

THE BOTTOM LINE



EXCELLENCE IN
BONDING

November 2008

Vol. 10 Issue 3

PRIVATE WORK: DIFFERENTIATE YOURSELF WITH BONDING

Contributing Staff

Louis J. Spina

Editor

Lydia O. Baker

Famous Quotes

"The secret of success is constancy of purpose."

- Benjamin Disraeli

"Leadership is the capacity to translate vision into reality."

- Warren G. Bennis

"Vision is the art of seeing the invisible."

- Jonathan Swift

As a bonded contractor, you should encourage and welcome bonding requirements on commercial, non-public works projects. Why? To differentiate yourself from your non-bonded competitors. The cost of the bond is typically a pass-through, being borne by the project owner, and bonding requirements tend to limit the playing field to better qualified, reputable competitors.

Surety Bonds are a risk transfer mechanism.

You should educate your prospective client that, from a risk management standpoint, a surety bond should be posted by the contractor to protect the financial success of a project. You should let the project owners know that surety bonds are a dependable, proven and reliable product that provides protection against contractor default. Of course, you might state your opinion to them that this condition might not be necessary if

you were the contractor. But, this particular project is being bid and you cannot speak for the financial position of your competitors.

In a building owner/contractor relationship, each party has a legitimate responsibility to determine whether or not the other party is capable of meeting its contractual obligations. The contractors need to know that they will be paid timely for work performed. They should

(Continued on page 2)

MANDATORY TAX WITHHOLDINGS AND SECTION 511

While the political pundits gesticulate, the economic experts deliberate and media mongrels salivate over headlines, Americans, overwhelmed by the blow-by-blow commentary, theorizing and grandstanding, clutch the proverbial handlebars of faith and hope on this economic rollercoaster, squeeze their eyes shut and wait for it all to end.

Over the past few months there have been quite a few changes in the markets and laws that affect our economy, the effects of which may take months or years to emerge. But there are some that will come to fruition in a few months that will have lasting effects on our bottom-line. One such

change is Public Law No.: 109-222.

On May 17, 2006, President Bush signed into law H.R. 4297, the Tax Increase Prevention and Reconciliation Act of 2005. Included in the Act (P.L. 109-222) is Section 511, which requires mandatory tax withholdings at a rate of 3% on all payments for products and services made by governments at all levels—federal, state and local—that spend \$100 million or more annually. Apparently, Section 511 was inserted into H.R. 4297 as a last-minute addition without any congressional committee hearings.

According to the U.S. Senate Committee on Finance,

Section 511 is intended to “improve taxpayer compliance, reduce the tax gap, and promote fairness” as well as to address “concerns regarding the poor compliance records of Federal contractors.” Section 511 imposes a flat rate of 3% on all government payments to contractors, regardless of the actual tax liability of the contractor. Certain kinds of payments are exempted, however, including payments of interest and payments of wages to which existing withholding requirements apply. Section 511 requirements would apply to government payments to contractors occurring after December 31, 2010.

(Continued on page 3)

CORPORATION DECISIONS IMPACTING THE SURETY INDUSTRIES

(Continued from page 1)

request verification of the project’s financing and should understand the flow of funds and the length of time that will elapse from requisition date to payment date. Sometimes you may feel uncomfortable asking for this information since it has an undertone of distrust. But, your bonding company will require this information, thus allowing you to make them the ‘bad guy’.

We understand that you incur additional exposure on a bonded project. Of course, that needs to be weighed against the prospect of not having the project at all or having a longer bidders list littered with potentially unqualified competitors. A number of other considerations might have to be evaluated, such as the owner, your relationship with the owner,

project specific risk, etc.

Even if you have worked for a building owner in the past, if a new project is going out to bid (rather than negotiated with just you), you should request that bonding requirements be included in the bid documents.

Again, the owner may need to be educated that Performance and Payment Bonds can financially protect a construction project. Building owners often complain that the cost is prohibitive. For a risk management tool, the cost is very minimal. If the contractor does not default during the project, were the premiums wasted? Isn’t that like most other insurance-type products? But, what if a default does occur?

While rates vary among contractors and bonding companies, a \$10,000,000 P&P will

probably cost something in the one percent range. Considering the uncertain times that lie ahead, many would argue that this is a reasonable sum of money to protect the financial success of the project. It may be difficult to explain to their financing partners and investors involved in a failed project that has cost millions extra to complete, that they could have minimized the financial exposure, but chose instead to save one percent of the project costs.

Of course, we would be happy to discuss this with you in greater detail or make a presentation to your prospective client.

Interested contractors and their clients can contact us at atlynx@esuretybond.com

REPEAL OF WITHHOLDING TAX TIMELINE

Nov 10, 2005	H.R. 4297	House of Representatives Bill to provide for reconciliation pursuant to the section 201(b) of the concurrent resolution on the budget for fiscal year 2006. This bill was introduced to amend the 1986 Internal Revenue Code along with other the addition, modification and extension of other provisions under that code. Bill included Section 511 requiring federal, state and local government to withhold 3% on all payments for on goods and services. Sponsor: Rep. Williams Thomas [R-CA]
May 17, 2006	P.L. 109-222	Tax Increase Prevention and Reconciliation Act of 2005 signed into law by President George W. Bush. This Act became Public Law No.: 109-222
May 17, 2006	S.2821 [109 th]	Senate Bill (Withholding Tax Relief Act of 2006) to repeal Section 511 of the Tax Increase Prevention and Reconciliation Act 2005 (TIPRA 2005) Sponsor – Sen. Larry Craig [R-ID] Status: Dead
Sept 28, 2006	H.R. 6242 [109 th]	House of Representatives Bill to repeal Section 511 of the TIPRA 2005. Sponsor – Rep. Walter Herger [R-CA] Status: Dead
Feb 13, 2007	H.R. 1023 [110 th]	House of Representatives Bill to repeal the imposition of withholding on certain payments made to vendors of government entities. Section 511 of TIPRA 2005. Bill is before Committee on Ways and Means. Sponsor – Sen. Kendrick Meek [D-FL]
March 6, 2007	S. 777 [110 th]	Senate Bill to repeal Section 511 for TIPRA 2005. (Withholding Tax Relief Act 2007) This bill are before the Committee on Finance. Sponsor – Sen. Larry Craig [R-ID]

