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President Trump's Payroll Tax Deferral and its Implications

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Abstract

This paper explores the general concept of payroll taxes and the wide-ranging effects of President Trump's payroll tax deferral. This single executive action has impacted millions of people and may impact millions more in the years to come.

To determine the payroll tax deferral's effect on a wide variety of stakeholders, I used a mix of sources including but not limited to federal laws and regulations, professional practice guides written by practicing CPAs, and academic and mass media publications. Furthermore, I conducted interviews with practicing tax professionals to discern what impact the payroll tax deferral may have on long-term tax policy in the United States.

The results of this qualitative research indicate that the payroll tax deferral has negative consequences for employees, employers, and the Social Security program. However, because this temporary change in tax policy was only recently enacted, the long-term effects of this deferral on American tax policy are still unknown.

Introduction

The coronavirus pandemic has quickly changed the world as we know it. Every day, we see new ramifications and ripple effects that stem from the pandemic. Economic and financial strife is one of the largest ripples for millions of American citizens. As a result, the federal government has implemented several initiatives to combat economic hardship. One such initiative was President Trump's payroll tax deferral.

On August 8, 2020, President Trump issued a memorandum announcing the deferral of federal payroll tax obligations for all people making less than $4,000 every two weeks or $104,000 annually. Starting on September 1, 2020, eligible employees would retain an extra 6.2% of their paycheck that would normally be withheld through December 31, 2020 (Memorandum on Deferring Payroll Tax Obligations). President Trump signed this order in an attempt to bolster what many Americans perceive to be a reeling U.S. economy.

Regardless of the reasons behind the payroll tax deferral, I argue that the deferral is ineffective in several ways. In one way or another, the payroll tax deferral negatively impacts employees, employers, the Social Security program, and long-term tax policy. The adverse effects of the tax deferral vastly outweigh the intended benefits.

What are payroll taxes and why defer them?

Payroll taxes are amounts withheld from an employee's paycheck by their employer, who then remits the tax to the federal government on the employee's behalf. In the United States, payroll taxes currently pay for the Social Security and Medicare programs.

All employees have 7.65% withheld from every paycheck, so payroll taxes impact all Americans who are employed. More specifically, 6.2% is withheld for Social Security, but only on every employee's first $137,000 of wages in 2020. The remaining 1.45% is earmarked for Medicare, and there is no salary limit on the Medicare tax (Kopp, 2020). For example, someone who makes $100,000 annually would have $7,650 withheld from their paychecks over the course of the year. Of the $7,650, $6,200 would go to Social Security, and $1,450 would help to fund Medicare. Only payroll tax obligations related to Social Security were eligible to be deferred under President Trump's executive order. As a result, the maximum increase temporary increase that Americans could have received in their paycheck was 6.2%.

The argument supporting the deferral of payroll tax obligations was that American citizens needed financial help, but Congress could not agree on a stimulus bill or payroll tax deferral when President Trump issued his memorandum. President Trump described the payroll tax deferral as a "modest, targeted action [which] will put money directly in the pockets of American workers and generate additional incentives for work and employment" (Memorandum on Deferring Payroll Tax Obligations).

The payroll tax deferral and its effects on employees

The payroll tax deferral applied to employees from September 1, 2020 through December 31, 2020, provided that their employer opted into the payroll tax deferral at all. According to IRS guidance, those employees who participated in the payroll tax deferral must pay back any deferred payroll taxes by December 31, 2021. Failure to repay the deferred taxes by then will result in interest and penalties (I.R.S. Notice 2021-11).

Applying this to an employee making $50,000 annually, that employee would have had a temporary windfall of $1,033 due to the payroll tax deferral[1]. Since the employee is required to repay the deferred $1,033 by December 31, 2021, they would have more tax withheld from their paychecks throughout 2021.

At the present moment, it is unclear exactly how many employees actually participated in the payroll tax deferral. Aside from the notable exception of the federal government, most employers who opted in to the deferral allowed their employees to choose whether or not they would like their payroll tax obligations to be deferred. As a result, we most likely will not know how many employees participated in the payroll tax deferral until the IRS releases data for tax year.

