

# TAX ADVISORY

## Executive Order on 2020 Social Security Withholdings



September 4, 2020

On August 8, 2020, President Trump issued an executive order requesting that employers stop withholding the 6.2 percent Social Security tax from certain employees' paychecks for the remainder of 2020. The order applies to those employees who make less than \$4,000 per pay period and less than \$104,000 per year. Withholding of the federal income tax and the Medicare tax are not affected by the new order. On August 28, 2020, the Internal Revenue Service issued guidance (Notice 2020-65) concerning the order.

### KEY LEGAL ISSUES

Because the president cannot eliminate Social Security tax withholding without congressional action, the order is set up to provide only for a deferral of the tax, unless further congressional action occurs. Consequently, the tax that was not withheld in 2020 will be withheld in early 2021, along with the regular 6.2 percent withholding that would otherwise apply to those 2021 paychecks.

**Takeaway:** To the extent an employer reduces employee payroll taxes in 2020 under the new executive order, employee paychecks will be larger; however, those same employees will have correspondingly smaller paychecks in early 2021 when the deferred payroll tax is "paid back" into the Social Security system. Although the order indicates that the president will attempt to get Congress to pass legislation eliminating employee liability for the deferred 2020 payroll tax altogether, there is certainly no guarantee that any such legislation will be enacted.

The new order raises difficult administrative issues in applying the 2020 payroll tax reduction and its reimbursement in 2021. Most notably, how does an employer recoup the reduced payroll taxes for those employees who are employed in late 2020 but who may no longer be employed by that same employer in early 2021, either because they are seasonal employees or because they otherwise terminate employment before the deferred payroll tax is paid back?



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**Takeaway:** Under those circumstances, the order requires the employer to make appropriate arrangements for the repayment of the deferred tax. For example, it is conceivable that an employer could recover all the deferred payroll taxes in an employee's final paycheck, although that could make for some very small final paychecks.

Because of complications like these, many employers have simply decided that they will not apply the payroll tax reduction permitted by the new executive order and instead will continue withholding the 6.2 percent Social Security tax from employee paychecks throughout the remainder of 2020. The IRS has confirmed that the new payroll tax reduction rule is optional for employers.

## QUESTIONS

If you would like more information about this order or have questions about any other payroll tax issue, please contact Sherman & Howard tax attorneys [Mike Dubetz](#) or [Elizabeth Peterkort Jacobsmeyer](#).