

# **Government Withholding Relief Coalition**

September 16, 2010

TO THE MEMBERS OF THE UNITED STATES SENATE:

The Government Withholding Relief Coalition and its 109 member associations strongly urge you to include a two-year delay of the 3% tax withholding law in a legislative vehicle moving through Congress this September if repeal is unattainable this year. The Coalition will continue to vigorously advocate for repeal of this misguided law; however, a delay is urgently needed now to prevent any additional wasteful expenditure of funds and manpower by governments and companies in order to prepare for the looming implementation deadline of January 2012.

The 3% withholding law, which was enacted in Section 511 of the *Tax Increase Prevention and Reconciliation Act of 2005* (P.L. 109-222) as section 3402(t) of the Internal Revenue Code, mandates that federal, state, and local governments withhold 3% of nearly all of their contract payments, Medicare payments, farm payments, and certain grants. Compliance with this law will impose significant, unnecessary financial burdens on both the public and private sectors. The Coalition stands ready to work with Congress and the Administration to improve tax compliance for companies and other entities receiving federal dollars while also repealing the onerous 3% withholding tax.

There have been numerous legislative and regulatory measures put in place since the enactment of the 3% withholding law back in 2006 that have focused on increasing tax compliance and enhancing transparency for companies that have received government payments. All these initiatives taken together obviate any rationale or need for retaining the withholding mandate and will be far more cost-effective for the government. The enclosure with this letter includes a list and summary of these new initiatives that enhance transparency and increase tax compliance. These measures and proposals directly address the legitimate concerns about tax-delinquent government contractors and other entities receiving federal payments. They are a much better approach than the costly, broad brush mandate of the 3% withholding law

The withholding is a flat percentage of revenues from government payments, bears no relationship to companies' taxable incomes, and will restrict cash flow needed for day-to-day operations and investments. In addition, the administrative and capital investment costs to businesses and governments will be substantial and the withholding mandate will be exceedingly complicated to implement. Access to capital is a major concern for businesses in this economy, and the 3% withholding will further compound this problem for businesses by limiting their operating capital and cash-on-hand. Businesses, especially small businesses, do not need additional limits on capital while the economy begins to recover.

While the withholding requirement is not scheduled to go into effect until January 1, 2012, it is already proving costly, and such costs will increase exponentially as the implementation deadline moves closer. Businesses – the vast majority of which are small businesses without any tax delinquencies – and governmental entities are starting to expend resources now in preparation for implementation due to major system and process changes needed for withholding, reporting, and reconciling the millions of affected payments annually. These changes have to be made well in advance of 2012.

For these reasons, the Coalition believes that at a minimum approving a two-year implementation delay until 2014 this year is urgently needed to prevent governments and companies from incurring these costs. Along with a two-year delay, we ask that Congress require an independent entity to assess the costs of the

3% withholding regime for federal, state, and local governments and the companies that provide goods and services to them.

Sincerely,

Government Withholding Relief Coalition

- Aeronautical Repair Station Association
- Aerospace Industries Association
- Air Conditioning Contractors of America
- Air Transport Association
- America's Health Insurance Plans
- American Bankers Association
- American Clinical Laboratory Association
- American Concrete Pressure Pipe Association
- American Congress on Surveying and Mapping
- American Council of Education
- American Council of Engineering Companies
- American Farm Bureau Federation
- American Health Care Association
- American Institute of Architects
- American Logistics Association
- American Moving and Storage Association
- American Nursery and Landscape Association
- American Road & Transportation Builders Association
- American Shipbuilding Association
- American Society of Civil Engineers
- American Subcontractors Association
- American Supply Association
- American Traffic Safety Services Association
- American Trucking Associations
- Armed Forces Marketing Council
- Associated Builders and Contractors
- Associated Equipment Distributors
- Association of National Account Executives
- Association of School Business Officials International
- Business and Institutional Furniture Manufacturers Association
- Coalition for Government Procurement
- Colorado Motor Carriers Association
- Computing Technology Industry Association
- Construction Contractors Association
- Construction Employers' Association of California
- Construction Industry Round Table
- Construction Management Association of America
- Design Professionals Coalition
- Edison Electric Institute
- Electronic Security Association
- Engineering & Utility Contractors Association
- Federation of American Hospitals
- Financial Executives International's Committee on Government Business
- Financial Executives International's Committee on Taxation
- Finishing Contractors Association
- Gold Coast Hispanic Chamber of Commerce
- Independent Electrical Contractors, Inc
- International City/County Management Association
- International Council of Employers of Bricklayers and Allied Craftworkers
- International Foodservice Distributors Association
- International Municipal Lawyers Association
- Management Association for Private Photogrammetric Surveyors
- Mason Contractors Association of America
- Mechanical Contractors Association of America
- Medical Group Management Association
- Messenger Courier Association of the Americas
- Miami Dade County
- Modular Building Institute
- Munitions Industrial Base Task Force
- National Association for Self-Employed
- National Association of Counties
- National Association of Credit Management
- National Association of Government Contractors
- National Association of Manufacturers

