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IRS ISSUES GUIDANCE ON PAYROLL WITHHOLDING DEFERRAL

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The IRS has issued Notice 2020-65, which implements President Trump's August 8 memorandum calling for a deferral of withholding of the employee portion of payroll taxes attributable to certain wages. This deferral is elective by the employer. The deferral is available for any pay period in which the employee has wages paid to the employee from September 1, 2020 through December 31, 2020, but only if the wages for a bi-weekly pay period don't exceed $4,000. For different pay periods the maximum wages eligible for the deferral are adjusted to be an equivalent amount.

The deferral is for withholding of the employee portion of FICA taxes under section 3102 of the IRC and similar Railroad Retirement taxes under section 3202 of the IRC. These amounts are generally 6.2% of the wages paid to employee, so the deferral could be as much as $248 per bi-weekly pay period, depending on the employee's wages.

Any applicable withholding amounts deferred during this period must be withheld and paid over to the IRS ratably from wages paid between January 1, 2021 and April 30, 2021. Penalties and interest for unpaid withholding amounts begin to accrue starting May 1, 2021. The notice also makes clear that the taxes are due even if the employer pays no wages to the employee during 2021, because, for example, the employee is no longer employed after 2020. The employer can be liable to pay any amounts not withheld.

Employers should consider carefully whether to undertake this deferral. Because of the potential liability imposed on employers and the limited deferral benefit to the employees, many of our clients are choosing not to defer these withholding amounts.