



*National Payroll Reporting Consortium*

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Following are questions from the National Payroll Reporting Consortium<sup>1</sup>, as well as preferred approaches, related to the August 8<sup>th</sup> Executive Order deferring employee Social Security taxes. This is intended to assist the IRS and Treasury Department in developing appropriate guidance for employers.

- Is this program mandatory for employers, or could employers choose not to support this deferral?
  - Preferred answer: The IRS/Treasury should publicly recognize that some employers may not be able to offer the deferral, and some employees may prefer not to receive it. In effect, the program should be voluntary for employers and employees.
  - Why: The programming changes to payroll systems are significant and may take employers months to accommodate the changes. If mandatory for employers, this may create additional stress and complication at a time when employers are already under an extreme amount of pressure.
  - Some employers may not want to offer the deferral since they understand that they would generally remain liable for employment taxes. (See next point)
- Clarify that employers will not be held liable for employee Social Security taxes not withheld in accordance with the August 8<sup>th</sup> Memorandum..
  - Preferred answer: Publish guidance to the effect that employers will not be held liable for employee Social Security taxes not withheld in accordance with the August 8<sup>th</sup> Memorandum.
  - Why: Employers will recognize that they would continue to be liable for employment taxes, whether or not they withhold them, notwithstanding the deferral.
  - Should congress NOT act to forgive the amounts deferred, it is possible that the IRS may assess employers for the full amount that should have been withheld.
  - Employers that recognize this may reasonably decline to offer the deferral to employees.
  - It would be a conflict to require employers to cease withholding when they might ultimately remain liable for taxes not withheld.
- There is reference to ‘pre-tax’ – does that mean that pre-tax amounts (such as Section 125 deductions) need to be added back?

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<sup>1</sup> The National Payroll Reporting Consortium (“NPRC”) is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private-sector workforce. Payroll service providers have long served an important role in our nation’s tax collection system as a conduit between employers and government authorities. Payroll service providers improve the efficiency of government tax collections and reporting through electronic payment and reporting programs and improve employer compliance.

- Preferred Answer – No, these pre-tax amounts should not be added back in. Wages subject to the deferral should be based on earnings subject to Social Security; i.e., Sec 3121(a).
- Why: All payroll systems already calculate wages subject to Social Security, so this would be the easiest change for employers to implement.
- Social Security taxable wages exclude Section 125 deductions. Taxable wages define the related tax amount. To add Section 125 deductions to Social Security taxable wages would inflate the wage and tax amount subject to deferral, which would then exceed the actual taxable wage and tax amount associated with the wages being paid. The actual Social Security wage and tax amounts would thus be less than the tax deferred.
- What will the reporting requirements for employers be?
  - The IRS will need to quickly advise employers of any reporting requirements, because this will define how payroll systems are reprogrammed; i.e., programming cannot really begin until this is known.
  - Based on the circumstances and similar IRS reporting, reconciliation and enforcement systems, employers may need to separately report the following elements on Form W-2 and Form 941:
    - Qualifying Social Security wages paid during the deferral period (9/1 – 12/31)
    - Possibly: Social Security tax deferred
      - It may not be necessary to separately state Social Security tax amounts deferred on the W-2, since the IRS would have full-year Social Security wages and full-year Social Security tax withheld. They can thus calculate the amount deferred for each employee.
- Clarify the conflicting threshold figures - \$100K annually (referenced in White House Press materials) vs. “\$4,000 per bi-weekly pay period. The methods result in significantly different relief amounts.
  - For example, if a per-pay period limit of \$4,000 (biweekly) is enforced, the maximum tax deferral would be \$2,232 (assuming nine biweekly pay periods beginning 9/1/2020).
  - If a \$104,000 annual earnings limit is enforced, the maximum tax deferral would be \$6,448.
  - Preferred Answer – Employers should be advised to apply only a per-pay period amount, such as \$4,000 biweekly, to determine eligibility. IRS should publish a specific amount for each pay frequency that translates to qualifying or not qualifying for deferral. Each pay period should be evaluated in isolation.
- Clarify “Equivalent Amounts in Relation to Other Pay Periods”; and the intent of “generally less than \$4,000.” This would imply that employers should keep a running total and average of wages paid per employee through the deferral period, and perhaps apply or not apply the deferral if wages paid in the present pay period is within “X” standard deviations of the average wage for each employee since September 1. This would be unnecessarily complex and difficult for employers.



