



National Association of Surety Bond Producers

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May 24, 2011

The Honorable Mick Mulvaney
House Committee on Small Business
Subcommittee on Contracting and Workforce

Re: Statement for the Record: Repeal the 3% Withholding Rule

Dear Committee and Subcommittee Members:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers and brokers, whose membership includes firms employing over 5,000 personnel who specialize in surety bonding, issuing bid, performance, and payment bonds for the Nation's construction projects, I would like to thank Chairman Mick Mulvaney and the members of the House Small Business Committee's Subcommittee on Contracting and Workforce for holding this hearing on the sweeping tax withholding requirement mandated by Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (PL 109-222).

NASBP is part of the Government Withholding Relief Coalition (GWRC) that was formed to support efforts to repeal section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222), which mandates that federal, state, and local governments with total annual expenditures of \$100 million or more withhold 3% from all payments for goods and services, including payments made to contractors for public works repair or construction. Many other industries and organizations oppose the 3% withholding, including those representing state and local governments, which believe that the collection of the 3% withholding will place too great a burden on resources.

NASBP is concerned that the tax withholding will disadvantage small construction firms significantly, making public construction less desirable for those firms. The withholding will constitute an additional barrier for small firms seeking any public construction work, not just federal government contracts, and may result in less interest by all construction contractors in pursuing public construction, thereby reducing competition for public projects at all levels. The law would impose new and substantial burdens on S corporations and joint ventures. Many government contracts are performed through joint ventures, which increase the competition for public construction projects; additional burdens placed on these entities may reduce competition for public projects.

The 3% withholding applies to the total contract value, not to the net revenue generated from a project. For construction contractors, the government will withhold funds that are necessary to complete a project, such as funds needed to pay for the work of subcontractors and material suppliers. Three percent is larger than the profit margins realized under many government contracts and will significantly impede cash flow, the financial life-blood of all construction firms, thereby jeopardizing a firm's ability to maintain bonding, compete for business, or even complete projects.

For example, if a contractor obtains a \$5 million public contract, the 3% withholding law would require \$150,000 to be held. Meanwhile, the contractor only expects to net \$125,000 after paying subs, suppliers, etc.; therefore, the maximum tax owed on the \$5 million project is \$43,750. However, due to the 3% rule, the government has withheld over 3 times the necessary amount. Furthermore, a private sector study has estimated that the 3% withholding will cost federal, state, and local governments as much as \$75.2 billion to implement in its first five years.

For the reasons given above, the 3% withholding must be repealed to avoid grave injury to the construction industry and the competitiveness of the public procurement system. NASBP appreciates your interest in this matter. Thank you for your consideration of our concerns.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Larry LeClair". The signature is written in a cursive, flowing style.

Larry LeClair
Director, Government Relations