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Late in the evening on Friday, August 28th, the IRS issued notice 2020-65. The notice seeks to expand on and clarify the payroll tax deferral for employees put in place by President Trump's executive orders signed August 8th. This comes on the heels of requests by many professional agencies and large employers for more information on who is eligible, how the amounts will be repaid, and how to appropriately calculate the wage limits.

The notice provides that any employee making less than $4,000 per bi-weekly paycheck is eligible for deferral of social security tax. The deferral creates an extra 6.2% in excess take home pay for those that choose to take the deferral. If an employee's eligible wages exceed the amount for a pay period, those wages will be excluded from the Applicable Wages. Each pay period should be looked at independently from others. The annualized income limit is $104,000 and all weekly, semi-monthly, and monthly payers should adjust the thresholds to account for this limit.

Any amount of deferral must be repaid starting January 1, 2021 and ending April 30, 2021through additional employee withholding. Any amounts not collected and deposited by the employer as of May 1, 2021 will begin to accrue penalties and interest. Employers who choose to allow employees to make the election to defer should proceed with caution. Payroll taxes are still subject to joint and several liability. In the event an employee leaves or is terminated, those deferred payroll taxes should be collected at that time. If the deposits are not collected the employer could ultimately end up responsible for making the deposits in order to avoid penalties and interest.

President Trump has stated if he wins the election, he will forgive all the amounts that were deferred. However, the Executive Branch does not have the power to levy taxes, that power lies with Congress, so this action cannot be performed unilaterally. He will need Congressional support, agreement, and enough votes. Given that President Trump has had low support on both sides of the isle for this executive order this will require substantial turnover in his favor.

This program is separate from the deferral of the employers' share of social security tax, which was outlined in the CARES Act, signed into law on March 27th. The combination of these two programs mean very few dollars will be required to be contributed to social security for the employee or employer portion until 2021 at the earliest.

Prior to the new guidance, there were many employers who were not planning on participating in this program and at this point, it remains to be seen if any of these clarifications change that thought process. We will be providing updates as they occur so please continue to monitor our Economic Relief Resource center (https://www.peasecpa.com/covid-19-resource-center/) for the latest developing information.