When filing their 2020 taxes, it is likely that many employees who participated in the payroll tax deferral will not do anything differently. For employees who only had one employer in 2020 and whose Form W-2 shows a correction in box 4 to account for the deferred taxes, there will be no change in how they file their taxes. The situation is murkier for those who had multiple employers in 2020. Those individuals must examine their Form W-2's to ensure that they did not have too much tax withheld (Schreiber, 2020).

Unlike those with multiple employers, employees who voluntarily leave their employer before April 30, 2021 could also have an unexpected tax bill if they are not careful. Employees who voluntarily leave their employer before their deferred payroll taxes are repaid are still liable to pay those taxes. For example, the federal government has notified employees that if they voluntarily leave or retire before their payroll tax obligations are fulfilled, the government will

[1] $50,000 annual salary x 6.2% = $3,100 in annual Social Security tax obligations x 4/12 since the deferral only applied to the last four months of 2020 = $1,033.33

pay the payroll taxes. Then, the federal government will withhold as much as required out of the employee's final paycheck, and if that is insufficient, send the former employee a debt notice (Mercado, 2020). Like any other tax obligation, failure to repay deferred payroll taxes will result in the accrual of interest and penalties with the IRS.

Payroll tax deferral and its impact for employers

President Trump's executive order posed a few challenges for employers. First, employers had to decide if they would even allow their employees to participate in the payroll tax holiday. If employers chose to allow employees to opt in, they had to keep track of which employees were participating to ensure that the right amount of tax was withheld from each paycheck. Employers may have subjected uninformed employees to unexpected future repayments of tax obligations.

In fact, many employers opted out of the payroll tax deferral because opting in would have caused inconsistent paychecks for employees and an administrative nightmare for employers. For example, UPS, FedEx, Proctor & Gamble, General Motors, and the states of Iowa, Arizona, and California were among several large employers to opt out of the payroll tax deferral (Ziv, 2020). Each of those employers decided that it would be too cumbersome to recalculate payroll tax withholdings for employees for September through December of 2020. Of course, those employers would have had to recalculate the withholdings all over again in January 2021, when employees needed to begin repaying their previously deferred payroll tax obligations.

Under the initial IRS guidance, employers could also be held liable for any employee payroll tax that was not repaid plus penalties and interest (I.R.S. Notice 2020-65).

Understandably, this caveat gave many employers pause about participating in the payroll tax deferral. The pandemic has already severely hurt businesses and individuals. Accordingly, businesses are extremely sensitive to risk and judicious in taking on new liabilities in the current environment. In short, from an employer's perspective, the payroll tax deferral cost too much and posed too much risk for a relatively small benefit to employees.

Unlike employees, employers are unable to defer their payroll tax obligations under President Trump's executive order. The order strictly applies to employees, though employers were expected to play a critical role in administering the deferral (Memorandum on Deferring Payroll Tax Obligations).

Employers still had their own opportunity to defer their payroll tax obligations as well. Under the CARES Act, eligible employers could defer the 6.2% employer portion of payroll taxes for any payroll paid between March 27, 2020 and December 31, 2020. Currently, employers are permitted to repay 50% of any deferred payroll taxes on December 31, 2021 and the remaining 50% on December 31, 2022 (Krucker, 2021).

However, some employers are now finding that deferred payroll tax obligations are a significant issue when preparing their 2020 tax returns. Employers who recorded accrued payroll taxes on the books in 2020 and deferred their payroll tax payments will only be able to deduct the deferred portion of payroll taxes if they are repaid within eight and a half months of the company's fiscal year end. For employers who are repaying deferred taxes at the stated deadlines of December 31, 2021 and 2022, the deferred taxes are not deductible until they are actually paid (Murphy, 2020).

The CARES Act provision allowing for employers to defer their payroll tax obligations is significant because it helps illustrate how much new tax legislation has been thrown at businesses in the past 12 months. New legislation was being passed faster than businesses could process older legislation. I suspect that the sheer volume of tax legislation overwhelmed some employers, especially for larger employers where administrative costs are generally higher. By the time the employee payroll tax deferral came around, employers felt that the associated costs to make it happen were not worth the benefit.

Undoubtedly, President Trump's payroll tax deferral has affected millions of American employees and employers alike. Yet, there is still another massive stakeholder to address. To realize the total scope of the payroll tax deferral, we must turn our attention to the Social Security program.

