



COVID-19: Presidential Order Deferring Individual Payroll Taxes

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On August 8, 2020, President Trump issued a [presidential memorandum](#) ordering the [deferral of individual payroll tax obligations](#) from September 1, 2020, through December 31, 2020. The deferral was for employees with biweekly compensation of generally less than \$4,000. The memorandum directed the Secretary of the Treasury to issue guidance to implement this policy. On August 28, 2020, guidance was provided in [IRS Notice 2020-65](#).

This Insight discusses the individual payroll tax deferral outlined in the memorandum, including issues related to repayment of deferred amounts; compares this order to the business payroll tax deferral provided in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136); and addresses questions related to potential economic effects.

What individual payroll taxes were affected by the order?

The presidential memorandum ordered deferred collection and payments of the employee portion of the Old Age, Survivors, and Disability Insurance (OASDI) payroll tax, also known as the Social Security payroll tax. The [Social Security trust funds](#) are financed by a 12.4% payroll tax on wages up to the taxable earnings base ([\\$137,700 in 2020](#)). The tax is split equally between employers and employees, with each paying 6.2%. Self-employed individuals pay both the employer and the employee share, or 12.4%. The deferral was applicable to employees with less than \$4,000 in wages during the biweekly pay period (or equivalent amounts with respect to other pay periods). The deferral applied to the railroad retirement tax attributable to the individual Social Security tax. The memorandum and IRS Notice 2020-65 did not specify whether the deferral applies to self-employed individuals.

How did the order affect payroll tax collections?

Employers collect the employee portion of the tax by deducting the tax from wages when wages are paid. Employers typically [deposit payroll taxes](#) with the Internal Revenue Service (IRS) semiweekly or monthly, and report employment taxes paid on [quarterly federal tax returns](#) filed no later than 30 days

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after the end of the calendar quarter. Some employers with small payrolls may file annually. [Decisions about withholding](#) of employee payroll tax amounts, and thus decisions regarding participation in deferral, are made by the employer.

Employee payroll taxes were deferred, not forgiven, by the presidential order. Deferring employee payroll taxes resulted in the deferred tax liability being due after December 31, 2020. The presidential memorandum did not specify how deferred employee payroll taxes are to be collected, but did direct the Secretary of the Treasury to explore avenues to eliminate the obligation to pay deferred taxes, including legislation. Permanent forgiveness would require congressional action.

Administrative concerns and issues not resolved in IRS Notice 2020-65 (described below) may have limited the scope of employers opting to defer employee payroll taxes. When the deferral was announced, stakeholders asserted [it would have been unworkable](#) to implement a system where employees choose whether or not their employer would defer their share of OASDI payroll taxes from September 1, 2020, through the end of the year. Employers also [expressed concerns](#) about administrative costs associated with implementing the deferral and concerns about being liable for the deferred tax liability of employees who have changed jobs. Another concern was that [employers may be liable](#) for deferred employee payroll taxes if [employees' employment terminates](#) before the end of the repayment period.

When are deferred taxes repaid?

Deferred payroll taxes must be repaid in 2021. IRS Notice 2020-65 provides that any deferred employee payroll tax be withheld and paid ratably in the first four months of 2021, between January 1, 2021, and April 30, 2021. A provision in the COVID-Related Tax Relief Act of 2020 (Division N, Title II, Subtitle B of P.L. 116-260) extended the repayment period through December 31, 2021.

Deferred payroll taxes not repaid during this period are subject to interest and penalties. Notice 2020-65 provides that employers “may make arrangements” to collect deferred taxes from employees. The notice does not, however, explicitly address how employers should handle the deferred employee payroll taxes for employees no longer employed by the employer during the repayment period.

Federal government and [military employees](#) who had the employee share of their payroll taxes deferred in 2020 will have deferred amounts withheld from their paychecks in 2021.

How does the individual deferral compare to the CARES Act deferral for businesses?

The CARES Act contained a [delay in payment of employer payroll taxes](#) (as opposed to the employee's share of payroll taxes). Specifically, the CARES Act deferred employer OASDI payroll taxes due between March 27, 2020, and December 31, 2020. Deferred tax liability is to be paid in two installments—with half of the deferred amount paid on or before December 31, 2021, and the remainder due on or before December 31, 2022. For businesses, the payroll tax deferral was intended to free up cash flow. The payroll tax deferral is similar to an interest-free loan, which businesses will presumably repay once normal business operations resume.

The CARES Act provides general revenue transfers to the Social Security trust funds in the event that the employer payroll tax deferral results in a loss of revenue. The presidential memorandum does not address how the employee payroll tax deferral might affect the Social Security trust funds, or specifically include any hold-harmless provision.

Is the individual deferral likely to provide economic stimulus?

There are likely [limited economic effects](#) from changing the timing of when individual OASDI payroll taxes are paid. Delaying payroll tax liability for several months does not provide working individuals with additional economic resources in the longer term; nor does it change the incentives to work, save, or invest. Employees employed by employers choosing to defer payroll taxes could see increased take-home pay in the near term. However, given the administrative concerns and other unresolved issues, [employers may have been hesitant to defer employee payroll taxes](#), which could mean limited economic effects. Payroll tax deferrals do not provide additional resources to nonworking or unemployed individuals. If deferred payroll tax liability is forgiven, the forgiveness of deferred payroll tax liability could provide additional [fiscal stimulus](#).

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