

52.229-11 Tax on Certain Foreign Procurements—Notice and Representation.

As prescribed in 29.402-3(a), insert the following provision:

Tax on Certain Foreign *Procurements*—Notice and Representation (Jun 2020)

(a) *Definitions*. As used in this provision—

Foreign person means any person other than a *United States person*.

Specified Federal procurement payment means any payment made pursuant to a contract with a foreign *contracting* party that is for goods, manufactured or produced, or services provided in a foreign country that is not a party to an international *procurement* agreement with the *United States*. For purposes of the prior sentence, a foreign country does not include an outlying area.

United States person as defined in 26 U.S.C. 7701(a)(30) means

- (1) A citizen or resident of the *United States*;
- (2) A domestic partnership;
- (3) A domestic corporation;
- (4) Any estate (other than a foreign estate, within the meaning of 26 U.S.C. 701(a)(31)); and
- (5) Any trust if-

(i) A court within the *United States* is able to exercise primary supervision over the administration of the trust; and

(ii) One or more *United States persons* have the authority to control all substantial decisions of the trust.

(b) Unless exempted, there is a 2 percent tax of the amount of a *specified Federal procurement payment* on any *foreign person* receiving such payment. See 26 U.S.C. 5000C and its implementing regulations at 26 CFR 1.5000C-1 through 1.5000C-7.

(c) Exemptions from withholding under this provision are described at 26 CFR 1.5000C-1(d)(5) through (7). The *Offeror* would *claim* an exemption from the withholding by using the Department of the Treasury Internal Revenue Service Form W-14, Certificate of Foreign *Contracting* Party Receiving Federal *Procurement* Payments, available via the internet at www.irs.gov/w14. Any exemption claimed and self-certified on the IRS Form W-14 is subject to audit by the IRS. Any disputes regarding the imposition and collection of the 26 U.S.C. 5000C tax are adjudicated by the IRS as the 26 U.S.C. 5000C tax is a tax matter, not a contract issue. The IRS Form W-14 is provided to the acquiring agency rather than to the IRS.

(d) For purposes of withholding under 26 U.S.C. 5000C, the *Offeror* represents that

- (1) It [] is [] is not a *foreign person*; and

(2) If the *Offeror* indicates "is" in paragraph (d)(1) of this provision, then the *Offeror* represents that—I am claiming on the IRS Form W-14 [] a full exemption, or [] partial or no exemption [*Offeror shall* select one] from the excise tax.

(e) If the *Offeror* represents it is a *foreign person* in paragraph (d)(1) of this provision, then—

(1) The clause at FAR 52.229-12, Tax on Certain Foreign *Procurements*, will be included in any resulting contract; and

(2) The *Offeror shall* submit with its *offer* the IRS Form W-14. If the IRS Form W-14 is not submitted with the *offer*, exemptions will not be applied to any resulting contract and the Government will withhold a full 2 percent of each payment.

(f) If the *Offeror* selects "is" in paragraph (d)(1) and "partial or no exemption" in paragraph (d)(2) of this provision, the *Offeror* will be subject to withholding in accordance with the clause at FAR 52.229-12, Tax on Certain Foreign *Procurements*, in any resulting contract.

(g) A taxpayer *may*, for a fee, seek advice from the Internal Revenue Service (IRS) as to the proper tax treatment of a transaction. This is called a private letter ruling. Also, the IRS *may* publish a revenue ruling, which is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties, and regulations. A revenue ruling is the conclusion of the IRS on how the law is applied to a specific set of facts. For questions relating to the interpretation of the IRS regulations go to <https://www.irs.gov/help/tax-law-questions>.

(End of provision)

Parent topic: 52.229 [Reserved]