

Contractor Coalition Slams Law Requiring

Three Percent Withholding on Most Contracts

A coalition of contractor groups Jan. 28 wrote to Rep. Darrell Issa (R-Cal.) strongly criticizing a law that mandates a 3-percent withholding of contract payments.

“It will cost jobs and waste significant amounts of time and money for companies as well as governments to implement,” the 116-member Government Withholding Relief Coalition said in the letter. “Compliance with this law will impose significant, unnecessary financial burdens on both the public and private sectors, with a disproportionate impact on small businesses.”

The letter was sent in response to Issa's recent request for interested parties to identify regulations that, in their view, harm the economy and cost jobs.

The requirement, which is set to take effect Jan. 1, 2012, was enacted in section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (Pub. L. No. 109-222) as section 3402(t) of the Internal Revenue Code, requires federal, state, and local governments to withhold 3 percent of almost all contract payments, Medicare payments, farm payments, and certain grants.

On Dec. 5, 2008, the Internal Revenue Service issued a proposed rule providing guidance for complying with the requirement. Industry groups expressed concerns about compliance costs and related issues then as well.

According to the coalition, which includes the U.S. Chamber of Commerce, the National Defense Industrial Association, the Coalition for Government Procurement, and the Professional Services Council, the IRS rule “is just the beginning of the regulations that need to be altered and issued” in response to the withholding requirement. In addition, the group said, the Federal Acquisition Regulation will have to be amended, as will regulations for Medicare payments, farm payments, and grants.

“[S]ince this requirement flows down to state and local governments (as an unfunded mandate), every state and many city, county, and municipal governments will need to change their regulations and companies will have to learn to comply with these numerous and likely divergent implementing regulations,” the letter added.

‘Exorbitant Expenditures’

Further, the coalition said the withholding requirement will cost too much and bring in too little revenue.

“The provision is already proving costly, and [costs] will increase exponentially as the implementation deadline moves closer,” the letter said. “If this tax is not repealed, it will cost companies and governments at all levels substantial amounts of money. These exorbitant expenditures will be at the expense of hiring new employees, expanding businesses, and providing government services at a time that neither the public nor private sector can absorb such unnecessary costs.”

The coalition also said that according to a Defense Department estimate, it could cost more than \$17 billion in the first five years to comply with the withholding requirement, which “far exceeds” estimated additional tax revenue.

“The coalition believes this law and its corresponding regulations are a prime example of wasteful requirements that have a negative impact on the economy and job-creation,” the letter said. “As you develop your agenda, we strongly urge you to consider the damaging effects of the 3 percent withholding tax and include its repeal among your priorities for this year.”

Two bills, sponsored by Sen. David Vitter (R-La.) (S. 89) and Sen. Scott Brown (R-Mass.) (S. 164), were introduced Jan. 25 to repeal the law. The bills were referred to the Senate Finance Committee.