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COVID-19 Update

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

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On Friday, 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**"). Some 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, large 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 (Partially) to PPP Loan Recipients:** In addition, the Internal Revenue Service ("IRS") has published FAQs clarifying that *employers who have applied for and received PPP loans **may also benefit from this Payroll Tax Delay**,* as explained further in Section 3 below.

1. Social Security Taxes Deferred/Delayed—Not Excused

This 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 quarterly with the filing of 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.

3. Interaction with PPP Loans

The CARES Act limits the Payroll Tax Delay for employers that have received a PPP loan and had a portion of the loan forgiven. ***However, the IRS has made clear that limitation applies only <u>after</u> the loan is forgiven.***

The IRS FAQs state the following:

> ***Can an employer that has applied for and received a PPP loan that is not yet forgiven defer deposit and payment of the employer's share of Social Security tax without incurring failure to deposit and failure to pay penalties?***
>
> *<u>Yes.</u> Employers who have received a PPP loan may defer deposit and payment of the employer's share of Social Security tax that otherwise would be required to be made beginning on March 27, 2020, through the date the lender issues a decision to forgive the loan in accordance with paragraph (g) of section 1106 of the CARES Act, without incurring failure to deposit and failure to pay penalties. Once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposit and payment of the employer's share of Social Security tax due after that date. …*

This means that UMC annual conferences, local churches and general agencies that have applied for and received PPP loans can benefit from the Payroll Tax Delay through the date that their PPP loan is forgiven by the lender, if the loan is forgiven in part or whole.

Example: To illustrate, let's assume 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 for payroll costs of its employees for eight weeks. Assume on July 15, after review of the loan for forgiveness, the lender informs the local church that it has forgiven most of the PPP loan. The local church could take advantage of the Payroll Tax Delay for the 6.2% Social Security tax on wages paid **from March 27, 2020** (start date of the deferral opportunity) **through July 15, 2020** (the date of notice from the lender of loan forgiveness).

The local church:

- **(i)** Might be able to defer the employer share of Social Security taxes from **March 27 to March 31** related to its first-quarter 2020 *IRS Form 941* (*Employer's Quarterly Federal Tax Return)*, depending on forthcoming IRS guidance;
- **(ii)** Would be able to defer those taxes from **April 1 to June 30** related to its second-quarter 2020 *Form 941*, pursuant to IRS guidance and instructions; and
- **(iii)** Would be able to defer those taxes from **July 1 to July 15** related to its third-quarter 2020 *Form 941*.

The local church would have to pay these deferred taxes in two equal installments due on **December 31, 2021** and **December 31, 2022**. The local church would also have to remit in a timely manner the employer share of Social Security taxes from **July 16 to September 30, 2020** with its third-quarter 2020 *Form 941*.

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 will publish information in the near future to instruct employers how to reflect the Payroll Tax Delay for the first calendar quarter of 2020 (January–March 2020). Additionally, the IRS will revise *Form 941* for the second calendar quarter of 2020 (April–June, 2020), and will make the revised form available soon.

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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