Payroll tax deferral must be repaid in 2021

By Anjali Patel, Esq., *cyber*FEDS® Legal Editor Washington Bureau

IN FOCUS: Employees must be aware that any payroll taxes deferred as a result of President Trump's recent presidential memorandum must be repaid.

The memo defers an employee's portion of Social Security taxes for those making less than $4,000 taxable wages during a biweekly pay period starting Sept. 1, 2020, through Dec. 31, 2020. Employees making $4,000 or above in taxable wages per biweekly pay period may not defer their portion of Social Security taxes.

Federal Practice Group partner Debra D'Agostino told ***cyber*FEDS®** that even though COVID-19 has devastated the economy, "federal employees, despite other forms of hardship, have stayed on payroll with a steady income stream and benefits intact." So "there is no evidence that federal employees want this deferral, or want the hassle of having to pay it back, with interest and a potential penalty."

Agencies "will have to waste labor and resources to execute the tax deferral, and then waste more to collect it back, which may be complicated if some are allowed to pay it back in a lump sum while others opt for installments," she added.

Attorney John Mahoney told ***cyber*FEDS®** that "federal employees deserve prompt answers" from the administration about the impact, both during the deferral period prior to Dec. 31, 2020, as well as next year when those deferred taxes will likely be due to be paid.If possible, "employees should consult a certified public accountant or a tax attorney to best determine how to handle the impact of those deferred taxes" or put the increased pay they receive this year into an escrow account, "so they are not caught off guard if and when they have to ultimately pay those taxes in 2021."

Interest and penalties

According to Internal Revenue Service guidance, employers must withhold the deferred payroll taxes from wages and compensation paid between Jan. 1, 2021 and April 30, 2021 or "make arrangements to otherwise collect the total Applicable Taxes from the employee."

If the employers do not collect the deferred payroll tax, interest and penalties will begin to accrue on May 1, 2021, the IRS said.

However, the National Federation of Federal Employees said in a press release that the "administration has not issued any guidance to employees on how to keep accurate track of the taxes they must set aside and pay in April of 2021." So, employees could be surprised in early 2021 if agencies take unilateral action to recoup the deferred taxes via installments or lump-sum payments.

A senior administration official from OMB said that they have been working with federal payroll providers since the IRS guidance came out to address any issues with implementation.

Less in retirement

Even if the administration issues a permanent deferment order for these taxes in the future, "federal employees will have paid less into their Medicare and Social Security accounts which can lower their benefit annuities when they retire," NFFE explained.

"Either way, the employee loses," NFFE national president Randy Erwin said."If the tax deferment becomes permanent, and provided it is legal, the employee could get a lower payout in retirement.If the deferment is temporary, the employee risks getting a huge tax bill plus interest and penalties early next year."

Unions want more information

The National Treasury Employees Union noted that "information to federal employees about the payroll tax deferral, as ordered by the president, has been incomplete and conflicting."

In a letter to OMB Director Russell Vought, NTEU president Tony Reardon raised concerns about how repayment would work, including the impact of salary increases and retirement during the deferral or repayment period. Specifically, NTEU asked OMB to clarify:

- How the deferred taxes will be repaid, such as having extra taxes taken out of several paychecks in early 2021 or in one lump sum, and whether employees will be able to choose how and over what period of time they can pay back the deferred taxes.
- Whether payroll processors are prepared to make proper tax calculations on differing amounts for employees who receive a raise starting in 2021. This would require separate calculations for the taxes owed on the previous wage and new wage in 2021.
- How to calculate payroll taxes when a federal employee retires or leaves the federal service during the deferral period or during the repayment window.
- Options for employees who may have trouble paying back the deferred taxes.

Calls to allow opting in or out

The NTEU also asked whether federal agencies or employees may opt out of the deferral, an option provided to private sector employers.

If forced to defer taxes, the repayment may be cumbersome for some people. For example, federal employees who make $70,000 a year -- or $2,693 per pay period -- will get an additional $167 in their paychecks if payroll taxes are deferred, but they must repay the government about $1,500 in 2021, the NTEU explained.

In a similar letter to OMB, American Federation of Government Employees national president Everett Kelley requested federal workers be allowed to opt in or at a minimum be allowed to opt out "rather than be forced to participate, as most federal agencies appear to be doing."

However, the Defense Finance and Accounting Service, a federal payroll provider, allegedly emailed instructions to agencies that do not allow employees to opt out of the deferral.

DFAS referred questions to OMB. OMB spokesperson Rachel Semmel told ***cyber*FEDS®** that the "President put forward this action to give relief to all Americans during this pandemic -- as an employer, the Executive Branch is implementing the deferral to give our employees relief as quickly as possible, in line with the Presidential memo."

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