



## Legal Alert: Social Security Tax Break Being Extended to Year-End

2/21/2012

**Executive Summary:** On February 18, 2012, the Senate passed a bill that extends the tax break on the employee portion of the Social Security Old-Age, Survivor and Disability Insurance tax (OASDI) through the end of 2012. The House of Representatives had passed the bill earlier in the week, and it is now awaiting signature by President Obama.

Last week, the House of Representatives and the Senate passed The Middle Class Tax Relief and Job Creation Act of 2012, which extends, for the remainder of 2012, the 2% payroll tax cut that is otherwise scheduled to expire at the end of February. The bill has not yet been signed by President Obama, but he has said that he will sign it.

Currently, the general rule is that employees and employers each pay Social Security OASDI tax<sup>[1]</sup> equal to 6.2% of the first \$110,100 of the employee's wages. Self-employed individuals also pay 12.4% of their self-employment income up to \$110,100 (equivalent to the 6.2% "employee" share plus the 6.2% "employer" share). In 2010, the employee share of the tax was reduced, for calendar year 2011 only, to 4.2% (total of 10.4% for self-employed individuals). By the end of 2011, Congress extended that reduction but could only agree to two extra months – through February 29, 2012 – and the tax was to revert to the full 6.2% (or 12.4% for self-employed individuals) beginning March 1, 2012. Highly paid individuals, including individuals who receive prior year bonuses early in the year, would also have to repay, in the form of additional income tax, the 2% reduction that they receive with respect to wages or self-employment income in excess of \$18,350 (*i.e.*, two-twelfths of the \$110,100 annual wage limitation), so that they would not receive more than a *pro rata* share of the reduction for the year.

Once the new bill is signed, the 2% cut will be extended through the end of 2012, and would render the \$18,350 cap meaningless. There are some questions that will need to be answered, however.

First, will an immediate adjustment be appropriate, or be required, for individuals who, due to high earnings (or any other reason) have already had OASDI tax withheld at the higher 6.2% rate? Or should the employer simply cease withholding this tax when the employee's total withheld for the year reaches \$4,624 (*i.e.*, 4.2% of \$110,100), even though his or her wages will not yet have reached the \$110,100 maximum?

If you have any questions regarding the information contained in this Legal Alert or about the described legislation in general, you should contact the

author of this Alert, Jeffrey Ashendorf, [jashendorf@fordharrison.com](mailto:jashendorf@fordharrison.com), any member of Ford & Harrison's Employee Benefits practice group, or the Ford & Harrison attorney with whom you usually work.

[1] The discussion in this Alert does not include the Medicare (Hospital Insurance, or HI) portion of the FICA tax, for which employees and employers each pay 1.45% of an employee's wages, without limitation, and self-employed individuals pay 2.9% of self-employment income, without limitation. That tax is not affected by the 2% reduction, and is payable in addition to the amounts that are discussed in this Alert.