Stop Withholding Federal Taxes - Legally

A Layman's Guide to Federal Taxation of Employers and Employees

Introduction

This paper is addressed to employers everywhere, who dutifully withhold taxes from their employees, in the belief that they are required to do so by law, and to the millions of American workers who are affected by such withholding. Many employers believe they are required to withhold taxes because someone told them so, and most believe that if they don't, they'll be in hot water with the IRS. I also address this to "employees" and "independent contractors" who pay income tax on their wages or salaries. I challenge anyone to show me a law that states clearly that withholding applies to the wages and salaries of the American working people. No such law exists.

Our "federal income tax withholding" system is held in place by our ignorance and fear. The law imposes no such requirement on private parties. It is tragic that not many have ever taken the time or trouble to read and understand the law for themselves. Thomas Jefferson warned that we cannot remain ignorant and free, and anyone who pays a percentage of his earnings to the federal government, when the law does not require it, but pays it out of fear, is hardly what we would call free. Jefferson also said that where the people fear the government, there is tyranny; where the government fears the people, there is liberty. We are either afraid, or we are free; let's take our pick.

The government "justifies" the income tax by claiming it is founded it on the 16th Amendment. This claim is not accurate. The first income tax came before the 16th Amendment, and after the "ratification" of the 16th Amendment it was modified, but only slightly. The IRS claims that because of the 16th Amendment, Congress has taxed all income. Wrong. The 16th Amendment authorizes the taxation of income, "from whatever source derived", and since 1909, the law has always included a description of the ***sources*** from which taxable income may be derived. Congress has never taxed all income or all Americans. It can't do that under the Constitution.

Most of us believe that income is any money we take in, whether from wages, or dividends, or interest, but the law does not treat wages as "income", nor does it tax ***all*** income. If it taxed ***all*** income, the whole Code could be reduced to a single sentence.

It is much more specific than what we've been taught to believe. The law is simple if one knows what to look for, and what he is reading when he reads it. The biggest mistake one can make in reading law is reading words and ideas that are ***not there***. Another mistake is believing that the words used in laws mean what the ordinarily mean in conversation. TIP! Whenever the law defines a term, it is because the term is being used in a special way. Therefore, when we see the word "employee" in the Code, and see that it is defined, we know right away that it is being used to mean something ***we would not ordinarily take it to mean***.

Laws do not mean what they do not specifically say, and often, do not mean what they seem to say, without reference to how the terms used are defined. Our government has mastered the fine art of reading words into the laws that are not there. The laws are meant for us to read and understand. I suggest that anyone reading this article check up on my references, and see for yourself what the law actually says. Remember this: laws do not say what others say they say, they say only what they say. Government bureaucrats are no different from us - they generally get their understanding of the law from others, not from studying the law. Further, they have mountains of regulations to comprehend, in addition to the law. As with the law, their understanding of the regulations comes from others, not from study. To get an idea of the mindset of government workers, ask your local IRS employees why they believe they are employed by the Treasury Department, when their paychecks come from the Department of Agriculture. They never think about it, let alone ask why it is.

In numerous conversations with IRS personnel, I've asked which section of the Code imposes a tax on my clients' pay, and invariably, they tell me "Code Section 61." Code Section 61 is a definition of gross income, not a taxing provision. "Surely", I ask, "mustn't the tax be imposed by another section?" To which their response is to hire a lawyer. They don't know

which section of the Code imposes a tax on our pay. I find that highly irregular and alarming. If they don't know which provision of the law imposes a tax on our pay, we'd best find out for ourselves. We are probably paying taxes we don't owe, because NOBODY knows what the law says, including Congress, the judges, or our lawyers, let alone we ordinary folks.

There are two income taxes in the Code, neither of which applies to most of us. There is a tax on ***income*** removed from America by nonresident aliens, matched by a tax on Americans removing income from foreign nations, and a separate tax on ***wages*** of federal employees, also referred to as an income tax.

The Two Income Taxes

The Two are on Different Subjects, Collected by Different Collectors.

The first income tax is imposed at Subtitle A, Income Taxes. The Second is imposed at Subtitle C, Employment Taxes.

Income subject to tax under Subtitle A is either: income derived from ***U. S. sources*** by nonresident aliens, or by certain American businesses deriving income from ***foreign sources***. ***Withholding*** of income tax from payments of ***items*** of income under Subtitle A, is limited to those who are ***authorized*** and ***required*** to withhold, called "withholding agents". Withholding agents' instructions are found in Publication 515, Withholding of Taxes on Nonresident Aliens and Foreign Corporations. Although there is a tax on foreign income received by Americans, the withholding provisions of Subtitle A do not apply to such income. (See Exhibit A, Excerpts from Pub 515.)

Publication 515 does not refer to ***American*** citizens or businesses, except to state that its rules ***do not apply to them***. It says that if an individual furnishes a statement that he or she is a citizen or resident of the United States, not to withhold. It also says, "instead, get Publication 15, Circular E, ***Employer's*** Guide to Withholding." Note carefully that it does not refer to another publication that explains income tax withholding; it refers us to Employment tax withholding. To me, this is a clear indication that income

tax withholding is limited to nonresident aliens and foreign corporations. The law substantiates this position.

Circular E says that employers are required to withhold "income, FICA, and FUTA taxes" from employees, file 941's and 945's, 1099's, etc. It says that there are two classes of employers - Federal Government Employers, and State and Local Government Employers. It refers to the taxes imposed under Subtitle C. We find that Subtitle C, at Section 3401(c) of the Code, defines "employee" for purposes of withholding income taxes, as someone who works for the government, hence his "employer" would have to be the government. (See Exhibit B, Excerpts from Pub 15, and Section 3401.)

If you, or your employees, are not nonresident aliens, or are not receiving foreign income, you are not subject to Subtitle A income taxes. If you are not employing government workers, you are not an employer for purposes of Subtitle C Employment taxes. Thus, if you and/or your employees are not subject to either "income tax" it is your duty to stop volunteering to pay it. The government has us all confused. ***Income***, for purposes of Subtitle A, is taxable to Americans only if it comes from a foreign source, which does not affect most of us. Subtitle C "income" is wages or salaries paid to government officials or workers, which does not apply to your employees. If you are paying income tax yourself, it's most likely the Subtitle C income tax, because it is not the one imposed on foreign income. If you are currently deducting Subtitle C "income" tax from your employees, you should cease immediately- they are not Subtitle C "employees", as will be demonstrated below.

Evidence in the Law

The Internal Revenue Code, a.k.a. Title 26 of the United States Code, is divided into Subtitles that deal with different subjects. Subtitle A deals with income taxes, Subtitle B with gift and estate taxes, Subtitle C with employment taxes, Subtitles D and E with excise taxes on cigarettes, liquor, petroleum, etc., and Subtitle F is Procedure. Subtitle C, Employment Taxes, shows an "income tax" at Chapter 24 that is unrelated to the Subtitle A income taxes. The two taxes have different origins, serve different

purposes, affect different taxpayers, ***and*** are collected by ***different collectors***.

The Divergent Origins and Natures of the Two Taxes

In analyzing any law, it is essential to understand how it came about, and what purpose it was intended to serve. Subtitle A is the modern version of the Corporation Excise Tax of 1909. That tax has always been a tax on "the privilege of doing business for profit" and it has always been "measured by" corporate profits. It came about as a result of a "tariff convention" with Great Britain, whose purpose was to "***equalize tariffs***" between the two nations, relative to areas subject to the exclusive jurisdiction of the United States. Under a ***treaty***, tariffs become constitutional law. Provisions of a ***convention***, may apply where the Constitution does not - in the District of Columbia and the Possessions or Territories of the United States.

