

April 24, 2008

CCPA: LPD: PR (Notice 2008-38)  
Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Dear Mr. Coleman,

Enclosed are the U.S. Nuclear Regulatory Commission's comments on the implementation of Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (P. L. 109-222) entitled, Imposition of Withholding on Certain Payments made by Government Entities. Thank you for the opportunity to review and comment.

Sincerely,

**/RA/**

J. E. Dyer  
Acting Chief Financial Officer

Enclosure:  
As stated

cc: D. Werfel, OBM  
S. Fonner, NRC/OGC  
T. Hagan, NRC/ADM

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cc:

Daniel I. Werfel  
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Eisenhower Executive Office Building  
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Washington, DC 20502

## COMMENTS OF NRC STAFF ON IMPLEMENTATION OF SECTION 511 OF THE TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005

The U.S. Nuclear Regulatory Commission (NRC) staff has the following comments in response to IRS Notice 2008-38, regarding which Government agencies have been invited to express their views with respect to implementation of section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA):

- For reasons stated below, tasking all Federal agencies with the responsibility of collecting the tax may not be the most efficient solution in obtaining the statutory objective. A better solution may be to have this done centrally by the Department of Treasury, which issues payments for the Federal government.
- Requiring Federal agencies to address their contractors and vendors would be a very resource-intensive and costly undertaking, and would require Federal agencies to modify financial systems throughout the government to:
  - 1) Collect the offset from each payment.
  - 2) Provide statements to the vendors to show the tax deduction.
  - 3) Accumulate and store the data for each vendor.
  - 4) Report the withholding to the IRS.
  - 5) Provide the amount withheld on the vendor's Form 1099.
- Application of TIPRA section 511 to existing Government contracts could result in increases of the costs of those contracts to the Government, because of the burdens that implementation of the law would impose (e.g., modification of existing contracts). In light of this, IRS may also wish to issue guidelines for applying section 511 to existing Government contracts.
- For an agency like the NRC, the impact of TIPRA section 511 would be at least somewhat alleviated if the requirement for withholding were not applied to any "micro-purchase," which (with certain exceptions) is defined in the Federal Acquisition Regulations as "an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed" \$3,000 (48 C.F.R. 2.101). The extra costs and loss of efficiency resulting from subjecting micro-purchases to the requirements of section 511, and problems that may have to be resolved with respect to the use of the Government purchase cards, would make it logical to treat the amounts paid for these purchases as *de minimis*.
- Section 511 of TIPRA was aimed at limiting loss of tax revenue not collected from contractors and vendors. Based upon reports of the General Accountability Office and the Senate investigation report of 2005, significant tax revenues had not been collected from contractors and vendors of certain Government agencies. However, Paul Denett, the Administrator for Federal Procurement Policy, has indicated that recovery of delinquent taxes has improved substantially since 2005. (See Mr. Denett's February 27, 2008 testimony before the

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Subcommittee on Government Management, Organization, and Procurement of the House Committee on Oversight and Government Reform.) In light of this, it would be reasonable to find ways to alleviate the difficulties Government agencies may encounter in implementing TIPRA section 511. The problems associated with implementing the TIPRA mandate would be diminished if the amounts paid for micro-purchases were treated as *de minimis*.

- It would also be helpful if the IRS issued guidelines for applying TIPRA section 511 to existing Government contracts. A grandfathering or waiver process for current contracts could ease the burdens and possible legal problems that might otherwise be encountered by Government agencies in applying section 511 to such contracts.

#### Recommended Additional Guidance

The following guidance would be required to implement TIPRA section 511 consistently and accurately:

- A comprehensive list of payments to which the withholding applies;
- A comprehensive list of excluded payments;
- Provisions for waivers; and
- Policy guidance on potentially recurring questions, such as delineation of the obligations (if any) of credit card vendors in the implementation process.

Under guidance provided by the IRS, Federal agencies could perhaps be authorized to issue waivers with respect to the agencies' contractors or vendors.