

FEDERAL TAX WITHHOLDING



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1 **1 Introduction and purpose**

2 The IRS produces a publication on withholding below:

Circular E: Employer's Tax Guide, Publication 15
<http://famguardian.org/TaxFreedom/Forms/IRS/IRSPub15.pdf>

3 The above publication, according to the IRS' own Internal Revenue Manual (I.R.M.), Section 4.10.7.2.8, is NOT trustworthy
4 and should not be relied upon to sustain a position:

5 *"IRS Publications, issued by the National Office, explain the law in plain language for taxpayers and their*
6 *advisors... While a good source of general information, publications should not be cited to sustain a position."*
7 *[Internal Revenue Manual (I.R.M.), Section 4.10.7.2.8 (05-14-1999)]*

8 The courts similarly say you can't trust anything the IRS says or writes. This is explained below:

Federal Courts and the IRS' Own IRM Say IRS is NOT RESPONSIBLE for Its Actions or its Words or For Following Its
Own Written Procedures
<http://famguardian.org/Subjects/Taxes/Articles/IRSNotResponsible.htm>

9 If you would like to know more about what the government says you CAN rely upon as a reasonable basis for belief, see our
10 free pamphlet below:

Reasonable Belief About Income Tax Liability, Form #05.007
<http://sedm.org/Forms/FormIndex.htm>

11 For all the foregoing reasons, we felt it was important to know what the law says about how you must handle federal tax
12 withholding in order to help you follow what the law says. The law is your friend. Hence, this pamphlet. We want you to
13 be like King Hilkiah, who after stumbling upon and reading a law book that had been hidden from him, tore his clothes and
14 asked God for His forgiveness for all the evil he had allowed to happen because he had not been reading and following the
15 law. We'll give you a hint: your public dis-servants are the ones doing the hiding by not teaching you law in the PUBLIC
16 FOOL system:

17 *Now it happened, when the king heard the words of the Book of the Law, that he tore his clothes. 12 Then the king*
18 *commanded Hilkiah the priest, Ahikam the son of Shaphan, Achbor^[a] the son of Michaiah, Shaphan the scribe,*
19 *and Asaiah a servant of the king, saying, 13 "Go, inquire of the LORD for me, for the people and for all Judah,*
20 *concerning the words of this book that has been found; **for great is the wrath of the LORD that is aroused against***
21 ***us, because our fathers have not obeyed the words of this book, to do according to all that is written concerning***
22 ***us.**"*
23 *[2 Kings 22:11-13, Bible, NKJV]*

24 Remember, *America is the Land of the Kings*. Both the Supreme Court and God say that YOU ARE THE KING over your
25 public dis-servants. We are princes and priests of the most high God and all of our delegated authority comes from Him:

26 *"...at the Revolution, the sovereignty devolved on **the people**; and **they are truly the sovereigns of the country**,*
27 *but they are sovereigns without subjects...with none to govern but themselves [and their PUBLIC SERVANTS];*
28 *the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty."*
29 *[Chisholm v. Georgia, 2 Dall (U.S.) 419, 454, 1 L.Ed. 440, 455 @DALL 1793, pp. 471-472]*

30 *"You are worthy to take the scroll,*
31 *And to open its seals;*
32 *For You were slain,*
33 *And have redeemed us to God by Your blood*
34 ***Out of every tribe and tongue and people and nation,***
35 ***And have made us kings and priests to our God;***
36 ***And we shall reign on the earth."***
37 *[Rev. 5:9-10, Bible, NKJV]*

1 If after reading this pamphlet you want to use its contents to educate those who may be violating the law, we recommend that
2 you give it to them printed on double-sided paper and ask them to rebut the questions in Section 15 later.

3 **2 LEGAL NOTICE TO RECIPIENT: Criminal and civil liabilities to private employers for**
4 **willfully disregarding the law or this pamphlet or filing FALSE information returns such as**
5 **IRS Forms W-2 and 1099**

6 This document shall also serve as a LEGAL NOTICE to all private employers that there are SEVERE criminal and civil
7 consequences for failing to heed the requirements of the Internal Revenue Code documented herein relating to income tax
8 withholding and reporting. You are therefore legally notified not to exceed your private-sector status! Any erroneous
9 assumption and/or implication that as a private party you are authorized to act on behalf of government and its laws will not
10 save you (or your employer) from possible civil action or criminal conviction. All liability that may result is yours personally
11 as a payroll clerk and NOT as an officer of the company. The company you work for is not the liable party: you personally
12 and individually, as the recipient are the liable party for all the civil and criminal ramifications described in this section.

13 The term “information return” covers a wide variety of government forms that government employers, accounting
14 departments and payroll organizations are to file with the IRS, such as IRS Forms W-2, 1042-S, 1098, and 1099. These forms
15 are prescribed by government law and those using said forms are understood to have knowledge of such government law.
16 Sadly many non-governmental private sector return-filers are not licensed to practice government law. Consider this court
17 case:

18 *"We must note here, as matter of judicial knowledge, that most lawyers have only scant knowledge of the tax*
19 *laws."*
20 *[Bursten v. U.S., 395 F.2d 976, 981 (5th. Cir., 1968)]*

21 If most lawyers have scant knowledge of laws, what does that imply about accountants, payroll departments, company
22 employees, non-lawyer tax preparers and IRS employees? Anyone challenging a filing can simply ask the filing party: You
23 made an assumption and filed a government legal form prescribed by government law:

- 24 1. Are you licensed to practice government law?
- 25 2. Are you my legal counsel?
- 26 3. Where is your signed delegation of authority to act on behalf of government?
- 27 4. Where is your Power of Attorney to act on my behalf?
- 28 5. Are you an authorized ‘withholding agent’ as described in sections [26 U.S.C. §1441, 1442, 1443, or 1461](#)?”
- 29 6. Do you have an IRS Form 2678 on file signed by a delegate of the Secretary of the Treasury authorizing you to act as a
30 “withholding agent”. If not, you are simply a private individual who is STEALING from people if they don’t consent to
31 withholding.
- 32 7. Are you prepared to answer these “sticky” questions and possibly many more?
- 33 8. Do you realize that while acting under “color” but without actual authority of law as a voluntary agent for the government,
34 that you consent to be bound by all the restrictions imposed upon the government, including the Bill of Rights?
- 35 9. Do you realize that if the submitter provides no IRS Form W-4 and tells you that he is not engaged in a “trade or business”,
36 that:
 - 37 9.1. He or she earns no “wages” as legally defined in 26 C.F.R. §31.3401(a)-3(a) and 26 C.F.R. §31.3402(p)-1?
 - 38 9.2. You may not truthfully report anything other than ZERO for “wages, tips, and other income” in IRS Form W-2,
39 block 1?
 - 40 9.3. You may not lawfully withhold ANY amount from his or her pay. Even if the IRS orders you to withhold at “single
41 zero” or garnish his or her pay, 100% of ZERO “wages” is still ZERO.
 - 42 9.4. If you wrongfully withhold, you personally and not the company become legally liable to return all amounts
43 unlawfully withheld?
 - 44 9.5. You may not lawfully submit an IRS Form W-2 to the government, because he is not engaged in a “trade or
45 business”.
 - 46 9.6. You are violating [26 U.S.C. §6041](#), which says that you may only submit an IRS Form W-2 if he or she is engaged
47 in a “trade or business”, which is defined in [26 U.S.C. §7701\(a\)\(26\)](#) as “the functions of a public office”?
 - 48 9.7. You are submitting a false and fraudulent information return to the government in violation of [26 U.S.C. §7207](#)?
 - 49 9.8. You become personally and civilly liable for all attorneys fees and tax liabilities caused by the false W-2
50 information return you submit to the government?

1 It is for this reason that filing parties--due to ignorance of all the implications of their actions--put themselves at great risk by
2 filing a government form containing accusatory *implications* they might or might not understand. Worse yet, the IRS cannot
3 and does not intervene to take responsibilities associated with any false information provided to third parties who contact
4 them, and the courts refuse to hold them accountable to do this either. All risk is born by the filing party! See:

Federal Courts and IRS' Own IRM say the IRS is NOT RESPONSIBLE for its Actions or its Words or for Following its
Own Written Procedures
<http://famguardian.org/Subjects/Taxes/Articles/IRSNotResponsible.htm>

5 The filing of an information return in most instances is considered a voluntary act. Whenever anybody enters-into a voluntary
6 arrangement with the government they are presumptively "CHARGED WITH" knowing government statutes (i.e law U.S.C.)
7 and regulations (i.e. CFR):

8 *"Persons dealing with the government are charged with knowing government statutes and regulations, and they*
9 *assume the risk that government agents may exceed their authority and provide misinformation."* See [Federal](#)
10 [Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85, 68 S.Ct. 1, 3-4, 92 L.Ed. 10 \(1947\)](#)
11 *[Lavin v. Marsh, C.A.Cal., 1981, US Crt Appeals 9th Cir., 1981, No. 79-4163]*

12 Can you say you know all the government statutes and regulations? What about all the attendant case-law?

13 From a reading of the above case, if your common sense tells you that "CHARGED WITH"...presumes something *other*
14 than..."innocent until proven guilty", you are probably correct. There is an "implied obligation" involved on your behalf
15 because of the voluntary act you did. You are safer with, "If in doubt, don't act":

16 *"An individual may be under no obligation to do a particular thing, and his failure to act creates no liability but*
17 *if he voluntarily attempts to act and do a particular thing, he comes under an implied obligation in respect to the*
18 *manner in which he does it."*
19 *[Guardian T & D Co. v. Fisher, 26 S.Ct. 186, 188 (1986)]*

20 Be aware that as a legal form of government, the filing of information return forms are *accusatory* in nature—reaching far
21 beyond mere amount and name. The "implied obligation" upon the filing parties is specific and intimate knowledge of the
22 people and organizations to which they are filed-upon with an understanding sufficient to stand on federal law of the
23 accusation. Remember: The burden of proof is on the filing party and as most filing parties are not licensed to practice law,
24 they are hence cautioned against implication of taxation status without direct evidence.

25 Don't be misled into overstepping your boundaries and doing the dirty-work of the federal government. They won't come to
26 your rescue. See the *Federal Crop Insurance* case above as a shocking reminder. The federal government is "a government
27 of small enumerated powers" limited to operating primarily on federal territory and has limited authority in the private affairs
28 in the states.

29 *"The laws of Congress in respect to those matters [Federal Income Taxation] do not extend into the territorial*
30 *limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive*
31 *jurisdiction of the national government."*
32 *[Caha v. United States, 152 U.S. 211, 215, 14 S.Ct. 513 (1894)]*

33 But what about NOT doing some action "supposedly" required? There are very few instances in free society whereby people
34 are held accountable for acts they DON'T DO [assuming justification and reasonableness]. The only persons who can be
35 prosecuted for NOT doing something are all fiduciaries of one kind or another, and you aren't a government fiduciary or
36 "transferee" as described in [26 U.S.C. §6903](#) and neither am I in this context. Almost the entirety of the Bill of Rights and
37 several amendments, in fact, protect us from being convicted of "things we FAILED to do." That is NOT true for voluntary
38 acts a person does FREELY. Notice the severity associated with filing false (voluntary-act) forms (see legal notice below)
39 yet from the Guardian case-quote above says a:

40 *"...failure to act creates no liability."*

41 Once again illustrating: If in doubt, don't act. Be aware that the rights you desire in your protection are the same as the rights
42 you should project in the protection of others. One party can inquire into the business [i.e. affairs personal or otherwise] of

1 another, but as a protected right, there is NO DUTY for the other party to reveal any aspect of that business [i.e. affairs
2 personal or otherwise]. Think about this famous Supreme Court case the next time you make demands on another:

3 *“The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private
4 business in his own way. His power to contract is unlimited. **He owes no duty to the state or to his neighbors to
5 divulge his business, or to open his doors to an investigation,** so far as it may tend to incriminate him. He owes
6 no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His
7 rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be
8 taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to
9 incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant
10 of the law. **He owes nothing to the public so long as he does not trespass upon their rights**”
11 [Hale v. Henkel, 201 U.S. 43 (1906)]*

12 There is a **no duty** for anyone to divulge the nature of his affairs or business or [implied] paperwork. In addition, one sees
13 the reminder to the information-return filer to **“not trespass”** upon this right. It is not a crime and not harmful to anyone to
14 earn a living and support yourself.

15 **TAKE HEED AND NOTICE--LEGAL WARNING—CRIMINAL AND CIVIL PENALTIES APPLY!**

16 I urge you to use extreme caution when filing “information returns” with the IRS! A false information return is NOT limited
17 to just the amount. An “...information return contains implications of taxation binding on the filing party in verification
18 thereof...”. The risks associated with willfully filing false information returns include, but are not limited to:

- 19 1. [26 U.S.C. §7206](#) provides up to \$100,000 fine and 3 years imprisonment for filing false returns regardless of whether
20 they are signed or not . *United States v. Coveney*, 995 F.2d 578, 588 (5th Cir. 1993). Further it is *not* necessary that the
21 defendant be the same individual who actually filed the false return, as long as the defendant's willful conduct *led* to the
22 false filing. *United States v. Kellogg*, 955 F.2d 1244, 1249 (9th Cir. 1992). While frequently the false document will
23 be...an information return, *any* document required or authorized to be filed with the IRS can give rise to the offense. See
24 U.S. Dept of Justice Criminal Tax Manual 13:00.
- 25 2. [26 U.S.C. §7434](#) authorizes a suit in federal court against the filer of the false information return in which the innocent
26 victim can recover attorney fees plus any tax liabilities sustained because of the false information return.
- 27 3. [26 U.S.C. §7207](#) makes it a crime punishable by a fine of \$10,000 if you are an individual or \$50,000 for a corporation
28 and one year in jail for filing a false information return against anyone.
- 29 4. [18 U.S.C. §912](#) makes it a crime punishable by three years in jail or a fine for impersonating or causing others to
30 impersonate a “public officer”. Anyone who has an information return filed against them is, by definition, a “public
31 officer”.
- 32 5. [42 U.S.C. §408](#) makes it a crime punishable by five years in jail and a fine for doing any of the following:
33 5.1. 42 U.S.C. §408(a)(8): Compelling the use of a Social Security Number in the case of a nonresident alien not
34 engaged in a “trade or business”.
35 5.2. 42 U.S.C. §408(a)(1): Reporting false “wages” on an IRS Form W-2.
36 5.3. 42 U.S.C. §408(a)(2) to (a)(3): Making a false statement.

37 If you would like to learn more about the consequences of knowingly filing false information returns, which is criminal fraud,
38 read the following article:

[Correcting Erroneous IRS Form W-2's](http://sedm.org/Forms/FormIndex.htm), Form #04.006
<http://sedm.org/Forms/FormIndex.htm>

39 If there is any question in your mind about whether you should file an information return against me, the safest route is to
40 NOT file it. There is no provision of law applicable to a non-fiduciary such as yourself that creates a legal duty to file such
41 a return, and based on the remainder of this document, that information return will likely be false because I am NOT engaged
42 in a “trade or business” as defined in [26 U.S.C. §7701\(a\)\(26\)](#) and you are not a “withholding agent” as legally defined in [26](#)
43 [U.S.C. §7701\(a\)\(14\)](#).

44 You have been duly warned:

- 45 1. If you persist by filing a false information return beyond this point, the offense becomes not only actionable, but
46 fraudulent and subject to the criminal penalties found at [26 U.S.C. §7207](#).

- 1 2. Not to call the IRS for advice on this matter, because the courts have repeatedly said they aren't accountable for their
 2 answer. Only you can decide what to do, and that decision MUST be based ONLY upon enacted positive law. [1 U.S.C.](#)
 3 [§204](#) says the Internal Revenue Code is NOT positive law.
 4 3. Not to rely upon any IRS Form OR publication, because the IRS' own website and the courts both say you can't:
 5 *"IRS Publications, issued by the National Office, explain the law in plain language for taxpayers and their*
 6 *advisors... While a good source of general information, publications should not be cited to sustain a position."*
 7 *[Internal Revenue Manual (I.R.M.), Section 4.10.7.2.8 (05-14-1999)]*
 8 4. Not to rely upon any tax professional or any industry trade publication, because the courts have said that these sources
 9 of information are not authoritative.
 10 5. If there is any question in your mind about what you can reasonably rely upon in making your decision about what to
 11 do, I advise you to read the following authoritative pamphlet containing the government's own statements on this
 12 important subject:

Reasonable Belief About Income Tax Liability, Form #05.007
<http://sedm.org/Forms/FormIndex.htm>

13 If you as the recipient of this notice want to be indemnified of the risks described in this section, then I would like to offer
 14 you a lawful way to do this. I as the person submitting this notice to you would be happy to assume all consequences and
 15 liabilities for following the law PROVIDED that you honor and obey all the laws described in this section and don't withhold
 16 or report from my pay as a nonresident alien not engaged in a trade or business. I am willing to sign a written, notarized
 17 agreement with you to that affect so that you don't have to assume any legal liabilities by virtue of obeying the laws
 18 documented in this pamphlet. I am doing this because I want to make it easy and carefree for you to obey the tax laws. You
 19 are encouraged to approach me informally if you would like to negotiate the terms of such a written agreement.

20 **3 Nature of the Internal Revenue Code Subtitle A Income Tax**

21 The income tax described in Subtitle A of the Internal Revenue Code is an excise tax upon a "trade or business", which is
 22 defined as "the functions of a public office" within the United States government:

23 [26 U.S.C. Sec. 7701\(a\)\(26\)](#)

24 *"The term 'trade or business' includes the performance of the functions of a public office."*

25 A "trade or business" is what the legal profession calls a "franchise". Participation in all franchises is voluntary, which is
 26 why there is no liability statute anywhere in the Internal Revenue Code Subtitle A that makes the average American "liable"
 27 to pay the income tax. For details on franchises, see:

Government Instituted Slavery Using Franchises, Form #05.034
<http://sedm.org/Forms/FormIndex.htm>

28 A "public office" is a type of employment or agency within the federal government that is created by contract or agreement
 29 that you must implicitly or explicitly consent to.