> SIXTY-FOURTH CONGRESS. SESS. I. CH. 463. 1916. 39 Stat 773
> INCOME TAX Part III GENERAL ADMINISTRATIVE PROCEDURES
> SEC. 15. The word "State" or "United States" when used in this title shall be construed to include any Territory, the District of Columbia, Porto Rico, and the Phillipine Islands, when such construction is necessary to carry out its provisions.

Thus, we see that the income tax is founded in international trade conventions, is limited to international commerce, and applies only within the areas enumerated above. It is worthy of note that no ***treaty*** includes an income tax. The terms "include", "includes", and "including" mean "excluding items not enumerated" unless the language indicates otherwise. Code Section 61, for example, says "gross income means all income, from whatever source derived, including (but not limited to) the following items". Although it is not much of a definition (gross income means all income), we see that where the term is used expansively, the sentence will indicate that it is being used that way. Where such expansive terms are absent, "includes", means "means". Thus, we see the extremely limited application of the income tax "laws" by examining where they came from - conventions regarding international trade, having to do with areas outside the Union States under federal control.

The term "income" as used in the 16th Amendment, means profits; it is an accounting term, not a legal term. Working people do not have profits. Businesses have profits. Certain businesses are privileged entities, whose profits are taxed. The tax has always been considered a ***privilege*** tax, on the order of a license, hence an indirect or excise tax. What is screwy about the income tax, is that it is the only tax in our history that is measured by income, rather than by some other standard.

In the States, license fees vary according to how regulated an industry is, which itself is determined by how much of a threat the business poses to the health or safety of the public. For example, an demolitions company poses a greater threat to public safety than a landscaper, and the explosives license costs more, accordingly. A tax that is measured by income, is effectively a tax on success, rather than the amount of danger the industry poses to the public or the cost of regulating it. Couple its unusual nature with its origin, and we see how special this tax is. In point of fact, from 1909 until about 1930, the Codes and the Congress referred to it as a "special excise tax". Well, folks, if it's a "special excise tax" we'd have to be special ***persons*** having special ***income*** to be subject to it.

In the case of the income tax, unless you are engaged in international commerce, are exercising a privilege you received from the federal government, and doing international business from within the District of Columbia or the Possessions of the United States, you are not a "taxable person" subject to the income tax. Note below, that it is the "net income of a taxable person" that is subject to the tax.

> "SIXTY-FOURTH CONGRESS. SESS. I. CH. 463. 1916. 39 Stat 756
>
> INCOME DEFINED
>
> Sec. 2. (a) That, subject only to such exemptions and deductions as are hereinafter allowed, the ***net income*** of a ***taxable person*** shall include gains, profits, and income **derived from** salaries, wages, compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property…."

The language above is quite specific. Note that it is income ***derived*** from salaries or wages that is taxable, not wages or salaries. This is corroborated,

incidentally, in the instruction books for Form 1040A, where it says that:

> "You can use Form 1040A only if you had ***income from the following sources***:
>
> Wages, salaries, tips (etc.)

1040A instructions tell us that ***wages*** are ***not*** subject to income taxes, they are ***sources*** of income. The 16th Amendment bars the government from taxing ***sources*** of income. It says Congress can tax "income, from whatever source derived", so if wages are a ***source*** of income, and 1040A says so, only income ***derived from*** them is taxable. This confused me for a long time, until I realized that there are sources of income and items of income described and defined in the Code. If income from wages is an item of taxable income, how could one derive ***income from*** wages? Consider a "temp" agency, that hires its workers out to other companies. The fees it charges for its employees are wages. Wages it pays its employees are less than those it charges its customers. The difference, less operating expenses, is profits, hence ***income from*** wages. Wage (employment) taxes are not taxes on ***income from*** wages, but are taxes ***on*** wages. Wage taxes have nothing to do with international commerce, so have nothing to do with the "income" tax at Subtitle A.

The income tax at Subtitle C is in the class of ***employment*** taxes. Employment taxes are those whose subject is ***employment***, not business ***privileges***. These are effectively ***wage*** taxes. Wages are property, and taxes on them are direct, not indirect. These "taxes" originated as a means of defraying and accounting for the expense of providing ***benefits*** to government employees, such as the Civil Service Retirement or Railroad Retirement plans.

The government budgets by appropriating totals to various Departments. The Departments allocate some funds to wages and salaries, and others, shown as deductions to workers, are allocated to the benefits plans. Wage "taxes" have more to do with the government's accounting systems than with actual taxation. Ordinarily, a tax produces revenue. Wage taxes produce no revenue whatsoever; they are merely allocations made from gross departmental wage or salary appropriations. For purposes of this paper, wages and salaries are what we receive in exchange for our work, and are not taxable under the ***income*** tax "laws", except to government workers.

Federal Employment Taxes vs. Income Taxes

Our system of government is one of dual sovereignty. Although in practice it seems otherwise, our governments were formed to protect our rights. State governments protect us from trespasses by others, including the federal government. The federal government protects us from invasions by foreign powers. The two governments operate in totally different spheres. Within their boundaries, States make all the laws that affect people and property. The federal government regulates commerce between them individually, and between them collectively and foreign nations. It is our international government, not our "internal" one. The meaning of the 10th Amendment is that the federal government cannot encroach on the rights of States to protect themselves and their people from federal encroachment. That is also, incidentally, the intent of the 2nd Amendment. State militias are necessary to prevent the United States from maintaining a standing army which could be used against the States or their people. The 2nd Amendment was intended to protect us from federalism and from warring on foreign nations, not our right to shoot targets for sport or game.

Originally, the federal government thrived on revenues from import taxes. It collected taxes in coin, primarily from foreign businesses, and circulated coin as it paid its domestic bills. The provisions in the Constitution for it to tax the States were seen as necessary for exigencies. The Constitution divides taxes into two great classes, direct and indirect, and requires each to be collected by different means. Thus, in times of war, it could lay taxes ***on*** the ***States*** (capitation taxes) or ***on goods*** (excises and imposts) being sold within the States, provided the States collect them. Direct taxes are those laid on States, and indirect taxes are those laid on goods. Constitutionally, in either case, the taxes are collected by the States, not by federal tax-collectors. The only taxes the Constitution permits federal tax-collectors to collect are the import taxes. In addition, the Constitution requires Congress to ultimately collect all federal taxes. The internal revenue taxes are collected by the Secretary of the Treasury, in the Executive, not the Legislative, branch of the government. (See Code Section 6301 "The Secretary shall collect all taxes imposed by the internal revenue laws.")

Subtitle C (direct tax) provisions require ***employers*** to withhold federal taxes from wages paid to ***employees***. Clearly, no such law can apply to the private sector in States of the Union, because it does not fall into either of the classes of taxes collectible by the federal government- at least as far as the Union States are concerned. If the federal government could tax

Citizens of the States directly, there would be no need for State boundaries or legislatures. Congress cannot pass a law that requires any private party to withhold from payments made to another private party under a contract for employment made between the two parties.

Our right to contract is senior to the Constitution and the whole government. It is our right to contract that empowers us to create governments- by contract- and a contract between Citizens is more sacred than a Constitution. Therefore, it only makes sense that Federal Unemployment (FUTA) benefits, Railroad Retirement (RRA) benefits, Social Security benefits, are part of a ***contract for employment***, and the requirements for deductions are created by the ***contract*** for employment, not by the income tax laws of Subtitle A. The employers and employees are all "***covered*** employers and employees". Employees' benefits are ***covered*** by a contract for employment between the employer and the government.

The income tax, at Subtitle A, is ***determined*** by applying the relative provisions of Subchapter N, Tax Based on Income (derived) From Sources Within and Without the United States, and its regulations. We know this because the regulations tell us so, at 26 CFR 1.861-1;

> "Part 1 of Subchapter N of Chapter 1, and its regulations, determine the ***sources*** of Income for purposes of the income tax."

