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H.R. 3056: 3% withholding provision for contract payments

Background

On May 17, 2006, the U.S. Congress passed the *Tax Increase Prevention and Reconciliation Act of 2005*. This Act contains a government withholding provision that will compel all state and local governments to withhold three percent of almost all payments made to vendors and contractors. These governments then would be required to remit that amount to the federal government for federal income tax purposes.

On October 10, 2007, the U.S. House of Representatives passed H.R. 3056 (*The Tax Collection Responsibility Act of 2007*), Section 3 of which delays implementation of the withholding tax until January 1, 2011. The bill also requires the Secretary of Treasury to submit a report within six months of implementation to the both House and Senate. This report is to offer a detailed analysis of the potential problems of administration and compliance, the burden on government and business, and the potential affect of the provision on small businesses.

Current Status

Many corporate and government groups, including the U.S. Chamber of Commerce, the National Association of State Budget Officers ("NASBO"), the National Conference of State Legislators ("NCSL"), the National League of Cities ("NLC"), and the National Governors Association ("NGA") have urged Congress to repeal the provision, citing issues including:

- an anticipated three percent increase in the price of goods and services;
- private companies are not required to withhold three percent on payments which could place state and local governments at a disadvantage;
- lack of consultation with state and local governments; and
- the shifting of the burden of collection at a prohibitive cost from the federal government to state and local government.

Procurement offices in several states have contacted their Congressional representatives urging the repeal of the withholding tax entirely. The National Association of Counties (“NACo”) has called the withholding requirement an unfunded mandate and as a result has called for the annulment of the requirement.

In addition, a number of state associations including the Council of State Governments (“CSG”), Government Finance Officers Association (“GFOA”), the International City/County Management Association (“ICMA”), the National Association of State Auditors, Comptrollers and Treasurers (“NASACT”), the National Association of State Retirement Administrators (“NASRA”), the National Council on Teacher Retirement (“NCTR”), NACo and NASBO have formed a coalition to combat the implementation of the withholding tax, and sent a letter to Senator Larry Craig (R-ID) in March of 2006 in support of S. 777 which would repeal the provision. That letter can be found at the end of the NASBO issue brief linked below.

NASPO State and Federal Relations Committee Recommendation

At its January 11, 2008 monthly meeting, the NASPO State and Federal Relations Committee agreed to refer the issue of H.R. 3056 to the NASPO Executive Board. The Committee encourages the Executive Board to authorize NASPO to join as a signatory to the protest led by NASBO against the withholding provision itself. In addition, the Committee asks that the NASPO Executive Board authorize a dialogue with the Department of Treasury in order to protest the provision prior to the completion of the Treasury’s review of the withholding as mandated in H.R. 3056. To facilitate this, the Committee will determine to whom in the Treasury Department NASPO should address a statement of protest.

Resources

- Section 3 of H.R. 3056: <http://thomas.loc.gov/cgi-bin/query/F?c110:4:./temp/~c110AdRNo1:e3786>:
- Tax Increase Prevention and Reconciliation Act of 2005: <http://thomas.loc.gov/cgi-bin/query/D?c109:6:./temp/~c109X4h89Z:>
- NASBO Issue Brief: “New Government Withholding Provision Could Involve Costs to States”: <http://www.nasbo.org/Publications/PDFs/Government%20Withholding%20Provision.pdf>
- Washington Technology: “House-passed law would delay 3 percent withholding”: http://www.washingtontechnology.com/online/1_1/31669-1.html

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