



DAVID A. RAYMOND
PRESIDENT & CEO

July 27, 2011

Mr. A.G. Kelley
Office of the Associate Chief Counsel
Internal Revenue Service, Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: CC:PA:LPD:PR (REG-151687-10)

Dear Mr. Kelley:

On behalf of the American Council of Engineering Companies (ACEC) – the national voice of America’s engineering industry – I appreciate the opportunity to comment on proposed regulations issued by the Internal Revenue Service (IRS) regarding the application of IRC Section 3402(t) to existing contracts and payments.

ACEC members – numbering more than 5,100 firms representing hundreds of thousands of engineers and other specialists throughout the country – are engaged in a wide range of engineering works that propel the nation’s economy, and enhance and safeguard America’s quality of life. Section 3402(t), which takes effect in 2013, will require the federal government, state governments, and certain local governments to withhold three percent from contracts and payments for goods and services. ACEC strongly opposes this new mandate, which will have a detrimental impact on engineering firms and the public sector clients they serve, and we are continuing to work with Congress for full repeal of Section 3402(t).

As you know, the final regulations implementing Section 3402(t) that were issued by the IRS on May 9, 2011 apply three percent withholding only to contracts that are entered into or materially modified after December 31, 2012. Existing contracts that are not materially modified will be not subject to three percent withholding. However, the IRS has also proposed applying three percent withholding to all contracts – both new and existing contracts – starting on January 1, 2014. ACEC opposes this proposed change to the final regulations. If Section 3402(t) is not repealed, it should only apply to new contracts as stipulated in the final regulations.

Existing contracts were negotiated without accounting for the financial impact of three percent withholding. Engineering and construction firms often engage in multi-year contracts, due to the long-term nature of infrastructure and other construction projects.

Consequently, engineering firms would be particularly impacted by the proposed regulations.

Three percent withholding will already place a financial burden on engineering firms. In the engineering industry, the average taxable income from a contract is often less than three percent of the gross amount of the contract, so for most companies this withholding will cut into funds needed to complete the contract and will create serious cash flow problems. Withholding three percent from existing contracts that were negotiated without reflecting this new mandate would only add to the financial hardship engineering firms will face. In addition, small businesses would be adversely impacted as they would be unable to absorb the impact on their cash flow.

Implementing this proposed change would also create administrative challenges for engineering firms. By applying the withholding retroactively to existing contracts beginning in 2014, firms would have to once again revise their systems for tracking the withholding and ensuring that it matches with what they report on their tax returns.

As ACEC continues to work for repeal of IRC Section 3402(t), we urge the IRS to reject the proposal to apply three percent withholding to existing contracts because of its detrimental impact on businesses that provide services to the public sector.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Raymond", with a long, sweeping horizontal line extending to the right.

David A. Raymond
President & CEO