- Preferred Answer – IRS should publish a specific amount for each pay frequency that translates to qualifying or not qualifying for deferral. Each pay period should be evaluated in isolation.
- What if a taxpayer exceeds the \$4k threshold in one/several pay periods but not others? Many employees have fluctuating earnings. Will the employer need to collect money back from employee, or is the assessment just for each individual pay period?
  - Preferred Answer – Each pay period should be evaluated based only on the wages of that pay period, not year-to-date or September-to-date or averages of such periods.
  - Why: would create massive confusion and collections problems; e.g., if December bonus or similar payments bring a person over \$4,000 for the pay period or even the entire suspension period. What if an employee has zero tax for 3.5 months and the last payroll then changes their eligibility? The back tax collection would absorb the entire net pay, and may leave the employee owing a large amount with their 1040.
  - How would an employer collect funds from an employee who is no longer with the company?
- Is there any way to avoid a “cliff” result for those that earn just over the Income limit?
  - For example, someone earning \$3,999 biweekly may defer \$2,231 over nine biweekly pay periods; whereas someone earning one dollar more may not be able to defer anything.
  - Preferred Answer – IRS should make no adjustment; i.e., keep the existing calculation, and avoid creating a complex phase-out formula for a temporary program.
- Could an employee receive the benefit of the deferral if their employer does not offer it?
  - Preferred Answer – Employees could receive a similar tax reduction amount even if they work for an employer that chooses not to offer this tax deferral by submitting a new Form W-4 to reflect any additional tax credit or deduction to which they believe they are entitled. This would have the effect of reducing federal income tax withheld. This does not need guidance or recognition. No answer is necessary.
- Would an employer be permitted to withhold, but not remit, the employee Social Security tax?
  - Preferred Answer – No. This should be confirmed. A concern is that the employers will ultimately be responsible for the tax, which may lead some to withhold and not remit.
  - Why: Would defeat the purpose of the EO and conflict with normal tax deposit rules.
  - The IRS should affirmatively state that this is not permitted.
- How would repayment work if Congress doesn’t vote to forgive this? Would a lump sum be due at the end of the year when the 941 is filed?
  - Preferred Answer – Employees would pay any deferred amount with the IRS Form 1040.



- Will the IRS realistically be able to complete a new 941, e-filing schema changes, etc. in time for 3Q filing? If not, what are the alternatives?
  - Preferred Answer – Definitive guidance from IRS as soon as feasible.
  
- Would there be any records retention or documentation requirements for employers to substantiate that an employee authorized the deferral? If the deferral is not forgiven and the employee ends up with a large tax bill at the end of the year, they could complain that they did not authorize the deferral or that they did not fully understand it.
  - Preferred answer: IRS guidance should direct employers that they should apply the deferral to all employees; but may stop deferrals upon request of any employee.
  - Employers should offer a standard disclosure explaining the program (defined by the IRS), but the default should be IN for all employees (i.e., to defer SS tax) unless the employee opts out.
  - Employees opting OUT should require no particular form of notice or opt-out election/authorization, and no recordkeeping requirements for employers since the employee will merely be opting to continue withholding as usual. The results will be obvious, and arguably no harm can come from it, etc..
  - It will be a priority to avoid any additional paperwork/authorization or similar paper forms given that it would affect ~100 million workers and employers have only a few weeks to do it.
  - it would be a huge and costly undertaking to collect authorization forms from tens of millions of U.S. workers within a few weeks.
  
- What happens if an employer misses the September 1 Implementation Date?

Many employers will not be able to implement the change by September. Some will be as late as November or December. Some may not be able to do it at all in 2020.

  - What will employers be able or required to do in terms of adjustments for prior payrolls?
  - For employees that have already paid the tax, how do they get it back?
    - Preferred Answer – the employer may, but is not required to, refund prior Social Security taxes withheld and paid to the IRS
      - Note: There may need to be restrictions on when and how this can apply. For example, applying a retroactive adjustment in November back to September may require an amendment to the 3Q2020 Form 941.
    - If Congress enacts legislation to forgive deferred tax amounts, employees will receive the refund from their Annual IRS Form 1040.

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