



## EY Payroll NewsFlash Workforce Tax Services

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### IRS releases Form 941 instructions for employee deferral of Social Security tax allowed as part of a COVID-19 relief measure

On October 1, 2020, the IRS released [final Form 941 instructions](#) that include guidelines to figure and report the employee Social Security tax deferral pursuant to the President's [Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster](#) and IRS [Notice 2020-65](#) (the Notice).

The [Form 941](#) has also been revised to reflect that employee Social Security tax deferrals are reported on lines 13b and 24. In consideration that the employee Social Security tax deferral applies for the period September 1, 2020, and through December 31, 2020, these revised reporting instructions apply only to the Form 941 for the 2020 third and fourth quarters.

See our recap of IRS attorney responses to questions raised about this deferral program in [EY Tax Alert 2020-2204](#) and our executive summary in [EY Tax Alert 2020-2182](#).

#### Background

As previously reported ([EY Tax Alert 2020-2163](#)), the Notice exercises the authority under IRC Section 7508A to allow employers to defer, without penalties, interest or additional tax, the withholding, deposit and payment of the employee's share of Social Security tax for the period from September 1, 2020, through December 31, 2020, for employees generally earning less than \$4,000 in gross wages in a biweekly pay period (Applicable Wages), or the equivalent amount if the pay period is not biweekly. The \$4,000 biweekly cap is determined without regard to the amount of wages or compensation paid to the employee for other pay periods.

The Notice designates employers as taxpayers affected by the COVID-19 emergency and postpones the deadline for withholding and payment of certain employee Social Security tax (or the corresponding amount of RRTA) until the period from January 1, 2021 to April 30, 2021.

The Notice applies only to the employee portion of Social Security tax (6.2% of covered wages up to the 2020 limit of \$137,700) and does not affect Medicare tax (1.45% of all covered wages for 2020) or the employer portion of Social Security tax (the latter of which was separately deferred by the CARES Act).

For employers that withhold, the Notice does not defer the deposit obligation, observing that separate relief is unnecessary because the deposit obligation arises at withholding. Accordingly, the Notice states that interest, penalties, and additions to tax will not begin to accrue against employers until on and after May 1, 2021, for any portion of the deferral left unpaid.

If an employer does defer collecting employee Social Security tax on Applicable Wages, the employer must withhold and pay the taxes ratably from wages paid from January 1, 2021, through April 30, 2021. If necessary, the employer may arrange to otherwise collect the deferred taxes.

## **Form 941 instructions for employee Social Security tax deferral**

### *Reporting mechanics*

Employers are instructed to report the employee Social Security tax deferral on line 13b together with the deferral of the [employer share](#) of Social Security tax as allowed under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. So that the IRS can differentiate between employee and employer Social Security tax deferrals reported on line 13b, employers are instructed to report only the employee portion of the deferral on line 24.

### *Payment mechanics*

- ***Paying employee Social Security taxes in the same quarter they were deferred.*** If employers defer payment of the employee and/or employer share of Social Security tax and subsequently pay or deposit that deferred amount in the same quarter it was deferred, they are instructed to report the amount of the payment or deposit on Form 941, line 16, or on Schedule B (Form 941) on the date of the payment or deposit and not the date of liability.

The employer shouldn't include any portion of the deferred amount of Social Security taxes already paid or deposited by the end of the quarter on Form 941, line 13b.

- ***Payment of employee Social Security tax in 2021.*** Employers may pay the amount of the employee Social Security tax deferral that is owed in 2021 electronically using EFTPS, by credit or debit card, or by a check or money order. The preferred method of payment is EFTPS.
  - *EFTPS.* To pay the deferred amount using EFTPS, select Form 941, the calendar quarter in 2020 to which the payment relates, and the option for "***payment due on an IRS notice.***"
  - *Check or money order.* To pay by check or money order, include a 2020 Form 941-V, *Payment Voucher*, for the quarter in which the employer originally deferred the employee Social Security

tax deposit. Darken the circle identifying the quarter for which the payment is being made. Make the check or money order payable to "United States Treasury." Enter the employer's EIN, "Form 941," and the calendar quarter in which the employee Social Security tax amount was originally deferred (for example, "2nd Quarter 2020").