Subchapter N is divided into sources within and sources without the United States. Foreign nations and the Possessions, such as Guam and Puerto Rico, are considered to be sources ***without*** the United States. Sources ***within*** the United States include only the District of Columbia, and not the 50 States. We know this for several reasons. First, because the income tax did not originate as a revenue measure, but to accommodate the tariff "convention" between Great Britain and the United States. It was not a treaty, but a convention. There is a huge difference between the two. Second, we know because we can rely on the definitions of "State" and "United States" as used in the Code of 1916.

Treaties vs. Conventions

Any law that applies throughout the United States must have a constitutional foundation and purpose. The Constitution makes no mention of "conventions", but affords treaties the status of constitutional law. Any law made in pursuance of a Treaty has the standing of ***constitutional*** law. Conventions and "agreements", such as NAFTA (North American Free Trade Agreement) or GATT (General Agreement on Tariffs and Trade) do

not rise to the status of constitutional law.

Perhaps the most overlooked power of the federal government is its power to make laws for the District of Columbia and the Territories or Possessions, as distinguished from national or Union law. In those areas, it acts as though it were a State government, and in those areas alone, it has what is known as "police powers". Within the States, it has ***no police powers***. Its national powers enable it to act ***between*** the States, or ***on their behalf*** internationally. The federal government cannot make marriage laws that are effective in the States. They cannot lay real property taxes on our land, alongside or in preference to County or State property taxes. It cannot seize our property without a Court Order, any more than any of us may take the property of another without a Court Order. It ***cannot*** make a law that compels Citizens in the States to collect taxes for it, no matter whether the taxes are constitutional, because the Constitution restricts the government from collecting taxes from people directly. It also prohibits involuntary servitude. No government can compel anyone to perform a service for it without ***just compensation***. Recently, Boeing announced that it costs the company $3 in administrative expense for every $1 in taxes it sends to the government. There is something wrong with this picture.

The federal government cannot act as a State government in a Union State. Within States, its activities are limited to regulating the value of money and little else. Where it collects import taxes, Congress must first create Port Districts, and secure their jurisdiction to the United States, outside the jurisdiction of the States. Port districts are ordinarily ceded to the United States, in order to clearly establish where federal jurisdiction lies. The same is done for federal forts and arsenals. Federal jurisdiction lies ***outside*** State jurisdiction. Where it collects either direct or indirect taxes, as conceived by Article I sections 2 or 8, it must collect them from the States, who, in turn, collect them from their taxpayers, by any means provided by their consitutions. There is no nexus between Citizens and the federal government unless it involves international or interstate affairs or the value of money.

Laws made in pursuance of its constitutional governance of the District and the Possessions are not limited by the Constitution in the same ways as it limits the laws it makes that affect the Union States. Thus, where Treaties bind the States, "conventions" and "agreements" may bind the Possessions and the District of Columbia. Where such agreements and conventions apply are only in areas not subject to Treaties.

Essentially, where the government makes marriage and property laws, it can

tax people, activities, and property, much like a State. Think of it this way; if the federal income tax is on a privilege to do business, the United States government must be the source of the privilege. If you got your license to cut hair or mow lawns from the federal government, you are subject to its jurisdiction, and owe it certain duties. Outside areas directly controlled by the federal government, laws that affect people or their activities or property are limited to those made by State legislatures. This is the doctrine of dual sovereignty invented and established by the Founders. The federal government was created to provide certain services to the States, not to invade them and supplant local governments with a super-national one.

Within the Union States, the government may tax goods, but the States are the tax collectors for the Union government. Where the Constitution applies, any federal tax must be collected according to one of two rules- Uniformity or Apportionment. Either way, the States collect all federal taxes that apply within their sovereign boundaries. The difference between federal powers in the Possessions and the same in the States is ***enormous***.

Income that is Taxable by the Federal Government

One cannot figure out what the tax codes ***are*** by reading and studying only what they ***say***. One can only figure out what they are by locating their origins and studying their history, in light of the enumerated powers of Congress to make laws for the Union, as opposed to its greater power over the Territories or Possessions or the District of Columbia. The conventions, of which there are currently 74 in place, tax "nonresident aliens" relative to the two nations involved in each agreement.

Certain American businesses, known as Foreign Sales Corporations (FSC's) and Domestic International Sales Corporations (DISC's) are taxed by the United States on their foreign income. See regulation 1.861-8 and 8T). The remainder of the Subtitle A income tax code applies to nonresident aliens (under one or more tax conventions), who are taxed on their United States (District of Columbia) source income and their Possessions income. Certain foreign businesses operating in the District or the Possessions are taxed on their "domestic" income. This part of the income tax, codified at Subtitle A, has nothing to do with the 50 States or any of their Citizens.

Here, directly from the regulations, is a brief description of how to determine ***taxable income*** under Subtitle A. As the name of Subchapter N implies, sources of income are either foreign or domestic. The following provisions apply in determining whether items of income, from sources within or without the United States, are taxable. Ask your "tax advisor" if

he or she has ever read them. Factors in determining taxable income:

1. 26 CFR § 1.861-8 "*Sections **861(b)** and 863(a) state in general terms **how to determine taxable income of a taxpayer from sources within the United States after gross income** from sources within the United States has been **determined**.*"

Once "***gross income*** from sources within the United States has been determined" we are instructed to refer to 861(b) and 863(a) for instructions on how to determine ***taxable*** income. Remember Code Section 61, above?" "Gross income means all income from whatever source derived." Obviously, that definition is not all-inclusive, as one must determine "gross income" from "sources within or without" the United States before one can apply other provisions to determine ***whether*** it is taxable.

2. 26 CFR § 1.863-1(c) "***Determination of taxable income**. The taxpayer's **taxable** income from sources **within or without** the United States **will be determined under the rules of Secs. 1.861-8 through 1.861-14T** for determining taxable income from sources **within** the United States.*"

Thus, it seems that 1.861-8 through 1.861-14T govern how ***taxable*** income is ***determined***.

3. 26 CFR § 1.861-8(a)(4) "*…the term '**statutory grouping**' means the gross income from a **specific source** or activity **which must first be determined in order to arrive at 'taxable income'** from **which** specific **source** or **activity** under an **operative section**.* (See paragraph (f)(1) of this section.)"

Now it appears that in order to determine whether income is taxable, we must analyze it in light of its ***statutory grouping***. Statutory groupings include both specific ***sources*** of income ***and*** specific income-producing ***activities***, under ***operative sections*** shown below, at (f)(1). Because the law is so very specific, one wonders how we could have so easily been convinced that it says what it does not say.

4. 26 CFR § 1.861-8(f)(1) ***"****…the determination of taxable income of the taxpayer from **specific sources or activities** and which gives rise to **statutory groupings*** to which this section is applicable…"

The regulations continue to narrow down the process of determining taxable income. It is the sources or the activities which give rise to the statutory groupings, so income must be allocated to one or the other, whether source or activity, in order to be exposed to taxation. But, no matter what, it is the specific source or the specific activity that gives rise to the statutory grouping.

5. 26 CFR § 1.861-8(a)(1) "*The rules contained in **this section** apply in determining **taxable*** income *of the taxpayer from **specific sources** and **activities** under other sections of the Code, referred to in this section as **operative sections**. **See paragraph (f)(1) of this section** for a list and description of **operative sections**."*

Another reference to paragraph (f)(1) for the list of operative sections. The first sentence of the above citation says "the rules contained in this section (Section 1.861-8) apply in determining taxable income…." We must be getting awfully close to home plate. We now know that we must first determine gross income from sources (or activities) and then apply the rules under 1.861-8 to determine whether our "gross income from sources" is subject to an income tax. These rules tell us that we must find the ***operative sections*** to make the final determination. Note that so far, we have not been told who *taxpayers* are.

Here we go- this is the heart and soul of the income tax:

6. 26 CFR § 1. 861-8 *COMPUTATION OF TAXABLE INCOME FROM SOURCES WITHIN THE UNITED STATES AND FROM OTHER SOURCES AND ACTIVITIES*.

