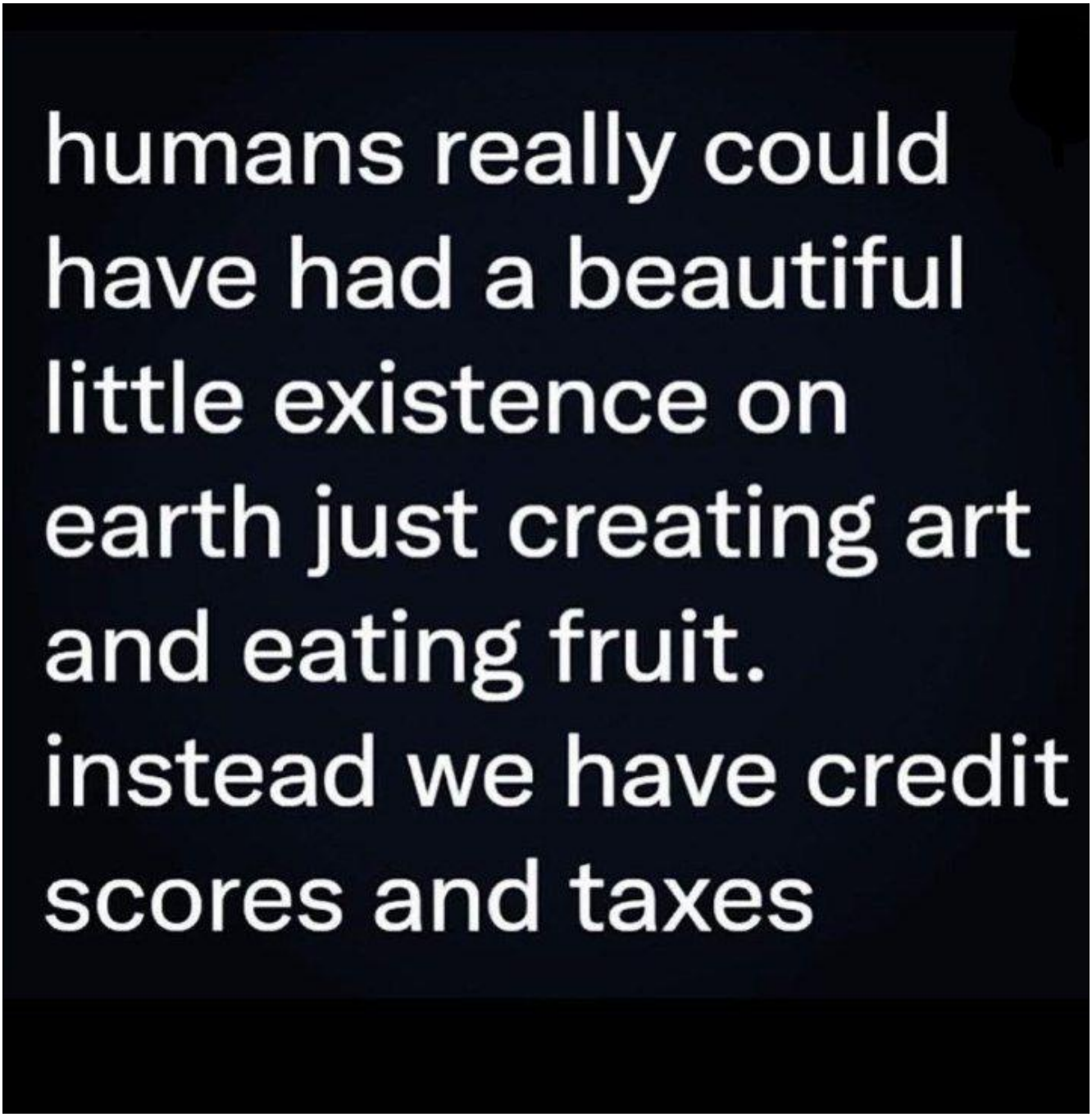
POLICY DOCUMENT: RETIREMENT AND PENSIONS

DEDICATION



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1 Introduction

This document briefly summarizes the SEDM position on retirement in general and military retirement in particular of compliant Members. We welcome constructive comments about how to improve it.

If, after reading this memorandum, you would like to use it to apply for military retirement, we provide a sample letter for doing so at:

DOD Retirement Pay Request Letter, Form #04.227** (Member Subscriptions)
https://sedm.org/product/dod-retirement-pay-request-letter-form-04-227/

2 Are retired servicemembers "members of the Armed Forces"?

> *26 U.S. Code §6051 - Receipts for employees*
>
> *(b) Special rule as to compensation of members of Armed Forces*
>
> *In the case of compensation paid for service as a **member of the Armed Forces**, the statement required by subsection (a) shall be furnished if any tax was withheld during the calendar year under section 3402, or if any of the compensation paid during such year is **includible in gross income under chapter 1**, or if during the calendar year any amount was required to be withheld as tax under section 3101. In lieu of the amount required to be shown by paragraph (3) of subsection (a), such statement shall show as wages paid during the calendar year the amount of such compensation paid during the calendar year which is **not excluded from gross income under chapter 1** (whether or not such compensation constituted wages as defined in section 3401(a)).")*

