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## COVID-19 Update

# CARES Act—Payroll Tax Deferral (Delay) and UMC Employers

April 21, 2020—Updated June 18, 2020

On **March 27, 2020**, the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748) ("CARES Act") became law. Among its key provisions were loans for small businesses, including nonprofits and churches, under the *Paycheck Protection Program* ("PPP"). Many United Methodist Church (UMC) employers (such as local churches, annual conferences and general agencies) applied for PPP loans through the Small Business Administration ("SBA") and have had loans approved.

In addition to PPP loans, the CARES Act creates a *payroll tax deferral period* ("**Payroll Tax Delay**") running from **March 27 through December 31, 2020**. Employers—including tax-exempt nonprofits like UMC local churches, annual conferences and general agencies—may defer/delay payment of the "employer share" of Social Security taxes that they otherwise are responsible for paying to the federal government with respect to their employees.

- ***Cash Flow Benefit:*** The Payroll Tax Delay may assist UMC annual conferences, local churches and general agencies with cash flow during this period when shelter-in-place orders are slowing donations, contributions, apportionment payments and other sources of revenue.
- ***Available to PPP Loan Recipients:*** In addition, on **June 5, 2020**, the Paycheck Protection Program Flexibility Act ("**PPPFA**") became law. As explained here, the PPPFA allows PPP borrowers—even those *that have their PPP loans forgiven*—***to benefit from this Payroll Tax Delay****,* as explained further in Section 3 below.

### 1. Social Security Taxes Deferred/Delayed—Not Excused

The Payroll Tax Delay CARES Act provision is not a payroll tax holiday, but it does allow payment of taxes (remittance to the IRS) to be *postponed*. Employers may delay paying the 6.2% "employer share" of Social Security tax on their employees' wages—however, the taxes must be paid in the following two years (**2021** and **2022**). ***This allows employers to spread these payroll tax costs over time, which may free up cash and revenues so employers can continue funding essential operations, paying wages and providing employee benefits during the economic slowdown period related to the COVID-19 pandemic.***

### 2. Other Payroll Taxes Still Due

Generally, employers are responsible for paying 6.2% Social Security tax on employee wages. Typically, employers remit these taxes and file quarterly an *IRS Form 941*. *The Payroll Tax Delay does not excuse employers from continuing to remit* ***other*** *tax withholdings to the IRS*, e.g., federal income taxes and the "employee share" of Social Security taxes withheld from employee wages, and Medicare taxes. Generally, for church employers, the Payroll Tax Delay will be limited to amounts of Social Security taxes on the wages of ***lay*** (non-clergy) employees because most clergy are considered self-employed for SECA tax purposes.

The IRS is updating its forms to reflect changes as they emerge. *Forms 941* and instructions from the IRS are below (*please check irs.gov for the most current information*).

- January 2020
  - — *Form 941* Revised January 2020
  - — Instructions Revised January 2020
- April 2020
  - — Draft *Form 941* Revised April 2020
    Draft Instructions Revised April 2020 (as of June 3, 2020)

### 3. Interaction with PPP Loans

The CARES Act had limited the Payroll Tax Delay for employers that receive a PPP loan and have a portion of the loan forgiven. ***However, shortly after CARES was enacted, the IRS clarified that the limitation applies only <u>after</u> the PPP loan is forgiven.***

With the **June 5** enactment of the PPPFA, however, **all PPP borrowers, even those that have their PPP loans forgiven, can benefit from this Payroll Tax Delay. This means that UMC annual conferences, local churches and general agencies that have applied for and received PPP loans can also benefit from the Payroll Tax Delay.**

> ***Example:*** To illustrate, let's assume that a large UMC local church applied for a PPP loan on April 10, 2020, and received the loan proceeds from its lender on April 17. The local church appropriately uses most of the PPP loan as permitted through mid-June.
>
> In addition, the church may have deferred payroll tax deposits of the employer share of Social Security taxes (the 6.2%) that were due on and after March 27, 2020. *It may continue to do so through the end of 2020, thanks to the PPPFA.* (Recently published Draft Instructions for *Form 941* provide guidance on how to handle reporting if the church already made some of these tax deposits. See Draft Instructions for *Form 941*, Rev. April 2020.)

The local church would have to pay these deferred taxes in two equal installments due on **December 31, 2021** and **December 31, 2022**.

### 4. Time Frames for Payment

The Payroll Tax Delay applies to deposits and payments of the employer's share of Social Security tax for wages paid during the period **beginning on March 27, 2020, and ending December 31, 2020**.

The delayed payroll taxes must be paid over the following two years:

- Half of the amount must be paid to the IRS by **December 31, 2021**;
- The other half by **December 31, 2022**.

The IRS has published *draft* Instructions for *Form 941* as of June 3, 2020, available here. *Please note:* These Instructions have been updated to include reference to the Payroll Tax Delay created by the CARES Act but have *not yet been updated* for the PPPFA. As such, the Instructions still indicate that the Payroll Tax Delay is not available after a PPP loan is forgiven. We expect the IRS will update the Instructions soon to conform to the PPPFA's change, which now ***permits*** a PPP borrower to take advantage of the Payroll Tax Delay even after the borrower has part or all of its loan forgiven. (Per prior rules, these taxes must be paid in 2021 and 2022, with 50% due on **December 31, 2021** and 50% due on **December 31, 2022**.)

## More Information

Wespath is closely monitoring developments related to COVID-19. Please check our webpage for periodic updates at Wespath.

***The information above should not be considered legal or tax advice. Plan participants, annual conferences, local churches, or other employers or parties affiliated with The United Methodist Church (UMC) should consult with counsel in considering the application of the CARES Act to their circumstances.***

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