   (f)(1) …"*The **operative sections** of the Code which require the **determination*** of ***taxable income** of the taxpayer from **specific sources** or activities and **which gives rise** to **statutory groupings** to which this section is applicable **include the sections described below**.*

Here, the term "include" is shown to mean ***"means."*** The above sentence says "these are the ***only*** operative sections. We need not look elsewhere!

*(i) Overall limitation to the **foreign** tax credit…{*as provided in section 904(a)(2)}

(ii) [Reserved]

(i) has to do with the foreign tax credit, (ii) is reserved. The next subparagraph is the only one that might possibly describe an American business.

(iii) ***DISC*** *and* ***FSC*** *taxable income…* [Domestic International and Foreign Sales Corporations] {Sections 925 and 994}

What are these entities? A FSC is a "domestic" business exporting goods to foreign nations, regulated by the conventions. A DISC is likewise a "domestic" exporter. Try as we might to locate them, there are no other provisions that tax the income of American businesses or people. The rules below apply either to nonresident aliens or foreign corporations, whether operating "within the United States" (the District of Columbia) or "without the United States" (the possessions or foreign nations).

(iv) ***Effectively connected*** *taxable income.* ***Nonresident alien individuals and foreign corporations*** *engaged in trade or business within the United States…*

(v) ***Foreign*** *base company income…*

(vi) ***Other operative sections****. The rules provided in this section also apply in determining--*

(A) The amount of ***foreign*** *source items…*(FSC's & DISC's)

(B) The amount of ***foreign*** *mineral income*…(FSC's & DISC's)

(C) [Reserved]

(D) The amount of ***foreign*** *oil and gas extraction income* (ditto FSC's & DISC's as above)

(E) (deals with **Puerto Rico & Possessions** tax credits)

"The tax base for citizens entitled to the benefits of section 931 and the section 936 tax credit of a domestic corporation which has an election in effect under section 936;"

(F) (deals with **Puerto Rico** tax credits)

"The exclusion for income from Puerto Rico for residents of Puerto Rico under section 933;"

(G) (deals with **Virgin Islands** tax credits)

(H) The income derived from **Guam** by an individual…

(I) (deals with **China Trade Act** corporations)

(J) (deals with **foreign** corporations)

(K) (deals with insurance income of **foreign** corporations)

(L) (deals with countries subject to **international boycott**)

(M) (deals with the **Merchant Marine Act** of 1936)"

What seems like a bunch of gobblydegook is actually clear instructions on how to arrive at (determine) taxable income. There are six items on the primary list. Let's review how they work together. #1 says that 861(b) and 863(a) state in general terms ***how*** to ***determine*** taxable income from sources within the United States, ***after gross income*** from ***sources within***

the United States has been determined, and #2 says that ***taxable*** income will be determined by ***1.861-8 through 1.861-14T***. I submit that IRS is totally unaware of those regulations. #3 says that gross income from a specific ***source*** or ***activity*** places it in a ***statutory grouping***, which must be determined ***before*** it can be determined whether the ***item*** is ***taxable***. #4 says that the ***specific sources*** and ***activities*** determine the ***statutory groupings***, of which there are only two; for Americans (FSC's and DISC's) it's income from foreign sales, and for foreigners, it's income from sources within the U. S. or the possessions. If you are not a FSC or DISC, deriving income from exports, you are not a Subtitle A taxpayer!

The statutory groupings are controlled by ***operative sections*** described in #5 and #6. #6 says that its six subdivisions are the ***operative sections***, so those sections really control the subject of who pays income tax and on what income.

Under # 6, items (i) and (iii) have to do with the foreign income of a DISC or FSC. These two business types are United States businesses deriving most of their profits from exporting goods. No one would quarrel that the government cannot regulate such businesses. It should be apparent that the government is authorized to regulate only such businesses. Since FSC's and DISC's are the only American businesses subject to the tax, and the tax is on foreign-source income and not domestic-sourced income, we are not subject to Subtitle A income tax, unless we are nonresident aliens deriving income from "United States" sources.

(iv), (v), and (vi), and its six subdivisions, deal with nonresident aliens, the possessions tax credits for nonresident aliens, and certain miscellaneous other items. At times, one must read the law backwards ***and*** forwards.

Congress could have worded Subchapter N so we could understand it easily. It could have read "income from foreign sources is taxable to FSC's and DISC's and income from United States sources is taxable to nonresident alien individuals and foreign corporations. Sources within the United States include only the District of Columbia. Sources without the United States include the Possessions, and foreign nations with whom the United States has a tax convention. The tax is 3% of net profits, payable as profits are distributed to the stockholders." Any fourth-grader could figure that out.

The ***operative sections*** do not include Washington or Idaho businesses deriving income from Washington or Idaho sources. Section 862 and its regulations apply to income derived from sources without the United States, and unless one had income from any of those sources, including the Possessions, that part does not apply. Therefore, Subtitle A does not apply unless one is a FSC or DISC receiving income from foreign sources or a nonresident alien or business deriving income from United States sources. If you or your business are not a DISC or FSC, which of the operative sections above can be applied to ***your*** income? If you apply the above operative sections to your income, which one would you imagine applies? Remember that the above are ALL the operative sections. Unless your business and your income are clearly described in Subchapter N, you had no income on which the United States has laid a Subtitle A income tax. Clearly, this "law" does not apply to all Americans, or to all income.

Understanding the Structure of the Code

The United States Codes are divided into 50 "Titles" or general subjects. These "titles" are not to be confused with "titles" as used within Acts of Congress. The Acts of Congress are often divided into Titles, denoting different Subject areas within the same Act. Perhaps you've heard expressions like "Title IX of the Social Security Act" or something similar. Titles are divided into Subtitles, covering different but related subjects. Subtitles are further divided into Chapters, Subchapters, Sections, Subsections, Paragraphs, and Subparagraphs.

Its Sections run consecutively (although there are blanks; some numbers have yet to be assigned), from Sections 1 through Section 9000. There are currently 2027 provisions, divided into several Subtitles and Chapters. Each Chapter includes certain Sections. For example, Subtitle A, Income Taxes, is divided into four Chapters:

Subtitle A - Income Taxes
- Chapter 1. Normal taxes and surtaxes. (Sections 1-1398)
- Chapter 2. Tax on self-employment income. (Sections 1401-1403)
- Chapter 3. Withholding of tax on nonresident aliens and foreign corporations. (Sections 1441, 1451, 1461)
- Chapter 4. Rules Applicable to Recovery of Excessive Profits on Government Contracts (Section 1481- Repealed)
- Chapter 5. Tax on Transfers to Avoid Income Tax (Repealed.)
- Chapter 6. Consolidated returns. (Sections 1501- 1564)

Note that Chapter 3, consisting of only three sections, is the only Chapter that deals with withholding of income tax. It applies to withholding agents,

as above, verified by our exhibits. It is safe to say that only withholding agents are authorized to withhold income tax, and only from nonresident aliens. Americans are not subject to withholding of ***income*** tax, as Publication 515 makes clear.

Chapter 24 also imposes a tax referred to as an "income tax". However, Chapter 24 is the fourth Chapter in Subtitle C, Employment taxes. The division of the Code into Subtitles shows clearly that the Chapter 24 income tax is not a Subtitle A income tax, for if it were, it would have been included in Subtitle A.

The history of the income tax shows that it is rooted in international trade "conventions" with foreign nations. The history of "employment taxes" shows that they are ***federal benefits*** taxes for its employees and government-related employees, not related or connected in any way to the income taxes imposed by Subtitle A. Therefore, it is imperative that we know which "income tax" we are expected to pay, and which one we are paying. Don't think for one moment that the government would turn down revenue if paid under the wrong tax. Voluntary overpayment is tough luck to the volunteer.

