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GOVERNMENT CONTRACTOR WITHHOLDING

While the Form 1099 requirement may be the most infamous of the tax gap closing initiatives, it was not the first and it probably will not be the last. One of the first tax gap closing measures to be enacted into law was the three percent withholding provision imposed by the Tax Increase Prevention and Reconciliation Act of 2005. It imposed a requirement on Federal, state, and local governments to withhold taxes from government contractors beginning in 2011.

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act as Public Law 111-5. The law delayed the effective date of the withholding requirement by one year to 2012.

The Internal Revenue Service has just announced it is delaying implementation until 2013. Withholding and reporting requirements will apply to payments made after December 31, 2012. In addition, payments made under contracts existing on December 31, 2012, that are not materially modified, will be exempt until January 1, 2014.

Meanwhile on the legislative front, efforts continue to repeal the requirement. The House bill is H.R.674, introduced by Representative Wally Herger (R-CA). There are two Senate bills, S.89, introduced by Senator David Vitter (R-LA), and S.164, introduced by Senator Scott Brown (R-MA).

DRIVERS' HOURS OF SERVICE RULE UPDATE

The Federal Motor Carrier Safety Administration (FMCSA) has indicated that it will delay the release of a final revised rule regulating the hours of service (HOS) for drivers of commercial motor vehicles (CMV). The FMCSA is under a court supervised settlement agreement to issue the final rule by July 26, 2011. The FMCSA has released some new studies and is giving the public 30 more days to comment. A new time line for a final rule has not been revealed.

As a refresher, late last year the FMCSA issued a proposed rule to comply with the settlement agreement. SBLC commented on the proposal.

While the existing rule is often associated with long-haul drivers in the media, aspects apply to short-haul drivers and smaller trucks. It gets a bit convoluted with some special provisions based on the size of the truck and distance traveled.

For those of us who are not full time members of the trucking industry, the U.S. Department of Transportation uses different Commercial Motor Vehicle definitions for different rules. It can get confusing because the same acronym (CMV) is used. For example, for Commercial Driver License purposes, the vehicles are larger but the Commercial Motor Vehicle (CMV) for the purposes of the HOS rule is generally a truck, or truck-tractor with a trailer, that:

- Is involved in interstate commerce and weighs (including any load) 10,001 pounds (4,536 kg) or more or

- Is involved in interstate commerce and has a gross vehicle weight rating or gross combination weight rating of 10,001 pounds (4,536 kg) or more, or

- Is involved in interstate or intrastate commerce and is transporting hazardous materials in a quantity requiring placards.

(Note: the interstate versus intrastate distinction is minor since most states

adopt the Federal rules in order to receive federal funds.)

The proposal would require commercial truck drivers to complete all driving within a 14-hour workday, and to complete all on-duty work-related activities within 13 hours to allow for at least a one-hour break. It also leaves open for comment whether drivers should be limited to 10 or 11 hours of daily driving time. Eleven hours is the current standard and the FMCSA said it favors a 10-hour limit but left the question open-ended in the proposal. Under the proposed HOS rule, there is an option of extending a driver's daily shift to 16 hours twice a week to accommodate for issues such as loading and unloading at terminals or ports, and allowing drivers to count some time spent parked in their trucks toward off-duty hours. The new HOS proposal would retain, but modify the "34-hour restart" provision allowing drivers to restart the clock on their weekly 60 or 70 hours by taking at least 34 consecutive hours off-duty.

SBLC filed comments during the original comment period. We made several observations; among them this observation about the impact on all types of businesses: "If carriers of all kinds have to increase the number of trips to deliver goods as the number of driver hours are reduced, the cost of goods at each point in the supply chain is going to increase. Either this is going to have a chilling impact on sales, if everyone tries to pass the cost on to the consumer, or some business in the supply chain is going to get stuck absorbing those costs and it is most likely to be the smaller businesses in the chain."