30 Public office

31 *"Essential characteristics of a 'public office' are:*

- 32 (1) Authority conferred by law,
 33 (2) Fixed tenure of office, and
 34 (3) Power to exercise some of the sovereign functions of government.
 35 (4) Key element of such test is that "officer is carrying out a sovereign function".
 36 (5) Essential elements to establish public position as 'public office' are:
 37 (a) Position must be created by Constitution, legislature, or through authority conferred by legislature.
 38 (b) Portion of sovereign power of government must be delegated to position,
 39 (c) Duties and powers must be defined, directly or implied, by legislature or through legislative authority.
 40 (d) Duties must be performed independently without control of superior power other than law, and
 41 (e) Position must have some permanency."
 42 *[Black's Law Dictionary, Sixth Edition, p. 1230]*

43 A person holding a "public office" has a fiduciary duty to the public as a "trustee" of the "public trust":

1 "As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be
2 exercised in behalf of the government or of all citizens who may need the intervention of the officer. 1
3 Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level
4 of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under
5 every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain
6 from a discharge of their trusts. 2 That is, a public officer occupies a fiduciary relationship to the political
7 entity on whose behalf he or she serves. 3 and owes a fiduciary duty to the public. 4 It has been said that the
8 fiduciary responsibilities of a public officer cannot be less than those of a private individual. 5 Furthermore,
9 it has been stated that any enterprise undertaken by the public official which tends to weaken public confidence
10 and undermine the sense of security for individual rights is against public policy.⁶
11 [63C American Jurisprudence 2d, Public Officers and Employees, §247 (1999)]

12 If you aren't engaged in a "public office", then you can't be the proper subject of the income tax or truthfully or lawfully be
13 described as THE "person", "individual", "employee", "employer", "citizen", "resident", or "taxpayer" described anywhere
14 in the Internal Revenue Code UNLESS you volunteer by signing an agreement. Yes, you could be described by these terms
15 in their ordinary English usage, but you would not fit the LEGAL meanings of these terms as they are defined in the Internal
16 Revenue Code unless you in fact and in deed engage in a "public office" within the United States government through private
17 contract or agreement that you consent to. Within this publication, we put quotes around words like those above when we
18 wish to refer to the legally defined meaning of a term and exclude the common or ordinary definition. In that sense, the
19 Internal Revenue Code constitutes:

20 1. Private law:

21 "Private law. That portion of the law which defines, regulates, enforces, and administers relationships among
22 individuals, associations, and corporations. As used in contradistinction to public law, the term means all that
23 part of the law which is administered between citizen and citizen, or which is concerned with the definition,
24 regulation, and enforcement of rights in cases where both the person in whom the right inheres and the person
25 upon whom the obligation is incident are private individuals. See also Private bill; Special law. Compare Public
26 Law."
27 [Black's Law Dictionary, Sixth Edition, p. 1196]

28 2. Special law:

29 "special law. One relating to particular persons or things; one made for individual cases or for particular places
30 or districts; one operating upon a selected class, rather than upon the public generally. A private law. A law is
31 "special" when it is different from others of the same general kind or designed for a particular purpose, or limited
32 in range or confined to a prescribed field of action or operation. A "special law" relates to either particular
33 persons, places, or things or to persons, places, or things which, though not particularized, are separated by any
34 method of selection from the whole class to which the law might, but not such legislation, be applied. *Utah Farm*
35 *Bureau Ins. Co. v. Utah Ins. Guaranty Ass'n, Utah, 564 P.2d. 751, 754. A special law applies only to an individual*
36 *or a number of individuals out of a single class similarly situated and affected, or to a special locality. Board of*
37 *County Com'rs of Lemhi County v. Swensen, Idaho, 80 Idaho 198, 327 P.2d. 361, 362. See also Private bill;*
38 *Private law. Compare General law; Public law.*"
39 [Black's Law Dictionary, Sixth Edition, pp. 1397-1398]

40 3. What the courts call a "franchise", which is a "privilege" or benefit offered only to those who volunteer:

1 State ex rel. Nagle v Sullivan, 98 Mont 425, 40 P.2d. 995, 99 ALR 321; Jersey City v Hague, 18 N.J. 584, 115 A.2d. 8.

2 Georgia Dep't of Human Resources v Sistrunk, 249 Ga. 543, 291 S.E.2d. 524. A public official is held in public trust. Madlener v Finley (1st Dist) 161 Ill.App.3d. 796, 113 Ill.Dec. 712, 515 N.E.2d. 697, app gr 117 Ill.Dec. 226, 520 N.E.2d. 387 and revd on other grounds 128 Ill.2d. 147, 131 Ill.Dec. 145, 538 N.E.2d. 520.

3 Chicago Park Dist. v Kenroy, Inc., 78 Ill.2d. 555, 37 Ill.Dec. 291, 402 N.E.2d. 181, appeal after remand (1st Dist) 107 Ill.App.3d. 222, 63 Ill.Dec. 134, 437 N.E.2d. 783.

4 United States v Holzer (CA7 Ill) 816 F.2d. 304 and vacated, remanded on other grounds 484 US 807, 98 L.Ed. 2d 18, 108 S Ct 53, on remand (CA7 Ill) 840 F.2d. 1343, cert den 486 US 1035, 100 L.Ed. 2d 608, 108 S Ct 2022 and (criticized on other grounds by United States v Osser (CA3 Pa) 864 F.2d. 1056) and (superseded by statute on other grounds as stated in United States v Little (CA5 Miss) 889 F.2d. 1367) and (among conflicting authorities on other grounds noted in United States v Boylan (CA1 Mass) 898 F.2d. 230, 29 Fed Rules Evid Serv 1223).

5 Chicago ex rel. Cohen v Keane, 64 Ill.2d. 559, 2 Ill.Dec. 285, 357 N.E.2d. 452, later proceeding (1st Dist) 105 Ill.App.3d. 298, 61 Ill.Dec. 172, 434 N.E.2d. 325.

6 Indiana State Ethics Comm'n v Nelson (Ind App) 656 N.E.2d. 1172, reh gr (Ind App) 659 N.E.2d. 260, reh den (Jan 24, 1996) and transfer den (May 28, 1996).

1 FRANCHISE. A special privilege conferred by government on individual or corporation, and which does not
2 belong to citizens of country generally of common right. Elliott v. City of Eugene, 135 Or. 108, 294 P. 358, 360.
3 In England it is defined to be a royal privilege in the hands of a subject.

4 A "franchise," as used by Blackstone in defining quo warranto, (3 Com. 262 [4th Am. Ed.] 322), had reference
5 to a royal privilege or branch of the king's prerogative subsisting in the hands of the subject, and must arise from
6 the king's grant, or be held by prescription, but today we understand a franchise to be some special privilege
7 conferred by government on an individual, natural or artificial, which is not enjoyed by its citizens in general.
8 State v. Fernandez, 106 Fla. 779, 143 So. 638, 639, 86 A.L.R. 240.

9 In this country a franchise is a privilege or immunity of a public nature, which cannot be legally exercised
10 without legislative grant. To be a corporation is a franchise. The various powers conferred on corporations are
11 franchises. The execution of a policy of insurance by an insurance company [e.g. **Social Insurance/Social**
12 **Security**], and the issuing a bank note by an incorporated bank [such as a **Federal Reserve NOTE**], are
13 franchises. People v. Utica Ins. Co., 15 Johns., N.Y., 387, 8 Am.Dec. 243. But it does not embrace the property
14 acquired by the exercise of the franchise. Bridgeport v. New York & N. H. R. Co., 36 Conn. 255, 4 Arn.Rep. 63.
15 Nor involve interest in land acquired by grantee. Whitbeck v. Funk, 140 Or. 70, 12 P.2d. 1019, 1020 In a popular
16 sense, the political rights of subjects and citizens are franchises, such as the right of suffrage. etc. Pierce v.
17 Emery, 32 N.H. 484; State v. Black Diamond Co., 97 Ohio St. 24, 119 N.E. 195, 199, L.R.A.1918E, 352.

18 Elective Franchise. The right of suffrage: the right or privilege of voting in public elections.

19 Exclusive Franchise. See Exclusive Privilege or Franchise.

20 General and Special. The charter of a corporation is its "general" franchise, while a "special" franchise consists
21 in any rights granted by the public to use property for a public use but-with private profit. Lord v. Equitable Life
22 Assur. Soc., 194 N.Y. 212, 81 N. E. 443, 22 L.R.A.,N.S., 420.

23 Personal Franchise. A franchise of corporate existence, or one which authorizes the formation and existence of
24 a corporation, is sometimes called a "personal" franchise. as distinguished from a "property" franchise, which
25 authorizes a corporation so formed to apply its property to some particular enterprise or exercise some special
26 privilege in its employment, as, for example, to construct and operate a railroad. See Sandham v. Nye, 9 Misc.ReP.
27 541, 30 N.Y.S. 552.

28 Secondary Franchises. The franchise of corporate existence being sometimes called the "primary" franchise of a
29 corporation, its "secondary" franchises are the special and peculiar rights, privileges, or grants which it may,
30 receive under its charter or from a municipal corporation, such as the right to use the public streets, exact tolls,
31 collect fares, etc. State v. Topeka Water Co., 61 Kan. 547, 60 P. 337; Virginia Canon Toll Road Co. v. People,
32 22 Colo. 429, 45 P. 398 37 L.R.A. 711. The franchises of a corporation are divisible into (1) corporate or general
33 franchises; and (2) "special or secondary franchises. The former is the franchise to exist as a corporation, while
34 the latter are certain rights and privileges conferred upon existing corporations. Gulf Refining Co. v. Cleveland
35 Trust Co., 166 Miss. 759, 108 So. 158, 160.

36 Special Franchisee. See Secondary Franchises, supra.
37 [Black's Law Dictionary, Fourth Edition, pp. 786-787]

38 4. An "excise tax" or "privilege tax" upon privileges incident to federal contracts, employment, or agency.

39 "Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon
40 licenses to pursue certain occupations and upon corporate privileges...the requirement to pay such taxes
41 involves the exercise of [220 U.S. 107, 152] privileges, and the element of absolute and unavoidable demand
42 is lacking...

43 ...It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right
44 to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure
45 of taxation is found in the income produced in part from property which of itself considered is nontaxable...

46 Conceding the power of Congress to tax the business activities of private corporations.. the tax must be measured
47 by some standard..."
48 [Flint v. Stone Tracy Co., 220 U.S. 107 (1911)]

49 The IRS itself admitted some of the above in a letter documented below:

Hoverdale Letter, Exhibit #09.023
<http://sedm.org/Exhibits/ExhibitIndex.htm>

1 The rules for administering the “trade or business” franchise followed universally by the IRS and the courts are as follows:

2 1. The method of conveying consent to participate in the “trade or business” franchise is any one or more of the following:

3 1.1. Signing and submitting Social Security Form SS-5, the Application for Social Security. See:

Resignation of Compelled Social Security Trustee, Form #06.002

<http://sedm.org/Forms/FormIndex.htm>

4 1.2. Signing and submitting IRS Form W-4, which is the WRONG form for persons NOT engaging in the franchise.
5 See:

Federal and State Tax Withholding Options for Private Employers, Form #09.001

<http://famguardian.org/Publications/FedStateWHOOptions/FedStateWHOOptions.pdf>

6 1.3. Signing and submitting IRS Form 1040 and assessing yourself with a liability:

7 *“... the government can collect the tax from a district court suitor by exercising it's power of distraint... but we*
8 *cannot believe that compelling resort to this extraordinary procedure is either wise or in accord with*
9 *congressional intent. Our system of taxation is based upon VOLUNTARY ASSESSMENT AND PAYMENT , NOT*
10 *UPON DISTRAINT” [Footnote 43] **If the government is forced to use these remedies(distraint) on a large scale,***
11 ***it will affect adversely the taxpayers willingness to perform under our VOLUNTARY assessment system.**”*
12 *[Flora v U.S., 362 U.S. 145, (1959)]*

13 1.4. Failing or refusing to rebut false information returns that connect you to the franchise. [26 U.S.C. §6041](#)(a) says
14 that information returns, such as IRS Forms W-2, 1042S, 1098, and 1099 may ONLY lawfully be filed against
15 those engaged in the “trade or business” franchise. If you don’t rebut these when they are mailed to you, then your
16 failure to rebut is an admission that they are truthful. See:

17 1.4.1. *Correcting Erroneous Information Returns*, Form #04.001

<http://sedm.org/Forms/FormIndex.htm>

18 1.4.2. *Correcting Erroneous IRS Form 1042’s*, Form #04.003

<http://sedm.org/Forms/FormIndex.htm>

19 1.4.3. *Correcting Erroneous IRS Form 1098’s*, Form #04.004

<http://sedm.org/Forms/FormIndex.htm>

20 1.4.4. *Correcting Erroneous IRS Form 1099’s*, Form #04.005

<http://sedm.org/Forms/FormIndex.htm>

21 1.4.5. *Correcting Erroneous IRS Form W-2’s*, Form #04.006

<http://sedm.org/Forms/FormIndex.htm>

22 1.5. Failing to rebut the use of federal identifying numbers on government correspondence sent to you, which constitute
23 a “prima facie” license number to participate in “public rights” and franchises. See:

Wrong Party Notice, Form #07.105

<http://sedm.org/Forms/FormIndex.htm>

24 2. Those who do NOT participate in the “trade or business” franchise:

25 2.1. Cannot legally withhold on their earnings. Anyone who withholds upon them against their will is committing
26 THEFT for which they are personally liable.

27 2.2. Do not earn “wages” as legally defined in 26 U.S.C. §3401, 26 C.F.R. §31.3401(a)-3, or 26 C.F.R. §31.3402(p)-1.
28 Therefore, any amount reported on an IRS Form W-2 MUST be ZERO, because it only reports “wages” as legally
29 defined and not as commonly understood or used.

30 2.3. Have their private rights protected by the Constitution but not by most federal law. Most federal law is “foreign”
31 in relation to them:

32 *“The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers,*
33 *and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no*
34 *attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not*
35 *assume to deal, and they are neither of the subject nor of the object of the revenue laws...”*
36 *[Long v. Rasmussen, 281 F. 236 (1922)]*

37 *“Revenue Laws relate to taxpayers [instrumentalities, officers, employees, and elected officials of the Federal*
38 *Government] and not to non-taxpayers [American Citizens/American Nationals not subject to the exclusive*
39 *jurisdiction of the Federal Government]. The latter are without their scope. No procedures are prescribed for*
40 *non-taxpayers and no attempt is made to annul any of their Rights or Remedies in due course of law. With*
41 *them[non-taxpayers] Congress does not assume to deal and they are neither of the subject nor of the object of*
42 *federal revenue laws.”*
43 *[Economy Plumbing & Heating v. U.S., 470 F.2d. 585 (1972)]*

- 2.4. May not cite any provision of the franchise agreements codified in the Internal Revenue Code and the Social Security Act because they are “foreign law” in relation to them and their estate is a “foreign estate” pursuant to [26 U.S.C. §7701\(a\)\(31\)](#) .
- 2.5. If they cite any provision of the franchise agreements, it implies their voluntary consent to be bound by them, which is all that is needed to enforce these provisions of “private law”/”contract law” against them.
- 2.6. Are called the following in the context of federal law:
- 2.6.1. “nontaxpayers”. See:
[Who are “Taxpayers” and Who Needs a “Taxpayer Identification Number”?](http://sedm.org/Forms/FormIndex.htm), Form #05.013
<http://sedm.org/Forms/FormIndex.htm>
- 2.6.2. “nonresident aliens not engaged in a ‘trade or business’” as defined in 26 C.F.R. §1.871-1(b)(i) . See:
[Non-Resident Non-Person Position](http://sedm.org/Forms/FormIndex.htm), Form #05.020
<http://sedm.org/Forms/FormIndex.htm>
- 2.6.3. “transient foreigners”
- 2.6.4. “stateless persons” in relation to the federal courts.
- 2.6.5. “non-citizen nationals”
- 2.6.6. American Citizens or “citizens of the United States **OF AMERICA**”. See 1 Stat. 477, in which the U.S. Congress identifies those domiciled in states of the Union as both “American Citizens” and “citizens of the United States **OF AMERICA**”
3. Those who participate in the “trade or business” franchise:
- 3.1. Earn “wages” as legally defined in 26 U.S.C. §3401 because they signed a voluntary W-4 “agreement” consenting to call such earnings “wages” pursuant to 26 C.F.R. §31.3401(a)-3, or 26 C.F.R. §31.3402(p)-1. Therefore, any amount reported on an IRS Form W-2 MUST include all earnings subject to the W-4 “agreement”.
- 3.2. If they are individuals, are called the following in the context of federal law:
- 3.2.1. “taxpayers”
- 3.2.2. “public officers”
- 3.2.3. “employees”
- 3.2.4. “employers”
- 3.2.5. “citizens” or “citizens of the United States” as defined in [8 U.S.C. §1401](#) and 26 C.F.R. §1.1-1(c)-1, where “United States” means either the federal zone or the U.S. government.
- 3.2.6. “residents of the United States” as defined in [26 U.S.C. §7701\(b\)\(1\)\(A\)](#), , where “United States” means either the federal zone or the U.S. government.
- 3.3. If they are federal territories or possessions:
- 3.3.1. Must enter an Agreement on Coordination of Tax Administration (ACTA) agreement with the Secretary of the Treasury pursuant to:
- 3.3.1.1. 26 U.S.C. §6361 through 6365
- 3.3.1.2. [26 C.F.R. §301.6361-1](#) through [301.6361-5](#)
- 3.3.2. Are called “States” within federal law, which are territories and possessions of the United States pursuant to 4 U.S.C. §110(d). See also the following for further examples in state law:

*California Revenue and Taxation Code
 Division 2: Other Taxes
 Part 10: Personal Income Tax*

17018. "State" includes the District of Columbia, and the possessions of the United States.

*California Revenue and Taxation Code
 Division 2: Other Taxes
 Part 1: Sales and Use Taxes*

6017. "In this State" or "in the State" means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

- 3.4. May have any provision of the franchise agreements codified in the Internal Revenue Code or the Social Security Act cited against them in court. See:

[Why You Shouldn't Cite Federal Statutes as Authority for Protecting Your Rights](http://famguardian.org/Subjects/Discrimination/CivilRights/DontCiteFederalLaw.htm)
<http://famguardian.org/Subjects/Discrimination/CivilRights/DontCiteFederalLaw.htm>

- 3.5. Become “trustees” of the “public trust” as well as officers of the federal corporation identified in [28 U.S.C. §3002\(15\)\(A\)](#).

3.6. Are acting in a representative capacity on behalf of the federal government pursuant to [Federal Rule of Civil Procedure 17\(b\)](#) as “officers of a federal corporation”.

4. All franchises and “public rights” create federal agency and “public office” to one extent or another, and it is this agency that is the subject of most federal legislation. Nearly all laws passed by Congress pertain only to their own territory, possessions, offices, employees, and franchises. You must therefore become part of the government for them to lawfully regulate the exercise of the franchise.

*“The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer. We have recognized this in many contexts, with respect to many different constitutional guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. [Kelley v. Johnson](#), [425 U.S. 238, 247](#) (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. [O’Connor v. Ortega](#), [480 U.S. 709, 723](#) (1987) (plurality opinion); *id.*, at 732 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their job. [Gardner v. Broderick](#), [[497 U.S. 62, 95](#)] [392 U.S. 273, 277](#)-278 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. [Connick v. Myers](#), [461 U.S. 138, 147](#) (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. [Public Workers v. Mitchell](#), [330 U.S. 75, 101](#) (1947); [Civil Service Comm’n v. Letter Carriers](#), [413 U.S. 548, 556](#) (1973); [Broadrick v. Oklahoma](#), [413 U.S. 601, 616](#)-617 (1973).”*
[[Rutan v. Republican Party of Illinois](#), [497 U.S. 62](#) (1990)]

5. All privileged activities and franchises are usually licensed by the government and cause a surrender of constitutional rights:

5.1. The application of the license causes a surrender of constitutional rights.

*“And here a thought suggests itself. As the Meadors, subsequently to the passage of this act of July 20, 1868, applied for and obtained from the government a license or permit to deal in manufactured tobacco, snuff and cigars, I am inclined to be of the opinion that they are, by this their own voluntary act, precluded from assailing the constitutionality of this law, or otherwise controverting it. **For the granting of a license or permit—the yielding of a particular privilege—and its acceptance by the Meadors, was a contract, in which it was implied that the provisions of the statute which governed, or in any way affected their business, and all other statutes previously passed, which were in pari materia with those provisions, should be recognized and obeyed by them. When the Meadors sought and accepted the privilege, the law was before them. And can they now impugn its constitutionality or refuse to obey its provisions and stipulations, and so exempt themselves from the consequences of their own acts?**”*
[*In re Meador*, 1 Abb.U.S. 317, 16 F.Cas. 1294, D.C.Ga. (1869)]

5.2. Those participating in the “benefits” of the franchise have implicitly surrendered the right to challenge any encroachments against their “private rights” or “constitutional rights” that result from said participation:

The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:

[. . .]

6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.^{FN7} [Great Falls Mfg. Co. v. Attorney General](#), 124 U.S. 581, 8 S.Ct. 631, 31 L.Ed. 527; [Wall v. Parrot Silver & Copper Co.](#), 244 U.S. 407, 411, 412, 37 S.Ct. 609, 61 L.Ed. 1229; [St. Louis Malleable Casting Co. v. Prendergast Construction Co.](#), 260 U.S. 469, 43 S.Ct. 178, 67 L.Ed. 351.