Each tax has specific rules for its collection. To determine whether the two taxes are the same tax, but collected by different means (unlikely, and legally impossible), there are several Code Sections and documents we must examine.

There are no requirements for Americans to withhold taxes from each other, at least as far as Subtitle A is concerned. For purposes of Subtitle A, those who are required to withhold are called withholding agents. General Definitions provided at Section 7701 say that withholding agents are those who are required to withhold under the provisions of Sections 1441, ff., in Chapter 3- provisions applicable to nonresident aliens. Instructions for withholding agents are found in Publication 515, Withholding of Income Tax on Nonresident Aliens and Foreign Corporations. That's it for withholding of Subtitle A income tax.

When definitions are given, they are often given as "for purposes of this title" or "for purposes of this Chapter", and sometimes only "for purposes of this section". Terms defined in one Subtitle or Chapter may be given a different meaning in another Subtitle or Chapter, or not. Chapter 24 "income tax" applies to "employers" and "employees". So do all the Chapters in Subtitle C. The person authorized and required to withhold

under Subtitle C is the "***employer***", not a ***withholding agent***.

Subtitle A, Income Taxes, includes Chapter 3, entitled "Withholding of Tax on Nonresident aliens and foreign corporations and tax-free covenant bonds." Chapter 3 includes Sections 1441-1464. It is the only part of the Code that deals with withholding of ***income*** taxes. This may, and should, strike you as odd, because your employees are probably not nonresident aliens, so you are not a withholding agent. Most certainly, if you were an agent for the government, you would have been made aware of it by now, and would have your certificate of appointment and a list of your duties in hand. Did you realize that anyone who is ***required*** to handle the government's money must be both ***appointed*** and ***authorized*** to do so? The creation of an office imposes procedural requirements for filling it. Withholding Agents must be appointed by the government, and ***bonded accordingly***, as does ***anyone who handles the government's money***. It should strike you as odd that the government expects you to handle its money without "making it official".

The tax is imposed on the *taxable income* of *taxable persons* who are engaged in *international commerce*, regulated by the American side of an international tax convention. The first such convention was made with Great Britain, in 1909, which led to the Corporation Income Tax. Britain had imposed an income tax, but America had no such tax. It wanted to impose its income tax on Americans making money there, so President Taft agreed, so long as America could tax Brits making money here. It's a "we tax yours, if you tax ours" proposition. The convention created the need for "domestic" regulations, which became the Tariff "Act" of 1909. The Corporation Tax was buried at Section 38 of the Act, just like FSC's and DISC's are buried in the regulations above.

Determining Withholding for Employment

All nonresident aliens are ***taxable persons***. Not all Americans are taxable persons. As you have seen above, the only American businesses that are subject to Subtitle A income taxes are FSC's and DISC's, and only on their foreign income. Income that is taxable to nonresident aliens may be required to be withheld by ***withholding agents***, but not by ***employers***. The items of income that are taxable are explained in Publication 515; they do not include "wages for employment", and they do not apply to any American citizens. The taxes in Subtitle C are all taxes on "employment". The law says that taxes on ***employment*** are those laid on ***government workers***, as you shall soon see.

Origins of the Employment Taxes

The income tax was originally a Corporation tax. It was a tax ***ON*** certain corporations (later referred to as "taxable persons"), ***MEASURED BY*** their profits. It was called a Corporation Excise Tax. It was enacted shortly after the United States entered into a "tariff convention" with Great Britain, which included a large list of commodities, and "income tax" measures. Its subject, hence its scope, is ***international commerce***. In reality, the "income tax" code is only ***one-half of an international agreement***. Therefore, it only applies to those who are affected by the agreements.

Other parts of the Code came about for different reasons, having nothing to do with trade agreements. The Civil Service Retirement Act of 1930 and the Railroad Retirement Act introduced "employment taxes". At the time, pension plans for retirement were being sold in the private sector, and the government had to keep up, to keep its underpaid civil servants, or so it said. In 1932, Congress included compensation paid to Presidents and federal judges in the definition of "gross income". This renders an apparency that a tax on compensation can be classed with a "privilege tax, measured by income". Then, in 1936, Congress gave its workers Social Security. Social Security brought benefits, similar to Civil Service Retirement benefits, to government employees of the Territories of Alaska and Hawaii, and also of the District of Columbia. At least, that is what the original Act said.

Although sold to America as a national plan, like the Corporation Excise tax, the words of the Acts say otherwise. In 1939, Congress passed the Public Salary Tax Act, following the enactment of numerous State income taxes, modeled after misunderstanding and misconstruction of the federal income tax. The PSTA, as it is known, authorized "States" that had income taxes to tax federal employees. (The "States" in this case, like the case of Social Security, were not the 50 Union States.) All of the above are "employment taxes"; all are collected according to Subtitle C, but none of them are actually ***imposed*** in Title 26.

The Donald Duck Tax: Politicians Exposed

World War II brought a wartime wage tax, allegedly part of the "Victory Tax" of 1942. It was explained to the public as a national "forced loan" to the government, withheld from wages, just like Social Security. We were told that we could file a "return" to obtain a refund of the tax, as it was not actually owed. We were told the Act would expire at the cessation of hostilities. What we were not told was that the finals draft of the law said

nothing about withholding or wages or forced loans. It was a 5% surtax on ***existing income taxes***, which did not include existing employment taxes, except for those imposed on Presidents and federal judges. Even if it had said what we were told, it expired at the end of the war. There is no doubt in my mind that it is this "withholding tax" most American employers are withholding today- a tax that never was. It is not the withholding of income tax at Subtitle A, nor is it the withholding of "income tax" at Subtitle C. It's an income tax that has never existed.

Convincing us that this nonexistent tax was made law was the work of President Roosevelt and his communist cronies. Social Security and the graduated income tax came directly from the pages of Karl Marx' ***Kapital***, as means of abolishing the middle class. The "withholding tax" was so appealing to Roosevelt (it was his idea), and he was so convinced that Congress would pass it, that he commissioned Walt Disney Studios to make a movie to explain this tax to the people. The film, "The New Spirit", circulated in theaters nationwide for months before Congress submitted its final bill to the President. The final version contained nothing like what the Disney movie explained. There was no "forced loan" or new "withholding" provision. Thus, the tax came about as a result of the movie, instead of the law. Because the movie starred no less a personage than Donald Duck, I call the tax "The Donald Duck Tax", for it was he who explained this tax to the American people. How could we not trust Walt Disney, or Donald Duck himself?

The income taxes have no real meaning outside the "tax conventions" that gave rise to the "income tax" in the first place. Within Subtitle A, wages are neither sources of income nor items of income. DO NOT confuse wages with "compensation for services" as discussed in Publication 515. Taxable compensation paid to nonresident aliens, for services rendered ***to the government***, are not "wages" as that term is used in the law. The ***sources*** and ***activities*** determine ***who*** the taxpayers are, and which "income tax" they are required to pay.

Subtitle C Income Tax- the "other" Income Tax

The provisions that require withholding from ***employees*** are found only in Subtitle C, ***Employment*** Taxes. They are not imposed ***on*** foreign income, or ***on*** nonresident aliens, but ***on wages and salaries***. The source of income or activity for Subtitle C is ***employment***. Whether derived from "within or without" the United States is not a criterion. Subtitle C requires employers to obtain W-4's, deduct and withhold taxes from wages, file statements and transmittals, etc.

It should be clear that taxes on employment and taxes on business profits, are two entirely different things. It is for that reason that they are discussed in different Subtitles and in different publications. Publication 15, "Employer's Guide to Withholding", describes procedures for ***employers*** to withhold. It explains that "most employers" are required to withhold Social Security Taxes (FICA), Federal Unemployment Tax (FUTA) and "Income Tax". Under General Instructions, it shows only two classes of employers- Federal Government Employers, and State and Local Government employers. Those who are required to withhold Subtitle C taxes are called "employers", and ***who*** are employers is ***determined*** by ***whom*** they ***employ***.