We are not sure if retirement pay counts as "compensation of members of Armed Forces". We don't think so and have found no proof otherwise, but note the use of the phrase "includible in gross income under Chapter 1":

> *"...or if any of the compensation paid during such year is includible in gross income under chapter 1, or if during the calendar year any amount was required to be withheld as tax under section 3101"*

Note that "includible" does not mean "included" but means ABLE to be included with the consent of the owner. Also note this language in the second part:

> *"In lieu of the amount required to be shown by paragraph (3) of subsection (a), such statement shall show as wages paid during the calendar year the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 3401(a))."*

"not excluded from gross income" means "included in gross income". So a Form W-2 issued under this provision that reports an amount paid to the servicemember that could be construed as a reporting that you received amounts included in gross income (even if it does not constitute "wages" under I.R.C. 3401(a).") Note also how this language makes it sounds like "wages" under I.R.C. Section 3401 are necessarily "gross income" even though there is no provision of I.R.C. that expressly states that.

3 Legal Authority for Military Retired Pay

Legal authority for military retired pay is found at:

1. Retired Pay for non-regular reserve
   10 U.S.C. Chapter 1223
   https://www.law.cornell.edu/uscode/text/10/subtitle-E/part-II/chapter-1223
2. Army Active
   10 U.S.C. Chapter 741
   https://www.law.cornell.edu/uscode/text/10/subtitle-B/part-II/chapter-741
3. Navy and Marine Corps Active
   10 U.S.C. Chapter 841

https://www.law.cornell.edu/uscode/text/10/subtitle-C/part-II/chapter-841

4. Air Force Active

10 U.S.C. Chapter 941
https://www.law.cornell.edu/uscode/text/10/subtitle-D/part-II/chapter-941

4 Summary of our position

The only audience this site is permitted to address are "nonresident aliens". This answer PRESUMES the person posting has this civil status. If you do NOT intend to comply with the requirement to file as a nonresident alien, then disregard EVERYTHING in the remainder of this document and DO NOT use ANY of the "tax information and services" found ANYWHERE on this site or post additional questions to this thread about how to be a compliant "taxpayer".

4.1 Nonresident alien taxability of retirement

I.R.C. Section 872 for nonresident alien individuals states that income DERIVED from sources within the United States is included in gross income. This is the same language we see in I.R.C. Section 61 and in the 16th Amendment, and which SCOTUS analyzed in the Eisner v. Macomber case where it defined income as a profit or gain derived from a source, and stated that Congress had no power to redefine the term "income".

> "In order, therefore, that the [apportionment] clauses cited from article I [§2, cl. 3 and §9, cl. 4] of the Constitution may have proper force and effect …[I]t becomes essential to distinguish between what is an what is not 'income,'…according to truth and substance, without regard to form. ***Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone, it derives its power to legislate, and within those limitations alone that power can be lawfully exercised***… [pg. 207]…After examining dictionaries in common use we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909, *Stratton's Independence v. Howbert, 231 U.S. 399, 415, 34 S.Sup.Ct. 136, 140 [58 L.Ed. 285] and Doyle v. Mitchell Bros. Co., 247 U.S. 179, 185, 38 S.Sup.Ct. 467, 469, 62 L.Ed. 1054*…"
> *[Eisner v. Macomber, 252 U.S. 189, 207, 40 S.Ct. 189, 9 A.L.R. 1570 (1920)]*

> *"This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an* **excise tax upon the conduct of business in a corporate capacity**, *measuring, however, the amount of tax by the income of the corporation…Flint v. Stone Tracy Co., 220 U.S. 107, 55 L.Ed. 389, 31 Sup.Ct.Rep. 342, Ann. Cas."*
> *[Stratton's Independence v. Howbert, 231 U.S. 399, 414, 58 L.Ed. 285, 34 Sup.Ct. 136 (1913)]*

> "…Whatever difficulty there may be about a **precise scientific definition of 'income**,' it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; **conveying rather the idea of gain or increase arising from corporate activities**."
> *[Doyle v. Mitchell Brothers Co., 247 U.S. 179, 185, 38 S.Ct. 467 (1918)]*

Income means CORPORATE PROFIT rather than EVERYTHING YOU MAKE as someone who is NOT a corporation:

> *"... **`income' as used in the statute should be given a meaning so as not to include everything that comes in, the true function of the words `gains' and `profits' is to limit the meaning of the word `income'**"*
> *[So. Pacific v. Lowe, 238 F. 847, 247 U.S. 30 (1918)(U.S. Dist. Ct. S.D. N.Y. 1917)]*

> *"The Sixteenth Amendment declares that Congress shall have power to levy and collect taxes on income, "from [271 U.S. 174] whatever source derived," without apportionment among the several states and without regard to any census or enumeration. It was not the purpose or effect of that amendment to bring any new subject within the taxing power. Congress already had power to tax all incomes.* ***But taxes on incomes from some sources had been held to be "direct taxes" within the meaning of the constitutional requirement as to apportionment****. Art. 1, § 2, cl. 3, § 9, cl. 4; Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601. The Amendment relieved from that requirement, and obliterated the distinction in that respect between taxes on income that are direct taxes and those that are not, and so put on the same basis all incomes "from whatever source derived." Brushaber v. Union P. R. Co., 240 U.S. 1, 17.* ***"Income" has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the Sixteenth Amendment, and in the various revenue acts subsequently passed. Southern Pacific Co. v. Lowe, 247 U.S. 330, 335; Merchants' L. & T. Co. v. Smietanka, 255 U.S. 509, 219.*** *After full consideration, this Court declared that income may be defined as gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital. Stratton's Independence v. Howbert, 231 U.S. 399, 415; Doyle v. Mitchell Brothers Co., 247 U.S. 179, 185; Eisner v. Macomber, 252 U.S. 189, 207. And that definition has been adhered to and applied repeatedly. See, e.g., Merchants' L. & T. Co. v. Smietanka, supra; 518; Goodrich v. Edwards, 255 U.S. 527,*

