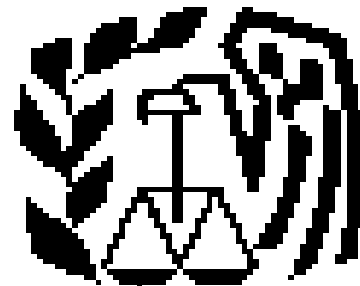


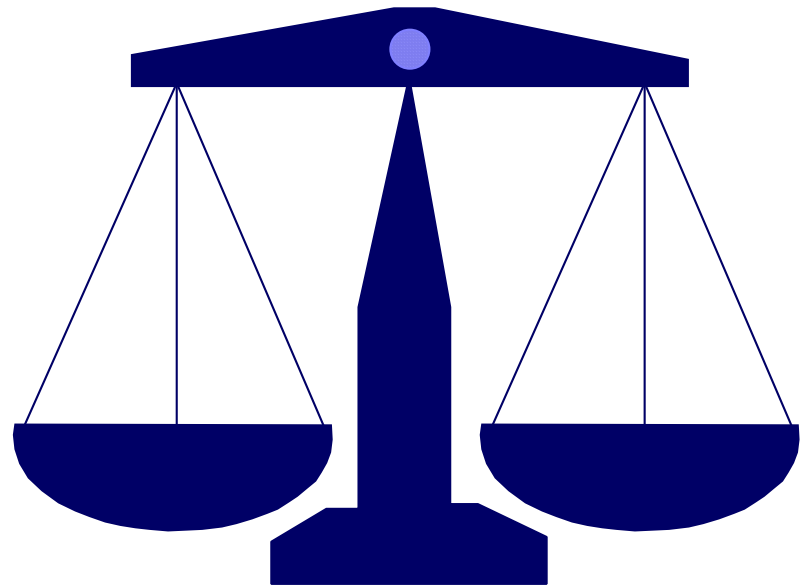
WELCOME

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FSLG Mission Statement

- Provide Government Entities top quality service by helping them understand and comply with their tax responsibilities and by applying the tax law with integrity and fairness to all.



IRC SECTION 3402(t)

REQUIRED
WITHHOLDING ON
GOVERNMENT
PAYMENTS



Tax Increase Prevention and Reconciliation Act of 2005

- PL 109-222 added subsection 3402(t) to Internal Revenue Code
- Generally requires 3% income tax withholding by government entities on payments for property and services
- Originally applied to payments made after December 31, 2010

American Recovery and Reinvestment Act of 2009

- Delayed implementation for one year – applies to payments after December 31, 2011

AFFECTED GOVERNMENT ENTITIES

- All U.S. Government agencies
- All state governments (including the District of Columbia, but excluding Indian tribal governments)
- All subdivisions or instrumentalities of state government unless it makes annual payments of less than \$100 million.

RECIPIENTS

Payments to all of the following are subject to the 3% withholding:

- Individuals
- Trusts and Estates
- Partnerships
- Associations
- Corporations

Requirement applies to payment in any form (cash, check, credit card, etc.)

EXCEPTIONS

The 3% withholding requirements do not apply to payments:

- Otherwise subject to withholding
- For retirement benefits, unemployment compensation, or social security
- Subject to backup withholding, if actually performed
- For real property

EXCEPTIONS (Continued)

- For interest
- To other government entities, foreign governments, or Indian tribes
- Made under confidential or classified contracts under IRC 6050M(e)(3)
- Made by a political subdivision of a state if the subdivision makes less than \$100 million in annual payments

EXCEPTIONS (Continued)

- Public assistance, made on the basis of need or income (but programs based on age (i.e. Medicare) are included
- To employees in connection with service, such as retirement plan contributions, fringe benefits, expense reimbursements
- Received by nonresident aliens and foreign
- Made by Indian tribal governments
- Made in emergency or disaster situations

\$100 MILLION EXCEPTION

Local governments are not subject to the requirements if total payments are less than \$100 million

Lookback period – consider all payments (other than exceptions above) made for second preceding calendar year

Example: Lookback period for 2012 is 2010. Consider all payments made for calendar year 2010 to determine whether withholding is required in 2012.

PAYMENT THRESHOLD

All governmental entities (including Federal and state agencies) are not required to withhold on payments of less than \$10,000.

Anti-abuse rule – withholding is required if a payment is divided solely for the purpose of avoiding the withholding requirements.

Payments under \$10,000 not subject to withholding **are** counted in determining whether total payments exceed \$100 million.

CREDIT CARD PAYMENTS

- New IRC section 6050W creates separate reporting requirements for payment card transactions
- Notice 2010-91 suspends section 3402(t) requirements for payment card transactions
 - cannot apply before years beginning earlier than at least 18 months before final 3402(t) Regulations

SUBCONTRACTORS

- The party contracting with the government entity to provide goods and services is subject to the 3402(t) withholding
- Subcontractors of the contracting party are not subject to the 3% withholding
- Agents acting as payment administrators for the government are required to withhold

HOW TO REPORT

- Withholding required at the time of payment
- Withheld amounts are shown on Form 945, Annual Return of Withheld Income Tax
- Form 945 deposit rules apply
- Withholding may not be used as a credit against employment or other taxes of payee
- Withholding reported to recipients on Form 1099-MISC, Miscellaneous Income

FAILURE TO WITHHOLD

In general, a government required to withhold under this provision that fails to do so becomes liable for the tax

COMMENTS? QUESTIONS?

For text of regulations and more information on the requirements, see the FSLG article at:

<http://www.irs.gov/govt/fslg/article/0,,id=204409,00.html>

Also, you can visit our website for more information on government entities:

<http://www.irs.gov/govt/fslg>