Subtitle C is divided into 5 Chapters. Chapter 21 is Social Security, Sections 3101-3231, Chapter 22 is FUTA, Section 3301-3311, Chapter 23 is Railroad Retirement, Sections 3321 and 3322, and Chapter 24 is "Collection of Income Tax at Source on Wages", Sections 3401-3451, and Chapter 25 is "General Provisions Relating to Employment Taxes and Collection of Income Taxes at Source", Sections 3501-3510.

The government has made it appear that the "income tax" paid by most businesses, and the ones withheld and collected from employees, is the income tax imposed by Subtitle A; they call it an income tax, but calling it an income tax does not make it one.

The W-4 Income Tax

Most employers require their employees to furnish them with W-4's. Let's examine a Form W-4 carefully. According to its instructions, Form W-4 is an ***authorization*** to withhold federal income taxes, furnished by ***employees*** to ***employers***. Under the instructions provided at the top of the front page, it says, "**Purpose**. Complete Form W-4 so your ***employer*** can ***withhold*** the ***correct*** Federal ***Income*** tax from your pay." In the Privacy Act Statement on the back, it says the information required on the Form is required by Code Sections 3402 and 6109, and their regulations. Section 3402 is the section that imposes "employment tax" withholding and other requirements on ***employers***. Bearing in mind that **withholding agents** withhold ***income*** **taxes**, and that **employers** withhold ***employment*** **taxes**, it becomes clear that not only are the two income taxes on different subjects, they are collected by different individuals, from different individuals, and for different reasons.

Since both the law and the W-4 say that ***employers*** are required to obtain W-4's and withhold taxes, the law must tell us also which ***employers*** these laws affect. Are all employers in China or South America "employers" for

withholding tax purposes? No law can apply to “all employers”, of all descriptions, everywhere. The law must be more specific.

The Code describes ***employers*** in a roundabout way. Section 3401(d) defines them in terms of the master-servant relationship between employers and employees, relating to control of time and activities, which could describe almost any employer. However, it is significant to remember that IRS people are paid by the Department of Agriculture, not the Department of the Treasury. Under the definition given at 3401(d), if the Treasury Department controls their activities, it is their employer. These same criteria are also used to determine whether Boeing is an ***employer*** when it builds airplanes under contract to the government. However, 3401(c) defines ***employee*** in a special way- a way that makes abundantly clear who ***employers*** really are:

> 3401 (c) EMPLOYEE
> For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

So whether one is an “employer” really depends upon whether he has “employees” as defined above. If the ***employee*** is not one of the above, the employer is not an ***employer for purposes of Chapter 21***, Social Security, or FICA***, 22,*** Railroad Retirement, ***23,*** FUTA, ***or 24***, withholding of income tax at source on wages. The above ***employees*** are the only ones mentioned or referred to anywhere in Subtitle C.

Laws cannot be imprecise. Laws that are imprecise are void for vagueness. (The Internal Revenue Code is not actually ***vague***, its meaning is ***obfuscated***- deliberately hidden from view.) 3401(a) defines “wages” for ***employment***. Wages for employment consist of “compensation for services” provided by an ***employee*** for his ***employer***, and on and on it goes. If any of your employees fit the description above, and you are paying them “wages for employment”, as defined at 3401(a), you are an ***employer***; your employees are “***employees***”; and you are required to withhold. When wages for employment consist of wages paid to the above ***employees*** only, why would anyone else ***want*** to pay such taxes or collect them for the government? What sort of people would tell us we have to?

There is a wonderful principle underlying all American lawmaking. Laws are meant and required to be understood by the average American. The common language is also the language of the law, and the rules of

construction, syntax, and punctuation for the English language must be strictly adhered to when reducing laws to writing. When the lawmakers use a term differently than it is ordinarily understood, they must define the term as it is being used, ***because*** it means something different than its ordinary use would indicate. Thus, for purposes of Title 26, Internal Revenue, Congress has defined "employees" subject to "employment" taxes as government workers. For the rest of us, wages are not taxable.

When we read Subtitle C provisions relating to withholding, we find that the tax withheld is called or described vaguely as "a tax":

> SUBTITLE C EMPLOYMENT TAXES
> Chapter 24 COLLECTION OF INCOME TAX AT SOURCE ON WAGES
> SECTION 3402. INCOME TAX COLLECTED AT SOURCE
> (a) REQUIREMENT OF WITHHOLDING
> (1) IN GENERAL
> Except as otherwise provided in this section, ***every employer making payment of wages*** shall deduct and withhold upon such wages ***a tax*** determined in accordance with tables or computational procedures prescribed by the Secretary.

The sentence above could have said "the income tax imposed by Subtitle A, Section…." It does not. Instead, it says "a tax determined in accordance with tables ... prescribed by the Secretary." Subtitle A taxes are computed at Sections 1 or 11, not according to tables prescribed by the Secretary. Section 3502(b) says that the "income tax" deducted and withheld under Chapter 24 is ***not allowed*** as a ***deduction*** from Subtitle A income taxes, so it should be very clear that they are different taxes:

> SECTION 3502. NONDEDUCTIBILITY OF TAXES IN COMPUTING TAXABLE INCOME
> (a) The taxes imposed by section 3101 of chapter 21{FICA), and by sections 3201 and 3211 of chapter 22 (FUTA) shall not be allowed as a deduction to the taxpayer in computing ***taxable income under subtitle A***.
> (b) The tax deducted and withheld ***under chapter 24 shall not be allowed*** as a deduction either to the employer or to the recipient of the income in computing ***taxable income under subtitle A***.

If it were the same tax, it would be deductible under Subtitle A. No tax can be twice collected on any item.

Publication 515, "Withholding of Taxes from Nonresident Alien Individuals and Foreign Corporations", says that anyone who is required to

withhold is a withholding agent. It says that nonresident alien individuals and foreign corporations are subject to withholding. It says that if a payee furnishes a statement that he or she is a citizen or resident of the United Sates "you do not have to withhold under these rules". Until recently, it went on to say, "instead, get Publication 15, Circular E, ***Employer's*** Guide to Withholding."

Pub 515 does not refer us to any other publication for withholding taxes from items of income paid to ***citizens*** or residents. Pub 15 shows two classes of employers- Federal ***government*** employers, and State and Local ***government*** employers, matching precisely those who employ the "employees" defined at 3401(c). Pub 15 refers us to ***no other publication***. Pub 15 also shows that employers are required to obtain W-4's and furnish W-2's to employees and 1099's to independent contractors.

The Treasury Financial Manual is an official publication of the Treasury Department. It says clearly that Pub 15 applies to Government Agencies. It says nothing that indicates that rules contained in the Pub apply anywhere in the private sector. Pub 15 explains that Federal and State and Local Government employers are required to obtain W-4's from employees, and deduct employment taxes, file 1099's for "non-employee compensation", etc. The instruction book does not say what the law does not say. The book, and the law, both say there are only two classes of employers subject to employment taxes, and they are federal or State and local government employers only.

Now, it looks like a whole lot of American employers are withholding employment taxes, believing they are withholding income taxes. The only ***income*** taxes, required to be withheld on income, are on ***items paid to nonresident aliens***. The only other "withholding" affects government employees for employment taxes, so every additional employer is voluntarily giving part of his employees' pay to the government without any reason, except ignorance or fear, or a combination of both.

<u>Why</u> so Confusing?