535; United States v. Phellis, 257 U.S. 156, 169; Miles v. Safe Deposit Co., 259 U.S. 247, 252-253; United States v. Supplee-Biddle Co., 265 U.S. 189, 194; Irwin v. Gavit, 268 U.S. 161, 167; Edwards v. Cuba Railroad, 268 U.S. 628, 633. In determining what constitutes income, substance rather than form is to be given controlling weight. Eisner v. Macomber, supra, 206. [271 U.S. 175]"
[Bowers v. Kerbaugh-Empire Co., 271 U.S. 170, 174 (1926)]

If IN FACT that party filing as a nonresident alien is representing an office in a federal corporation, it could therefore earn "income" within the meaning of the Sixteenth Amendment and the Corporation Excise Tax Act of 1909. "Nonresident Alien" defined in 26 U.S.C. §7701(b)(1)(B), in fact defines what a "nonresident alien" ISN'T, and not what it is.

TITLE 26 > Subtitle F > CHAPTER 79 > § 7701
§ 7701. Definitions

(b) Definition of resident alien and nonresident alien

(1) In general

(B) Nonresident alien

***An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident** of the United States (within the meaning of subparagraph (A)).*

A STATE corporation, for instance, could fall within the above definition, which is really a NON-DEFINITION. A legal definition defines what something IS, not what it is NOT. Anything that is NOT a STATUTORY "citizen" or "resident" therefore could fall therefore within the definition of "nonresident alien". Likewise, the rules of statutory construction do not permit or delegate to the IRS the authority to restrict this definition of "nonresident alien" that ONLY Congress can enact.

*"**When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning.** Meese v. Keene, 481 U.S. 465, 484-485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); Colautti v. Franklin, 439 U.S. at 392-393, n. 10 ("As a rule, `a definition which declares what a term "means" . . . excludes any meaning that is not stated'"); Western Union Telegraph Co. v. Lenroot, 323 U.S. 490, 502 (1945) ; Fox v. Standard Oil Co. of N.J., 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General's restriction -- "the child up to the head." Its words, "substantial portion," indicate the contrary."*
[Stenberg v. Carhart, 530 U.S. 914 (2000)]

*"**It is axiomatic that the statutory definition of the term excludes unstated meanings of that term**. Colautti v. Franklin, 439 U.S. 379, 392, and n. 10 (1979) . Congress' use of the term "propaganda" in this statute, as indeed in other legislation, has no pejorative connotation. **As judges, it is our duty to [481 U.S. 485] construe legislation as it is written, not as it might be read by a layman, or as it might be understood by someone who has not even read it.**"*
[Meese v. Keene, 481 U.S. 465, 484 (1987)]

*"As a rule, `**a definition which declares what a term "means" . . . excludes any meaning that is not stated**'"*
[Colautti v. Franklin, 439 U.S. 379 (1979), n. 10]

If military retirement pay is deferred pay, then it is compensation or reimbursement for services of EQUAL value in the market for labor:

***compensate** (kom-p;~n-sayt), vb. (17c) 1. PAY (3). 2. To make an amendatory payment to; to recompense (for an injury) <the court ordered the defendant to compensate the injured plaintiff>.*
[Black's Law Dictionary, Eleventh Edition, p. 353]

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***compensation** (kom-p3n-say-sh;m), n. (14c) 1. **Remuneration and other benefits received in return for services rendered;** esp., salary or wages.*

> *"Compensation consists of wages and benefits in return for services. It is payment for work. If the work contracted for is not done, there is no obligation to pay. [Compensation] includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of*

absence, and expense reimbursement." Kurt H. Decker & H. Thomas Felix II, Drafting and Revising Employment Contracts§ 3.17, at 68 (1991).

2. Payment of damages, or any other act that a court orders to be done by a person who has caused injury to another. • In theory, compensation makes the injured person whole. 3. SETOFF (2). -compensatory, (k3m-penS3- tor-ee), compensational (kom-p3n-say-sh3-n3l), adj.

~accrued compensation. (1919) Remuneration that has been earned but not yet paid.

~adequate compensation. See just compensation.

~deferred compensation. (1926) 1. ***Payment for work performed****, to be paid in the future or when some future event occurs. 2. An employee's earnings that are taxed when received or distributed rather than when earned, such as contributions to a qualified pension or profitsharing plan.*

~just compensation. (16c) Under the Fifth Amendment, a payment by the government for property it has taken under eminent domain- usu. the property's fair market value, so that the owner is theoretically no worse off after the taking. -Also termed adequate compensation; due compensation; land damages.

