

## Pres. Trump's Tax Deferral Plan Raises Questions for Employers

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On Saturday, Aug. 8, Pres. Donald Trump signed the "Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster," providing that the withholding, deposit, and payment of the employee's portion of the 6.2% Social Security tax is deferred for certain employees on all compensation paid from Sept. 1, 2020, through Dec. 31, 2020.

This payroll tax deferral applies generally only to employees making less than \$4,000 on a bi-weekly basis (approximately \$100,000 annually), and taxes deferred will not be subject to any penalties, interest, or additions to the tax. The President further directs the Secretary of the Treasury to explore opportunities to permanently forgive all taxes deferred under the Memorandum.

The Memorandum provides for a deferral of the covered employment taxes, not forgiveness (which would presumably require Congressional action). The Trump Administration has pledged to pursue legislation in 2021 to provide such forgiveness; however, such Congressional action is uncertain. Presently, Congress is debating another larger COVID-19 relief package similar to the CARES Act passed earlier this year.

The Memorandum did not provide many details regarding how the deferral will be implemented, so some important questions remain, in the event that Congress does not pass legislation forgiving the deferred taxes. It is yet unclear how long employers will have to recover the deferred taxes from their employees and pay the IRS if the deferred taxes are not forgiven. How employers can recover the deferred taxes from employees whose employment terminates is not specified. Additionally, the Memorandum does not address whether employers will be protected from liabilities due to uncollected payroll taxes that are owed if they are unable to withhold such amounts from their employees in the future.

Given these uncertainties and others, we anticipate further developments, including guidance being issued by the Department of the Treasury. Please contact the authors of this article or your Miller Canfield attorney if you have any questions regarding the issues discussed in this summary.

*This information is based on the facts and guidance available at the time of publication, and may be subject to change.*