov/pub/irs-drop/n-20-65.pdf>

³ <https://www.irs.gov/pub/irs-pdf/p517.pdf>

⁴ <https://www.forbes.com/sites/nicholasreimann/2020/08/24/social-security-fund-would-be-empty-by-2023-if-payroll-taxes-were-cut-actuary-estimates/#19f3418ba3b2>