~unemployment compensation. (1921) Compensation paid at regular intervals by a state agency to an unemployed person, esp. one who has been laid off. - Also termed unemployment insurance; unemployment benefit.

~unreasonable compensation. (1946) Tax. Compensation that is not deductible as a business expense because the compensation is out of proportion to the services actually rendered or because it exceeds statutorily defined limits. I.R.C. (26 USCA) § 162(m).
[Black's Law Dictionary, Eleventh Edition, p. 354]

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remuneration *(ri-myoo-m-ray-sh;:Jn), n. (lSc) 1. Payment;* ***compensation, esp. for a service that someone has performed.*** *2. The act of paying or compensating. - remunerative, adj. - remunerate, vb.*
[Black's Law Dictionary, Eleventh Edition, p. 1550]

We can find no provision of the I.R.C. that establishes that compensation for services is income derived from a source or permitting it to be treated as income derived from a source, not even in the case of a recipient who is a statutory "United States person" in 26 U.S.C. §7701(a)(30).

Our conclusion is that compensation for labor or services paid to a nonresident alien is not income to begin with, and therefore cannot be gross income, unless the individual allows the compensation to be treated as gross income effectively connected with the conduct of a trade or business.

Although I.R.C. Section 861(a) treats compensation for services performed in the United States as "income from sources within the United States" this applies ONLY where such compensation constitutes an item of "gross income", according to the language of I.R.C. Section 61. And in order to be gross income, the compensation must first be "income" i.e. a profit or gain. We can find no provision of I.R.C. that expressly states that compensation for services are included in gross income, as we see with Social Security benefits. I.R.C. Section 61 only APPEARS to state that all compensation for services is gross income, but as the Treasury Regulations recognize, wages and salaries and compensation for services may be excluded by law from income, which would disqualify the compensation from being "gross income". Since compensation is by definition not a gain or profit, it cannot be income.

Only where the recipient is a STATUTORY "United States person" under 26 U.S.C. §7701(a)(30) would Congress have lawful power to declare compensation for services to be "gross income" as Congress appears to do in I.R.C. Section 61 (but does not do so expressly). The Treasury Regulation at 26 C.F.R. §1.61-2 gives away this particular scam. They had to find some way of legally converting compensation for services into income, so that it could be decreed to be "gross income" and subject to tax. But, unlike with SS benefits which are unquestionably federally-connected, even if received by a nonresident alien, compensation for services paid to a nonresident alien is NOT necessarily federally connected. Since their scam depends much more on duping American workers into making themselves liable for taxes on their earnings than it does on taxing Social Security benefits, it makes sense that the "opt out" in this case is buried in an oddly worded provision at 26 C.F.R. §1.61-2. The legal challenges to the treatment of compensation for services as gross income have been predominantly raised in cases where the taxpayer had expressly or tacitly accepted the status of "United States person", which would make their argument frivolous due to being irrelevant. In none of those cases that we am aware of did

the litigant rely on 26 C.F.R. Section 1.61-2 in combination with the Eisner v. Macomber (SCOTUS) case. That would seem to be a solid argument, even for a United States person, since there is no provision of I.R.C. that expressly states that "United States person" status gives Congress the right to treat compensation for labor as income. What we am saying is that, even though Congress has the power to enact such a provision, due process still requires that they actually enact such a provision of law.

For a nonresident alien, only a pension that constitutes a gain or profit derived from sources in the United States would qualify as gross income under 26 U.S.C. §872(a)(1).

> *26 C.F.R. §1.61-2 Compensation for services, including fees, commissions, and similar items.*
>
> *§ 1.61-2 Compensation for services, including fees, commissions, and similar items.*
>
> *(a) In general.*
>
> *(1) Wages, salaries, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses (including Christmas bonuses), termination or severance pay, rewards, jury fees, marriage fees and other contributions received by a clergyman for services, pay of persons in the military or naval forces of the United States, **retired pay of employees, pensions, and retirement allowances are income to the recipients unless excluded by law.** Several special rules apply to members of the Armed Forces, National Oceanic and Atmospheric Administration, and Public Health Service of the United States; see paragraph (b) of this section.*

So a pension is not necessarily income! 26 U.S.C. §872 does not exclude anything from "income" it only excludes non-federally connected gross income from "gross income". The Eisner v. Macomber case of the U.S. Supreme Court might exclude a pension from income, because it is not a profit or gain derived from a source where the filer is not serving within an office within a federal and not state corporation.

The U.S. Supreme Court has held that "whatever sources derived" in the Sixteenth Amendment DOES NOT mean "all earnings", by the way:

> *"The Court has hitherto consistently held that a literal reading of a provision of the Constitution which defeats a purpose evident when the instrument is read as a whole, is not to be favored... [and one of the examples they give is...]' **From whatever source derived,' as it is written in the Sixteenth Amendment,** **does not mean from whatever source derived.** Evans v. Gore, 253 U.S. 245, 40 S.Ct. 550, 11 A.L.R. 519. See, also, Robertson v. Baldwin, 165 U.S. 275, 281, 282 S., 17 S.Ct. 326; Gompers v. United States, 233 U.S. 604, 610, 34 S.Ct. 693, Ann.Cas.1915D, 1044; Bain Peanut Co. v. Pinson, 282 U.S. 499, 501, 51 S.Ct. 228, 229; United States v. Lefkowitz, 285 U.S. 452, 467, 52 S.Ct. 420, 424, 82 A.L.R. 775."*
> *[Wright v. U.S., 302 U.S. 583 (1938)]*

We are just saying 26 U.S.C. §872 does not determine whether an item is "income" IN A CONSTITUTIONAL sense, it determines "gross income", which requires first that the item be "income".

