

Proposed Guidance Regarding Government Entities Required to Withhold Three Percent on Payments for Services and Property

On April 24, 2008, the U.S. Small Business Administration's Office of Advocacy (Advocacy) filed a comment letter on a notice issued by the Department of Treasury (Treasury) and the Internal Revenue Service (IRS), *Government Entities Required to Withhold Three Percent on Payments for Services and Property* [Notice 2008-38 (March 11, 2008)]. The notice invites public comments regarding guidance to be provided to Government entities required to withhold three percent of payments made by the Government entities or their paying agents for services and property (the "three percent withholding requirement"). Advocacy offers suggestions related to the three percent withholding requirement. A complete copy of Advocacy's comments may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, requires that all Government entities (except for certain small State entities) withhold three percent of all payments for services or property made after December 31, 2010.
- The three percent withholding requirement will adversely impact all small businesses that provide services to Government entities.
- Advocacy suggests that Treasury and the IRS consider the following recommendations to reduce the overall burden of the three percent withholding requirement on small businesses: (1) small businesses could be permitted to offset payroll tax submissions by the three percent amount withheld and could be reimbursed quarterly for any amounts withheld in excess of their payroll tax liabilities; (2) subcontractors could be excluded from the definition of "contract amount"; and (3) Federal construction contracts that are already subject to the Miller Act could be exempt from the requirements of the three percent withholding requirement.
- To the extent that Treasury and the IRS use the language of the guidance as the basis for a future notice of proposed rulemaking (NPRM), Advocacy's suggestions should be treated as recommendations for compliance with the Regulatory Flexibility Act (RFA).

For more information, visit Advocacy's Web page at <http://www.sba.gov/advo> or contact Assistant Chief Counsel Dillon Taylor by email at dillon.taylor@sba.gov or by phone at (202) 401-9787.