**IRS example:** If a monthly schedule depositor has an employment tax liability of \$1,000 every month in 2020 and defers \$200 of the employer's share of Social Security tax from its July 2020 liability, but deposits the deferred amount of \$200 together with its \$1,000 deposit August 2020 tax liability, it reports \$800 of its July 2020 tax liability (\$1,000 minus \$200) and \$1,200 of its August 2020 tax liability (\$1,000 plus \$200) on line 16. It doesn't include the \$200 deferral on Form 941, line 13b.

*Employee Social Security tax deferrals not allowed for amounts already withheld and deposited in prior quarters*

The Form 941 instructions make it clear that employers are not allowed to defer employee Social Security taxes for quarters in which they already withheld and deposited the employee's Social Security tax. Specifically, the instructions state that "you can't defer tax that you have already paid; therefore, the maximum amount of Social Security tax (both the employer and employee share of Social Security tax) that can be deferred each quarter is the lesser of (1) the total of the employer and employee share of Social Security tax, or (2) the excess of (a) line 10 (reduced by the amount, if any, on line 11a) over (b) line 13a."

*Employers may allow employees to opt in or opt out of the Social Security tax deferral*

Many practitioners have inquired as to whether employees can opt out of the employee Social Security tax deferral in the event the employer has elected to participate. The Form 941 instructions address this question by stating that "nothing prohibits employers from getting employee input on whether to apply the relief to postpone the due date for the withholding and payment of the employee share of Social Security tax on applicable wages paid to the employee."

*Figuring the employee Social Security tax deferral on supplemental wages*

As previously explained, the employee Social Security tax deferral is available only in those biweekly payroll periods that the employee's wages are less than \$4,000 (or the equivalent amount for pay periods other than biweekly). The Form 941 instructions provide further details concerning how supplemental wages affect this \$4,000 (or equivalent) cap. (See *IRS Regulations Section [31.3402\(g\)-1](#) for more information on supplemental wages.*)

Specifically, if an employer paid an employee supplemental wages (for example, a bonus or commission) and included the supplemental wages with the employee's regular wages in a single payment (that is, in a single paycheck) for a pay period, but didn't specifically identify the amount of each, the entire amount of

the payment (regular and supplemental wages) must be below \$4,000 for the biweekly period to be eligible for the deferral of the withholding and payment of the employee share of Social Security tax on the wages.

On the other hand, if the employer (1) paid the supplemental wages separately from the employee's regular wages (that is, in a separate check) or (2) combined the wages in a single payment but specifically identified the supplemental wages, the supplemental wages are disregarded for purposes of determining whether the regular wages are below \$4,000 (or the equivalent cap); however, the supplemental wages aren't eligible for the deferral of the withholding and payment of the employee share of Social Security tax.

Before deciding to not separately identify supplemental wages so that the combined amount of regular and supplemental wages can be applied toward the deferral, employers should keep in mind that in order to elect use of the flat federal income tax withholding rate of 22% on supplemental wages of less than \$1 million for the year, they must separately identify supplemental wages from regular wages. ([Publication 15, Circular E, Employer's Tax Guide, pg. 19](#)).

### **Ernst & Young LLP insights**

The Form 941 instructions expand on guidance previously issued in Notice 2020-65 by clarifying that if the employer chooses to delay the withholding and payment of employee Social Security tax for the period from September 1, 2020, to December 31, 2020, it may give employees the ability to opt out of the deferral. The IRS does not prescribe a specific procedure for collecting and storing such employee communications, giving employers flexibility in how they gather this information.

The Form 941 instructions also provide further clarity about how supplemental wages are factored in when determining if the employee is eligible for the Social Security tax deferral each pay period. Here employers will need to decide if they will make any changes in how they pay and/or identify supplemental wages in order to make them eligible/ineligible for the Social Security tax deferral.

The IRS has not yet issued guidance concerning the reporting of the employee Social Security tax deferral on the 2020 or 2021 Form W-2, *Wage and Tax Statement*.

## Contact us for more information

### Workforce Tax Services - Employment Tax Advisory Services

Ken Hausser  
[kenneth.hausser@ey.com](mailto:kenneth.hausser@ey.com)

Debera Salam  
[debera.salam@ey.com](mailto:debera.salam@ey.com)

Kristie Lowery  
[kristie.lowery@ey.com](mailto:kristie.lowery@ey.com)

### Compensation and Benefits

Christa Bierma  
[Christa.Bierma@ey.com](mailto:Christa.Bierma@ey.com)

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