Forget "source" until you determine there is a profit or gain. If it is not profit or gain, then it is not income. It could still be treated as statutory "gross income", such as Social Security benefits or unemployment compensation, if there is a specific provision that expressly states that the item shall be included in STATUTORY "gross income". They don't have any such provision for "compensation for services" or pensions, but they try to make it LOOK like they do with I.R.C. Section 61. However the regulation under 26 C.F.R. §1.61-2 undercuts that by pointing out that those items are at least in some cases "excluded by law" from "income". If it is excluded by law from income, it cannot be gross income without a specific provision (such as with Social Security benefits or unemployment compensation) that makes it "gross income". An example things that are "excluded by law" are earnings that are "constitutionally exempt" from within a constitutional state. Early regulations referred to these earnings but were conveniently "censored" to hide the truth. See:

1. *Constitutionally Exempt Income*, Exhibit #09.043
   https://sedm.org/Exhibits/EX09.043-Exempt.pdf
2. *Constitutionally Exempt Income Regulations*, Exhibit #09.040
   https://sedm.org/Exhibits/EX09.040-ConstitutionallyExemptRegulations.pdf

4.2 "IncludIBLE" or "includABLE"?

The main word used for equivocation about whether an earning is statutory "income" is the word "includable" v. "incluable". Here is the trickery involved:

> *Legal Documents*
>
> *In legal documents, the use of "includable" or "includible" can have a significant impact on the interpretation of the document. For example,* ***if a contract states that certain items are "includable," this means that they must be included in the total calculation. On the other hand, if the contract states that certain items are "includible," this means that they may be included but are not necessarily required to be.***
> *[Includable vs Includible: How Are These Words Connected?, The Content Authority; https://thecontentauthority.com/blog/includable-vs-includible]*

Black's Law Dictionary, on the other hand, never makes the above distinctions, which is rather curious.

So let's apply the above to voluntary W-4 withholding agreements to people who would not otherwise earn "wages":

> *26 CFR § 31.3402(p)-1 - Voluntary withholding agreements.*
>
> *§ 31.3402(p)-1 Voluntary withholding agreements.*
>
> ***(a)* Employer-employee agreement.**
>
> *An employee and his employer may enter into an agreement under section 3402(p)(3)(A) 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)(3)(A) 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.*

So in the above, they are admitting that the amounts are not required to be included in gross income but a 26 U.S.C. §3402(p) voluntary withholding agreement could cause them to be included in "gross income" regardless.

Obviously they could have just used the word "included" here if there was no choice in the matter but to include the amounts in the "gross income" of the employee.

Interesting how they state that an agreement under 3402(p) can be made "ONLY with respect to amounts which are includible in the gross income of the employee."

Since literally ANY amount is ABLE to be included in the gross income by the employee, there is actually no such thing as an amount that is NOT includible in the gross income of the employee. This choice of the word "includible" and not "included" is an indication that the possibility still exists of excluding the amounts from the gross income of the employee, notwithstanding any agreement to treat the amounts as "wages" under the provisions of IRC Sec. 3402(p).

The U.S. Tax court uses the word "includible" rather than "includable", and therefore RECOGNIZES that earnings need not be included in "gross income":

> *"A. Whether Petitioner's MRP Is Includable in Gross Income Section 61(a)(11) expressly defines gross income to include pensions. Petitioner's "Military retirement pay is pension income within the meaning of sec. 61(a)(11)." Wheeler v. Commissioner, 127 T.C. 200, 205 n. 11 (2006), affd. 521 F.3d 1289 (10th Cir. 2008); see also Eatinger v. Commissioner, T.C. Memo. 1990-310; sec. 1.61-11, Income Tax Regs."*
> *[Mathews v. Commissioner, No. 3074-09, at *7 (U.S.T.C. Oct. 19, 2010)]*

4.3 Congress acknowledges that employee compensation is NOT NECESSARILY includible in "gross income"

I.R.C. Sec. 32 where Congress acknowledges that employee compensation is not necessarily includible in "gross income":

1. I.R.C. §32(c)(2) Earned Income
2. I.R.C. §32(c)(2)(A) — The term "earned income" means—
3. I.R.C. §32(c)(2)(A)(i) — wages, salaries, tips, and other employee compensation, **but only if such amounts are includible in gross income for the taxable year**

4.4 Taxability of Social Security and military retirement generally

1. Social security is treated as "gross income from within the United States" under 26 U.S.C. §861(a)(8). https://www.law.cornell.edu/uscode/text/26/861

   Because it is "gross income" and NOT listed in 26 U.S.C. §871(b) as "trade or business" income, then it is NOT "trade or business" income but is treated AS IF it is from "within the United States" and therefore expressly taxable.