^{FN7} Compare [Electric Co. v. Dow](#), 166 U.S. 489, 17 S.Ct. 645, 41 L.Ed. 1088; [Pierce v. Somerset Ry.](#), 171 U.S. 641, 648, 19 S.Ct. 64, 43 L.Ed. 316; [Leonard v. Vicksburg, etc., R. Co.](#), 198 U.S. 416, 422, 25 S.Ct. 750, 49 L.Ed. 1108.
[[Ashwander v. Tennessee Valley Authority](#), 297 U.S. 288, 56 S.Ct. 466 (1936)]

6. The Social Security Number is the “de facto” license number which is used to track and control all those who voluntarily engage in public franchises and “public rights”.

6.1. The number is “de facto” rather than “de jure” because Congress cannot lawfully license any trade or business, including a “public office” in a state of the Union, by the admission of no less than the U.S. Supreme Court:

1 “Thus, Congress having power to regulate commerce with foreign nations, and among the several States, and
2 with the Indian tribes, may, without doubt, provide for **granting** coasting licenses, licenses to pilots, licenses to
3 trade with the Indians, and any other licenses necessary or proper for the exercise of that great and extensive
4 power; and the same observation is applicable to every other power of Congress, to the exercise of which the
5 granting of licenses may be incident. All such licenses confer authority, and give rights to the licensee.

6 But very different considerations apply to the **internal commerce or domestic trade** of the States. Over this
7 commerce and trade Congress has **no power of regulation nor any direct control**. This power belongs **exclusively**
8 to the States. **No interference by Congress with the business of citizens transacted within a State is warranted**
9 **by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the**
10 **legislature**. The power to authorize a business within a State is plainly repugnant to the exclusive power of the
11 State over the same subject. It is true that the power of Congress to tax is a very extensive power. It is given in
12 the Constitution, with only one exception and only two qualifications. Congress cannot tax exports, and it must
13 impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and
14 thus only, it reaches every subject, and may be exercised at discretion. But, it reaches only existing subjects.
15 **Congress cannot authorize a trade or business within a State in order to tax it.**
16 [*License Tax Cases*, 72 U.S. 462, 18 L.Ed. 497, 5 Wall. 462, 2 A.F.T.R. 2224 (1866)]

17 6.2. If you don't want to be in a “privileged” state and suffer the legal disabilities of accepting the privilege, then you
18 CANNOT have or use Social Security Numbers.

19 7. Use of a Social Security Number constitutes prima facie consent to engage in the franchise. Use of this number
20 constitutes prima facie evidence of implied consent because:

21 7.1. It is a crime to compel use or disclosure of Social Security Numbers. [42 U.S.C. §408](#).

22 7.2. You can withdraw from the franchise lawfully at anytime if you don't want to participate. See SSA Form 521.
23 See:

Resignation of Compelled Social Security Trustee, Form #06.002
<http://sedm.org/Forms/FormIndex.htm>

24 7.3. If the government uses the SSN trustee licenses number to communicate with you and you don't object or correct
25 them, then you once again consented to their jurisdiction to administer the program. See:

Wrong Party Notice, Form #07.105
<http://sedm.org/Forms/FormIndex.htm>

26 8. The Social Security Number is property of the government and NOT the person using it. 20 C.F.R. §422.103(d).

27 8.1. The Social Security card confirms this, which says: “Property of the Social Security Administration and must be
28 returned upon request.

29 8.2. Anything the Social Security Number is attached to becomes “private property” voluntarily donated to a “public
30 use” to procure the benefits of the “public right” or franchise. Only “public officers” on official business may have
31 public property in their possession such as the Social Security Number.

32 If you would like to learn more about how the “trade or business” franchise works, see:

The “Trade or Business” Scam, Form #05.001
<http://sedm.org/Forms/FormIndex.htm>

33 If you would like to know the entire affect of participating in federal franchises upon your standing in a federal court, see
34 Sections 3 through 3.4 of the following entitled “How statutory franchises and ‘public rights’ affect choice of law”:

Federal Jurisdiction, Form #05.018
<http://sedm.org/Forms/FormIndex.htm>

35 **4 General requirements for withholding on “wages” in the I.R.C.**

36 Before we begin on the subject of withholding, we must first emphasize the following important points about withholding:

37 1. The term “United States” as used throughout IRS publications and Subtitle A of the Internal Revenue Code is defined
38 ONLY as the District of Columbia and nowhere expanded anyplace else in Subtitle A do include states of the Union.

39 [TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701](#). [*Internal Revenue Code*]
40 [Sec. 7701. - Definitions](#)

41 (a)(9) United States

1 The term "United States" when used in a geographical sense includes only the [States](#) and the District of
2 Columbia.

3 [\(a\)\(10\)](#): State

4 The term "State" shall be construed to include the District of Columbia, where such construction is necessary to
5 carry out provisions of this title.

6 The Rules of Statutory Construction and Interpretation say that what is not explicitly included in the law may safely be
7 presumed to be PURPOSEFULLY EXCLUDED by implication:

8 **"Expressio unius est exclusio alterius.** A maxim of statutory interpretation meaning that **the expression of one**
9 **thing is the exclusion of another.** *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325; *Newblock v. Bowles*,
10 170 Okl. 487, 40 P.2d. 1097, 1100. **Mention of one thing implies exclusion of another. When certain persons or**
11 **things are specified in a law, contract, or will, an intention to exclude all others from its operation may be**
12 **inferred.** Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects
13 of a certain provision, other exceptions or effects are excluded."
14 [*Black's Law Dictionary, Sixth Edition, p. 581*]

15 If you would like to know about all the DECEITFUL, FRAUDULENT word games that the IRS, the courts, and the
16 government commit to perpetuate their illegal organized extortion and thereby work around this HUGE problem, please
17 read the following exhaustive expose:

[Meaning of the Words "Includes" and "Including"](#), Form #05.014

<http://sedm.org/Forms/FormIndex.htm>

- 18 2. Withholding is only authorized by law on "employment". There is no "employment" outside the District of Columbia
19 or in any state of the Union:

20 Title 26: Internal Revenue

21 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)

22 [Subpart B—Federal Insurance Contributions Act \(Chapter 21, Internal Revenue Code of 1954\)](#)

23 [General Provisions](#)

24 [§ 31.3121\(b\)-3 Employment; services performed after 1954.](#)

25 (a) In general.

26 Whether services performed after 1954 constitute employment is determined in accordance with the provisions
27 of section 3121(b).

28 (b) Services performed within the United States [District of Columbia, as defined in 26 U.S.C. §7701(a)(9) and
29 (a)(10)].

30 Services performed after 1954 within the United States (see §31.3121(e)-1) by an employee for his employer,
31 unless specifically excepted by section 3121(b), constitute employment. With respect to services performed within
32 the United States, the place where the contract of service is entered into is immaterial. The citizenship or residence
33 of the employee or of the employer also is immaterial except to the extent provided in any specific exception from
34 employment. Thus, the employee and the employer may be citizens and residents of a foreign country and the
35 contract of service may be entered into in a foreign country, and yet, if the employee under such contract performs
36 services within the United States, there may be to that extent employment.

37 "(c) Services performed outside the United States—

38 (1) In general. **Except as provided in paragraphs (c)(2) and (3) of this section, services performed outside the**
39 **United States (see §31.3121(e)-1) do not constitute employment.**"

- 40 3. Only persons who have a tax liability under [Subtitle A of the Internal Revenue Code](#) need to withhold. A person who
41 has no liability for [Subtitle A](#) tax need not withhold. Therefore, the burden of proof is upon the one asserting the
42 requirement to withhold that a tax liability actually exists in law:

43 Title 26: Internal Revenue

44 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)

45 [Subpart E—Collection of Income Tax at Source](#)

46 [§ 31.3402\(p\)-1 Voluntary withholding agreements.](#)

47 (a) In general.

An employee and his employer may enter into an agreement under section 3402(b) to provide for the withholding of income tax upon payments of amounts described in paragraph (b)(1) of §31.3401(a)-3, made after December 31, 1970. An agreement may be entered into under this section only with respect to amounts which are includible in the gross income of the employee under section 61, and must be applicable to all such amounts paid by the employer to the employee. The amount to be withheld pursuant to an agreement under section 3402(p) shall be determined under the rules contained in section 3402 and the regulations thereunder. See §31.3405(c)-1, Q&A-3 concerning agreements to have more than 20-percent Federal income tax withheld from eligible rollover distributions within the meaning of section 402.

4. Withholding may ONLY be effected by the following types of entities listed in [26 U.S.C. §7701\(a\)\(16\)](#):

[TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701.](#)
[Sec. 7701. - Definitions](#)

(a)(16) Withholding agent

The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461.

Now if you look up each of the above four statutes mentioned in the above definition, here is what you end up with:

Table 1: Statutes authorizing "withholding agents"

26 U.S.C./ I.R.C. section	Title of section	Object of tax
1441	Withholding of tax on nonresident aliens	Nonresident aliens
1442	Withholding of tax on foreign corporations	Foreign corporations
1443	Foreign tax-exempt organizations	Tax-exempt organizations
1461	Liability for withheld tax	Nonresident aliens and foreign corporations (see title of Chapter 3 of Subtitle A).

Chances are VERY good that you *aren't* in the above list. This means that most private employers and businesses in states of the Union who withhold against the wishes of the workers are VIOLATING THE LAW and have been doing this for quite some time, regardless of what the IRS publications or employees or tax professionals say. Note also that statutory "U.S. citizens" under [8 U.S.C. §1401](#) are *not* in the list. The reason is because unless they are overseas and coming under [26 U.S.C. §911](#) and an international tax treaty, they aren't the proper subject of any part of the Internal Revenue Code.

5. Those who are nonresident aliens, which includes most Americans born in and living within the states, cannot have a tax liability if they have no earnings from the District of Columbia under [26 U.S.C. §871](#). See:

5.1. [26 U.S.C. §871](#), which identifies only earnings from the "United States" (District of Columbia ONLY) as taxable in the case of nonresident aliens.

5.2. Section 4 of the following:

Federal and State Tax Withholding Options for Private Employers, Form #09.001
<http://sedm.org/Forms/FormIndex.htm>

5.3. [26 C.F.R. §1.872-2](#):

Title 26: Internal Revenue
[PART 1—INCOME TAXES](#)
[nonresident alien individuals](#)

[§ 1.872-2 Exclusions from gross income of nonresident alien individuals.](#)

(f) *Other exclusions.*

Income which is from sources without/outside] the United States [District of Columbia, see 26 USC 7701(a)(9) and (a)(10)], as determined under the provisions of sections 861 through 863, and the regulations thereunder, is not included in the gross income of a nonresident alien individual unless such income is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual. To determine specific exclusions in the case of other items which are from sources within the United States, see the applicable sections of the Code. For special rules under a tax convention for determining the sources of income and for excluding, from gross income, income from sources without the United States which is effectively connected with the conduct of a trade or business in the United States, see the applicable tax convention. For

determining which income from sources without the United States is effectively connected with the conduct of a trade or business in the United States, see section 864(c)(4) and §1.864-5.

6. Those who have no earnings connected with a “trade or business” cannot have Information Returns reported on them, including IRS Form W-2, 1098, and 1099. See:

6.1. [26 U.S.C. §6041](#).

[TITLE 26 > Subtitle F > CHAPTER 61 > Subchapter A > PART III > Subpart B > § 6041 § 6041. Information at source](#)

(a) Payments of \$600 or more

All persons engaged in a **trade or business** [public office in the U.S. government] and making payment in the course of such **trade or business** [public office in the U.S. government] to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section [6042 \(a\)\(1\)](#), [6044 \(a\)\(1\)](#), [6047 \(e\)](#), [6049 \(a\)](#), or [6050N \(a\)](#) applies, and other than payments with respect to which a statement is required under the authority of section [6042 \(a\)\(2\)](#), [6044 \(a\)\(2\)](#), or [6045](#)), of \$600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

6.2. [Correcting Erroneous Information Returns](#), Form #04.001

<http://sedm.org/Forms/FormIndex.htm>

6.3. [Correcting Erroneous IRS Form 1042's](#), Form #04.003:

<http://sedm.org/Forms/Tax/Form1042/CorrectingIRSForm1042.htm>

6.4. [Correcting Erroneous IRS Form 1098's](#), Form #04.004:

<http://sedm.org/Forms/Tax/Form1098/CorrectingIRSForm1098.htm>

6.5. [Correcting Erroneous IRS Form 1099's](#), Form #04.005:

<http://sedm.org/Forms/Tax/Form1099/CorrectingIRSForm1099.htm>

6.6. Prevent erroneous Currency Transaction reports from being filed against you using the form “Demand for Verified Evidence of Trade or Business Activity: Currency Transaction Report”:

<http://sedm.org/Forms/Tax/DmdVerEvOfTradeOrBusiness-CTR.pdf>

6.7. [Correcting Erroneous IRS Form W-2's](#), Form #04.006:

<http://sedm.org/Forms/Tax/FormW2/CorrectingIRSFormW2.htm>

7. A person who has no “trade or business” earnings, e.g.: earnings from a “public office” in the United States government, cannot have reportable earnings on an IRS Form W-2. [26 U.S.C. §6041\(a\)](#) says that only earnings connected with a “trade or business” may appear on an information return, and IRS Form W-2 is an information return. This is especially true if they did not submit an IRS Form W-4, which is identified in the regulations as an agreement to call his earnings “gross income”:

[26 C.F.R. §31.3401\(a\)-3 Amounts deemed wages under voluntary withholding agreements](#)

(a) In general.

Notwithstanding the exceptions to the definition of wages specified in section 3401(a) and the regulations thereunder, the term “wages” includes the amounts described in paragraph (b)(1) of this section with respect to which there is a voluntary withholding agreement in effect under section 3402(p). References in this chapter to the definition of wages contained in section 3401(a) shall be deemed to refer also to this section (§31.3401(a)-3).

(b) Remuneration for services. (1) Except as provided in subparagraph (2) of this paragraph, **the amounts referred to in paragraph (a) of this section include any remuneration for services performed by an employee for an employer which, without regard to this section, does not constitute wages under section 3401(a).** For example, remuneration for services performed by an agricultural worker or a domestic worker in a private home (amounts which are specifically excluded from the definition of wages by section 3401(a) (2) and (3), respectively) are amounts with respect to which a voluntary withholding agreement may be entered into under section 3402(p). See §§31.3401(c)-1 and 31.3401(d)-1 for the definitions of “employee” and “employer”.

1 8. Even those who are “U.S. citizens” or “residents” (aliens) are not liable for tax under Internal Revenue Code, Subtitle A
2 if they have no earnings effectively connected with a “trade or business”, which is defined in [26 U.S.C. §7701\(a\)\(26\)](#) as
3 “the functions of a public office”. See the article below for proof:

The “Trade or Business” Scam, Form #05.001

<http://sedm.org/Forms/FormIndex.htm>

4 9. Employment withholding taxes under Subtitle C of the Internal Revenue Code are classified by the IRS as “gifts” to the
5 U.S. Government, and therefore are technically not “taxes”. See the following for the proof:

Great IRS Hoax, Form #11.302, Section 5.6.8

<http://famguardian.org/Publications/GreatIRSHoax/GreatIRSHoax.htm>.

6 The requirement for withholding is found in [26 U.S.C. §3402\(a\)](#):

7 [TITLE 26 > Subtitle C > CHAPTER 24 > § 3402](#)
8 [§ 3402. Income tax collected at source](#)

9 (a) Requirement of withholding

10 (1) In general

11 *Except as otherwise provided in this section, every employer making payment of wages shall deduct and*
12 *withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed*
13 *by the Secretary. Any tables or procedures prescribed under this paragraph shall—*

14 (A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and

15 (B) be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to
16 be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable
17 to such periods.

18 (2) Amount of wages

19 *For purposes of applying tables or procedures prescribed under paragraph (1), the term “the amount of wages”*
20 *means the amount by which the wages exceed the number of withholding exemptions claimed multiplied by the*
21 *amount of one such exemption. The amount of each withholding exemption shall be equal to the amount of one*
22 *personal exemption provided in section 151 (b), prorated to the payroll period. The maximum number of*
23 *withholding exemptions permitted shall be calculated in accordance with regulations prescribed by the Secretary*
24 *under this section, taking into account any reduction in withholding to which an employee is entitled under this*
25 *section.*

26 The section above uses two “words of art”, which are terms that have a special legal definition that does not conform with
27 the usual understanding of the word: “wages” and “employer”. The term “wages” DOES NOT mean what you probably
28 think it means, which is EVERYTHING the person earns from the company. Instead, “wages” are legally defined below:

29 [TITLE 26 > Subtitle C > CHAPTER 24 > § 3402](#)
30 [§3402. Income tax collected at source](#)

31 (e) Included and excluded wages

32 *If the remuneration paid by an employer to an employee for services performed during one-half or more of any*
33 *payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such*
34 *employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an*
35 *employer to an employee for services performed during more than one-half of any such payroll period does not*
36 *constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be*
37 *deemed to be wages.*

38 The above definition also contains more “words of art”. For instance, the Classification Act of 1923, 42 Stat. 1488, which
39 has not been repealed, provides the following definitions of some of the above words:

40 1. “department”: “the term ‘department’ means an executive department of the United States Government, a governmental
41 establishment in the executive branch of the United States Government which is not a part of an executive department,
42 the municipal government of the District of Columbia, the Botanic garden, Library of Congress, Library Building and
43 Grounds, Government Printing Office, and the Smithsonian Institution.”

- 1 2. “position”: “means a specific civilian office or employment, whether occupied or vacant, in a department other than the
2 following: Offices or employments in the Postal Service; teachers, librarians, school attendance officers, and employees
3 of the community center department under the Board of Education of the District of Columbia; officers and members of
4 the Metropolitan police, the fire department of the District of Columbia, and the United States park police; and the
5 commissioned personnel of the Coast Guard, the public Health Service, and the Coast and Geodetic Survey.”
- 6 3. “employee”: “means any person temporarily or permanently in a position.”
- 7 4. “service”: “means the broadest division of related offices and employments.”

8 The above definition of “wages” is further restricted by the underlying regulations as follows:

9 [26 C.F.R. §31.3401\(a\)-3 Amounts deemed wages under voluntary withholding agreements](#)

10 *(a) In general. **Notwithstanding the exceptions to the definition of wages specified in section 3401(a) and the**
11 **regulations thereunder, the term “wages” includes the amounts described in paragraph (b)(1) of this section**
12 **with respect to which there is a voluntary withholding agreement in effect under section 3402(p).** References
13 in this chapter to the definition of wages contained in section 3401(a) shall be deemed to refer also to this section
14 (§31.3401(a)-3).*

15 The term “employer” is also defined in [26 U.S.C. §3401\(d\)](#) as someone who has “employees”. Therefore, under both the
16 Classification Act of 1923 and the definition of “employee” found in 26 C.F.R. §31.3401(c)-1, only “employees” working
17 for the United States government can earn “wages”, and even then, only when they have a voluntary withholding agreement
18 in place called a W-4.

