

Government Withholding Relief Coalition

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 malfasant, 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.