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Social Security Taxes Could Be Deferred for the Rest of 2020

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Under the CARES Act passed on March 27, 2020, Congress allowed employers and self-employed workers to defer payment of their portion of Social Security taxes that will accrue between March 27 and December 31, 2020. Fifty percent of the *employer* portion of the tax could be deferred until December 31, 2021 and the other half until December 1, 2022. In effect, the government is giving an interest-free loan until the deferred taxes are repaid.

The Social Security tax is a total of 12.4% on annual earnings up to \$137,700. Half of that, 6.2%, is paid by the individual employee and half by the employer on every paycheck until the maximum earnings are reached.

On August 8, President Trump issued a Memorandum directing the Secretary of the Treasury to use his authority under section 7508A of the Internal Revenue Code to defer the *employee* portion of Social Security tax obligations with respect to American workers making less than \$4,000 per bi-weekly pay period (or \$104,000 per year) for the period from September 1 through December 31, 2020.

Section 7508A of the Code allows the Treasury Secretary to postpone for up to one year the determination of tax liability (including interest and penalties) of a taxpayer who is determined by the Secretary to be affected by a federally declared disaster. On March 13th, 2020, President Trump issued an [emergency declaration](#) in response to the COVID-19 pandemic making the crisis a qualifying federally declared disaster. The IRS used its authority under section 7508A to extend the income tax payment and filing deadlines for the 2019 tax year to July 15, 2020.

Employers have raised questions about the impact of the President's Memorandum, in particular, on employees who quit on or before December 31, 2020. Under current law, if the employee quits, the employer would still have the obligation to pay the employee's portion of payroll taxes deferred under the President's memorandum. In addition, employers will have to change their payroll systems to halt the withdrawal of funds from their employees and then restore the current system if the deferral is not made permanent, as the President has promised to do if he is re-elected. Payroll providers have a very short time to adjust their software to accommodate the deferral.

In the Memorandum, the President asked for the Secretary of Treasury to issue implementation guidance and to explore avenues, including legislation, to eliminate the obligation to repay the taxes deferred. Stay tuned.