19 [26 C.F.R. §31.3401\(c\)-1 Employee:](#)

20 *...the term [employee] includes officers and employees, whether elected or appointed, of the United States, a
21 [federal] State, Territory, Puerto Rico or any political subdivision, thereof, or the District of Columbia, or any
22 agency or instrumentality of any one or more of the foregoing. The term ‘employee’ also includes an officer of
23 a corporation.*

24 As a matter of fact, filling out and signing the W-4 under penalty of perjury, which is identified in the regulation 26 C.F.R.
25 §31.3401(a)-3 above as a “voluntary withholding agreement”, makes the signer into a federal “employee” and contractor.
26 Black’s Law Dictionary, Sixth Edition, in fact, defines an “agreement” as a “contract”:

27 ***Agreement.** A meeting of two or more minds; a coming together in opinion or determination; the coming together
28 in accord of two minds on a given proposition. In law, a concord of understanding and intention between two or
29 more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or
30 performances. The consent of two or more persons concurring respecting the transmission of some property,
31 right, or benefits, with the view of contracting an obligation, a mutual obligation.*

32 *A manifestation of mutual asset on the part of two or more persons as to the substance of a contract. Restatement,
33 Second, Contracts, §3.*

34 *Although often used as synonymous with “contract”, agreement is a broader term; e.g. an agreement might lack
35 an essential element of a contract. The bargain of the parties in fact as found in their language or by implication
36 from other circumstances including course of dealing or usage of trade or course of performance. U.C.C. §-
37 201(c); Uniform Consumer Credit Code, §1.301(3).
38 [Black’s Law Dictionary, Sixth Edition, p. 66]*

39 However, section 10 of the [Federal and State Tax Withholding Options for Private Employers](#) book
40 (<http://famguardian.org/Publications/FedStateWHTOptions/FedStateWHTOptions.pdf>) proves that private employers, which
41 are companies that don’t have federal workers, aren’t even allowed by law to act as “withholding agents” and that the IRS
42 website even admits that such private employers do not have to withhold:

43 [IRM 5.14.10.2 \(09-30-2004\)](#)
44 *Payroll Deduction Agreements*

45 *2. **Private employers, states, and political subdivisions are not required to enter into payroll deduction**
46 **agreements.** Taxpayers should determine whether their employers will accept and process executed agreements
47 before agreements are submitted for approval or finalized.*

48 [<http://www.irs.gov/irm/part5/ch13s10.html>]

1 Any private company, church, or other business entity that withholds against the wishes of the worker is setting themselves
2 up for a huge legal liability, because they essentially are stealing money and the IRS then is in receipt of stolen property in
3 violation of [18 U.S.C. §2315](#). The IRS is hoping you don't know this, and they will not admit it to you if you call them on
4 their 800 number. They will do this to maintain "plausible deniability" so that if something goes wrong and the private
5 employee sues, the private company has to accept all the legal liability. Pretty cute, huh?

6 **5 Withholding on Nonresident aliens**

7 Nonresident alien tax withholding is described in IRS Publication 515, available at:

8

Withholding of Tax on Nonresident Aliens and Foreign Corporations http://famguardian.org/TaxFreedom/Forms/IRS/IRSPub515.pdf

9 The IRS website contains propaganda intended to willfully deceive private employers in the states of the Union into
10 withholding earnings of nonresident aliens not engaged in a "trade or business" even though this is ILLEGAL at:

11

http://www.irs.gov/businesses/small/international/article/0,,id=104997,00.html

12 This propaganda advises "withholding agents" to withhold 30% of the payments made to nonresident aliens from "sources
13 within the United States" and to file an IRS Form 1042-S documenting the amount of earnings and withholding. The
14 information provided is deceptive and constructively fraudulent, because:

- 15 1. The term "U.S." means ONLY the District of Columbia in the Internal Revenue Code. See [26 U.S.C. §7701](#)(a)(9) and
16 (a)(10). They don't define this term anywhere on their website that we could find. I wonder why? This is the only
17 logical conclusion one can reach after reading the rulings of the Supreme Court on the issue of federal jurisdiction within
18 states of the Union such as the following:

19 *"It is no longer open to question that the general government, unlike the states, Hammer v. Dagenhart, 247 U.S.*
20 *251, 275, 38 S.Ct. 529, 3 A.L.R. 649, Ann.Cas.1918E 724, possesses no inherent power in respect of the*
21 ***internal** affairs of the states; and emphatically not with regard to legislation. [Carter v. Carter Coal Co.,*
22 *298 U.S. 238, 56 S.Ct. 855 (1936)]*

23
24 *"The difficulties arising out of our dual form of government and the opportunities for differing opinions*
25 *concerning the relative rights of state and national governments are many; **but for a very long time this court***
26 ***has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the states or their***
27 ***political subdivisions.** The same basic reasoning which leads to that conclusion, we think, requires like limitation*
28 *upon the power which springs from the bankruptcy clause. United States v. Butler, supra." [Ashton v. Cameron*
29 *County Water Improvement District No. 1, 298 U.S. 513; 56 S.Ct. 892 (1936)]*

- 30 2. The Internal Revenue Code is NOT positive law, but private law and religion which obligates no one in a state of the
31 Union to do anything who doesn't first volunteer to be subject to its provisions by signing a contract called a W-4 or an
32 SS-5. See our memorandum of law on this subject:

33

Requirement for Consent, Form #05.003 http://sedm.org/Forms/FormIndex.htm

- 34 3. Even if the Internal Revenue Code was positive law or public law, private employers in states of the Union are not subject
35 to federal jurisdiction and applying for an Employer Identification Number doesn't make them subject either.

36 [IRM 5.14.10.2 \(09-30-2004\)](#)
Payroll Deduction Agreements

37 *2. Private employers, states, and political subdivisions are not required to enter into payroll deduction*
38 *agreements. Taxpayers should determine whether their employers will accept and process executed agreements*
39 *before agreements are submitted for approval or finalized.*
40 *[http://www.irs.gov/irm/part5/ch14s10.html]*

- 41 4. Private employers exclusively within states of the Union are NOT the subject of the article, because they do not qualify
42 as "withholding agents" as we pointed out earlier in section 1.

1 5. The federal income tax described under Internal Revenue Code Subtitle A is measured by the receipt of “income” in
2 connection with a “trade or business”. This is the privileged activity being “taxed”, and it is an avoidable activity that
3 few private employees are engaged in, because they do not in deed and in fact hold a privileged “public office” as required
4 by [26 U.S.C. §7701\(a\)\(26\)](#).

5 The IRS website admits some of the truths above, but you really have to dig for it. In the International Taxpayer Glossary, it
6 says the following about withholding of those who have no income from the District of Columbia:

7 *Services performed outside the U.S*

8 *Compensation paid to a nonresident alien (other than a resident of Puerto Rico) for services performed outside*
9 *the United States [District of Columbia] is not considered wages and is not subject to graduated withholding or*
10 *30% withholding.*

11 *[SOURCE: <http://www.irs.gov/businesses/small/international/article/0,,id=96594,00.html>]*

12 IRS Publication 519, Year 2000 agrees with the above, by saying the following:

13 *Income Subject to Tax*

14 ***Income from sources outside the United States [which is defined as ONLY the District of Columbia in [26](#)***
15 ***[U.S.C. §7701\(a\)\(9\) and \(a\)\(10\)\] that is not effectively connected with a trade or business \[which is defined as a](#)***
16 ***“public office” in [26 U.S.C. §7701\(a\)\(26\)](#)] in the United States is not taxable if you receive it while you are a***
17 ***nonresident alien. The income is not taxable even if you earned it while you were a resident alien or if you became***
18 ***a resident alien or a U.S. citizen after receiving it and before the end of the year.***
19 ***[IRS Publication 519, Year 2000, p. 26]***

20 A person who meets the requirement above of being a nonresident alien with no income from the District of Columbia,
21 whether connected to a “trade or business” or not under [26 U.S.C. §871](#), is described in the regulations as follows, under [26](#)
22 C.F.R. §1.871-1(b)(i):

23 *Title 26: Internal Revenue*
24 ***[PART 1—INCOME TAXES](#)***
25 ***[nonresident alien individuals](#)***
26 ***[§ 1.871-1 Classification and manner of taxing alien individuals.](#)***

27 *(a) Classes of aliens.*

28 *For purposes of the income tax, alien individuals are divided generally into two classes, namely, resident aliens*
29 *and nonresident aliens. Resident alien individuals are, in general, taxable the same as citizens of the United*
30 *States; that is, a resident alien is taxable on income derived from all sources, including sources without the United*
31 *States. See §1.1-1(b). Nonresident alien individuals are taxable only on certain income from sources within the*
32 *United States and on the income described in section 864(c)(4) from sources without the United States which is*
33 *effectively connected for the taxable year with the conduct of a trade or business in the United States. However,*
34 *nonresident alien individuals may elect, under section 6013 (g) or (h), to be treated as U.S. residents for purposes*
35 *of determining their income tax liability under Chapters 1, 5, and 24 of the code. Accordingly, any reference in*
36 *§§1.1-1 through 1.1388-1 and §§1.1491-1 through 1.1494-1 of this part to non-resident alien individuals does*
37 *not include those with respect to whom an election under section 6013 (g) or (h) is in effect, unless otherwise*
38 *specifically provided. Similarly, any reference to resident aliens or U.S. residents includes those with respect to*
39 *whom an election is in effect, unless otherwise specifically provided.*

40 ***(b) Classes of nonresident aliens—(1) In general. For purposes of the income tax, nonresident alien***
41 ***individuals are divided into the following three classes:***

42 ***(i) Nonresident alien individuals who at no time during the taxable year are engaged in a trade or business in***
43 ***the United States.***

44 ***(ii) Nonresident alien individuals who at any time during the taxable year are, or are deemed under §1.871-9 to***
45 ***be, engaged in a trade or business in the United States, and***

46 ***(iii) Nonresident alien individuals who are bona fide residents of Puerto Rico during the entire taxable year.***

47 *An individual described in subdivision (i) or (ii) of this subparagraph is subject to tax pursuant to the provisions*
48 *of subpart A (section 871 and following), part II, subchapter N, chapter 1 of the Code, and the regulations*
49 *thereunder. See §§1.871-7 and 1.871-8. The provisions of subpart A do not apply to individuals described in*

subdivision (iii) of this subparagraph, but such individuals, except as provided in section 933 with respect to Puerto Rican source income, are subject to the tax imposed by section 1 or section 1201(b). See §1.876-1.

Some important things to note at this point are:

1. The only IRS Form that American Nationals who are nonresident aliens can use to stop withholding is an AMENDED version of the IRS Form W-8BEN without committing perjury under penalty of perjury.
2. The standard IRS Form W-8BEN provides no way to avoid disclosing the “Beneficial Owner” or to become a “Beneficial Owner”, even though there is no requirement in the Internal Revenue Code itself to do so. Older versions of the W-8 form did not require disclosing the Beneficial Owner.
3. The standard IRS Form W-8BEN does not provide a block to indicate which of the above three types of nonresident aliens the submitter is, and this determination is very important because it affects whether withholding is or is not necessary. Those who are not “effectively connected to a trade or business” mentioned in paragraph (b)(1) above and all of whose earnings originate outside of the District of Columbia would not need withholding. The IRS doesn’t want to provide a form for nonresident aliens that shows how they can avoid the requirement for withholding. This forces employers to have to read the publications to find out, which few will do, or call up the IRS to ask, in which case they are sure to get LIES. The reason they will get LIES is because the courts refuse to hold the IRS responsible for anything they say, print, or do. This is discussed at:
<http://famguardian.org/Subjects/Taxes/Articles/IRSNotResponsible.htm>

The combination of all the above factors combine to introduce just enough ambiguity and uncertainty and “cognitive dissonance” for private employers that they just roll over and screw their workers rather than obey what the law actually says. This also explains why, if you intend to use IRS Form W-8BEN form to stop withholding, you should use the AMENDED form we provide in order to avoid this trap and in order to avoid committing perjury under penalty of perjury on the form if you are NOT in fact a “Beneficial Owner”. The article below explains how to lawfully and truthfully and properly complete the IRS Form W-8BEN is:

[About IRS Form W-8BEN, Form #04.202](http://sedm.org/Forms/FormIndex.htm)
<http://sedm.org/Forms/FormIndex.htm>

Below are the withholding requirements applicable to nonresident aliens, right from the Internal Revenue Code and implementing regulations:

1. [26 C.F.R. §31.3401\(a\)\(6\)-1\(b\)](#) says that nonresident aliens whose earnings originate from outside the District of Columbia or which are not connected with a “[trade or business](#)” are not subject to withholding:

[Title 26](#)
[PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
[Subpart E—Collection of Income Tax at Source](#)
[§ 31.3401\(a\)\(6\)-1 Remuneration for services of nonresident alien individuals.](#)

(a) In general.

All remuneration paid after December 31, 1966, for services performed by a nonresident alien individual, **if such remuneration otherwise constitutes wages within the meaning of §31.3401(a)-1 and if such remuneration is effectively connected with the conduct of a trade or business within the United States, is subject to withholding under section 3402 unless excepted from wages under this section.** In regard to wages paid under this section after February 28, 1979, the term “nonresident alien individual” does not include a nonresident alien individual treated as a resident under section 6013 (g) or (h).

(b) Remuneration for services performed outside the United States.

Remuneration paid to a nonresident alien individual (other than a resident of Puerto Rico) for services performed outside the United States is excepted from wages and hence is not subject to withholding.

2. [26 U.S.C. §3401\(a\)\(6\): Definitions](#)

[TITLE 26 > Subtitle C > CHAPTER 24 > § 3401](#)
[§ 3401. Definitions](#)

1 (a) Wages

2 ***For purposes of this chapter, the term “wages” means all remuneration (other than fees paid to a public official)***
3 ***for services performed by an employee for his employer, including the cash value of all remuneration (including***
4 ***benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—***

5 ***(6) for such services, performed by a nonresident alien individual, as may be designated by regulations***
6 ***prescribed by the Secretary; or***

- 7 3. [26 U.S.C. §3406\(g\)](#) and [26 C.F.R. §31.3406\(g\)-1\(e\)](#) both say that foreign persons (which includes "nonresident aliens")
8 are not subject to backup withholding or information reporting

9 [TITLE 26 > Subtitle C > CHAPTER 24 > § 3406](#)
10 [§ 3406. Backup withholding](#)

11 (g) Exceptions

12 (1) Payments to certain payees Subsection (a) shall not apply to any payment made to— (A) any organization or
13 governmental unit described in subparagraph (B), (C), (D), (E), or (F) of [section 6049 \(b\)\(4\)](#), or (B) any other
14 person specified in regulations.

15 (2) Amounts for which withholding otherwise required Subsection (a) shall not apply to any amount for which
16 withholding is otherwise required by this title.

17
18 Title 26: Internal Revenue
19 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
20 [§ 31.3406\(g\)-1 Exception for payments to certain payees and certain other payments.](#)

21 (e) Certain reportable payments made outside the United States by foreign persons, foreign offices of United
22 States banks and brokers, and others. For reportable payments made after December 31, 2000, a payor is not
23 required to backup withhold under [section 3406](#) on a reportable payment that qualifies for the documentary
24 evidence rule described in [§1.6049-5\(c\)\(1\)](#) or (4) of this chapter, whether or not documentary evidence is actually
25 provided to the payor, unless the payor has actual knowledge that the payee is a United States person. Further,
26 no backup withholding is required for payments upon which a 30-percent amount was withheld by another payor
27 in accordance with the withholding provisions under chapter 3 of the Internal Revenue Code and the regulations
28 under that chapter. For rules applicable to notional principal contracts, see [§1.6041-1\(d\)\(5\)](#) of this chapter.

- 29 4. [26 C.F.R. §1.872-2\(f\): Exclusions from gross income of nonresident alien individuals](#)

30 Title 26: Internal Revenue
31 [PART 1—INCOME TAXES](#)
32 [nonresident alien individuals](#)

33 [§ 1.872-2 Exclusions from gross income of nonresident alien individuals.](#)

34 (f) *Other exclusions.*

35 ***Income which is from sources without [outside] the United States [District of Columbia, see 26 USC 7701(a)(9)***
36 ***and (a)(10)], as determined under the provisions of sections 861 through 863, and the regulations thereunder,***
37 ***is not included in the gross income of a nonresident alien individual unless such income is effectively***
38 ***connected for the taxable year with the conduct of a trade or business in the United States by that individual.***
39 *To determine specific exclusions in the case of other items which are from sources within the United States, see*
40 *the applicable sections of the Code. For special rules under a tax convention for determining the sources of*
41 *income and for excluding, from gross income, income from sources without the United States which is effectively*
42 *connected with the conduct of a trade or business in the United States, see the applicable tax convention. For*
43 *determining which income from sources without the United States is effectively connected with the conduct of a*
44 *trade or business in the United States, see section 864(c)(4) and §1.864-5.*

- 45 5. [26 C.F.R. §1.871-7\(a\)\(4\): Taxation of nonresident alien individuals not engaged in U.S. business](#)

46 Title 26: Internal Revenue
47 [PART 1—INCOME TAXES](#)
48 [nonresident alien individuals](#)

1 [§ 1.871-7 Taxation of nonresident alien individuals not engaged in U.S. business.](#)

2 (a) Imposition of tax

3 (4) Except as provided in §§1.871-9 and 1.871-10, **a nonresident alien individual not engaged in trade or**
4 **business in the United States during the taxable year has no income, gain, or loss for the taxable year which**
5 **is effectively connected for the taxable year with the conduct of a trade or business in the United States.** See
6 section 864(c)(1)(B) and §1.864-3.

7 6. [26 U.S.C. §7701\(a\)\(31\): Definitions](#)

8 [TITLE 26 > Subtitle F > CHAPTER 79 > § 7701](#)
9 [§ 7701. Definitions](#)

10 (31) Foreign estate or trust

11 (A) Foreign estate

12 The term "foreign estate" means an estate the income of which, from sources without the United States which is
13 not effectively connected with the conduct of a trade or business within the United States, is not includible in
14 gross income under subtitle A.

15 7. [26 U.S.C. §861\(a\)\(3\)\(C\)\(ii\)](#) says that "nonresident aliens", even if they work in the District of Columbia, do not earn
16 income from sources within the "United States", if they are not engaged in a "trade or business"

17 [TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter N > PART I > § 861](#)
18 [§ 861. Income from sources within the United States](#)

19 (a) **Gross income from sources within United States**

20 The following items of gross income shall be treated as income from sources within the United States:

21 (3) **Personal services**

22 Compensation for labor or personal services performed in the United States; **except that compensation for labor**
23 **or services performed in the United States shall not be deemed to be income from sources within the United**
24 **States if—**

25 **(C) the compensation is for labor or services performed as an employee of or under a contract with—**

26 **(i) a nonresident alien, foreign partnership, or foreign corporation, not engaged in [trade or business](#) within**
27 **the United States, or**

28 **(ii) an individual who is a citizen or resident of the United States, a domestic partnership, or a domestic**
29 **corporation, if such labor or services are performed for an office or place of business maintained in a foreign**
30 **country or in a possession of the United States by such individual, partnership, or corporation.**

31 8. [26 U.S.C. §3401\(a\)](#) says that "nonresident aliens" don't earn "[wages](#)" and are therefore not subject to W-2 reporting:

32 [TITLE 26 > Subtitle C > CHAPTER 24 > § 3401](#)
33 [§ 3401. Definitions](#)

34 (a) For the purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public
35 official) for services performed by an employee [an elected or appointed public official] to his employer...**except**
36 **that such term shall not include remuneration for:**

37 **(6) such services, performed by a nonresident alien individual.**

38 9. [26 U.S.C. §1402\(b\)](#) says that "nonresident aliens" don't earn "self employment income":

39 [TITLE 26 > Subtitle A > CHAPTER 2 > § 1402](#)
40 [§ 1402. Definitions](#)

41 (b) **Self-employment income**

1 The term "self-employment income" means the net earnings from self-employment derived by an individual
2 (**other than a nonresident alien individual**, except as provided by an agreement under [section 233 of the Social](#)
3 [Security Act](#)) during any taxable year; except that such term shall not include—

4 10. [IRS Publication 515, entitled "Withholding of tax on Nonresident Aliens and Foreign Entities", year 2000](#), says on p. 3
5 the following:

6 "Foreign persons who provide Form W-8BEN, Form W-8ECI, or Form W-8EXP (or applicable documentary
7 evidence) are exempt from backup withholding and Form 1099 reporting."

8 11. [26 U.S.C. §7701\(a\)\(31\): Definitions](#)

9 [TITLE 26 > Subtitle F > CHAPTER 79 > § 7701](#)
10 [§ 7701. Definitions](#)

11 (31) Foreign estate or trust

12 (A) Foreign estate

13 The term "foreign estate" means an estate the income of which, from sources without the United States which is
14 not effectively connected with the conduct of a trade or business within the United States, is not includible in
15 gross income under subtitle A.

