



MEMORANDUM

TO: Timothy J Baroody, City Manager
FROM: Mark Whitley, Assistant City Manager
RE: Payroll Tax Deferral Question for September through December 2020
DATE: September 1, 2020

ISSUE

This is a report that will brief you on the City's response to the question raised by the potential deferral of FICA taxes for the City and its employees.

RECOMMENDATION

There is no recommendation – this report is informational only.

BACKGROUND

On August 8, 2020, President Trump ordered the Department of the Treasury to provide guidance on a proposed policy that would defer FICA taxes that would otherwise be owed between September and December of 2020. On August 28, the Internal Revenue Service issued Notice 2020-65, which postpones the due date for the payment of the employee's portion of the Social Security tax for employees whose wages are below \$4000 for a bi-weekly pay period, or to salaried workers earning less than \$104,000 per year.

The City, in evaluating this guidance, notes that the payroll taxes are only deferred – not eliminated. The guidance states that the deferred taxes would be owed between January and April of 2021. If the City were to cease deduction of the payroll taxes during September through December of 2020, the payroll tax deduction would need to be increased to pay the deferred tax beginning next January. In addition, the guidance is unclear as to the treatment of any employees who might separate employment with the City between September and December of 2020.

The proposed deferral does not provide a tax cut or otherwise save the City or the employees from making tax payments – rather, it postpones the tax liability. The City proposes to maintain the current system, and not pursue any deferral, as this is the easiest to administer and creates no potential additional liability for the City or employees.

If additional guidance is received that would allow the City to reconsider the proposal, then it could be brought back before City Council at a later date.

Attachment: IRS Notice 2020-65

Part III - Administrative, Procedural, and Miscellaneous

Relief with Respect to Employment Tax Deadlines Applicable to Employers Affected by the Ongoing Coronavirus (COVID-19) Disease 2019 Pandemic

Notice 2020-65

On August 8, 2020, the President of the United States issued a Presidential Memorandum directing the Secretary of the Treasury (Secretary) to use his authority pursuant to section 7508A of the Internal Revenue Code (Code) to defer the withholding, deposit, and payment of certain payroll tax obligations.¹ Accordingly, the Secretary has determined that employers that are required to withhold and pay the employee share of social security tax under section 3102(a) or the railroad retirement tax equivalent under section 3202(a) are affected by the COVID-19 emergency for purposes of the relief described in the Presidential Memorandum and this notice (Affected Taxpayers). For Affected Taxpayers, the due date for the withholding and payment² of the tax imposed by section 3101(a), and so much of the tax imposed by

¹ The Presidential Memorandum is available at <https://www.federalregister.gov/d/2020-17899>.

² The deposit obligation for employee social security tax does not arise until the tax is withheld. Accordingly, by postponing the time for withholding the employee social security tax, the deposit obligation is delayed by operation of the regulations. Thus, this notice does not separately postpone the deposit obligation.

section 3201 as is attributable to the rate in effect under section 3101(a), on Applicable Wages, as defined herein, (collectively Applicable Taxes) is postponed until the period beginning on January 1, 2021, and ending on April 30, 2021.

Applicable Wages

For purposes of this notice, Applicable Wages means wages as defined in section 3121(a) or compensation as defined in section 3231(e)³ paid to an employee on a pay date during the period beginning on September 1, 2020, and ending on December 31, 2020, but only if the amount of such wages or compensation paid for a bi-weekly pay period is less than the threshold amount of \$4,000, or the equivalent threshold amount with respect to other pay periods. The determination of Applicable Wages is made on a pay period-by-pay period basis. If the amount of wages or compensation payable to an employee for a pay period is less than the corresponding pay period threshold amount, then that amount is considered Applicable Wages for the pay period, and the relief provided in this notice applies to those wages or that compensation paid to that employee for that pay period, irrespective of the amount of wages or compensation paid to the employee for other pay periods.

Payment of Deferred Applicable Taxes

An Affected Taxpayer must withhold and pay the total Applicable Taxes that the Affected Taxpayer deferred under this notice ratably from wages and compensation

³ Because Applicable Wages are defined as wages as defined in section 3121(a) and compensation as defined in section 3231(e), any amounts excluded from wages or compensation under these sections are not included when determining Applicable Wages.

paid between January 1, 2021 and April 30, 2021 or interest, penalties, and additions to tax will begin to accrue on May 1, 2021, with respect to any unpaid Applicable Taxes. If necessary, the Affected Taxpayer may make arrangements to otherwise collect the total Applicable Taxes from the employee.

Drafting Information

The principal authors of this notice are attorneys of the Office of Associate Chief Counsel, Employee Plans, Exempt Organizations, and Employment Taxes, with the participation of staff from other offices. For further information regarding the guidance under this notice, please call the Notice 2020-65 Hotline at (202) 317-5436 (not a toll-free number).