

UPDATE ON PRESIDENTIAL EXECUTIVE ORDER - EMPLOYEE 6.2% FICA WITHHOLDING

As part of the continuing effects of COVID-19, President Trump issued an Executive Order on August 8, 2020 authorizing employers to stop withholding the employee's share of the 6.2% FICA tax on wages paid to employees on or after September 1, 2020 and ending with wages paid on or prior to December 31, 2020. Eligible wages are those wages paid to employees whose bi-weekly compensation is \$4,000 or less, or an annual gross wage of \$104,000 or less.

Currently, the executive order provides this is only a deferral of payment of these taxes, and the employer will ultimately be responsible for withholding and remitting this delayed payment of these taxes. The employer will be required to withhold double the amount of FICA taxes from the employees' wages paid during the period beginning on or after January 1, 2021 and ending with wages paid on or prior to April 30, 2021.

Unfortunately, your employees are most likely inquiring as to whether your company is going to stop withholding the FICA taxes from their wages or not, and employers are now faced with the immediate decision as to whether they are going to continue withholding the FICA tax from employees' pay or to stop withholding the tax.

Recently, the IRS has provided us with their unofficial guidance, that this order will be OPTIONAL. However, due to the unanswered questions and ambiguity of the enforcement of the Executive Order, we believe the prudent business decision is to continue withholding the 6.2% FICA tax until the Treasury Department issues clearer guidance. Following are several points to consider when making the decision to withhold the 6.2% FICA tax from your employees' wages or not:

1. Treasury Secretary Mnuchin's indicates employers are not mandated to suspend withholding of these taxes, and it is voluntary to participate in this Executive Order. This statement is not authoritative but appears to represent the intent of the Executive Order.
2. Who is responsible for payment of the taxes not withheld should the employee terminate their relationship with the employer prior to recouping the entire amount from the employee?
3. Are employees willing to double pay the 6.2% FICA taxes on wages paid from 1/1/20 - 4/30/21?
4. President Trump has indicated that, IF RE-ELECTED, he will propose legislation to have the entire amount of tax not withheld forgiven by the government. Even if re-elected with the new law ever get proposed and passed?

We understand the difficult times the COVID-19 Pandemic has created the past several months. Please feel free to call us at 402-496-9100 if you would like assistance in navigating through the various issues to consider prior to deciding.