   In the case of a nonresident alien, it must be reported on Form 1042s RATHER than Form 1099R. https://faq.ssa.gov/en-us/Topic/article/KA-01723
2. Military retirement is not listed in I.R.C. §861 as "gross income" or as "trade or business" income under I.R.C. §871(b). Military retirement or retirement generally is NOT expressly listed on the 1040NR form or in IRS Publication 515 or 519. They are paid out by the Defense Financial Accounting Service (DFAS) located geographically in Indianapolis, IN: https://www.dfas.mil/Contact-Us/

4.5 Civil status of military retirees:

1. Military servicemembers are not listed in 5 U.S.C. §2105 as "employees". Servicemembers aren't "employers" unless they elect to be an "employee" because they are NOWHERE identified as such IN ANY LAW.
2. Serving in the military is NOT a privilege, because it is COMMANDED by law. People get thrown in jail for being draft dodgers.
3. Only by consenting to be treated AS IF they are STATUTORY "employees" in filing a Form W-4 does a service member BECOME a statutory "employee" under 26 U.S.C. §3402(p).
4. Exchanging labor for money of EQUAL value is not profit, and therefore not a privilege.
5. It is unconscionable that the Department of Defense would therefore IN EFFECT reserve a PROPERTY interest in pension payments that taxes were already paid on during active duty by connecting it YET AGAIN to a privileged "trade or business" activity by filing a usually false Form 1099R or 1042-s on the payment proceeds at the end of each year.

4.6 Civil status of the EARNINGS of military retirees

1. Military retirement is "deferred compensation", usually on earnings that were ALREADY previously taxed.
2. 26 C.F.R. §1.61-11 says the following on the taxability of military retirement:

> *26 C.F.R. § 1.61-11 - Pensions.*
>
> *§ 1.61-11 Pensions.*
>
> ***(a)* In general.**
>
> ***Pensions and retirement** allowances **paid either by the Government or by private** persons **constitute** gross income **unless excluded by law**. Usually, where the taxpayer did not contribute to the cost of a pension and was not taxable on his employer's contributions, the full amount of the pension is to be included in his gross income. But see sections 72, 402, and 403, and the regulations thereunder. When amounts are received from other types of pensions, a portion of the payment may be excluded from gross income. Under some circumstances, amounts distributed from a pension plan in excess of the employee's contributions may constitute long-term capital gain, rather than ordinary income.*
>
> ***(b)* Cross references.**
>
> *For the inclusion of pensions in income for the purpose of the retirement income credit, see section 37 and the regulations thereunder. Detailed rules concerning the extent to which pensions and retirement allowances are to be included in or excluded from gross income are contained in other sections of the Code and the regulations*

thereunder. Amounts received as pensions or annuities under the Social Security Act (42 U.S.C. ch. 7) or the Railroad Retirement Act (45 U.S.C. ch. 9) are excluded from gross income. For other partial and total exclusions from gross income, see the following:

***(1)** Annuities in general, section 72 and the regulations thereunder;*

***(2)** Employees' annuities, sections 402 and 403 and the regulations thereunder;*

***(3)** References to other acts of Congress exempting veterans' pensions and railroad retirement annuities and pensions, section 122.*

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6856, 30 FR 13316, Oct. 20, 1965]

The key phrase in the above is "unless excluded by law". They don't enumerate or define what is "excluded by law", and thus make it difficult to for retirees to prove what might be excluded on a tax return.

2.1. This regulation implements 26 U.S.C. §61, which begins with the language: "Except as otherwise provided in this subtitle".

2.2. 26 U.S.C. §871, IN THE CASE OF NONRESIDENT ALIENS ONLY, in fact "otherwise provides" a different definition of "gross income".

2.3. This regulation is therefore limited to statutory "U.S. persons" (the DEFAULT status in the I.R.C.) and does not apply to nonresident aliens.

2.4. 26 U.S.C. §871, in turn, does NOT directly mention pensions or retirement, and thus they are EXCLUDED by the rules of statutory construction:
https://www.law.cornell.edu/uscode/text/26/871

2.5. Under I.R.C. Section 861(a)(3) compensation for labor or personal services performed in the United States shall be treated as income from sources within the United States.

2.6. Under I.R.C. Section 864(b) performing personal services within the United States is included in the meaning of a "trade or business within the United States."

2.7. HOWEVER, "personal services" itself is defined as services performed in connection with a "trade or business", so this is a tautology:

26 C.F.R. §1.469-9 Rules for certain rental real estate activities.

(b)(4) PERSONAL SERVICES. Personal services means any work performed by an individual in connection with a trade or business. However, personal services do not include any work performed by an individual in the individual's capacity as an investor as described in section 1.469-5T(f)(2)(ii).

See: https://famguardian.org/TaxFreedom/CitesByTopic/PersonalServices.htm

So "personal services" is "the functions of a public office" that's included in gross income under I.R.C. Section 872, whether we call it "wages" or not. Serving as a serviceman who is not a statutory "employee" under 5 U.S.C. §2105 does not constitute such "personal services" or "the functions of a public office", except perhaps if they are an commissioned officer or volunteer by misrepresenting their status as an "employee" in submitting a Form W-4.

3. Is military retirement a taxable "U.S. source" for compliant members, who are required to be "nonresident aliens"?

3.1. Technically, since DFAS is NOT located in the District of Columbia (which is what the United States is geographically defined as in 26 U.S.C. §7701(a)(9) and (a)(10)), then military retirement is not a GEOGRAPHICAL "U.S. source" payment.

