

Before the
United States House of Representatives
Small Business Committee
Subcommittee on Contracting and Workforce

Statement of the
American Trucking Associations, Inc.
On the
Need to Repeal the 3% Withholding Provision

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The American Trucking Associations (ATA) appreciates the opportunity to submit comments to the Subcommittee on Contracting and Workforce in support of repealing the 3% withholding tax. Specifically, Section 511 of the *Tax Increase Prevention and Reconciliation Act of 2005* (PL 109-222) created more than just a new tax; it mandates new layers of bureaucracies in municipalities, states and federal agencies, to collect the new tax. As a result, it will cost far more to implement than it will raise in new federal revenues. Stakeholders include agencies in every level of government, every industry that supplies goods and services to those myriad agencies, and the American taxpayer. The bottom line is this: by repealing this provision, Congress will save money at every level of government from the municipal to the federal level.

Repeal of this provision will eliminate a burdensome and costly requirement for the trucking industry, an industry that is comprised primarily of small businesses. The United States Department of Transportation reports¹ having issued “for hire” motor carrier authority to 370,082 companies. Approximately 90 percent of those companies operate six or fewer trucks, and 97% operate twenty or fewer trucks,² making small businesses the cornerstone of the trucking industry and squarely in the domain of this body. ATA commends the Subcommittee for holding this hearing and we strongly support repealing Sec. 511.

ATA is a member of the Government Withholding Relief Coalition. ATA supports and affirms the Coalition’s comments regarding the repeal of Sec. 511.

The trucking industry is a critical component of our nation’s economy, generating more than 80 percent of our country’s freight bill and transporting approximately 69 percent of all tonnage moved in the United States. More than 80 percent of communities in the United States depend solely on trucks to receive their everyday essential consumer goods. Not only are private sector consumers dependent on trucks to deliver and ship their goods, but so are public entities at the federal, state and local government level. Because of this, once the 3% withholding tax becomes effective, the administrative and cash flow burdens it imposes on every motor carrier providing government services will likely result in higher costs for transportation of the freight that sustains their operations.

Motor carriers participating in ATA’s Government Traffic Policy Committee voted unanimously to seek repeal of Sec. 511. ATA members, including those who provide services to federal agencies, not only transport commodities essential to our everyday life such as fuel and food, but also transport relief goods to storm ravaged areas, as well as uniforms, munitions, rockets, bombs, armored vehicles, and all other sustainment items that allow our men and women in uniform to defend and protect our nation. If Sec. 511 is not repealed, the additional costs resulting from this section will be passed on to the government consumer through higher prices. This will impact all government agencies, from local municipalities to the U.S. Department of Defense (DoD), and result in higher prices on everything from pencils and paper to munitions and meals.

¹ As of December 2010.

² United States Department of Transportation; Federal Motor Carrier Safety Administration

A recent initiative within DoD for procuring freight services is to shift from a tender-based procurement method to a contract-based system under the Federal Acquisition Regulations (FARs). This trend, combined with the 3% withholding provision, means that many more trucking services (or “shipments”) currently priced at less than the \$10,000 threshold will be bundled to exceed that threshold, and thereby become subject to the 3% withholding. ATA opposes both of these initiatives because each one on their own merits adds unnecessary costs without adding any performance advantage whatsoever to the government agencies served. The resulting increased costs will be ultimately passed on to taxpayers without any real benefit in improved services.

One of the most troubling aspects of Sec.511 is that the Internal Revenue Service final rule³ specifies that the withholding will also apply to fuel surcharges (FSC). A FSC is a charge that a carrier may add to a shipper’s bill depending on the cost of fuel at the time the service was provided. Some shippers, including government agency shippers, require carriers to commit to a fixed rate for a specific freight service; the period of that commitment may last up to a year or more. Fuel is always the number one or two highest cost component for trucking companies. Its inherent market volatility makes it impossible for a carrier to know what the cost of fuel will be 30 days hence. For this reason, rates that are binding for more than 30 days typically include a FSC. If a FSC is not included in such contracts, the carrier faces an untenable level of risk due to higher diesel costs resulting in a potential financial loss to the carrier. Thus, a FSC is nothing more than a cost recovery mechanism that allows carriers to offer their lowest competitive rates to shippers, including government shippers, beyond 30 days.

Government FSC rates are generally lower than FSCs paid between private parties. If those cost recovery payments are reduced by yet another 3%, then the base rates will need to be raised by more than 3% because it is impossible to know by how much the cost of diesel will exceed the baseline amount assumed in the base rate (tender). The 3% withholding provision unravels the long tradition and best practice in both industry and government to implement reasonable cost recovery through the FSC. Given the volatility of markets, the economy and diesel prices in particular, it is our view that a carrier that wants to be financially solvent beyond the period specified in a government contract will estimate fuel costs on the high side to protect themselves against default of performance, if the current price of diesel exceeds the fuel cost assumption in the basic contract rate. This is a classic case of government policy inducing costly uncertainties and speculation into market decisions between shippers and carriers.

There are no winners if the 3% withholding goes into effect. Congress needs to repeal the requirement as soon as possible, before trucking, other industries, and government make the very expensive changes to their accounting, billing computer programs, and contracting systems needed to comply with the new withholding requirement. If Congress waits until the last minute, those very large expenditures will result in an enormous waste of money, by governments and employers, that none can afford. ATA strongly encourages Congress to repeal Sec. 511 as soon as possible.

³ IRS draft final rule. Summary of Comments and explanation. Paragraph “F”