



# GALLAGHER, FLYNN & COMPANY, LLP

◆ Tax Alert ◆

August 31, 2020

**Deferral of employee Old Age, Survivors and Disability Insurance (OASDI) withholding, often known as FICA, is set to begin on September 1 through December 31:**

- This deferral is only for the employee portion of the OASDI tax (6.2%).
- As this is not a forgiveness, rather a “holiday,” the repayment is postponed until the period beginning on January 1, 2021 and ending on April 30, 2021. This repayment will be done by the employer withholding appropriate amounts from the employee during that time frame and depositing them with their payroll tax deposits for that period. Penalties and interest will accrue on any unpaid deferred taxes beginning May 1, 2021.
- The employer is responsible for this repayment and the only mechanism in the guidance is that, if necessary, the employer may make arrangements to otherwise collect the deferred taxes from the employee if the deferred tax has not been fully repaid through payroll deduction by April 30, 2021. This leaves the responsibility on the employer if the employee leaves employment or otherwise does not have enough withheld to satisfy the deferred tax by April 30, 2021.
- This is still optional at the discretion of the employer whether to defer or not, since there is no requirement that the employer defer. Also, the employer can choose different classes of employees to defer for, and it appears that the employer has full discretion to force all employees to defer.
- For deferral eligibility, the guidance defines “applicable wages” as follows:  
“Applicable wages” means wages as defined in section 3121(a) or compensation as defined in section 3231(e) 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. So, in short, applicable wages are wages net of exclusions from FICA/Medicare wages such as health care under a cafeteria plan. Also, the guidance provides that the limitation applies on a pay period-by-pay period basis— thus, it is possible an employee with wages over \$104,000 for the year could qualify for deferral in any bi-weekly pay period where his/her wages are below \$4,000.

Here is the link to the notice for those who wish to read it: <https://www.irs.gov/pub/irs-drop/n-20-65.pdf>. If you have further questions, please do not hesitate to contact your trusted GFC advisor.

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