

News You Can Use

Update: Deferring Employee Payroll Tax Guidance

Suttle & Stalnaker PLLC is committed to helping our clients manage the ever-emerging payroll provisions related to the COVID-19 pandemic.

As we alerted you earlier this month, on August 8th the President signed an [Executive Order](#) establishing the opportunity for a Social Security tax deferral for employees who make \$4,000 or less every two weeks for the period starting September 1, 2020 and ending December 31, 2020.

Employers have been waiting for the Treasury Department to issue guidance on how to implement the tax deferral and who would be responsible for repayment of the 6.2% social security tax and under what terms.

On Friday, August 28th, the Treasury Department issued [Notice 2020-65](#), yet many questions still remain.

Major payroll companies such as Intuit (Quickbooks) and ADP have announced today that they are in discussions with the IRS to gain more clarity into how this order will be implemented before making updates to their payroll systems.

While the guidance from Treasury is welcome, it is non-binding and **employers will need to decide whether or not to opt-in.**

Highlights of Friday's notice from Treasury:

- Employers can opt-in or out. Employers who opt-in would then be required to remit the deferred taxes between January 1, 2021 and April 30, 2021.
- Employers are responsible for withholding and paying back any deferred taxes; however, the Treasury's note included a sentence saying that, "if necessary, the Affected Taxpayer [the employer] may make arrangements to otherwise collect the total Applicable Taxes from the employee."
- Many companies are expected to opt out of participating to avoid dealing with the complexity of a payroll tax deferral and saddling employees with tax bills next year. Moreover, given that Treasury's guidance puts the responsibility on employers to pay back deferred taxes, many may not want to take on the additional risk of doing so.

We will publish more on this topic as information becomes available.