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IRS' Guidance on the Payroll Tax Deferment: What Does It Mean for Your Club?



Brad D. Steele, J.D.
Founder, Private Club Consultants



Private Club Consultants

- PCC was created to provide in-depth legal and operational answers for the club industry
- Our mission is simple:
 - To help you implement new legislative and regulatory requirements – with minimal impact to your club’s bottom line, and
 - To help you minimize legal liability and keep your club’s private and tax-exempt status intact – without sacrificing your strategic goals
- We are “Your Trusted Source for Answers”



The Employee Payroll Tax Deferment



The President's Memorandum & IRS' Guidance

■ The Memorandum

- Employees' 6.2% Social Security payroll tax is **deferred** from 9/1-12/31
- Deferral is available for those making <\$4K during a bi-weekly pay period or the equivalent amount with respect to other pay periods
- The deferred taxes shall not accrue penalties, interest, additional amounts or additions to the tax
- President directs Sec. of Treasury to explore ways to make it a permanent tax cut – like Obama's 2011 & 2012 employee payroll tax cut (2% for each year)

■ The Guidance

- The tax is deferred until the period beginning January 1, 2021 and ending April 30, 2021
- Applicable wages are those paid to an employee on a pay date beginning 9/1/20 and ending 12/31/20
- **Club** must withhold and pay the deferred tax ratably from the employee's wages paid between 1/1/21 and 4/30/21
 - Clubs failing to do so incur interest, penalties, and additions to the tax starting 5/1/21
 - But, club may “make arrangements” to collect the deferred tax from its employee



Issues for Clubs

- Optional for clubs
 - Nothing in the Memorandum or guidance specifically says one way or the other
 - The Memorandum does say “deferral shall be made available” to those who qualify
 - Intent is to give workers more money now, and employees know this
 - With all of the questions, IRS attorneys finally stated 9/3 that clubs may opt-out...
- If you didn't offer the deferral
 - Possible FLSA claim? – it's the employees' money not the club's
 - What if Congress makes this a tax cut
 - Where does staff go for their money – you, the feds? – and what about an attendant loss of use claim?
- If you do offer the deferral
 - The guidance specifically made the employer responsible for paying this back
 - Must have a promissory note for every employee to ensure you can collect from them
 - If raises were given or seasonal overtime earned, then repayment could be based on different numbers = administrative nightmare



Next Steps for Clubs

- If you talk to your employees
 - Remind them that, at this time, the tax is only deferred and must be repaid
 - The repayment period begins on 1/1 with a 12.4% rate applied to their wages
 - Remind them that it is not the best option for them as the plan is currently written
 - Congress is not likely to make this a permanent cut at all...
- If you do opt-in
 - Have employees sign a promissory note to ensure the tax debt is paid by them when due
 - If the employee refuses, be prepared to pursue legal action to recover the debt - those who resign or are terminated might be hard to find
 - Club may have to calculate what the tax debt is so plan for that
 - They should consider placing these funds in a short-term savings account rather than using the money
 - It's a zero-interest loan from the government
 - If they do use the funds, they should prepare for less in their paycheck in 2021



Issues and Next Steps for Employees

- If they balk at your decision to opt-out
 - They claim “it’s their money”
 - Mention it’s only 6.2% each may period
 - On 1/1, they pay 12.4% S.S. tax to cover the deferred and current tax on every dollar
 - It starts right when their holiday bills come in
 - Tell them this will likely cause serious financial issues for them in 2021
 - Congress may not make this a tax cut, or
 - The President will be forced to delay the repayment start date but it will still have to be repaid



Questions



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Brad D. Steele, J.D.
Founder

Cell/Text: 703.395.5463
steele@privateclubconsultants.net
[linkedin.com/in/bradsteelepcc](https://www.linkedin.com/in/bradsteelepcc)