16 12. [Federal Thrift Savings Plan \(TSP\) retirement system pamphlet OC-96-21](#) says:

17 **3. How much tax will be withheld on payments from the TSP?**

18 The amount withheld depends upon your status, as described below. Participant. **If you are a nonresident alien,**
19 **your payment will not be subject to withholding for U.S. income taxes. (See Question 2.)** If you are a U.S. citizen
20 or a resident alien, your payment will be subject to withholding for U.S. income taxes. If you are a U.S. citizen or
21 resident alien when you separate, you will receive from your employing agency the tax notice "Important Tax
22 Information About Payments From Your TSP Account," which explains the withholding rules that apply to your
23 various withdrawal options.

24 [TSP Pamphlet OC-96-21, <http://tsp.gov/forms/index.html>, p. 3]

25
26 Tax Treatment of TSP Payments:

27 [. . .]

- 28 • A **nonresident alien participant** who never worked for the U.S. Government in the United States will
29 not be liable for U.S. income tax.
- 30 • A **nonresident alien beneficiary of a nonresident alien participant** will not be liable for U.S. income
31 tax if the participant never worked for the U.S. Government in the United States

32 [TSP Pamphlet OC-96-21, <http://tsp.gov/forms/index.html>, p. 2. Keep in mind that "United States" above is
33 defined as the "District of Columbia" and "worked for the U.S. government" is defined as a "[trade or business](#)"
34 in [26 U.S.C. 7701\(a\)\(26\)](#), which is then described as "the functions of a public office"]

35 Beyond the above list, there is very little else that a private employer needs to know about withholding on nonresident aliens.
36 The above firmly establishes that nonresident aliens with no income from the District of Columbia:

- 37 1. Are "nontaxpayers".
- 38 2. Do not need an identifying number.
- 39 3. Do not need any withholding.
- 40 4. Do not need any earnings reported. Only earnings from the District of Columbia must be reported.

41 **6 The W-4 Form**

42 We'll start off this section with a little history regarding the W-4. Few people realize what the "W" in the form number
43 means. It stands for "WAR". The IRS Form W-4 was first introduced as a method of voluntary withholding to fund the

1 Second World War. It was part of a voluntary program called the “Victory Tax”, which was first introduced in 1942. The
2 number “4” actually means “FOR”. If you reverse the characters, and substitute the meaning of each, you get “FOR WAR”.
3 After World War II ended, our government just conveniently decided to have people continue participating. Every expansion
4 of the federal tax system has occurred as an expediency to fund a large scale war. The first federal income tax was passed in
5 1862 to fund the Civil War and later repealed in 1872. The second income tax, began in 1942 as the Victory Tax, just
6 continued indefinitely after the war. It is still a voluntary donation program, but our federal government, unlike the first
7 income tax, conveniently refuses to admit that it is voluntary or how to unvolunteer, and goes after people who remind the
8 public that it is voluntary.

9 If you go to the website called “Tax History”, there is a graph which shows that a very tiny percentage of Americans paid
10 federal income tax before 1942.

11 <http://taxhistory.com/>

12 When the Victory Tax was instituted in 1942, the growth in those participating was exponential, because it was considered a
13 patriotic duty to contribute to winning the war.

14 In the current Internal Revenue Code and Treasury Regulations, the IRS Form W-4 is called a “voluntary withholding
15 agreement”. Below is an example from [26 U.S.C. §3402\(p\)](#):

16 [TITLE 26 > Subtitle C > CHAPTER 24 > § 3402](#)
17 [§ 3402. Income tax collected at source](#)

18 **(p) Voluntary withholding agreements**

19 **(I) Certain Federal payments**

20 **(A) In general**

21 *If, at the time a specified Federal payment is made to any person, a request by such person is in effect*
22 *that such payment be subject to withholding under this chapter, then for purposes of this chapter and*
23 *so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment*
24 *of wages by an employer to an employee.*

25 **(B) Amount withheld**

26 *The amount to be deducted and withheld under this chapter from any payment to which any request*
27 *under subparagraph (A) applies shall be an amount equal to the percentage of such payment specified*
28 *in such request. Such a request shall apply to any payment only if the percentage specified is 7 percent,*
29 *any percentage applicable to any of the 3 lowest income brackets in the table under section [1 \(c\)](#), or*
30 *such other percentage as is permitted under regulations prescribed by the Secretary.*

31 **(C) Specified Federal payments**

32 *For purposes of this paragraph, the term “specified Federal payment” means—*

33 **(i)** *any payment of a social security benefit (as defined in section [86 \(d\)](#)),*

34 **(ii)** *any payment referred to in the second sentence of section [451 \(d\)](#) which is treated as insurance*
35 *proceeds,*

36 **(iii)** *any amount which is includible in gross income under section [77 \(a\)](#), and*

37 **(iv)** *any other payment made pursuant to Federal law which is specified by the Secretary for purposes*
38 *of this paragraph.*

39 **(D) Requests for withholding**

40 *Rules similar to the rules that apply to annuities under subsection (o)(4) shall apply to requests under*
41 *this paragraph and paragraph (2).*

42 **(2) Voluntary withholding on unemployment benefits**

1 If, at the time a payment of unemployment compensation (as defined in section 85 (b)) is made to any person, a
2 request by such person is in effect that such payment be subject to withholding under this chapter, then for
3 purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if
4 it were a payment of wages by an employer to an employee. The amount to be deducted and withheld under this
5 chapter from any payment to which any request under this paragraph applies shall be an amount equal to 10
6 percent of such payment.

7 (3) Authority for other voluntary withholding

8 The Secretary is authorized by regulations to provide for withholding—

9 (A) from remuneration for services performed by an employee for the employee's employer which
10 (without regard to this paragraph) does not constitute wages, and

11 (B) from any other type of payment with respect to which the Secretary finds that withholding would
12 be appropriate under the provisions of this chapter,

13 if the employer and employee, or the person making and the person receiving such other type of
14 payment, agree to such withholding. Such agreement shall be in such form and manner as the
15 Secretary may by regulations prescribe. For purposes of this chapter (and so much of subtitle F as
16 relates to this chapter), remuneration or other payments with respect to which such agreement is made
17 shall be treated as if they were wages paid by an employer to an employee to the extent that such
18 remuneration is paid or other payments are made during the period for which the agreement is in
19 effect.

20 The W-4 form is also called a “withholding exemption certificate” in the regulations because it serves a dual purpose:

21 Title 26: Internal Revenue
22 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
23 [Subpart E—Collection of Income Tax at Source](#)
24 [§ 31.3402\(f\)\(2\)-1 Withholding exemption certificates.](#)

25 (a) On commencement of employment.

26 On or before the date on which an individual commences employment with an employer, the individual shall
27 furnish the employer with a signed withholding exemption certificate relating to his marital status and the number
28 of withholding exemptions which he claims, which number shall in no event exceed the number to which he is
29 entitled, or, if the statements described in §31.3402(n)-1 are true with respect to an individual, he may furnish
30 his employer with a signed withholding exemption certificate which contains such statements. For form and
31 contents of such certificates, see §31.3402(f)(5)-1. The employer is required to request a withholding exemption
32 certificate from each employee, but if the employee fails to furnish such certificate, such employee shall be
33 considered as a single person claiming no withholding exemptions.

34 The IRS Form W-4 itself is somewhat deceptive. For instance:

- 35 1. Even though [26 U.S.C. §3402\(p\)](#) and the regulation 26 C.F.R. §31.3401(a)-3 identify it as a “voluntary withholding
36 agreement”, the form itself says nothing about the fact that it is either an “agreement” or that it is “voluntary”. The
37 reason the form doesn't say that is the IRS doesn't want you to know that they need your permission or consent to
38 withhold, so they add an extra level of indirection which deceives most private companies into withholding against the
39 wishes of their workers.

40 [26 C.F.R. §31.3401\(a\)-3 Amounts deemed wages under voluntary withholding agreements](#)

41 (a) In general.

42 Notwithstanding the exceptions to the definition of wages specified in section 3401(a) and the
43 regulations thereunder, the term “wages” includes the amounts described in paragraph (b)(1) of this
44 section with respect to which there is a voluntary withholding agreement in effect under section
45 3402(p). References in this chapter to the definition of wages contained in section 3401(a) shall be
46 deemed to refer also to this section (§31.3401(a)-3).

47 (b) Remuneration for services.

48 (1) Except as provided in subparagraph (2) of this paragraph, the amounts referred to in paragraph (a)
49 of this section include any remuneration for services performed by an employee for an employer which,

1 without regard to this section, does not constitute wages under section 3401(a). For example,
2 remuneration for services performed by an agricultural worker or a domestic worker in a private home
3 (amounts which are specifically excluded from the definition of wages by section 3401(a) (2) and (3),
4 respectively) are amounts with respect to which a voluntary withholding agreement may be entered into
5 under section 3402(p). See §§31.3401(c)-1 and 31.3401(d)-1 for the definitions of “employee” and
6 “employer”.

7 For those who don’t otherwise earn “wages” as legally defined in [26 U.S.C. §3401\(a\)](#), the W-4 for them becomes an
8 “election” in which the submitter basically elects themselves into “public office” and agrees to become “effectively
9 connected with a trade or business”. [26 U.S.C. §7701\(a\)\(26\)](#) defines a “trade or business” as a “public office”. Uncle
10 Sam is delighted when people join their socialist cult and has a cage reserved and waiting on the federal plantation for
11 such “volunteers”.

- 12 2. The upper left corner of the form says “Employee Withholding Allowance Certificate”. This means that only
13 “employees” can fill it out, which are then defined in 26 C.F.R. §31.3401(c)-1 as federal employees. If you aren’t a
14 federal employee but fill out the form anyway, then you are in effect giving the federal government permission to treat
15 you as a federal “employee”.
- 16 3. The form is very small, and leaves no room to indicate the existence of duress, to qualify the language, or to add
17 explanatory information. This is because the IRS simply doesn’t want to be notified that it is receiving what amounts to
18 stolen property in violation of [18 U.S.C. §2315](#) if the worker did not explicitly consent to the withholding by voluntarily
19 signing a W-4. If the IRS were concerned about honoring the requirement for consent, as they should be, then they
20 would provide a block on the form to indicate the presence of duress or extortion and would advise private employers
21 not to withhold against the wishes of the worker.

22 A sample W-4 form is available at the link below:

23 http://famguardian.org/TaxFreedom/Forms/IRS/IRSFormw4_01.pdf

24 An IRS Form W-4, whether used as a “voluntary withholding agreement” or a “withholding exemption certificate”, remains
25 in effect until withdrawn by the original submitter.

26 *Title 26: Internal Revenue*

27 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)

28 [Subpart E—Collection of Income Tax at Source](#)

29 [§ 31.3402\(f\)\(4\)-1 Period during which withholding exemption certificate remains in effect.](#)

30 *(a) In general. Except as provided in paragraphs (b) and (c) of this section, a withholding exemption certificate*
31 *which takes effect under section 3402(f) of the Internal Revenue Code of 1954, or which on December 31, 1954,*
32 *was in effect under section 1622(h) of the Internal Revenue Code of 1939, shall continue in effect with respect to*
33 *the employee until another withholding exemption certificate takes effect under section 3402(f). Paragraphs (b)*
34 *and (c) of this section are applicable only for withholding exemption certificates furnished by the employee to the*
35 *employer before January 1, 1982. See §31.3402(f)(4)-2 for the rules applicable to withholding exemption*
36 *certificates furnished by the employee to the employer after December 31, 1981.*

37 The reason the form must remain in effect until revoked is that if they didn’t do it this way, the person submitting it wouldn’t
38 qualify as a “public officer” per the definition of “public officer”. Notice the legal definition below contains the phrase
39 “Position must have some permanency”.

40 *“Essential characteristics of a ‘public office’ are:*

41 *(1) Authority conferred by law,*

42 *(2) Fixed tenure of office, and*

43 *(3) Power to exercise some of the sovereign functions of government.*

44
45 *Key element of such test is that “officer is carrying out a sovereign function. Spring v. Constantino, 168 Conn.*
46 *563, 362 A.2d 871, 875. Essential elements to establish public position as ‘public office’ are:*

47 *Position must be created by Constitution, legislature, or through authority conferred by legislature.*

48 *Portion of sovereign power of government must be delegated to position,*

49 *Duties and powers must be defined, directly or implied, by legislature or through legislative authority.*

50 *Duties must be performed independently without control of superior power other than law, and*

51 ***Position must have some permanency.”***

52 *[Black’s Law Dictionary, Sixth Edition, p. 1230]*

1 A federal “employee” who has no income tax liability is described in [26 U.S.C. §3402\(n\)](#) and [26 C.F.R. §31.3402\(n\)-1](#). This
2 person uses the W-4 as an Exempt form to stop withholding:

3 *Title 26: Internal Revenue*
4 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
5 [Subpart E—Collection of Income Tax at Source](#)
6 [§ 31.3402\(n\)-1 Employees incurring no income tax liability.](#)

7 *Notwithstanding any other provision of this subpart, an employer shall not deduct and withhold any tax under*
8 *chapter 24 upon a payment of wages made to an employee after April 30, 1970, if there is in effect with respect*
9 *to the payment a withholding exemption certificate furnished to the employer by the employee which contains*
10 *statements that—*

11 *(a) The employee incurred no liability for income tax imposed under subtitle A of the Code for his preceding*
12 *taxable year; and*

13 *(b) The employee anticipates that he will incur no liability for income tax imposed by subtitle A for his current*
14 *taxable year.*

15 *For purposes of section 3402(n) and this section, an employee is not considered to incur liability for income tax*
16 *imposed under subtitle A if the amount of such tax is equal to or less than the total amount of credits against such*
17 *tax which are allowable to him under part iv of subchapter A of chapter 1 of the Code, other than those allowable*
18 *under section 31 or 39. For purposes of section 3402(n) and this section, “liability for income tax imposed under*
19 *subtitle A” shall include liability for a qualified State individual income tax which is treated pursuant to section*
20 *6361(a) as if it were imposed by chapter 1 of the Code. An employee is not considered to incur liability for such*
21 *a State income tax if the amount of such tax does not exceed the total amount of the credit against such tax which*
22 *is allowable to him under section 6362(b)(2) (B) or (C) or section 6362(c)(4). For purposes of this section, an*
23 *employee who files a joint return under section 6013 is considered to incur liability for any tax shown on such*
24 *return. An employee who is entitled to file a joint return under such section shall not certify that he anticipates*
25 *that he will incur no liability for income tax imposed by subtitle A for his current taxable year if such statement*
26 *would not be true in the event that he files a joint return for such year, unless he filed a separate return for his*
27 *preceding taxable year and anticipates that he will file a separate return for his current taxable year.*

28 *For rules relating to invalid withholding exemption certificates, see §31.3402(f)(2)–1(e), and for rules relating*
29 *to submission to the Internal Revenue Service of withholding exemption certificates claiming a complete*
30 *exemption from withholding, see §31.3402(f)(2)–1(g).*

31 On the other hand, a person who is a private worker associated with a private company and *not* a federal “employee” or
32 federal “public officer”, can and should use either an Affidavit of their Status or an AMENDED IRS Form W-8BEN to
33 control and stop his withholding, because in most cases he:

- 34 1. Is not an “employee” as defined in the Internal Revenue Code, [26 U.S.C. §3401\(c\)](#)) and the regulations thereunder at [26](#)
35 [C.F.R. §31.3401\(c\)-1](#).
- 36 2. Is a nonresident alien under [26 U.S.C. §7701\(b\)\(1\)\(B\)](#).
- 37 3. Does not qualify as a “resident alien” as defined in [26 U.S.C. §7701\(b\)\(1\)\(A\)](#), and therefore by default, he is a nonresident
38 alien of the [federal] United States.
- 39 4. Is a “national” but not a “citizen” under federal law. See:
40 <http://famguardian.org/Subjects/LawAndGovt/Citizenship/WhyANational.pdf>

41 A person domiciled in a state of the Union who is not a federal “employee” and who does not hold a “public office” cannot
42 submit a W-4 without committing perjury under penalty of perjury, in fact. For examples of how to accurately describe your
43 status to private employers and stop withholding WITHOUT submitting an IRS Form W-4 that you know would be FALSE
44 because you are not a “public official”, see the following:

- 45 1. *About IRS Form W-8BEN*, Form #04.202:
46 <http://sedm.org/Forms/FormIndex.htm>
- 47 2. *Affidavit of Citizenship, Domicile, and Tax Status*, Form #02.001
48 <http://sedm.org/Forms/FormIndex.htm>

49 Lastly, we emphasize that a person can, by using the above forms, be “exempt” from withholding and income taxes while at
50 the same time NOT satisfy the definition of either an “individual” or an “exempt individual” as defined in 26 U.S.C.

1 §7701(b)(5). You may want to emphasize that you are neither of these types of entities in the withholding paperwork you
2 submit in order to avoid any IRS penalties. This is covered in more depth later in section 11.

3 **7 What to expect if you call up the IRS to ask them what to do**

4 If you do call up the IRS to ask them about any of the issues in this chapter on withholding, usually the only thing they can
5 do to defend why they are illegally administering the Internal Revenue Code is try to deceive you using “words of art” and
6 the word “includes” as found in some of the definitions of key words. They will try to make you falsely believe essentially
7 that the word allows them to expand the definition of any word to mean what they want it to mean, rather than what the
8 Internal Revenue Code clearly says. Just point out to them that they are lying and point them at the article below:

Meaning of the Words “Includes” and “Including”, Form #05.014
<http://sedm.org/Forms/FormIndex.htm>

9 The above pamphlet thoroughly proves that:

- 10 1. The purpose for providing a definition of a term in law is to replace, not extend, the commonly understood definition of
11 the word.
- 12 2. When “includes” is used as a word of enlargement within any definition, the definition is extended elsewhere in the code
13 to add those additional things or classes of things that are to be included.

14 [Treasury Decision 3980, Vol. 29, January-December, 1927, pgs. 64 and 65](#)

15 “(1) To comprise, comprehend, or embrace...(2) To enclose within; contain; confine...But granting that the
16 word ‘including’ is a term of enlargement, it is clear that it only performs that office by introducing the specific
17 elements constituting the enlargement. It thus, and thus only, enlarges the otherwise more limited, preceding
18 general language...The word ‘including’ is obviously used in the sense of its synonyms, comprising,
19 comprehending; embracing.”
20 [SOURCE: <http://famguardian.org/TaxFreedom/CitesByTopic/includes-TD3980.pdf>]

- 21 3. Under the rules of statutory construction, that which is not explicitly included somewhere in the law may safely be
22 presumed to be excluded.

23 “*Expressio unius est exclusio alterius*. A maxim of statutory interpretation meaning that **the expression of one**
24 **thing is the exclusion of another**. *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325; *Newblock v. Bowles*,
25 170 Okl. 487, 40 P.2d. 1097, 1100. **Mention of one thing implies exclusion of another. When certain persons or**
26 **things are specified in a law, contract, or will, an intention to exclude all others from its operation may be**
27 **inferred. Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects**
28 **of a certain provision, other exceptions or effects are excluded.**”
29 [Black’s Law Dictionary, Sixth Edition, p. 581]

- 30 4. The definition of “includes” found in [26 U.S.C. §7701\(c\)](#) does not allow the definitions of words to be expanded using
31 “presumption” to mean whatever the reader or the IRS wants. This abuse of the word would create what is called a
32 “statutory presumption”, and the U.S. Supreme Court has repeatedly said that statutory presumptions are unconstitutional
33 if they prejudice Constitutional rights.

34 Therefore, if the IRS pulls the “includes” deception, simply ask them to show you specifically where in the code is included
35 that which they want to include in the definition. We’ll give you a hint: No IRS employee we have ever met or heard of,
36 including Department of Justice employees, can justify their enlargement of a definition by reconciling it with the rules of
37 statutory construction or without violating Constitutional due process, which requires the complete absence of presumption
38 from all legal proceedings.