Table 1

MANDATORY TAX WITHHOLDINGS AND SECTION 511

(Continued from page 1)

Many have concerns about the negative impact that such withholding will have on participants on public works projects. The withholding requirement may prove to have a substantial impact to contractors in the public sector, who may not be able to afford significant disruptions to day-to-day cash flow.

In the competitive environment of construction contracting, the 3% withholding requirement on payments to contractors may erase the small profit margins of many contractors performing public work. Such a requirement certainly will make public construction less desirable from the contractor's perspective.

In Congress, there have been no fewer than five bills introduced in both the Senate and House of Representatives calling for the repeal of Section 511. In addition there has been legislation requesting its postponement.

It appears that not only will contractors be adversely affected by this new requirement. In a letter dated April 14, 2008, Deputy under Secretary of Defense, James I. Finley, argued that the Section 511 requirement would not only cost the Department of Defense \$17 billion in the first five years, but place additional cost escalations to its contracts, limit the number of contractors willing to do business with the government, reduce competition and access to new technology. Finley's assessment was part of report compiled in response to the House Armed Services Committee's request for review of the requirement's impact. Finley's report goes on to assert that more than \$22 million will be need to modify its accounting and payment systems. It is reasonable to assume that these concerns and costs will be reflected in all of the government agencies that buy goods and services.

Senator Larry Craig (R-Idaho) has introduced Senate Bill

THE CHALKBOARD

There are a number of organizations advocating the repeal of Section 511, for further information on efforts occurring in your area please contact the Small Business Administration's Office of Advocacy at www.sba.gov/advo

2821, the Withholding Tax Relief Act of 2006, to repeal Section 511. A similar bill (H.R.1023) has been introduced to the House of Representatives. Unfortunately, Section 511 will take affect in 2011 unless S.B. 2821 or H.R. 1023 gets traction in Congress. Please do your part and voice your opinion to your elected representatives in Congress.

This information was obtained from the National Association of Surety Bond Producers and Gov-Track.us. These materials are provided solely for educational and informational purposes. They are not to be considered the rendering of legal advice in specific cases or to create a lawyer-client relationship. Readers are responsible for obtaining legal advice from their own counsels, and should not act upon any information contained in these materials without such advice.

DELAY OF WITHHOLDING TAX TIMELINE

April 8, 2008	H.R. 5719	House Bill to amend the Internal Revenue Code of 1986 delay implementation of withholding taxes on government contractors.
April 14, 2008	House Resolution 1102	Amendment to H.R. 5719

COMPANY NEWS FLASH

CONTRACTOR'S FOR KIDS GALA

On February 6th, 2009, Contractor's for Kids is hosting its 4th Annual Dinner Dance at the Atlantis Marine World Aquarium, 431 E. Main Street, Riverhead, NY 11901. For tickets and more information please contact Lou Spina at lou@esuretybond.com.

CONTRACTOR'S FOR KIDS BOWL-A-THON

On March 6th, 2009 the Annual Bowl-a-thon will be held at Commack Vets Lanes, Commack, NY. For tickets and more information please contact Lou Spina at lou@esuretybond.com.

ATLYNX SURETY

Main Office

777 Zeckendorf Blvd., Suite 2
Garden City, New York 11530-2126
Phone: 516-745-7520
Fax: 516-794-0380

Satellite Office

55 Old Turnpike Road, Suite 310,
Nanuet, New York 10954-2451
Phone: (845) 624-4016
Fax: (845) 624-4026
Website: www.atlynx.com

LOOKING AHEAD

New Division of Atlynx Surety Brokers, LLC., Unveiled!

In next quarter's issue of *The Bottomline*, we explore the **Small Business Administration's Surety Bond Guarantee Program.**

In December, 2008, Atlynx Surety Brokers, LLC., plans to unveil this new division of our company designed especially for small and emerging contractors who desire bonding but are unable to qualify for bonding through traditional avenues.

In partnership with the Federal Government's Small Business Administration and a few select surety companies, Atlynx plans to launch this exciting new tool that will give those new to the bonding market the edge needed to compete and win public projects.

Atlynx is pleased to invite all contractors, both new and those returning to the bonding market, to partake in this opportunity. Feel free to contact us at denese@esuretybond.com in the Garden City or lbaker@esuretybond.com in the Nanuet office!

Letter From the Editorial Staff

This newsletter is designed with our readers in mind. All inquiries regarding this or future newsletters are appreciated. Please send all inquiries to denese@esuretybond.com.

If you know anyone who you feel would like a copy of our newsletter, please let us know so that we can include them in our mailing list. Please let us know if you would like to receive this newsletter via email.

Check our website at www.atlynx.com for past editions of our newsletter.

The Bottom Line is published bi-annually by Atlynx Surety Brokers. A service for our clients, contacts and friends, it is meant to provide advice and encourage its readers to keep up with all the latest developments. These articles are not intended to provide a complete discussion of the subjects presented.



777 ZECKENDORF BLVD., SUITE 2
GARDEN CITY, NEW YORK 11530-2127