Historical Origins of Social Security

In order to fully understand why and how the payroll tax deferral impacts the Social Security program, we need to have a better knowledge and understanding of Social Security. For our purposes, the story of Social Security begins with the Great Depression, although you could trace its origins back much further than that. In terms of Social Security, the Great Depression represents the systematic failure of government to create an environment where people could prosper. All the old systems of the economy, of labor, and of charity had failed in some way (Historical Background). As a result, Americans began to rethink how our society should work and what the government could do to prevent such catastrophic failures in the future.

At the onset of the Great Depression, President Hoover had three general courses of action that he could follow. First, Hoover could have done nothing at all, but given the state of the nation and economy, that was a nonstarter. Second, Hoover could have and in fact did launch a massive call for charitable help and outreach. Lastly, Hoover could have expanded the social safety net and welfare benefits. For his part, Hoover believed that volunteering and charitable outreach could restore the American economy the same way Europe was rebuilt following World War I. The problem with this was that the American economy was strong in the aftermath of World War I, but it had been decimated by the Great Depression (Historical Background).

Due to his lack of results and progress, Hoover was voted out of office and replaced by Franklin Delano Roosevelt in 1932. President Roosevelt moved quickly to create a social insurance program to create economic security, particularly for the elderly. Three years later, President Roosevelt signed the Social Security Act into law, officially creating the program we know as Social Security (Historical Background).

The Social Security Act of 1935 created two main programs related to elderly employees. Title I established and appropriated funds for grants to each state to support welfare programs. Title II created the program we know to be Social Security. The primary worker of a household would receive benefit payments beginning when the employee both retired and was age 65 or older. The benefits are based on the employee's lifetime payroll tax contributions to the Social Security Program (Social Security Act).

Payroll taxes for Social Security, more commonly known as FICA taxes, began to be withheld from employee paychecks in January of 1937. Monthly benefit payments were first distributed in 1940, and the first monthly payment was $22.54. However, before monthly benefit payments ever began, Congress expanded Social Security to include payments to cover the spouse and children of a retired worker and payments to families where a covered wage earned died prematurely. These benefits are commonly known as dependents' and survivors' benefits, respectively (Social Security Act).

Over the next 30 years, Social Security would continue to expand. The 1950s and 1960s sharply increased benefits to all Social Security recipients. Within those two decades, Congress raised benefits every second or third year. The amounts of these increases ranged from 7 to 20%. In addition, Congress also lowered eligibility thresholds to receive Social Security benefits. As a result, Congress also raised the tax rates in an effort to support these expansions (Kollmann, 2000).

The expansion of Social Security continued into the 1970s. In 1972, Senator Frank Church of Idaho introduced a bill that transformed the way Social Security is delivered. Church's bill authorized annual Cost of Living Allowances (COLAs), which indexed Social Security benefits to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) and took effect in 1975. Since these provisions were enacted, Social Security benefits have increased every year, with the exceptions of 2009, 2010, and 2015 (Cost-of-Living Adjustments).

How Social Security is directly affected by the payroll tax deferral

The continuous expansion of Social Security benefits now poses an ominous challenge. Numerous macroeconomic factors have combined to put the Social Security program in a precarious position in the near future. We will discuss the specific macroeconomic conditions later in this paper. Current estimates indicate that the Social Security trust fund will use all available cash reserves by 2035. Once the cash reserves are gone, continuing payroll taxes are only expected to sustain 76% of previously scheduled benefit payments (Goss, 2010).

The situation is only intensifying with each passing year. Approximately 60% of retirees rely on their monthly Social Security benefits to cover current expenses. Yet, 70% of the working population fear that Social Security will not be available when they retire (Nova, 2019). This trend should put us all on high alert. Otherwise, we assume the risk of two potential consequences. First, workers simply may not retire and prevent younger workers from entering the workforce. Second, workers will retire but may be unable to meet their financial needs and obligations. Either of those scenarios would be detrimental to our nation and our economy.

Thankfully, the effect of the payroll tax deferral on Social Security is relatively minor. The deferral causes exactly what it means: a delay in cash receipts for the Social Security trust funds. It is currently unknown how much deferred payroll tax the federal government and Social Security Administration expect to collect in 2021. As noted earlier, employees who participated in the payroll tax deferral have until December 31, 2021 to repay their obligations before accruing penalties and interest (IRS Notice 2021-65).