39 **8 Involuntary withholding ONLY applies to federal workers**

40 We showed earlier in section 1 that the W-4 is identified in 26 C.F.R. §31.3401(a)-3(a) as a “voluntary withholding
41 agreement”, which essentially is a contract. Because Article 1, Section 10 of the Constitution guarantees us an inalienable
42 right to contract, it also gives us a right, by implication NOT to contract, including the right to not sign such an agreement.

43 *United States Constitution*

1 [Article 1, Section 10](#)

2 *No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin*
3 *Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any*
4 *Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.*

5 26 C.F.R. §31.3402(f)(2)-1 prescribes what “employers” should do in the case of hiring a new “employee”. It says:

6 *Title 26: Internal Revenue*
7 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
8 [Subpart E—Collection of Income Tax at Source](#)
9 [§ 31.3402\(f\)\(2\)-1 Withholding exemption certificates.](#)

10 (a) *On commencement of employment.*

11 *On or before the date on which an individual commences employment with an employer, the individual shall*
12 *furnish the employer with a signed withholding exemption certificate relating to his marital status and the number*
13 *of withholding exemptions which he claims, which number shall in no event exceed the number to which he is*
14 *entitled, or, if the statements described in §31.3402(n)-1 are true with respect to an individual, he may furnish*
15 *his employer with a signed withholding exemption certificate which contains such statements. For form and*
16 *contents of such certificates, see §31.3402(f)(5)-1. **The employer is required to request a withholding exemption***
17 ***certificate from each employee, but if the employee fails to furnish such certificate, such employee shall be***
18 ***considered as a single person claiming no withholding exemptions.***

19 The key for the above regulation is that the person must be an “employee”, which is defined in 26 C.F.R. §31.3402(c)-1 as:

20 [26 C.F.R. §31.3401\(c\)-1 Employee:](#)

21 *...the term [employee] includes officers and employees, whether elected or appointed, of the United States, a*
22 *[federal] State, Territory, Puerto Rico or any political subdivision, thereof, or the District of Columbia, or any*
23 *agency or instrumentality of any one or more of the foregoing. The term 'employee' also includes an **officer of***
24 ***a corporation.***

25 The implication of the above is that if you aren’t a federal employee, then you aren’t subject to the requirement to withhold
26 against your will or to withhold at single with zero exemptions if you refuse to submit the W-4 to the federal agency you go
27 to work for. If you are a private worker not working for a federal agency, on the other hand, then:

- 28 1. It is a violation of the Fifth Amendment for a private company to deprive you of your earnings without your consent.
29 That amendment says that no person shall be deprived of property without just compensation.

30 *“Every man has a natural right to the fruits of his own labor, is generally admitted; and **no other person can***
31 ***rightfully deprive him of those fruits, and appropriate them against his will...**”*
32 *[The Antelope, 23 U.S. 66; 10 Wheat 66; 6 L.Ed. 268 (1825)]*

- 33 2. The burden of proof falls upon the private company to prove that you are a federal worker if they insist on withholding
34 against a private, non-federal worker who does not consent. This is the point that most workers miss when private
35 companies try to force them to withhold.
36 3. Even if the private company can prove that you are a federal worker, you still cannot be required to withhold if you have
37 no federal tax liability under Subtitle A.

38 *Title 26: Internal Revenue*
39 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
40 [Subpart E—Collection of Income Tax at Source](#)
41 [§ 31.3402\(p\)-1 Voluntary withholding agreements.](#)

42 (a) *In general.*

43 *An employee and his employer may enter into an agreement under section 3402(b) to provide for the withholding*
44 *of income tax upon payments of amounts described in paragraph (b)(1) of §31.3401(a)-3, made after December*
45 *31, 1970. **An agreement may be entered into under this section only with respect to amounts which are***
46 ***included in the gross income of the employee under section 61, and must be applicable to all such amounts***
47 ***paid by the employer to the employee.** The amount to be withheld pursuant to an agreement under section 3402(p)*
48 *shall be determined under the rules contained in section 3402 and the regulations thereunder. See §31.3405(c)-*

1 *1, Q&A-3 concerning agreements to have more than 20-percent Federal income tax withheld from eligible*
2 *rollover distributions within the meaning of section 402.*

3 Therefore, the burden of proving that you have a federal tax liability under Internal Revenue Code, Subtitle A also falls
4 on the private company who insists on withholding against your will. If you are a private worker in search of some
5 ammunition to show a private employer who insists that you are “liable” under subtitle A, use the questionnaire below
6 and demand that the private employer rebut it

Test for Federal Tax Professionals, Form #03.009
<http://sedm.org/Forms/FormIndex.htm>

7 We haven’t yet found even one private company that can justify withholding after thoughtfully and carefully answering
8 those questions based on the content of either this book or enacted federal law on the income tax.

- 9 4. Ignorance of the law on the part of the private company is NO EXCUSE to basically STEAL people’s earnings.
10 5. Private companies in the states who withhold against the wishes of the workers subject themselves to considerable legal
11 liability, which neither the IRS nor the government will help compensate companies for.
12 6. A private worker who does not consent to withholding earns no “wages”, as defined in 26 C.F.R. §31.3401(a)-3(a)
13 because he did not consent. Therefore, withholding may be instituted and W-2’s may be produced, but the “wages”
14 block on the form must indicate “zero” because the person earns no “wages”. This allows an ignorant private company
15 to satisfy the requirement to withhold, but the withholding will be on an amount of “wages” that is in fact zero.

16 Any private company, supervisor, human resource person, or other business entity that compels anyone other than a federal
17 “employee” to enter into a contract, whether it be a W-4 contract or otherwise, that they don’t consent to, and especially if
18 they do so under threat of duress, failure to hire, or threat to fire if the worker doesn’t comply, is engaged in racketeering. If
19 the duress crosses state lines, then it comes under federal jurisdiction and violates 18 U.S.C. §1951:

20 [TITLE 18](#) > [PART 1](#) > [CHAPTER 95](#) > § 1951
21 [§1951. Interference with commerce by threats or violence](#)

22 **(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or**
23 **commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens**
24 **physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of**
25 **this section shall be fined under this title or imprisoned not more than twenty years, or both.**

26 **(b) As used in this section—**

27 **(1) The term “robbery” means the unlawful taking or obtaining of personal property from the person or in the**
28 **presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury,**
29 **immediate or future, to his person or property, or property in his custody or possession, or the person or property**
30 **of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.**

31 **(2) The term “extortion” means the obtaining of property from another, with his consent, induced by wrongful**
32 **use of actual or threatened force, violence, or fear, or under color of official right.**

33 **(3) The term “commerce” means commerce within the District of Columbia, or any Territory or Possession of**
34 **the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia**
35 **and any point outside thereof; all commerce between points within the same State through any place outside such**
36 **State; and all other commerce over which the United States has jurisdiction.**

37 **(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115,**
38 **151–166 of Title 29 or sections 151–188 of Title 45.**

39 Workers who are instituting or changing withholding with their companies are strongly urged to designate a neutral, non-
40 relative third party to submit all withholding paperwork to their companies for them and to receive all communication and
41 correspondence relating to it on behalf of the worker. That way, they will have to litigate, lots of evidence will be available
42 to base the litigation on, because the designated intermediary can sign an affidavit attesting to what was said and done, and
43 can also be called as a witness if the private company fires the worker. Workers who have been compelled in this way are
44 also informed that it is probably a good idea to correct the erroneous W-2 reports coming from the coercive private company
45 using the free instructions available at:

[Correcting Erroneous IRS Form W-2’s, Form #04.006](#)

1 The U.S. Dept. of Treasury Regulations also indicate that “employers” are indemnified of liability under federal law ONLY
2 if they wrongfully withhold or do so in a way that is not strictly consistent with what the Internal Revenue Code itself says:

3 [26 C.F.R. 1.1461-1: Payment and returns of tax withheld](#)

4 (e) Indemnification of withholding agent.

5 *A withholding agent is indemnified against the claims and demands of any person for the amount of any tax it*
6 *deducts and withholds in accordance with the provisions of chapter 3 of the Code and the regulations under that*
7 *chapter. A withholding agent that withholds based on a reasonable belief that such withholding is required under*
8 *chapter 3 of the Code and the regulations under that chapter is treated for purposes of section 1461 and this*
9 *paragraph (e) as having withheld tax in accordance with the provisions of chapter 3 of the Code and the*
10 *regulations under that chapter. In addition, a withholding agent is indemnified against the claims and demands*
11 *of any person for the amount of any payments made in accordance with the grace period provisions set forth in*
12 *Sec. 1.1441-1(b)(3)(iv). This paragraph (e) does not apply to relieve a withholding agent from tax liability under*
13 *chapter 3 of the Code or the regulations under that chapter.*

14 HOWEVER, private employers should also be aware that:

- 15 1. The above does *not* indemnify them under state law for wrongful withholding.
16 2. Federal law does not apply in other than a federal employment workplace or on federal land or in federal court, as
17 discussed earlier.

18 *“It is no longer open to question that the general government, unlike the states, [Hammer v. Dagenhart](#), [247](#)*
19 *[U.S. 251, 275](#), [38 S.Ct. 529](#), [3 A.L.R. 649](#), [Ann.Cas.1918E 724](#), possesses no inherent power in respect of the*
20 *[internal affairs of the states](#); and emphatically not with regard to legislation. The question in respect of the*
21 *inherent power of that government as to the external affairs of the Nation and in the field of international law is*
22 *a wholly different matter which it is not necessary now to consider. See, however, [Jones v. United States](#), [137](#)*
23 *[U.S. 202, 212](#), [11 S.Ct. 80](#); [Nishimur Ekiu v. United States](#), [142 U.S. 651, 659](#), [12 S.Ct. 336](#); [Fong Yue Ting v.](#)*
24 *[United States](#), [149 U.S. 698](#), [705 et seq.](#), [13 S.Ct. 1016](#); [Burnet v. Brooks](#), [288 U.S. 378, 396](#), [53 S.Ct. 457](#), [86](#)*
25 *A.L.R. 747.”*
26 *[[Carter v. Carter Coal Co.](#), [298 U.S. 238](#) (1936)]*

27 **9 “Employer” Liability and Failure to Withhold**

28 Failure to withhold is addressed in 26 C.F.R. §31.3401(d) -1

29 Title 26: Internal Revenue
30 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
31 [Subpart E—Collection of Income Tax at Source](#)
32 [§ 31.3402\(d\)-1 Failure to withhold.](#)

33 *If the employer in violation of the provisions of section 3402 fails to deduct and withhold the tax, and thereafter*
34 *the income tax against which the tax under section 3402 may be credited is paid, the tax under section 3402 shall*
35 *not be collected from the employer. Such payment does not, however, operate to relieve the employer from liability*
36 *for penalties or additions to the tax applicable in respect of such failure to deduct and withhold. The employer*
37 *will not be relieved of his liability for payment of the tax required to be withheld unless he can show that the tax*
38 *against which the tax under section 3402 may be credited has been paid. See §31.3403-1, relating to liability for*
39 *tax.*

40 Employer liability for tax is also described below:

41 Title 26: Internal Revenue
42 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
43 [Subpart E—Collection of Income Tax at Source](#)
44 [§ 31.3403-1 Liability for tax.](#)

45 *Every employer required to deduct and withhold the tax under section 3402 from the wages of an employee is*
46 *liable for the payment of such tax whether or not it is collected from the employee by the employer. If, for example,*
47 *the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is*
48 *nevertheless liable for the correct amount of the tax. See, however, §31.3402(d)-1. The employer is relieved of*

1 liability to any other person for the amount of any such tax withheld and paid to the district director or deposited
2 with a duly designated depository of the United States.
3

4 Title 26: Internal Revenue

5 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
6 [Subpart B—Federal Insurance Contributions Act \(Chapter 21, Internal Revenue Code of 1954\)](#)
7 [Tax on Employers](#)
8 [§ 31.3111-4 Liability for employer tax.](#)

9 The employer is liable for the employer tax with respect to the wages paid to his employees for employment
10 performed for him.
11

12 Title 26: Internal Revenue

13 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
14 [Subpart B—Federal Insurance Contributions Act \(Chapter 21, Internal Revenue Code of 1954\)](#)
15 [Tax on Employees](#)
16 [§ 31.3102-1 Collection of, and liability for, employee tax; in general.](#)

17 (c) In collecting employee tax, the employer shall disregard any fractional part of a cent of such tax unless it
18 amounts to one-half cent or more, in which case it shall be increased to 1 cent. **The employer is liable for the**
19 **employee tax with respect to all wages paid by him to each of his employees whether or not it is collected from**
20 **the employee.** If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct
21 any part of the tax, he is nevertheless liable for the correct amount of the tax. **Until collected from him the**
22 **employee also is liable for the employee tax with respect to all the wages received by him. Any employee tax**
23 **collected by or on behalf of an employer is a special fund in trust for the United States. See section 7501. The**
24 **employer is indemnified against the claims and demands of any person for the amount of any payment of such**
25 **tax made by the employer to the district director.**
26

27 [TITLE 26 > Subtitle F > CHAPTER 77 > § 7501](#)
28 [§ 7501. Liability for taxes withheld or collected](#)

29 (a) General rule

30 Whenever any person is required to collect or withhold any internal revenue tax from any other person and to
31 pay over such tax to the United States, the amount of tax so collected or withheld shall be held to be a special
32 fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same
33 manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to
34 the taxes from which such fund arose.

35 (b) Penalties

36 For penalties applicable to violations of this section, see sections [6672](#) and [7202](#).

37 The important thing to remember about the liability provisions in this section is the following:

- 38 1. Private companies are not “employers” as defined in [26 U.S.C. §3401\(d\)](#).
39 2. Under [26 U.S.C. §3402](#), withholding occurs ONLY on “wages” as legally defined, which is earned by “employees”, who
40 are federal workers. See below, in which “words of art” are bold faced and underlined:

41 Title 26: Internal Revenue

42 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
43 [Subpart B—Federal Insurance Contributions Act \(Chapter 21, Internal Revenue Code of 1954\)](#)
44 [Tax on Employees](#)
45 [§ 31.3101-3 When employee tax attaches.](#)

46 The employee tax attaches at the time that the **wages** are received by the **employee**. For provisions relating to
47 the time of such receipt, see [§31.3121\(a\)-2](#).

- 48 3. “wages” are legally defined in 26 C.F.R. [§31.3401\(a\)-3\(a\)](#) as earnings in connection with a voluntarily submitted and
49 signed W-4 form by the worker.
50 4. Under 26 C.F.R. [§31.3401\(a\)-3\(a\)](#), a worker who did not sign and submit a W-4 absent any duress cannot earn “wages”
51 and therefore is not subject to withholding.

1 5. A private employer who has no “employees” (federal subcontractors or workers) need not withhold, but if he does
2 withhold, then he becomes a fiduciary over government property and MUST pay in everything withheld to the
3 government.

4 **10 Information Returns: W-2, 1098, and 1099 Reporting**

5 Information returns, including IRS Forms W-2, 1098, and 1099, report the receipt of “trade or business” earnings:

6 [TITLE 26](#) > [Subtitle F](#) > [CHAPTER 61](#) > [Subchapter A](#) > [PART III](#) > [Subpart B](#) > § 6041
7 [§ 6041. Information at source](#)

8 (a) *Payments of \$600 or more*

9 *All persons engaged in a trade or business and making payment in the course of such trade or business to another*
10 *person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed*
11 *or determinable gains, profits, and income (other than payments to which section 6042 (a)(1), 6044 (a)(1), 6047*
12 *(e), 6049 (a), or 6050N (a) applies, and other than payments with respect to which a statement is required under*
13 *the authority of section 6042 (a)(2), 6044 (a)(2), or 6045), of \$600 or more in any taxable year, or, in the case of*
14 *such payments made by the United States, the officers or employees of the United States having information as to*
15 *such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall*
16 *render a true and accurate return to the Secretary, under such regulations and in such form and manner and to*
17 *such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income,*
18 *and the name and address of the recipient of such payment.*

19 A “trade or business” is defined as follows:

20 [26 U.S.C. Sec. 7701\(a\)\(26\)](#)

21 *“The term ‘trade or business’ includes the performance of the functions of a [public office](#).”*

22 Under [4 U.S.C. §72](#), all “public offices” MUST be in the District of Columbia:

23 [TITLE 4](#) > [CHAPTER 3](#) > § 72
24 [§ 72. Public offices; at seat of Government](#)

25 *All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere,*
26 *except as otherwise expressly provided by law.*

27 You will note that the above says that all places other than the District of Columbia may only have “public offices” if created
28 by law, and that no public offices are created by law for any IRS employee or tax enforcement anywhere in the U.S. Code
29 for any place other than the Virgin Islands, in accordance with [48 U.S.C. §1612\(a\)](#). The above is also consistent with the
30 following sections of the code, which place all persons subject to the Internal Revenue Code in the District of Columbia:

31 [TITLE 26](#) > [Subtitle F](#) > [CHAPTER 79](#) > Sec. 7701. [*Internal Revenue Code*]
32 [Sec. 7701. - Definitions](#)

33 (a)(9) *United States*

34 *The term “United States” when used in a geographical sense includes only the [States](#) and the District of*
35 *Columbia.*

36 (a)(10) *State*

37 *The term “State” shall be construed to include the District of Columbia, where such construction is necessary to*
38 *carry out provisions of this title.*

39 (a)(39) *Persons residing outside United States*

40 *If any citizen or resident of the United States does not reside in (and is not found in) any United States judicial*
41 *district, such citizen or resident shall be treated as residing in the District of Columbia for purposes of any*
42 *provision of this title relating to—*

1 (A) jurisdiction of courts, or

2 (B) enforcement of summons.

3
4 [TITLE 26 > Subtitle F > CHAPTER 76 > Subchapter A > § 7408](#)
5 [§ 7408. Action to enjoin promoters of abusive tax shelters, etc.](#)

6 (c) Citizens and residents outside the United States

7 *If any citizen or resident of the United States does not reside in, and does not have his principal place of business*
8 *in, any United States judicial district, such citizen or resident shall be treated for purposes of this section as*
9 *residing in the District of Columbia.*

10 The IRS Form 1099-R and 1099-MISC may ONLY be used in connection with a “trade or business”, which is defined as
11 “the functions of a public office” in the U.S. government, as revealed in 26 U.S.C. §7701(a)(26). Below is where this
12 requirement is described:

13 1. IRS Publication 583 entitled *Starting a Business and Keeping Records*, Rev. May 2002, p. 8 says:

14 *“Form 1099-MISC. Use Form 1099-MISC, Miscellaneous Income, to report certain payments you make in your*
15 ***trade or business**. These payments include the following...”*

16 [SOURCE: <http://famguardian.org/TaxFreedom/Forms/IRS/IRSPub583.pdf>]

17 2. IRS Form 1099-MISC Instructions, 2005, p. 1 says:

18 *“**Trade or business reporting only.** Report on Form 1099-MISC only when payments are made in the course of*
19 *your **trade or business**. Personal payments are not reportable. You are engaged in a trade or business*
20 *if you operate for gain or profit. However, nonprofit organizations are considered to be engaged in a trade or*
21 *business and are subject to these reporting requirements. Nonprofit organizations subject to these reporting*
22 *requirements include trusts of qualified pension or profit-sharing plans of employers, certain organizations*
23 *exempt from tax under section 501(c) or (d), and farmers' cooperatives that are exempt from tax under section*
24 *521. Payments by federal, state, or local government agencies are also reportable.”*

25 [SOURCE: <http://famguardian.org/TaxFreedom/Forms/IRS/IRSForm1099Inst.pdf>]

26 Likewise, the W-2 may ONLY be prepared and sent to the IRS when the subject meets **BOTH** of the below criteria:

27 1. voluntarily completed an IRS Form W-4.