Congress has made our comprehension of the tax code difficult, by complicating the Code to the point where even the experts can't agree on what it says, or how it operates. Most of us go to experts for help. Most of the experts only know what the government tells them, directly or indirectly. Prentice-Hall, Commerce Clearing House, Lexis Publishing, Wests' Publishing, and a host of other publishers, collect information from

the government about taxes, and publish it in rather expensive new sets each year which they sell to accountants and attorneys and others whose businesses involve federal taxation. Our lawyers and accountants purchase these items, and use them to explain the tax laws to us. None of the publications explain that Subtitle A and Subtitle C impose distinguishable income taxes. Note that taxpayers who consult accounting firms for tax advice, must return each year, because last year's rules won't work this year. One might say that each years' taxes are planned to be obsolete the next. It's an enormous *consumer* industry that offers tax advice to the public.

It is ***big*** business in America. Think of the millions of accountants and lawyers who make their living from it. Who benefits? People who benefit most from ***changes*** and ***complications*** in the tax laws are not the government, except indirectly, but the publishers, law firms, accounting firms and a host of satellite businesses that depend on the difficulties and annual obsolescence of the income tax for their revenues. The income tax generates and drives a huge industry in America. This industry accounts for a noticeable fraction of our gross national product, and figures significantly in our economy. If the income tax were ever reduced to something like "1% of every dime taken in by any American for any reason without consideration of expenses, profits, or losses, including wages and the monetary value of all gifts…" the tax would be so simple an idiot could figure it out, and a huge industry would disappear overnight; the economy would shrink, and millions would be out of a job with nowhere to turn. Who would hire an ex- tax consultant? Better yet, who would hire an ex-IRS agent?

It is said that money talks. In Washington D. C., the fact that the income tax industry ranks, economically, with heavy manufacturing or software does not go unnoticed. However, those other industries are not founded on misinformation. Probably the best-kept secret in America is how the tax code really works. It is not what we have been taught. If the truth were known, the "industry" would die a natural death overnight, and millions of people who had formerly depended on it for a living would be looking for work in other, more productive, industries. The rest of us would be spending and saving a lot more of what we earn, and the government would have plenty of money with which to operate- sensibly.

By What Authority?

If you are an employer, and you are currently withholding taxes from your employees' pay, you owe it to yourself, and to them, to ask "why?" You

also owe it to yourself to learn about the hundreds, perhaps thousands, of other businesses that no longer withhold, and against whom the IRS has mounted no attack. By now, you know you are not a withholding agent, and that you are not a government employer. Did the IRS ever present you with any document that told you specifically to withhold income taxes from your employees? No? How about employment taxes? No? Then why do you do it? Did your accountant tell you to? If he did, and you took his advice, how would you know whether he is right or wrong, unless you looked into the law for yourself?

Are you "staying out of trouble with the IRS", as millions of other Americans are doing, or are you ***obeying the law as it is written***? Are you paying taxes for your employees that they do not owe? Has it occurred to you that by withholding compensation from your employees that the law does not require, you might be a committing a trespass? The Courts of the United States have long held that wages are ***property***, and a tax on them is a tax on property, and there is only one way the federal government can tax property. It is said that we own our wages, and that what can be taken from us without our consent was not ours in the first place. What makes it "theirs"?

The Power to Tax

We have the right to question any asserted authority, but often forget why we retained the right to question our government. Congress has power to lay and collect taxes two ways, mentioned above. It is up to us to determine whether the government is following the rules laid down in the Constitution. It may tax States directly, or it may tax commerce within States, by indirect taxes. Either tax is collected by the States. Whether a tax is direct or indirect depends upon whether it is a per capita tax or a tax on trade.

Often overlooked in the Internal Revenue Code, is Section 6301. It says that the Secretary (presumably the Secretary of the Treasury- of the United States, or of Puerto Rico or Guam or Samoa) ***collects all*** the ***internal revenue*** taxes. According to the separation of powers doctrine, built into the Constitution, the Secretary cannot collect taxes, at least where the Constitution applies. Powers delegated to one branch by the Constitution cannot be exercised by a different branch, or delegated to a different branch. Strictly speaking, the Constitution does not limit the government in its governance of Puerto Rico or the District of Columbia, but it is impossible for the Secretary to collect taxes without violating the structure for the government authorized by the Cosntitution. Congress most certainly

can't shift its powers or its duties to a different branch for the sake of convenience. The Constitution clearly applies to affairs between the federal government and the States, so the Constitution itself prohibits the executive branch from collecting any taxes of any description from the States or their people. In 1916, when Congress first "codified" the "internal revenue laws" they said that the income taxes apply only to the Territories, the Possessions, and the District of Columbia.

> SIXTY-FOURTH CONGRESS. SESS. I. CH. 463. 1916. 39 Stat 773
> INCOME TAX Part III GENERAL ADMINISTRATIVE PROCEDURES
> SEC. 15. The word "State" or "United States" when used in this ***title*** (now Title 26 USC) ***shall be construed to include*** any Territory, the District of Columbia, Porto Rico, and the Phillipine Islands, ***when such construction is necessary*** to ***carry out*** its provisions.

That's a double assurance that the terms will be used to apply only to the enumerated areas. Title 26 still does that. The "States" are currently defined and enumerated at Section 3121(e), under employment taxes. They include only the District of Columbia, Guam, American Samoa, and the Virgin Islands. They are, incidentally, also considered as ***sources without*** the United States under Subtitle A. The income tax is considered ***indirect***, and hence constitutional, for several reasons. Governments can tax things they create far more easily than they can tax those who create them. Corporations are legal entities, created by governments, hence fictitious "persons". Citizens are born "endowed with certain unalienable rights", including property rights. What we have a ***right*** to cannot be ***taxed***, with or without our consent. We have a right to breathe, so there can't be a breathing tax. We have a right to work, so there can't be a working tax. Privileged entities derive their privileges from the government that grants them. Thus, ***U. S.*** corporations might be subject to the tax (most are not), but ***State*** corporations cannot be.

One fundamental characteristic of an indirect tax is that it can be passed on to others. Who pays a tax is determined partly by its nature. A tax on the ***manufacture*** (activity) of whiskey is paid by the ***distiller*** (taxpayer) and passed on to the wholesaler, distributor, retailer, and ultimately the consumer. It is the ability of the taxpayer to pass the tax along to others that makes it indirect. To the ultimate consumer, it is hidden within the price of the goods. In such case, the actual taxpayer is not out of pocket for it, the ultimate consumer is. Stockholders, in that sense, are the "consumers" of corporate profits, so it could be said that the special excise tax is indirect on the Corporation, which passes it on to, and is ultimately

paid by the stockholders, who are the "consumers" of the corporation's profits. A bit tricky, I realize, but the tax is tricky in other ways as well.

States Collect All Constitutional Federal Taxes Except Customs

The federal Constitution grants Congress exclusive power to tax imports. There can be no question of State involvement in the collection or payment of customs or import taxes. Any ***other*** tax imposed by the federal government, that applies to or within a State, must allow for the ***States to collect*** it. The method by which States collect such taxes is determined by the nature of the tax, whether direct or indirect. State Constitutions decide whom or what the State may tax, and in what manner. States are limited to collecting taxes, whether their own or federal, from ***their*** taxpayers, according to their Constitutions and laws. The feds can't tell States whom to collect from- only total amounts for direct taxes, or percentages on pre-retail transactions, reachable by the State under its Constitution. There are few ***federal*** taxpayers within the States of the Union.

A State could collect the total due on a capitation tax from 1,000 or 10,000 or 100,000 of its taxpayers, or by a special tax on gasoline, or by a general sales tax, or by any other means at its disposal, depending on State law. The federal government has no mechanism by which it can collect taxes from ***people*** directly, except from imports, or its agencies, its instrumentalities, or employees.