As a result, the federal government will continue to collect the deferred taxes throughout 2021. Depending on when the payroll taxes were deferred, the federal government and Social Security could receive payroll tax revenues as late as 15 months after when those obligations were actually accrued. Meanwhile, every day that the Social Security program does not receive the deferred payroll taxes is a day that it cannot reinvest those tax dollars. Since the amount of the deferred taxes is still unknown, the opportunity cost of those funds not being available to the Social Security trust funds is also unknown.

In the long-term, these deferred revenues and associated opportunity costs are relatively minor. Former Treasury Secretary Steven Mnuchin repeatedly asserted that the payroll tax deferral will have no impact on the payment of Social Security benefits (De Lea, 2020).

However, this assertion about benefits does not address the depletion of Social Security's reserve funds.

An updated analysis by the Penn Wharton Budget Model shows that the coronavirus pandemic will cause Social Security's current reserves to run out between 2032 and 2034. This is two to four years earlier than was expected prior to the pandemic. The actual timeline depends on how well the economy recovers from the pandemic (Shin & He, 2020).

When considering this new analysis, Social Security is harmed even more as a result of receiving deferred cash flows. The pandemic has already hurt Social Security, and deferring cash flows only further restricts the number of corrective actions that the Social Security trust fund and Congress can take. The payroll tax deferral may not directly impact Social Security now. However, when combined with the already devastating effects of the pandemic, our collective decision timeline about Social Security is being accelerated. The stakes are too high for too many people, so Congress must take some action to ensure the survival of the Social Security program. At the most, we have 15 years to do something. That might sound like a long time, but collectively we have just tried to kick the proverbial can as far down the road as we possibly can. That is no longer a sustainable option without significant changes to the Social Security program.

The tax deferral and tax policy

On a broad level, American presidents have little statutory authority to determine tax policy. The Constitution specifically enumerates that Congress has "the power to lay and collect taxes, duties, imposts and excises" (U.S. Const. art I, § 8). Over time however, presidents have grown bolder in lobbying for their own unique tax policy preferences. Particularly, they make tax policy central to their campaigns and work with Congress, especially when it is controlled by their party, to advance their tax agenda (Phillips Erb, 2019). However, long-term tax reform is particularly difficult for presidents to achieve.

Indeed, President Trump found his goals stymied by congressional rules and authorities regarding both the payroll tax deferral and his signature achievement, the Tax Cuts and Jobs Act of 2017. Specifically, the congressional budget reconciliation process represents the largest obstacle to lasting tax reform in the current hyper-partisan environment.

Budget reconciliation is a process designed to bring government spending in line with money that has been duly appropriated. In the 1980s, the reconciliation process forced congressional committees to prioritize which programs would be funded and to what extent. As partisan tensions have intensified tenfold since the turn of the century, reconciliation has become critical for either party to pass and implement their policy objectives through Congress (Wessel, 2021). In the Senate, reconciliation allows the chamber to pass legislation by a simple majority, instead requiring the usual 60 votes. For example, the two most well-known bills of the past decade, the Affordable Care Act and the Tax Cuts and Jobs Act were both passed through budget reconciliation (Wessel, 2021).

Within the reconciliation process, there are several important rules that hinder a president's ability to influence and implement tax policy. First, bills passed under reconciliation cannot increase the federal deficit beyond the period specified in the bill, which is usually ten years. For this reason, some of the Bush tax cuts expired within 10 years and some provisions of the Tax Cuts and Jobs Act will expire later this decade (Wassell, 2021).

Another rule of the reconciliation process is known as the Byrd Rule, after Senator Robert Byrd. The Byrd Rule limits what can and cannot be included in bills passed through reconciliation. The Byrd Rule precludes “extraneous” measures from being included in reconciliation bills. A measure is considered extraneous if it has no budgetary effect, worsens a deficit when a committee has not achieved its reconciliation target, is outside the jurisdiction of the committee that submitted the measure, or recommends changes to Social Security and other entitlement payments (House Committee on Budget, 2020).

By their very nature, tax policies will always affect the federal budget, so they can often be included in reconciliation bills. However, given the reconciliation rules on increasing the budget deficit, long-term tax reform will likely need some bipartisan compromise.