28 *voluntary. “Unconstrained by interference; unimpelled by another’s influence; spontaneous; acting of oneself.*
29 *Coker v. State, 199 Ga. 20, 33 S.E.2d 171, 174. Done by design or intention. Proceeding from the free and*
30 *unrestrained will of the person. Produced in or by an act of choice. Resulting from free choice, without*
31 *compulsion or solicitation. The word, especially in statutes, often implies knowledge of essential facts. Without*
32 *valuable consideration; gratuitous, as a voluntary conveyance. Also, having a merely nominal consideration;*
33 *as, a voluntary deed.” [Black’s Law Dictionary, Sixth Edition, p. 1575]*

34 2. Is engaged in a “trade or business”, which is a public office in the United States government as defined in [26 U.S.C.](#)
35 [§7701\(a\)\(26\)](#):

36 Title 26: Internal Revenue
37 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
38 [Subpart E—Collection of Income Tax at Source](#)
39 [§ 31.3401\(a\)\(11\)-1 Remuneration other than in cash for service not in the course of employer's trade or](#)
40 [business.](#)

41 *[\(a\) Remuneration paid in any medium other than cash for services not in the course of the employer's trade](#)*
42 *[or business is excepted from wages and hence is not subject to withholding.](#) Cash remuneration includes checks*
43 *and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food,*
44 *or other goods or commodities, for services not in the course of the employer's [trade or business](#) does not*
45 *constitute wages. Remuneration paid in any medium other than cash for other types of services does not come*

1 within this exception from wages. For provisions relating to cash remuneration for service not in the course of
2 employer's trade or business, see §31.3401(a)(4)-1.

3 Note that threatening a private employee with termination or failing to hire a prospective private employee because they
4 refuse to sign and submit a W-4 cannot be described as “voluntary” by any means. In fact, a person who did not submit a W-
5 4 at all or who executed it involuntarily does not earn reportable “wages”, according to [26 C.F.R. §31.3401\(a\)-3](#):

6 [26 C.F.R. §31.3401\(a\)-3 Amounts deemed wages under voluntary withholding agreements](#)

7 (a) In general.

8 **Notwithstanding the exceptions to the definition of wages specified in section 3401(a) and the regulations**
9 **thereunder, the term “wages” includes the amounts described in paragraph (b)(1) of this section with respect**
10 **to which there is a voluntary withholding agreement in effect under section 3402(p). References in this chapter**
11 **to the definition of wages contained in section 3401(a) shall be deemed to refer also to this section (§31.3401(a)-**
12 **3.**

13 Without a voluntarily executed W-4 and employment with the federal government in a “public office”, which is synonymous
14 with a “trade or business”, a person CANNOT earn “wages” who is not in deed and in fact an elected or appointed officer of
15 the United States government, which is what “employee” is defined as under 26 C.F.R. §31.3401(c)-1. Therefore:

- 16 1. An IRS Form W-2 SHOULD NOT be filed in connection with their earnings.
- 17 2. If a form W-2 is filed, the amount for “wages” in block 1 should be zero.
- 18 3. If the amount reported for “wages” in block 1 is nonzero, the worker should immediately rebut the erroneous report by
19 sending the IRS a Form 4852 correcting the “wages” and “income” to zero. See the following for instructions on how
20 to amend the erroneous W-2 or 1099 reports using the IRS Form 4852:

[Correcting Erroneous IRS Form W-2's](#), Form #04.006

<http://sedm.org/Forms/FormIndex.htm>

21 Private employers are forewarned that if they do not follow the requirements above, then they risk a liability of up to \$5,000
22 for a fraudulently or falsely executed W-2. Here is the section of the Internal Revenue Code that imposes this penalty, [26](#)
23 [U.S.C. §7434](#):

24 *Title 26, Internal Revenue Code*
25 [§ 7434. Civil Damages For Fraudulent Filing Of Information Returns.](#)

26 (a) In General-

27 *If any person willfully files a fraudulent information return with respect to payments purported to be made to any*
28 *other person, such other person may bring a civil action for damages against the person so filing such return.*

29 (b) Damages-

30 *In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant*
31 *shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of--*

32 *(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent*
33 *information return (including any costs attributable to resolving deficiencies asserted as a result of*
34 *such filing),*

35 *(2) the costs of the action, and*

36 *(3) in the court's discretion, reasonable attorneys' fees.*

37 (c) Period For Bringing Action-

38 *Notwithstanding any other provision of law, an action to enforce the liability created under this section may be*
39 *brought without regard to the amount in controversy and may be brought only within the later of--*

40 *(1) 6 years after the date of the filing of the fraudulent information return, or*

1 (2) 1 year after the date such fraudulent information return would have been discovered by exercise
2 of reasonable care.

3 (d) Copy Of Complaint Filed With IRS-

4 Any person bringing an action under subsection (a) shall provide a copy of the complaint to the Internal Revenue
5 Service upon the filing of such complaint with the court.

6 (e) Finding Of Court To Include Correct Amount Of Payment-

7 The decision of the court awarding damages in an action brought under subsection (a) shall include a finding of
8 the correct amount which should have been reported in the information return.

9 (f) Information Return-

10 For purposes of this section, the term 'information return' means any statement described in section
11 6724(d)(1)(A).'

12 We caution that the above statute cannot apply to any private employer who is not doing business on federal property and
13 who is not a "U.S. person" because they never applied for a "Taxpayer Identification Number" (TIN). Unfortunately, this
14 does not describe many private employers, because few have investigated the law and conducted themselves carefully enough
15 to avoid this IRS trap.

16 No doubt, many private companies are not familiar with the nuances in this section, the I.R.C, or the regulations themselves.
17 The reason is that few of them actually read what the law says on this subject, preferring to defer judgment to payroll trade
18 publications or the IRS itself. The result is the improper execution of the Internal Revenue Code and the equivalent of robbery
19 of the earnings of workers everywhere. On more than one occasion they have probably submitted incorrect form W-2's that
20 indicated a nonzero amount in the "wages" block against workers who never consented to withholding. They no doubt did
21 this in violation of the regulations at 26 C.F.R. §31.3401(a)-3(a). Workers are reminded that there is a very important
22 administrative way to correct such erroneous reports using IRS Form 4852. For an article on how to use this form, see:

Correcting Erroneous IRS Form W-2's, Form #04.006
<http://sedm.org/Forms/FormIndex.htm>

23 In addition to W-2 and 1099 reports, the regulations also impose a requirement upon "withholding agents" to submit an IRS
24 Form 1042 on all amounts withheld. See [26 C.F.R. §1.1461-1\(c\)](#) . However, most private employers are NOT "withholding
25 agents" as shown in section 10 of the following reference:

Federal and State Tax Withholding Options for Private Employers, Form #09.001
<http://sedm.org/Forms/FormIndex.htm>

26 **11 Why most Americans living in the states are NOT "Exempt Individuals" under the I.R.C.**

27 Below is a definition of "exempt" from Black's Law Dictionary:

28 *"Exempt. To release, discharge, waive, relieve from liability. To relieve, excuse, or set free from a duty or service*
29 *imposed upon the general class to which the individual exempted belongs; as to exempt from military service. [*
30 *.] See also Exemption; Exemption laws."*
31 *[Black's Law Dictionary, Sixth Edition, p. 571]*

32 A better and clearer definition of "exempt" is provided in the book *The Institutes of Biblical Law*:

33 *"Quite logically, the federal income tax legislation calls what the taxpayer is allowed to keep an 'exemption' by*
34 *the state, i.e., an act of grace. All a man's property and income, his artistic and commercial products, are, in*
35 *terms of this claim to sovereignty and eminent domain, the property of the state, or at least under the control and*
36 *use of the state.*

37 *"Only as the sovereign power and saving grace of the triune God are asserted and accepted can the claims of the*
38 *state to be the source of sovereignty and grace be undercut and nullified."*

3 “Exempt individuals” are statutorily defined in [26 U.S.C. §7701\(b\)\(5\)](#).

4 [TITLE 26](#) > [Subtitle F](#) > [CHAPTER 79](#) > Sec. 7701.
5 [Sec. 7701](#). - Definitions

6 (b)(5) Exempt individual defined
7 For purposes of this subsection –

8 (A) In general

9 An individual is an exempt individual for any day if, for such day, such individual is -

- 10 (i) a foreign government-related individual,
11 (ii) a teacher or trainee,
12 (iii) a student, or
13 (iv) a professional athlete who is temporarily in the United States to compete in a charitable sports
14 event described in section 274(l)(1)(B).

15 (B) Foreign government-related individual

16 The term “foreign government-related individual” means any individual temporarily present in the United States
17 by reason of -

- 18 (i) diplomatic status, or a visa which the Secretary (after consultation with the Secretary of State)
19 determines represents full-time diplomatic or consular status for purposes of this subsection,
20 (ii) being a full-time employee of an international organization, or
21 (iii) being a member of the immediate family of an individual described in clause (i) or (ii).

22 (C) Teacher or trainee

23 The term “teacher or trainee” means any individual -

- 24 (i) who is temporarily present in the United States under subparagraph (J) or (Q) of section 101(15)
25 of the Immigration and Nationality Act (other than as a student), and
26 (ii) who substantially complies with the requirements for being so present.

27 (D) Student

28 The term “student” means any individual -

- 29 (i) who is temporarily present in the United States -
30 (I) under subparagraph (F) or (M) of section 101(15) of the Immigration and Nationality Act, or
31 (II) as a student under subparagraph (J) or (Q) of such section 101(15), and (ii) who substantially
32 complies with the requirements for being so present.

33 (E) Special rules for teachers, trainees, and students

34 (i) Limitation on teachers and trainees

35 An individual shall not be treated as an exempt individual by reason of clause (ii) of subparagraph
36 (A) for the current year if, for any 2 calendar years during the preceding 6 calendar years, such person
37 was an exempt person under clause (ii) or (iii) of subparagraph (A). In the case of an individual all of
38 whose compensation is described in section 872(b)(3), the preceding sentence shall be applied by
39 substituting “4 calendar years” for “2 calendar years”.

40 (ii) Limitation on students

41 For any calendar year after the 5th calendar year for which an individual was an exempt individual
42 under clause (ii) or (iii) of subparagraph (A), such individual shall not be treated as an exempt
43 individual by reason of clause (iii) of subparagraph (A), unless such individual establishes to the
44 satisfaction of the Secretary that such individual does not intend to permanently reside in the United
45 States and that such individual meets the requirements of subparagraph (D)(ii).

46 To be “exempt”, one must first be otherwise liable in general for something and then lose the liability by virtue of meeting
47 some special provision of the I.R.C. listed above. Most people are not “exempt individuals” because they do not meet any
48 of the above criteria, and only those who are “exempt” should be filling out the word “EXEMPT” on a W-4 form. As pointed
49 out repeatedly throughout this memorandum and the [Tax Freedom Solutions Manual](#), the W-4, in fact, is the WRONG form
50 to be using to stop withholding for most Americans. The correct form is the W-8BEN form, which may be used by “nationals”
51 and “nonresident aliens”. Section 8 of the following also shows that this is the status of Americans born in states of the Union
52 and living and working outside of federal jurisdiction:

[Federal and State Tax Withholding Options for Private Employers, Form #09.001](#)
<http://sedm.org/Forms/FormIndex.htm>

1 Being an “exempt individual” and being an “nontaxpayer” are entirely different things that are not equivalent. The term
2 “nontaxpayer” is not even defined in the Internal Revenue Code or the legal dictionary and is only defined by the courts, but
3 it means someone who is *not subject* to the jurisdiction of the Internal Revenue Code because he or she does not come under
4 its provisions. The term “nontaxpayer” is obtusely referenced in 26 U.S.C. §7426 as “persons other than taxpayers”, but
5 nowhere defined or given a word of its own. The status of being a “nontaxpayer” may be caused by any one of the following
6 factors and possibly others not listed:

- 7 1. One is a “nonresident” of the jurisdiction, meaning that he is not subject to the territorial jurisdiction of the law or statute.
- 8 2. One is not engaged in any excise taxable activity identified in the code and has no earnings that would “effectively
9 connect” them to the Internal Revenue Code Recall that 26 C.F.R. §1.1-1(a)(2)(ii) says that only income of “aliens” and
10 “nonresident aliens” which is “effectively connected with a trade or business” is subject to the code. Since “trade or
11 business” is statutorily defined in [26 U.S.C. §7701\(a\)\(26\)](#) as the “functions of a public office”, if one is not engaged in
12 a public office, is not a federal corporation involved in interstate or foreign commerce coming under the provisions of
13 Article 1, Section 8, Clause 3 of the Constitution, then one is not the proper subject of the code.
- 14 3. One is not the subject of the code by virtue of a Constitution restriction on the taxing power of Congress. For instance,
15 Article 1, Section 9, Clause 4 and Article 1, Section 2, Clause 3 specifically state that the federal government has no
16 power to institute direct taxes on anything other than a State, and may not directly tax individuals. If one is an individual
17 living in a state of the Union, then one is not the proper subject of any direct federal tax, and this includes all of Subtitle
18 A of the Internal Revenue Code.

19 Of the two statuses, “exempt” and “nontaxpayer”, the preferable one to have is that of a “nontaxpayer”, which is a person not
20 subject to the jurisdiction of the Internal Revenue Code at all. For instance, people living in China are all “nontaxpayers”
21 relative to the Internal Revenue Code. As soon as they either get involved in importing goods into the country, which is
22 foreign commerce, or hold an appointed office in the United States government for compensation, then they become subject
23 to federal jurisdiction because they involved themselves in an excise taxable privileged activity. Likewise, a person who
24 lives in California is a “nonresident” and an “alien” with respect to an adjacent state such as Nevada, and therefore is a
25 “nontaxpayer” with respect to Nevada state tax laws.

26 **12 Withholding and taxation of Ministers and Church Employees**

27 We have compiled an index of tax regulations that lists all of the requirements pertaining to ministers and church employees
28 below:

- 29 1. Legal References on Taxation of Churches
 - 30 1.1. [Church Audit Procedures Act-IRS](#)
 - 31 1.2. [26 U.S.C. §501: Exemption from tax on corporations, certain trusts, etc.](#)
 - 32 1.3. [IRS Website: Annual Exempt Organization Information Returns](#)-shows that churches don't have to report
33 ANYTHING
 - 34 1.4. [IRS Website: Application for Recognition of Exemption](#)-notice that churches don't have to apply for exemption.
- 35 2. Federal Tax Regulations Relating to "Self-Employed" Ministers
 - 36 2.1. [26 C.F.R. §1.1402\(a\)-11: Ministers and members of religious orders](#)
 - 37 2.2. [26 C.F.R. §1.1402\(c\)-5: Ministers and members of religious orders](#)
 - 38 2.3. [26 C.F.R. §1.1402\(c\)-7: Members of religious groups opposed to insurance](#)
 - 39 2.4. [26 C.F.R. §1.1402\(e\)-2A Ministers, members of religious orders and Christian Science practitioners: application](#)
40 [for exemption from self-employment tax](#)
 - 41 2.5. [26 C.F.R. §1.1401\(e\)\(1\)-1: Election by ministers, members of religious orders, and Christian Science practitioners](#)
42 [for self-employment coverage](#)
 - 43 2.6. [26 C.F.R. §1.1402\(h\)-1 Members of certain religious groups opposed to insurance](#)
 - 44 2.7. [26 C.F.R. §1.1402\(e\)-5A Applications for exemption from self-employment taxes filed after December 31, 1986,](#)
45 [by ministers, certain members of religious orders, and Christian Science practitioners.](#)
- 46 3. Federal Tax Regulations Relating to "Employed" Ministers
 - 47 3.1. [26 C.F.R. §31.3121\(b\)\(8\)-1 Services performed by a minister of a church or a member of a religious order.](#)
 - 48 3.2. [26 C.F.R. §31.3401\(a\)\(9\)-1 Remuneration for services performed by a minister of a church or a member of a](#)
49 [religious order](#)
 - 50 3.3. [26 C.F.R. §31.3121\(b\)\(8\)-2 Services in employ of religious, charitable, educational, or certain other organizations](#)
51 [exempt from income tax.](#)

1 In addition, the IRS Market Segment Specialization Program guide for auditing Ministers is available on the website at:

2 <http://famguardian.org/Subjects/Spirituality/ChurchTaxation/IRS-MSSP-minister.pdf>

3 The bottom line on ministers, just like everyone else, is that unless you are domiciled in the District of Columbia and/or earn
4 income from within the District of Columbia, then you can't earn taxable income or have a requirement to withhold or report
5 earnings. As a matter of fact, the IRS website admits that churches aren't even required to submit any kind of Information
6 Returns, whether it be IRS Forms W-2, 1042-s, 1098, 1099, or 8300 (Currency Transaction Reports) etc. Read it the amazing
7 truth for yourself:

8 **Annual Exempt Organization Information Returns**

9 *Every organization exempt from federal income tax under Internal Revenue Code section 501(a) must file an*
10 *annual information return **except**:*

- 11 • *A church, an interchurch organization of local units of a church, a convention or association of*
- 12 *churches,*
- 13 • *An integrated auxiliary of a church,*
- 14 • *A church-affiliated organization that is exclusively engaged in managing funds or maintaining*
- 15 *retirement programs,*
- 16 • *A school below college level affiliated with a church or operated by a religious order, even though it*
- 17 *is not an integrated auxiliary of a church,*
- 18 • *Certain church-affiliated mission societies that conduct activities in foreign countries, or activities*
- 19 *directed at persons in foreign countries,*
- 20 • *An exclusively religious activity of any religious order. . . .*

21 [Link: <http://www.irs.gov/charities/charitable/article/0,,id=123308,00.html>]

22 **13 Conclusions and summary**

23 We will now succinctly summarize the findings of this pamphlet in a short, enumerated list for your quick reference as
24 follows:

- 25 1. It is an undisputable fact there is no law requiring any private sector employer or worker to enter into contracts with the
26 U.S. government to deduct or withhold payroll taxes under Subtitle C of the Internal Revenue Code. Even the IRS
27 website supports this conclusion:

28 *Internal Revenue Manual (I.R.M.)*
29 [5.14.10.2 \(09-30-2004\)](#)
30 *Payroll Deduction Agreements*

31 *Private employers, states, and political subdivisions are **not required** to enter into payroll deduction*
32 *agreements. Taxpayers should determine whether their employers will accept and process executed agreements*
33 *before agreements are submitted for approval or finalized.*

- 34 2. Withholding agreements are required for government employees and those persons having a tax liability for Subtitle A
35 taxes. A person who does not have a tax liability for Subtitle A taxes has no duty to request withholding.

36 *Title 26: Internal Revenue*
37 [PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)
38 [Subpart E—Collection of Income Tax at Source](#)
39 [§ 31.3402\(p\)-1 Voluntary withholding agreements.](#)

40 (a) *In general.*

41 *An employee and his employer may enter into an agreement under section 3402(b) to provide for the withholding*
42 *of income tax upon payments of amounts described in paragraph (b)(1) of §31.3401(a)-3, made after December*
43 *31, 1970. **An agreement may be entered into under this section only with respect to amounts which are***
44 ***includible in the gross income of the employee under section 61, and must be applicable to all such amounts***
45 ***paid by the employer to the employee.** The amount to be withheld pursuant to an agreement under section 3402(p)*
46 *shall be determined under the rules contained in section 3402 and the regulations thereunder. See §31.3405(c)-*

1 *1, Q&A-3 concerning agreements to have more than 20-percent Federal income tax withheld from eligible*
2 *rollover distributions within the meaning of section 402.*

- 3 3. Entering into the W-4 agreement/contract is voluntary. No worker should be compelled to fill one out. Only the worker,
4 absent duress, can voluntarily request withholding and he should only do so to fulfill an existing liability under [Subtitle](#)
5 [A of the I.R.C.](#) because he/she is a “taxpayer”.
- 6 4. Those private companies or churches who enter into such voluntary withholding agreements become:
7 4.1. Quasi “withholding agents” obligated by law to surrender deductions and to report those deductions on a W-2 form,
8 26 U.S.C., Subchapter F, Chapter 79, [Section 7701\(a\)\(16\)](#).
9 4.2. “Trustees” and “transferees” over federal payments. See [26 U.S.C. §§6901](#) and [6903](#).
- 10 5. When a worker signs a Form W-4 they generate a contractual obligation for the company or private employer to take out
11 deductions and an obligation to annually submit a W-2, which is a report on “wages” earned and deductions taken from
12 them.