In the case of direct taxes, States are required only to come up with total amounts, or in the case of indirect taxes, the uniform percentage. Congress has laid Direct taxes only three times in our history. Direct taxes are laid ***on*** the ***States*** in fixed amounts, proportional to their populations. That's what the Constitution is telling us, when it says representatives are to be elected and direct taxes collected by "the rule of apportionment". Direct taxes are one-time affairs. In any case, only a State can ***lay*** a tax ***directly*** on a Citizen, and only a State can collect a tax directly from people. No federal tax, laid directly on a person, collected directly by the feds, bypassing the State, can be applied ***within a State*** of the Union. It can only be applied where there is no State, such as in the District of Columbia, Guam, Puerto Rico, and the other Possessions, enumerated above.

One principle that separates the federal government from the States is their ability to collect direct taxes. Congress can lay a direct tax on all the real estate in a State, or all the money in its banks, or all of virtually any assets imaginable, but the amount collected, not the means, is all to which the State is obligated. The federal government cannot send its officers into the

States to collect taxes, any more than Arkansas can declare war on Japan. State and federal governments have distinct powers and duties. No federal law can direct a State, or anyone in it, to collect federal taxes from particular Citizens. The federal government can only receive taxes, lawfully laid, from the States, and only Congress can receive them.

Indirect Taxes, Generally

The Rule of Uniformity applies to indirect taxes, such as excises, duties, and imposts. The term "tax" means any burden or duty imposed by law, and is not limited to monetary taxes. The taxes contemplated by the Constitution are divided into two classes- direct taxes, and indirect taxes, which include excises, imposts, and duties. While such taxes are similar, they are not all the same. The term "excise" means "cut out of", and is usually applied to transactions. It is a tax laid on the sale of goods, wherein the taxpayer passes the tax along to the purchaser, ultimately absorbed by the consumer.

There is a *wagering* tax on those engaged in the business of wagering in the Code. Any tax on an occupation is an occupation tax, also considered an ***excise***, because, as a license tax, it can be passed on. Occupations taxes are considered ***duties*** rather than transaction taxes. Duties are founded in privileges, which are ordinarily taxed and regulated by license fees and requirements. The taxing authority is always the creator of the privilege. The federal government creates no privileged occupations within States.

The term "duty" comes from an ancient custom of one king paying another for the privilege of selling his goods in the other's markets. When the Constitution was written, it was not uncommon for the world's kings to be paying duties to other kings. They often took the form of a large annual contribution.

Imposts are taxes imposed on goods, as the name implies, and the term is usually used to describe import taxes collected by the receiving nation. Taxes on French Perfumes are such taxes. They are uniform on the measure, such as ounce, pint, gallon, pound, or ton. The gasoline tax is an excise tax, not an impost or duty, presently being collected by the States, at the uniform national rate of 19¢ per gallon, I believe. The IRS does not collect that tax, and for very good reason- it is not an "internal revenue" tax. It is a constitutional national tax.

Can the Government Force You to Collect Federal Taxes for Free?

If the federal government has laid a tax on your employees, and requires

you to collect it for them, you should be a little suspicious about whether the federal government can force you to perform ***duties*** for it ***without*** any form of exchange or benefit for the service performed, or for just compensation. In our system of law, imposing a duty on someone that requires him to perform services, without benefit of something in exchange, or compensation of some kind, is called involuntary servitude. Citizens individually cannot compel others to perform services for them without some form of compensation, so collectively, we cannot endow our governments with power to compel individuals among us to perform services for them for free. The only way the government can compel you to withhold, and keep books and records for it, is if you are a withholding agent or an employer, as shown above. In your present state, what ***duty*** do you owe the federal government, in exchange for what ***privilege***? If you are receiving no privileges from the federal government, you have no special duty to it. Absent a clear duty, the government cannot compel you to work for it for free.

It is legally impossible for you to be required to collect taxes for, or pay them directly to, the federal government. Since the State is not collecting the income tax, like it collects the national gasoline tax, you have ***no obligation to pay it***. The federal government can tax ***anything*** it can ***regulate***. Conversely, it cannot tax anything it cannot regulate. It can regulate interstate commerce, international commerce, and commerce with the Indian Tribes. It cannot impose "duties" on private citizens, merely engaged in the common occupations of life, exercising no special privileges, and ***not*** engaged in interstate, inter-tribal, or international commerce.

Income taxes, whether on wages or on imports, are not being collected according to the Rule of Apportionment for direct taxes- by the State, or according to the Rule of Uniformity- likewise by the State.

Seeking the Truth and Finding it: The Government Knows we Don't Read the Fine Print

The government does not want you to understand what I have tried to convey above, but it furnishes enough information in its publications to prove the assertions. It does a fair job of obfuscating or hiding the truth, but is not totally successful. On the back of the W-4 there is a Privacy Act/Paperwork Reduction Act Notice (in fine print). It says the requirements for the information on the Form are imposed at Sections 3402(f)(ii)A and 6109 of the Code, and their regulations. We already know that 3402 refers to ***government*** employers, and that Pub 15 applies to them.

6109 brings up yet another matter. 6109 and its regulations require ***taxpayers*** to obtain ***taxpayer*** numbers for ***income*** tax purposes, and ***employers*** and ***individual employees*** to obtain numbers for ***employment*** tax purposes. Thus, having been directed to 6109, we learn that the W-4 Privacy Act Statement, which Act requires ***Agencies*** to state ***why*** they are asking for the information, is really telling us that Social Security Numbers and Employer ID numbers are for ***employment*** taxes, and ***taxpayer*** numbers for income taxes, are entirely different things, and are used for entirely different purposes by entirely different classes of "taxpayers". Taxpayer numbers are for withholding agents and nonresident aliens, and employment numbers are for government employees and their ***benefit*** programs.

The IRS uses our ignorance and fear against us. The only way to overcome our fear, and challenge the government, is to first overcome our ignorance.

What happens if the ***employer***, who ***IS*** required to withhold under 3402, fails to deduct and withhold? If the payee actually did have an income tax liability, and met his liability himself, the payor is off the hook for payee liability. In other words, the IRS can't punish an employer for not withholding, until at least after April 15th of next year, when "income" taxes are due. Income taxes are not due monthly, so there can be no absolute requirement to collect them in advance. Benefits taxes like Social Security, however, are due each pay period.

> 3402 (d) TAX PAID BY RECIPIENT
> If the employer, in violation of the provisions of this chapter, fails to deduct and withhold the tax under this chapter, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

If an employee files a W-4 with his employer, instructing him not to withhold the Chapter 24 tax, and the employer ceases to withhold, even if the employee has a tax liability, the case is on hold at least until the tax is due- April of next year, when it can be determined whether the employee paid it timely.

The 1040 Trap

Now try to figure whether you are required to file a ***1040*** for your "individual income tax liability". If your liability did not arise subject to

Subtitle A, you have no income tax liability. If your liability did not arise subject to Subtitle C, you have no employment tax liability. If your employees did not incur any employment tax liability, you cannot be compelled to withhold from them or pay taxes on their behalf.

So when you file "your" income tax return on a 1040, you may be paying the wrong tax- the Chapter 24 employment tax, not the income tax imposed by Subtitle A.

Read the instructions for Form 1040 carefully, for yourself. They say that you should use the tables provided in the instruction book to compute the tax. Remember that the income tax under Subtitle A is computed according to tables and computational procedures ***in the Codes***, written by Congress, not in the Regulations or other publications written by the ***Secretary***. The two are distinct and unrelated. {Tax Returns for FSC's and DISC's, the only American ***taxable persons***, bear the OMB Control Number 1545-0935 or -0938, not 1545-0074 as on Form 1040}. You should be able to see the connection between the form and the tax. Wage income taxes and Social Security payments are not deductible for income tax purposes, as you have seen above, nor are they in any way relevant to Subtitle A.

I hope you have begun to see how our government has been deceiving us. I hope you are angry about what you have read here. I hope you remain angry long enough to contact me for assistance in getting the monster of your back and the backs of your valued employees. Why shouldn't they get full paychecks? And why shouldn't you?

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