3.2. Even during the period of active duty, the services of military servicemen are rendered OUTSIDE the statutory geographical "United States" and unless they are commissioned officers, they are not engaged in "the functions of a public office" per 26 U.S.C. §7701(a)(26).

3.2.1. Regular enlisted servicemen are NOT OFFICERS of the United States. They are treated as mere "employees". "Employees" and "officers" are not technically equivalent.

3.2.2. Retired servicemen, whether enlisted or commissioned officers, are also not civil statutory "employees" under 5 U.S.C. §2105.

3.3. HOWEVER, we can find NO LEGISLATIVE authority to treat the term "United States" as EXPRESSLY including the CORPORATE "United States".

3.3.1. The only definition of GEOGRAPHICAL "United States" in the code is 26 U.S.C. §7701(a)(9) and (a)(10).

3.3.2. Since servicemembers are not "employees" under 5 U.S.C. §2105, the only way they can BECOME STATUTORY "employees" is by consenting and submitting a W-4.

3.3.3. AFTER they consent by filing a W-4, they are WITHIN the CORPORATE "United States", but even then, 4 U.S.C. §72 forbids them from acting as a public officer engaged in a "trade or business" outside the District of Columbia.

3.4. The DEFAULT definition of "United States" is District of Columbia in 26 U.S.C. §7701(a)(9) and (a)(10).

3.4.1. ONLY in the case of aliens does it enlarge to the entire country in 26 C.F.R. §301.7701(b)-1(c)(2)(ii), which is the PRESENCE test for ALIENS and never NATIONALS.

3.4.2. The presence test DOES NOT apply to nationals.

3.4.3. The presence test DOES NOT distinguish being in the GEOGRAPHICAL "UNITED STATES" from being within the COPORATE "United States". Thus, there is no such thing as being a source "within the United States" as an "employee" or "officer" of the United States working OUTSIDE the geographical "United States" because it is not expressly recognized where it needs to be recognized.

3.5. Of COURSE income tax can have an extraterritorial application outside the statutory geographical "United States" defined in 26 U.S.C. §7701(a)(9) and (a)(10), as in the case of Cook v. Tait, 265 U.S. 47 (1924). HOWEVER:

3.5.1. Cook volunteered for the privileged status of "U.S. Person" by filing a 1040 instead of a 1040NR.

3.5.2. Service members who DO NOT submit a Form W-4, who submit a Form W-8, and therefore DO NOT ELECT to be treated as statutory "employees" remain PRIVATE and their earnings are absolutely owned private property.

3.5.3. There is NO LEGISLATIVE AUTHORITY to exercise public offices or "trades or business" outside the statutory geographical "United States" under 4 U.S.C. §72.

3.5.4. By CONSENT, however, ANYTHING is permissible. This includes servicemembers who are NOT otherwise "employees" making elections under 26 U.S.C. §3402(p) to be treated AS IF they are "employees".

4.7 Withholding on military retirement:

26 C.F.R. § 31.3401(a)-1 - Wages.

***(b)* Certain specific items**—

(1) Pensions and retirement pay.

[. . .]

(ii) Amounts received as retirement pay for service in the Armed Forces of the United States, the Coast and Geodetic Survey, or the Public Health Service or as a disability annuity paid under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22) U.S.C. 1081; 60 Stat. 1021), ***are subject to withholding*** *unless such pay or disability annuity is excluded from gross income under section 104(a)(4), or is taxable as an annuity under the provisions of section 72.* ***Where such retirement pay or disability annuity (not excluded from gross income under section 104(a)(4) and not taxable as an annuity under the provisions of section 72) is paid to a nonresident alien individual, withholding is required only in the case of such amounts paid to a nonresident alien individual who is a resident of Puerto Rico.***

Those who are compliant members and who file as nonresident aliens therefore will NOT be subject to I.R.C. Subtitle C withholding unless they are residents of Puerto Rico.

Now a summary of the scenario for withholding:

1. When servicemen retire:
   1.1. They submit DD Forms 2656 and 108.
   1.2. They are asked by DFAS on the DD Form 2656, Part 1, Section VI to fill out a Form W-4 before they can receive their retirement check.
   1.3. If they complete a Form W-4, this constitutes a VOLUNTARY ELECTION to treat the earnings as statutory "wages". See 26 U.S.C. §3402(p) and 26 U.S.C. §83(b).
   1.4. Members should NOT be submitting the W-4, but rather the SEDM Form W-8SUB on our website instead as part of their retirement application:

W-8SUB, Form #04.231 https://sedm.org/Forms/04-Tax/2-Withholding/W-8SUB.pdf

2. If retiring servicemen do decide to submit our W-8SUB, Form #04.231 mentioned above, be cognizant that:

2.1. DFAS will try to ignore it or pretend they didn't receive it.
2.2. During the time between submitting your DD Form 2656 retirement package and the time you begin receiving pay, there is no way to interact with DFAS directly, because your myPay account will not have been established. This puts you in a blind spot as far as making sure that DFAS both receives and honors your W-8SUB form. That means you should go out of your way to contact them BEFORE the myPay account is established to make SURE they received the W-8SUB and that they will honor it.
2.3. The DFAS default method is to ignore your withholding paperwork, use a Social Security Number for reporting, and send out the IRS Forms 1099R or 1042s at the end of each year. DO NOT LET THEM get away with this. Our W-8SUB emphasizes that there is NOT WITHHOLDING, NO REPORTING, and that reports may NOT contain a Social Security Number. VERY IMPORTANT!