13 [26 C.F.R. §31.3401\(a\)-3 Amounts deemed wages under voluntary withholding agreements](#)

14 *(a) In general.*

15 ***Notwithstanding the exceptions to the definition of wages specified in section 3401(a) and the regulations***
16 ***thereunder, the term “wages” includes the amounts described in paragraph (b)(1) of this section with respect***
17 ***to which there is a voluntary withholding agreement in effect under section 3402(p).*** *References in this chapter*
18 *to the definition of wages contained in section 3401(a) shall be deemed to refer also to this section (§31.3401(a)-*
19 *3).*

- 20 6. The W-2 may ONLY be prepared and sent to the IRS when the worker who is the subject of it has voluntarily completed
21 an IRS Form W-4. Otherwise, no “wages” as legally defined can be earned and no lawful deductions can be taken from
22 the earnings of the worker. See 26 C.F.R. §31.3401(a)-3(a) and 26 C.F.R. §31.3402(p)-1. This means that in the case
23 of a worker who decided not to voluntarily submit an IRS Form W-4:
24 6.1. There is no legal authority to submit an IRS Form W-2 at the end of the year.
25 6.2. The worker earns no reportable “wages”.
26 6.3. The worker is responsible for reconciling his own tax liability at the end of the year.
- 27 7. Because there is no law to requiring a company or private employer to submit a W-2 for a worker who has not explicitly
28 consented in writing using a W-4 to the assignment of his earnings as “wages” nor consented to deductions, the only
29 proper number that could be put in the “wages” block is “0”.
- 30 8. A payroll clerk or treasurer who puts down a number other than zero in the Block 1 “wages” of the annual W-2 form for
31 a worker who never voluntarily (absent duress, such as failure to hire or threat to fire if don’t sign W-4) submitted a
32 “voluntary withholding agreement”, IRS Form W-4:
33 8.1. Is submitting a false return in criminal violation of [26 U.S.C. §7207](#).
34 8.2. Is personally and civilly liable under [26 U.S.C. §7434](#) for all tax liabilities that might result and attorney fees to
35 prosecute.
36 8.3. Risks being criminally prosecuted for involuntary servitude in violation of the Thirteenth Amendment, [42 U.S.C.](#)
37 [§1994](#), and [18 U.S.C. §1581](#).
- 38 9. A worker who submits other than an IRS Form W-4 to control withholding, such as an IRS Form W-8, cannot earn
39 “wages” and therefore has no reportable “wages” that would go on an IRS Form W-2.
- 40 10. If a worker is threatened either with a refusal to hire or being fired if he does not sign the W-4 withholding agreement:
41 10.1. The contract/agreement is NOT voluntarily executed and therefore voidable at the option of the coerced party.

42 *“An agreement [consent] obtained by duress, coercion, or intimidation is invalid, since the party coerced is not*
43 *exercising his free will, and the test is not so much the means by which the party is compelled to execute the*
44 *agreement as the state of mind induced.”⁷ Duress, like fraud, rarely becomes material, except where a contract*
45 *or conveyance has been made which the maker wishes to avoid. As a general rule, duress renders the contract*
46 *or conveyance voidable, not void, at the option of the person coerced,⁸ and it is susceptible of ratification. Like*

7 Brown v Pierce, 74 U.S. 205, 7 Wall 205, 19 L.Ed. 134

8 Barnette v Wells Fargo Nevada Nat’l Bank, 270 US 438, 70 L.Ed. 669, 46 S Ct 326 (holding that acts induced by duress which operate solely on the mind, and fall short of actual physical compulsion, are not void at law, but are voidable only, at the election of him whose acts were induced by it); Fiske v Gershman, 30 Misc.2d. 442, 215 N.Y.S.2d. 144; Glenney v Crane (Tex Civ App Houston (1st Dist)) 352 S.W.2d. 773, writ ref n r e (May 16, 1962); Carroll v Fetty, 121 W Va 215, 2 S.E.2d. 521, cert den 308 US 571, 84 L.Ed. 479, 60 S Ct 85.

1 other voidable contracts, it is valid until it is avoided by the person entitled to avoid it. 9 However, duress in the
2 form of physical compulsion, in which a party is caused to appear to assent when he has no intention of doing so,
3 is generally deemed to render the resulting purported contract void. 10⁴”
4 [63C American Jurisprudence 2d, Duress, §21 (1999)]

5 10.2. The worker has standing in civil court to sue the private employer for slavery in violation of the Thirteenth
6 Amendment, filing of false information returns in violation of [26 U.S.C. §7207](#), and civil damages described in [26](#)
7 [U.S.C. §7434](#).

8 10.3. The worker may correct the false information returns and notify the IRS that he was coerced using an affidavit in
9 order to restore his status as a “nontaxpayer”.

10 10.4. The private employer may not lawfully file a W-2 on the worker and if he does, the amount indicated in block 1 for
11 “wages, tips, and other compensation” MUST be zero. The only way to lawfully earn “wages” in the case of a
12 person who is not in deed and in fact a “public officer” engaged in a “trade or business” is to volunteer by signing
13 an IRS Form W-4. See 26 C.F.R. §31.3401(a)-3(a) and 26 C.F.R. §31.3402(p)-1.

14 11. Statutory withholding agents are required to deduct and withhold taxes ONLY on specific legal “persons” who are listed
15 in code sections 1441, 1442, 1443, and 1461.

16 [TITLE 26](#) > [Subtitle F](#) > [CHAPTER 79](#) > [Sec. 7701](#).
17 [Sec. 7701](#). - Definitions

18 (a)(16) Withholding agent

19 The term “withholding agent” means any person required to deduct and withhold any tax under the provisions of
20 section 1441, 1442, 1443, or 1461.

21 Now if you look up each of the above four statutes mentioned in the above definition, here is what you end up with:

22 **Table 2: Statutes authorizing "withholding agents"**

26 U.S.C./ I.R.C. section	Title of section	Object of tax
1441	Withholding of tax on nonresident aliens	Nonresident aliens
1442	Withholding of tax on foreign corporations	Foreign corporations
1443	Foreign tax-exempt organizations	Tax-exempt organizations
1461	Liability for withheld tax	Nonresident aliens and foreign corporations (see title of Chapter 3 of Subtitle A).

23 12. Not only are non-federal churches not required to keep records or send reports to the government, even government
24 churches are not required to do so.

25 **Annual Exempt Organization Information Returns**

26 Every organization exempt from federal income tax under Internal Revenue Code section 501(a) must file an
27 annual information return **except**:

- 28 • A church, an interchurch organization of local units of a church, a convention or association of
29 churches,
- 30 • An integrated auxiliary of a church,
- 31 • A church-affiliated organization that is exclusively engaged in managing funds or maintaining
32 retirement programs,
- 33 • A school below college level affiliated with a church or operated by a religious order, even though it
34 is not an integrated auxiliary of a church,
- 35 • Certain church-affiliated mission societies that conduct activities in foreign countries, or activities
36 directed at persons in foreign countries,
- 37 • An exclusively religious activity of any religious order. . . .

38 [Link: <http://www.irs.gov/charities/charitable/article/0,,id=123308,00.html>]

9 Fasje v Gershman, 30 Misc.2d. 442, 215 N.Y.S.2d. 144; Heider v Unicume, 142 Or. 416, 20 P.2d. 384; Glenney v Crane (Tex Civ App Houston (1st Dist)) 352 S.W.2d. 773, writ ref n r e (May 16, 1962)

10 Restatement 2d, Contracts § 174, stating that if conduct that appears to be a manifestation of assent by a party who does not intend to engage in that conduct is physically compelled by duress, the conduct is not effective as a manifestation of assent.

1 13. A church has no duty to respond to the IRS or any federal government agency issued summons short of a court order.
2 Quoting from the decision (*Schulz v. IRS*, Case No. 04-0196-cv):

3 "...absent an effort to seek enforcement through a federal court, IRS summonses apply no force to taxpayers, and
4 no consequence whatever can befall a taxpayer who refuses, ignores, or otherwise does not comply with an IRS
5 summons until that summons is backed by a federal court order.[a taxpayer] cannot be held in contempt, arrested,
6 detained, or otherwise punished for refusing to comply with the original IRS summons, no matter the taxpayer's
7 reasons, or lack of reasons for so complying."

8 14. The Internal Revenue Code is "private law", which means it is a contract or agreement between the "taxpayer" and the
9 "government" that attaches to those who voluntarily seek a "public office" in the U.S. government and thereby
10 engaged in excise taxable "privileges" as an instrumentality or franchise of the U.S. government. Those who are party
11 to this private agreement are called "taxpayers". Those who are not are called "nontaxpayers". The government is
12 hiding this fact from you because they don't want you to know that you have the option to "unvolunteer" from the
13 slavery you find yourself in:

14 "The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers,
15 and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no
16 attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not
17 assume to deal, and they are neither of the subject nor of the object of the revenue laws..."

18 "The distinction between persons and things within the scope of the revenue laws and those without is vital."
19 [*Long v. Rasmussen*, 281 F. 236, 238 (1922)]
20

21 "Revenue Laws relate to taxpayers [officers, employees, and instrumentalities of the Federal Government] and
22 not to non-taxpayers [American Citizens/American Nationals not subject to the exclusive jurisdiction of the
23 Federal Government]. The latter are without their scope. No procedures are prescribed for non-taxpayers and
24 no attempt is made to annul any of their Rights or Remedies in due course of law. With them[non-taxpayers]
25 Congress does not assume to deal and they are neither of the subject nor of the object of federal revenue laws."
26 [*Economy Plumbing & Heating v. U.S.*, 470 F.2d. 585 (1972)]

27 For more information on this fascinating subject, see:

Who are "Taxpayers" and Who Needs a "Taxpayer Identification Number"?, Form #05.013
<http://sedm.org/Forms/FormIndex.htm>

28 15. It doesn't matter what IRS publications, forms, and other propaganda say about the subjects in the pamphlet. It also
29 doesn't matter what industry trade publications, tax professionals, or any government employee says about it either.
30 Both the IRS itself and the Courts say YOU CAN'T RELY ON ANY OF IT and that the ONLY thing you can rely
31 upon is the law itself to determine what you are liable to do! See:

Reasonable Belief About Income Tax Liability, Form #05.007
<http://sedm.org/Forms/FormIndex.htm>

32 "One who turns his ear from hearing the law, even his prayer is an abomination."
33 [*Prov. 28:9, Bible, NKJV*]
34

1 **14 Resources for further study**

2 If you found the content of the pamphlet interesting and entertaining and would like to investigate this matter further, may
3 we recommend the following:

- 4 1. *Federal and State Tax Withholding Options for Private Employers*, Form #09.001. Free book that describes the laws
5 on tax withholding in much more detail:
6 <http://sedm.org/Forms/FormIndex.htm>
- 7 2. *About IRS Form W-8BEN*, Form #04.202: Describes how to stop withholding and reporting WITHOUT using IRS
8 Form W-4.
9 <http://sedm.org/Forms/FormIndex.htm>
- 10 3. *Affidavit of Citizenship, Domicile, and Tax Status*, Form #02.001: Describes how to truthfully describe your status to
11 private employers so that they MUST stop withholding without using an IRS Form W-4.
12 <http://sedm.org/Forms/FormIndex.htm>
- 13 4. *Income Tax Withholding and Reporting Course*, Form #12.004. Free Powerpoint training course that summarizes the
14 laws on withholding and reporting:
15 <http://sedm.org/Forms/FormIndex.htm>
- 16 5. *Tax Withholding and Reporting: What the Law Says*, Form #04.103. Free short handout that summarizes all the
17 withholding and reporting laws for income taxes.
18 <http://sedm.org/Forms/FormIndex.htm>
- 19 6. *Non-Resident Non-Person Position*, Form #05.020: Describes why most Americans domiciled in states of the Union
20 are nonresident aliens, why the IRS Form W-4 is the wrong form to stop withholding, and why they cannot file IRS
21 Form 1040 without making an unlawful "election" to be treated as a "resident alien" that causes them to commit
22 perjury under penalty of perjury on a government form.
23 <http://sedm.org/Forms/FormIndex.htm>
- 24 7. *SEDM Website, Liberty University*. Extensive free training course on how to use the law to restore your sovereignty.
25 <http://sedm.org/LibertyU/LibertyU.htm>
- 26 8. *Family Guardian Website*. Extensive FREE research into all aspects of government corruption. The legal research on
27 this website forms the basis for much of the above.
28 <http://famguardian.org/>

29 **15 Questions that Readers, Grand Jurors, and Petit Jurors Should be Asking the Government**

30 These questions are provided for readers, Grand Jurors, and Petit Jurors to present to the government or anyone else who
31 would challenge the facts and law appearing in this pamphlet, most of whom work for the government or stand to gain
32 financially from perpetuating the fraud. If you find yourself in receipt of this pamphlet, you are demanded to answer the
33 questions within 10 days. Pursuant to [Federal Rule of Civil Procedure 8\(b\)\(6\)](#), failure to deny within 10 days constitutes an
34 admission to each question. Pursuant to [26 U.S.C. §6065](#), all of your answers must be signed under penalty of perjury. We
35 are not interested in agency policy, but only sources of reasonable belief identified in the pamphlet below:

Reasonable Belief About Income Tax Liability, Form #05.007
<http://sedm.org/Forms/FormIndex.htm>

36 Your answers will become evidence in future litigation, should that be necessary in order to protect the rights of the person
37 against whom you are attempting to unlawfully enforce federal law.

- 38
39 1. Does the Internal Revenue Code define me as an "employee", based on its content below? (Answer Yes or No)

40 [26 C.F.R. §31.3401\(c\)-1 Employee:](#)

41 *...the term [employee] includes officers and employees, whether elected or appointed, of the United States, a*
42 *[federal] State, Territory, Puerto Rico or any political subdivision, thereof, or the District of Columbia, or any*
43 *agency or instrumentality of any one or more of the foregoing. The term 'employee' also includes an officer of*
44 *a corporation.*

45
46 YOUR ANSWER: _____
47

1 2. Do you regard yourself as a “withholding agent”? (Answer Yes or No)

2
3 YOUR ANSWER: _____

4
5 3. Do you consider yourself to be a “private employer”? (Answer Yes or No)

6 [IRM 5.14.10.2 \(09-30-2004\)](#)
7 *Payroll Deduction Agreements*

8 **2. Private employers, states, and political subdivisions are not required to enter into payroll deduction**
9 **agreements. Taxpayers should determine whether their employers will accept and process executed agreements**
10 **before agreements are submitted for approval or finalized.**
11 *[SOURCE: <http://www.irs.gov/irm/part5/ch13s10.html>]*

12
13 YOUR ANSWER: _____

14 4. Below is the definition of “withholding agent” right from the code, and a list of the associated code sections. Please
15 indicate which of the entity types in the table provided that you think I am:

16 [TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701.](#)
17 [Sec. 7701.](#) - Definitions

18 (a)(16) Withholding agent

19 *The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of*
20 *section 1441, 1442, 1443, or 1461.*

21 Now if you look up each of the above four statutes mentioned in the above definition, here is what you end up with:

22 **Table 3:** Statutes authorizing "withholding agents"

26 U.S.C./ I.R.C. section	Title of section	Object of tax
1441	Withholding of tax on nonresident aliens	Nonresident aliens
1442	Withholding of tax on foreign corporations	Foreign corporations
1443	Foreign tax-exempt organizations	Tax-exempt organizations
1461	Liability for withheld tax	Nonresident aliens and foreign corporations (see title of Chapter 3 of Subtitle A).

23
24 WHICH OF THE ABOVE ENTITIES DO YOU THINK I AM?: _____

25
26 5. Admit that withholding is only on “wages” as defined in the regulation at 26 C.F.R. §31.3401(a)-3(a).

27 [26 C.F.R. §31.3401\(a\)-3 Amounts deemed wages under voluntary withholding agreements](#)

28 (a) In general. **Notwithstanding the exceptions to the definition of wages specified in section 3401(a) and the**
29 **regulations thereunder, the term “wages” includes the amounts described in paragraph (b)(1) of this section**
30 **with respect to which there is a voluntary withholding agreement in effect under section 3402(p).** *References*
31 *in this chapter to the definition of wages contained in section 3401(a) shall be deemed to refer also to this section*
32 *(§31.3401(a)-3).*

33
34 YOUR ANSWER: _____

35 6. Admit that a person can only earn “wages” according to the above regulation if they submit a voluntary withholding
36 agreement.

37
38 YOUR ANSWER: _____

1 7. Admit that a person who does not submit a voluntary withholding agreement is incapable of earning “wages”.

2
3 YOUR ANSWER: _____

4 8. Admit that the amounts indicated on the W-2 in block 1 are “wages”?

5
6 Link to example W-2: <http://famguardian.org/TaxFreedom/Forms/IRS/IRSFormW2.pdf>

7
8 YOUR ANSWER: _____

9 9. Admit that under 26 C.F.R. §31.3401(a)-3(a) in question 5 above, a person who never voluntarily signed a W-4 earns no
10 “wages” and therefore has no requirement to withhold, even if withholding occurs on “wages” at a rate of single with no
11 exemptions.

12 See section 1 earlier for details.

13
14 YOUR ANSWER: _____

15
16 10. Admit that a person who does not work for the federal or state government cannot be classified as an “employee” as
17 defined in [26 U.S.C. §3401\(c\)](#) or 26 C.F.R. §31.3401(c)-1.

18 See section 1 for details on the definition of “employee”. See also:
19 <http://famguardian.org/TaxFreedom/CitesByTopic/employee.htm>

20
21 YOUR ANSWER: _____

22
23 11. Admit that IRS Publication 15, Circular E: Employers Tax Guide, 2000 edition, on p. 6 lists who “employers” are, and
24 that private employers are *not* included in their definition and only government employers are.

25 Link: <http://famguardian.org/TaxFreedom/Forms/IRS/IRSPub15.pdf>

26
27 YOUR ANSWER: _____

28
29 12. Admit that both the federal courts and the IRS’ own Internal Revenue Manual (I.R.M.), Section 4.10.7.2.8 admit that
30 you can’t trust anything that the IRS says or prints. Therefore, it is meaningless to call them up and ask answers to these
31 questions and that only an informed, reasonable citizen who has actually read what the law says for him/herself can decide
32 what it means.

33 *“IRS Publications, issued by the National Office, explain the law in plain language for taxpayers and their*
34 *advisors... While a good source of general information, publications should not be cited to sustain a position.”*
35 *[Internal Revenue Manual (I.R.M.), Section 4.10.7.2.8 (05-14-1999)]*

36
37 YOUR ANSWER: _____

38 13. Admit that a person who withholds against the wishes of the worker is STEALING if he can’t demonstrate the authority
39 of law, and can be prosecuted as a criminal.

40
41 YOUR ANSWER: _____

42
43
44 **Affirmation:**

45 I declare under penalty of perjury as required under [26 U.S.C. §6065](#) that the answers provided by me to the foregoing
46 questions are true, correct, and complete to the best of my knowledge and ability, so help me God. I also declare that these
47 answers are completely consistent with each other and with my understanding of both the Constitution of the United States,
48 Internal Revenue Code, Treasury Regulations, the Internal Revenue Manual (I.R.M.), and the rulings of the Supreme Court
49 but not necessarily lower federal courts.

1 Name (print): _____

2 Signature: _____

3 Date: _____

4 Witness name (print): _____

5 Witness Signature: _____

6 Witness Date: _____

7

8