



Executive Order- Employee FICA Tax Deferral

Should you consider deferring your employees' FICA withholding tax?

September 8, 2020

Dear CertiflexDimension Payroll Customers:

On August 8, 2020, the President of the United States issued an Executive Order to the Secretary of the Treasury to use his authority to allow employers to effectively defer (postpone) the withholding of their employees' FICA tax until the end of 2020. On August 28, 2020 the IRS published their first guidance on this subject with Notice 2020-65 which is available for review at:

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

While Notice 2020-65 leaves many questions unanswered, it does define the deferral wage period, exemptions, and postponement collection periods. Treasury Secretary Mnuchin's widely reported comments indicate that employer compliance for the deferral of employee FICA tax is a *voluntary* election by the employer. Employers are reminded that neither the Executive Order nor this Notice eliminates the tax liability. Ultimately, the employers should withhold all of the deferred taxes from employees in future compensation paid to the employees between January 1, 2021 and April 30, 2021. Since the employer can face penalties and interest on unpaid tax deferrals not collected by April 30, 2021, the IRS Notice states "If necessary, the Affected Taxpayer may make arrangements to otherwise collect the total Applicable Taxes from the employee." As the "Affected Taxpayer" is the employer, guidance is vague on how exactly these deferred taxes would be collectable by the employer if, for example, the employee was no longer an employee for all or part of the "deferred tax collection period". For this reason, and the fact that the onus is on the employer to pay the deferred tax regardless of whether or not it was collected from the employee, it appears that the majority of employers are electing to continue to withhold FICA taxes as normal.

One of the big unanswered questions still remains regarding what, if any, are the individual employee's options. For example, if an employer elects to allow employee tax deferrals for their company, is the employer mandated to defer taxes on all eligible employees or can an individual employee elect not to defer their FICA tax? Many employees may prefer to not have their FICA tax deferred due to the additional hardships of having their existing take home pay reduced in the very near future by the deferrals during the collection period. Another important unanswered guidance question is how the deferring of the employees' taxes will affect the upcoming 2020 and 2021 Employer 941 forms and 2020 and 2021 year-end employee W2's and employer W3's.

The existing CertiflexDimension Payroll programs are already capable of exempting individual employees from FICA Tax withholding while still tracking the employee's FICA wages required for other federal and state reporting. However, if you wish to implement an employee FICA tax exemption on an employee by employee basis, we strongly suggest consulting with your Accounting/Legal professionals before proceeding. For instructions on implementing employee FICA tax exemptions, please contact our support department at 800-237-8435 or Support@CertiflexDimension.com.

Please note that we are waiting on additional guidance from the IRS for deferral tracking of the tax for upcoming Employer's 941 forms and year-end W2 reporting. We do expect that some or all of this guidance will be published in the next few weeks by the IRS. Once that is available, payroll application programming changes are likely.

Sincerely,

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