Despite the limitations the reconciliation process places on Congress and presidents, presidential power to determine tax policy has been gradually increasing over the past few decades. There are several factors that have contributed to the president’s power of tax policy, including the president’s own role in policy making, Congress’ explicit delegation of some tax functions to the executive branch, and of course the use of executive orders.

As a policy maker, the president’s role has only grown over time regarding an ever-wider range of issues. First and foremost, the president serves as the de facto leader of his or her party. As a result, voters and sometimes legislators look to presidents for policy proposals. This is especially true when Congress is controlled by the same party as the presidency. One of the more recent developments in the continuous expansion of presidential power is a signing statement. President George W. Bush issued nearly 1,200 signing statements where he claimed the authority to ignore or refused to enforce parts of laws that he himself had signed into effect (How Presidents Get Things Done). When President Obama was first elected, he continued the use of signing statements. Signing statements allowed Presidents Obama and Trump to continue expanding their own powers and tweak laws to further their own policy agendas on a broad range of issues.

Over time, Congress has also delegated several responsibilities to various governmental departments and agencies. In terms of tax policy, this means the Department of the Treasury and the IRS have the ability to determine and implement policy when Congress does not do enact policies on a specific issue. In fact, some scholars believe that President Obama could have implemented many of his preferred tax policies through the Department of the Treasury without waiting for Congress to act (Hemel, 2016). For example, Hemel suggests that President Obama could have directed the Treasury Department and IRS to issue regulations that would have taxed carried interests as ordinary income. Whether or not President Obama actually could have done so is a debate for another day. Regardless of outcome, Hemel's suggestion is indicative of a growing receptiveness to presidential powers over tax law.

Similar to President Bush's signing statements, contemporary presidents have relied heavily upon the use of executive orders to achieve policy goals. The use of executive orders has been highly politicized in the 21st century. Presidents Bush, Obama, and Trump were all heavily criticized by their opponents for acting unilaterally on a range of issues. Yet, under President Trump, executive orders made a resurgence. President Bush issued an average of 36 executive orders a year throughout his presidency, and President Obama signed 35 executive orders each year. President Trump issued an average of 55 executive orders each year during his presidency, including the payroll tax deferral. Now, President Biden is on pace to issue 160 executive orders this year alone (University of California, Santa Barbara). The increase in usage executive orders is another example of the president's growing power in all aspects of policy making, including tax policy.

President Trump’s payroll tax deferral marks one of the most aggressive actions yet that any president has taken to directly influence tax policy, even if the action itself was only temporary. It represents a culmination of a uniquely brash president and the continued expansion of presidential powers. The payroll tax deferral could set a dangerous precedent which emboldens future presidents to implement their own tax policies unilaterally. That precedent could lead to volatile tax policies that are subject to change with every succeeding president.

On the other hand, the payroll tax deferral may have a minimal impact on long term tax policy. I had the opportunity to speak with Greg Rosko, a tax partner at PwC. Rosko pointed out that tax policy preferences are unique to each president, and not every president chooses the same methods to implement their policies. Instead, the payroll tax deferral’s impact on tax policy depends on whether future presidents are emboldened or revolted by the payroll tax deferral as an expansion of presidential power.

None of us know what the true impact of the payroll tax deferral will be on long-term tax policy. However, this is something that is worth watching over the next several years. Expanding the president’s authority over tax policy may lead to conflict with Congress over which branch of government has true authority to determine tax policy.

Conclusions

President Trump’s payroll tax deferral was an innovative idea, but lacked the proper planning and logistical support to generate a positive effect. Employers and employees were faced with confusion about how to implement the deferral and pay back any deferred obligations. The Social Security program is suffering from deferred cash flows even though we expect the program to use its reserves within the next 20 years. Even from a tax policy perspective, the payroll tax deferral has more potential for harm than it does for good.

Ultimately, President Trump's payroll tax deferral did not effectively achieve its stated goals. The deferral was too burdensome for employers for a relatively small benefit to their employees. To some extent, the Social Security program was harmed, although the magnitude of that harm is still unknown. As a policy precedent, President Trump's tax deferral creates an opportunity for future presidents alter tax policy in even greater ways, possibly threatening Congress' constitutional authority over the levying and collection of taxes.

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