

April 16, 2009

**Testimony of the
American Trucking Associations**

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&

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Before the

Internal Revenue Service

1111 Constitution Avenue, NW

Washington, DC

Regarding

The Service's Implementation of Three Percent Withholding

Proposed Rule Noticed at [REG-158747-06]

Pursuant to Public Law No. 109-222

The Tax Increase Prevention and Reconciliation Act of 2005

Thank you for convening today's hearing on 3% withholding. The trucking industry appreciates what the Service is doing to implement this new law efficiently, and to minimize the burdens for governments and businesses alike.

My name is Marc Boyle. I am the President and CEO of Boyle Transportation, a small business concern that specializes in transporting security-sensitive materials, including highly hazardous, and high value cargo, for the Departments of Defense and Energy, and for commercial firms. These types of freight services are referred to as Transportation Protective Service, or "TPS." I am here today representing the American Trucking Associations (ATA) and its member companies. This includes the few who haul TPS commodities, and the many who haul great volumes of general freight. I am also the Chairman of ATA's Government Traffic Policy Committee, the industry forum for trucking companies to develop improvements to the business processes, logistics, and government policies related to hauling freight for government agencies.

The General Services Administration estimates that Federal agencies pay a total of about \$9.5 billion each year for trucking services. Basically, if a government agency has it, a truck brought it. The competition is fierce and my small business vies for a tiny sliver of that market. The profit margins for hauling government freight are razor thin. ATA's Economics Research Department tells us that in today's slow economy, if a carrier is not losing money as some are, that it's profit margins range from 0% to only 2%.

There is nothing good about the impending 3% withholding requirement. The comments submitted by the Government Withholding Relief Coalition are right on target. ATA adopts and supports their submission.

Today I want to highlight two things the Service can do to help mitigate the withholding burden on the trucking industry, and on smaller companies like mine in particular:

1. Establish the \$10,000 threshold on payments, but do not allow bundling to determine whether or not withholding is required; and
2. Exempt payments made for TPS services, the performance of which requires Secret-level security clearances.

ATA commends the Service for proposing a threshold of \$10,000 that triggers withholding. If finalized, this will significantly reduce the volume of smaller transactions that would otherwise be affected – unless they are bundled. And there's the rub.

The Department of Defense is the largest federal shipper. About 99% of DoD shipments – taken separately – fall under the \$10,000 threshold. But when payments are bundled the result is very different: up to 99% of payments would exceed the \$10,000 threshold. In practice, it would be entirely unpredictable whether or not a given payment would be subject to withholding.

Why is predictability important? Because margins in the trucking industry are so thin.

Keep in mind that the 3% withholding is usually going to consume a carrier's entire profit margin. To protect itself, a carrier will have to adjust its rates when withholding is required; but, to be competitive, it must be careful not to increase its rates when withholding is not required.

In business, customers who pay in full, and quickly, get better rates. Withholding 3% means government customers may delay paying the full balance for more than a year. Based on these facts, we believe rate-makers will calculate a higher rate for government freight. Rate-makers have no way of knowing which, or how many, freight service orders will be subject to withholding. This is because bundling and payments are random processes. Ambiguity and randomness is induced by several variables such as:

1. How many invoices happen to converge on a give day in DoD's automated processes for accounting, approval and payment;?
2. The final price of a specific shipment is only determined after delivery;
3. Fuel Surcharges rise and fall with the price of diesel, making the total payment rise and fall along with it;
4. Miscellaneous or "assessorial" charges, including customer delays, also add to the cost of a given shipment.

But a carrier knows none of these things when it commits to a rate. There is a true cost associated with ambiguity and randomness. Consequently, we believe rate-makers will increase rates to cover the cost of delayed payment, that is to say the 3% that cannot be recovered until tax returns are filed.

In addition, the proposed bundling rule, since it will render most of the payments to DoD carriers subject to withholding, will severely delay cash flow to small trucking businesses, for which this is already a significant problem. Therefore, pricing agents will be required to calculate new – inevitably higher – rates to cover two consequences: (1) the carrier's exposure to potential withholding; and (2) the cost of delayed cash flow.

The good news is that none of this is necessary. If each line item in a bundled payment for discrete and separate services were treated as a separate payment, only about 1% of payments would be subject to withholding, and the problem would be solved.

ATA's second recommendation is for IRS to exempt payment for TPS shipments from the withholding requirement. This would include any freight service that requires the use of Secret-cleared personnel to transport the high security commodities. TPS service requires drivers and other personnel to have Secret-level clearances. Both clearances, and a need-to-know, are required of any person before they may have any knowledge of the shipment prior to delivery. This is required by the contracts we sign with United States Army's Surface Deployment and Distribution Command.

We believe that such contracts for Secret-level services may not be included in the exemption proposed at §31.3402(t)-4(f), "Payments made pursuant to a classified or confidential contract." Therefore, we ask the Service to clarify that service contracts, requiring the use of Secret-cleared personnel to execute the service, are specifically exempted. This will help motor carriers in these very sensitive operations to comply with the interagency requirements found in the National Industrial Security Program Operating Manual (NISPOM).

In summary, ATA recommends that:

1. The Service keep the threshold for withholding at \$10,000; but treat discrete, line-item services individually for the purpose of applying the threshold; and
2. The Service clearly exempt from the withholding requirement payment for services requiring Secret-level personnel clearances.

On behalf of ATA, I thank you for the opportunity to present this testimony. We stand ready to answer any questions you may have.

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