

ALERT

***UPDATED* Repeal of Three Percent Withholding Requirement Clears Congress**

November 11, 2011

AS OF NOVEMBER 17, 2011:

On Friday, November 11, we reported on the Senate's passage of Senate Amendment 927, a bill that included (i) repeal of Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), Pub. L. No. 109-222, a three percent withholding on payments to contractors, and (ii) tax incentives for hiring unemployed veterans. The bill was sent back to the House for reconciliation. On Wednesday, November 16, 2011, the House passed H.R. 674, as amended by the Senate. H.R. 674 was combined with H.R. 2576, an unrelated measure relating to the calculation of income for eligibility for healthcare-related programs. Having cleared Congress, the combined legislation will now be sent to the President for his signature. The Administration has already signaled approval of the repeal of the withholding measure as well as H.R. 2576.

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On November 10, 2011, the Senate voted unanimously to repeal a yet-to-be-implemented law that would have imposed a three percent withholding on most payments to government contractors. Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), Pub. L. No. 109-222, added section 3402(t) to the Internal Revenue Code (IRC) and, with certain limited exceptions, requires federal, state and local governments (including political subdivisions and instrumentalities with total annual payments in excess of \$100,000,000) to deduct and withhold as a tax three percent of any payment to any person providing property or services to federal, state and local governments. Various other laws, as well as IRS rules, delayed implementation of the measure. See IRS Issues Final Rule on

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Three Percent Payment Withholding Requirement; Delays Implementation Date.

H.R. 674 included a provision proposing to repeal TIPRA's three percent withholding. On October 25, 2011, the White House threw in its support for repeal of the withholding and H.R. 674, and on October 27, 2011, the House approved the bill.

The Senate amended and passed H.R. 674 as part of Senate Amendment 927. This amendment strikes Title II (which addressed tax provisions unrelated to the three percent withholding) from H.R. 674 and inserts a new Title II, the Vow to Hire Heroes Act, which provides tax incentives to businesses that hire unemployed veterans. Given the overwhelming support for the repeal of the three percent withholding, and the reported bipartisan support for the veterans' jobs measure, *see, e.g.*, November 9, 2011 *Washington Post* article, it is likely any differences between the two chambers will be resolved quickly, and the three percent withholding requirement will be sent to the President and officially off the books shortly.