- National Association of Minority Contractors
- National Association of State Auditors, Comptrollers and Treasurers
- National Association of State Procurement Officials
- National Association of Wholesaler-Distributors
- National Beer Wholesalers Association
- National Corn Growers Association
- National Defense Industrial Association
- National Electrical Contractors Association
- National Electrical Manufacturers Association
- National Emergency Equipment Dealers Association
- National Federation of Independent Business
- National Institute of Governmental Purchasing
- National Italian-American Business Association
- National League of Cities
- National Precast Concrete Association
- National Office Products Alliance
- National Roofing Contractors Association
- National Small Business Association
- National Society of Professional Engineers
- National Society of Professional Surveyors
- National Utility Contractors Association
- National Wooden Pallet and Container Association
- North-American Association of Uniform Manufacturers & Distributors
- North Coast Builders Exchange
- Office Furniture Dealers Alliance
- Oregon Trucking Association
- Plumbing-Heating-Cooling Contractors - National Association
- Printing Industries of America
- Professional Services Council
- Regional Legislative Alliance of Ventura and Santa Barbara Counties
- Santa Rosa Chamber of Commerce
- Security Industry Association
- Sheet Metal and Air Conditioning Contractors National Association, Inc.
- Small Business & Entrepreneurship Council
- Small Business Legislative Council
- TechAmerica
- Textile Rental Services Association of America
- The Associated General Contractors of America
- The Association of Union Constructors
- The Distilled Spirits Council of the U.S.
- The Financial Services Roundtable
- U.S. Chamber of Commerce
- United States Telecom Association
- Veterans Entrepreneurship Task Force
- Women Impacting Public Policy

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## **Legislative and Regulatory Developments Since the Enactment of Section 511 That More Efficiently Address Tax Gap Concerns**

Since the enactment of Section 511 of the *Tax Increase Prevention and Reconciliation Act of 2005* on May 17, 2006, there have been a number of legislative and regulatory developments that together address issues with tax compliance and transparency by companies receiving government payments.

- Federal Awardee Performance and Integrity Information System (FAPIS): The [final rule](#) implementing this database for contracts was issued on March 23, 2010, and the [proposed guidance](#) implementing it for grants was issued on March 10, 2010. These rules were promulgated to implement Section 872 of P.L. 110-417, which was passed on October 14, 2008, and created a Federal legal compliance database requiring Contracting Officers and grant officials to check for prospective contractor legal compliance (tax compliance among the records checked) before the award of a Federal prime contract.
- Tax Compliance Certifications on All Contracts: On May 22, 2008, a [final Federal Acquisition Rule](#) took effect requiring contractors to certify they are current on their federal taxes. The tax certification language requires government contractors to certify that the offeror and its principals have no delinquent federal taxes and explicitly makes tax delinquency grounds for suspension and debarment.
- Administration Memo on Tax Compliance: On January 20, 2010, the Administration released a [memo](#) requiring the Internal Revenue Service to review the certifications of non-delinquency in taxes that are required on all federal contracts (mentioned above). The directive also requires the Office of Management and Budget, working with other agencies, to develop recommendations to prevent companies with serious tax delinquencies from receiving contracts and to make contractor certifications more easily available. Self certifications are a powerful screening incentive for tax-compliant firms, as false certifications bring about False Claims Act penalties and contract suspension and debarments. The burden and weight of the regulation fall on the tax malfeasant, not the tax-compliant firms. The President's directive to tighten enforcement of the government contractor tax non-delinquency certification reinforces key concerns about certifications to the government.
- USASpending.gov: The Federal Funding Accountability and Transparency Act of 2006 ([P.L. 109-282](#)) required the creation of a single, searchable website, accessible by the public that includes information on all Federal contract and grant awards. This increases transparency for the public of agency prime contract and subcontract spending so awards will be subject to increased disclosures to the public.
- Central Contractor Registration (CCR) Database: The CCR system has been rolled out to all Federal contracting agencies since 2004, and a debt flag was added in 2009.
- Treasury Offset Program Expanded: The Treasury offset program has been expanded (through an interim rule on January 11, 2007, and final rule on June 10, 2009) to include State Debts.

*Prospective:*

- Improvements Stemming from Administration Memo: As directed by the January 20, 2010 [memo](#) mentioned above, OMB, working with other agencies, will develop recommendations to prevent companies with serious tax delinquencies from receiving contracts and to make contractor certifications more easily available.
- Provision in House Bill to Require Disclosure of Tax Debts: Section 403 of [H.R. 5013](#), which passed the House on April 28, 2010 (likely to be included in the FY 2011 National Defense Authorization Act), requires potential federal contractors and grantees to submit certifications as to whether they have a seriously delinquent tax debt and to authorize the Secretary of the Treasury to verify the certifications. The concepts in Section 403 are in alignment with those industry has supported in the past in order to demonstrate the need to repeal the 3% withholding tax.
- Treasury Green Book Proposal: The Department of the Treasury's [Green Book](#) released with the President's FY 2011 Budget includes a proposal (page 101) to allow information reporting on federal non-wage government payments. This proposal would enhance transparency and therefore increase tax compliance without imposing an enormous burden on the government sector.

All these measures taken together pursue the laudable goal of tax compliance in a way that puts the burden of the law and regulation more on the tax avoiders, and provides a positive inducement to law-abiding firms and the public agencies with which they do business. Such regulatory vigilance will keep tax avoiders out of the public contracting market in the first place, rather than shifting the compliance burden to law-abiding firms and the Federal, state and local governments.