3. The duty to WITHHOLD at single zero for those not submitting a W-4 is NOT FOUND in the statutes. 26 C.F.R. §31.3401(f)(2)-1(a). The statute this regulation implements in 26 U.S.C. §3401(f) does not even mention this! The obligation is only in the regulations and thus BEYOND the scope of the statutes and unconstitutional. U.S. v. Calamaro, 354 U.S. 351 (1957). The regulation is only CONSTITUTIONAL if it limits itself to people WITHIN the treasury department. The following article PROVES that STATUTORY "citizens" and "residents" made "liable to" rather than "liable for" the income tax in 26 C.F.R. §1.1-1(a) are OFFICERS WORKING IN THE DEPARTMENT OF TREASURY.
https://sedm.org/Forms/08-PolicyDocs/HowYouVolForIncomeTax.pdf
4. 5 U.S.C. §301 FORBIDS the Secretary to write regulations for people OUTSIDE the Department of Treasury, such as those who are military service members who do not consent to be treated as "employees" or to work in the Treasury Department IN ADDITION to their role as servicemembers.
5. IRS Form W-2 "wages" are classified by the IRS as Tax Class 5, which means GIFTS rather than income tax. Employers have NO AUTHORITY to COMPEL GIFTS to the treasury of other people's money. You HAVE to volunteer before they can.

4.8 Reporting on military retirement

26 U.S. Code §6041 - Information at source

(a) Payments of $600 or more

All persons engaged in a trade or business and making payment in the course of such trade or business 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.*** *"*

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26 C.F.R. §1.6041-1 - Return of information as to payments of $600 or more.

(a)General rule -

(1)Information returns required -

(i)Payments required to be reported.

Except as otherwise provided in §§ 1.6041-3 and 1.6041-4 , ***every person engaged in a trade or business shall make an information return for each calendar year with respect to payments it makes during the calendar year in the course of its trade or business to another person of fixed or determinable income described in paragraph (a)(1)(i) (A) or (B) of this section.*** *For purposes of the regulations under this section, the person described in this paragraph (a)(1)(i) is a payor.*

(A) Salaries, wages, commissions, fees, and other forms of compensation for services rendered aggregating $600 or more.

Note the language above suggesting the reporting is on profits and gains, not all amounts earned:

> *"setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment."*
> *[26 U.S.C. §6041(a)]*

The term "income" under the Sixteenth Amendment has also been defined by the U.S. Supreme Court as "PROFIT". There is no "profit" in the case of a human being working for him or her self. Only if they work for a company and the company earns profit from the labor of their workers does it become reportable. See:

Sovereignty Forms and Instructions Online, Form #10.004, Cites by Topic: "income" https://famguardian.org/TaxFreedom/CitesByTopic/income.htm

Based on the above, the connection of "trade or business" is to the PAYER, not the target. And of course the U.S. Inc., as the payer, is one of the FEW parties actually engaged in "the functions of a public office". So even with the W-8SUB, Form #04.231 being filed with the retirement papers, DFAS will probably still report and treat it as "U.S. source". That means a 1040NR return will need to be filed to reconcile the reporting with the fact that it is from human labor but not profit and therefore not "income".

In addition, the decision of whether to file an information return is entirely up to the payer:

> *"To the extent there is any doubt that a Form 1099 was required, the decision to file a Form 1099 is left "with the payor, the party who typically decides whether to file the form and the party who is subject to penalties should it incorrectly decide not to file the form." McCormick v. Brzezinski, No. 08-10075, 2010 WL 2105110, at *2 (E.D. Mich. May 21, 2010). Thus, RPM was entitled to take a protective approach by issuing and filing a Form 1099. "*
> *[Childers v. Receivables Performance Mgmt. LLC, No. C13-0697JLR, at *5 (W.D. Wash. May 9, 2013)]*

Now a summary of the scenario for reporting:

1. DFAS retirement reporting is documented at:
Taxes, DFAS https://www.dfas.mil/RetiredMilitary/manage/taxes/
2. DFAS typically uses the following forms for military compensation reporting:
   - 2.1. IRS Form 1042s for nonresident aliens.
   - 2.2. IRS Form 1099R for statutory "U.S. persons" under 26 U.S.C. §7701(a)(30) (STATUTORY "citizens" and "residents" DOMICILED within the exclusive jurisdiction of Congress). This is the WRONG form for most Americans in states of the Union, who are nonresident aliens by default.
3. DFAS tries to sidestep all this by filing information returns against retirees, often in DIRECT CONFLICT with the withholding paperwork they submit from this site such as the SEDM Form W-8SUB.
   - 3.1. They do this in DIRECT violation of 26 U.S.C. §6041(a), because a nonresident alien from a state of the Union is NOT engaged in a "trade or business" and therefore not subject to reporting AT ALL! See:
Correcting Erroneous Information Returns, Form #04.001 https://sedm.org/Forms/04-Tax/0-CorrErrInfoRtns/CorrErrInfoRtns.pdf
   - 3.2. When this happens, the retiree must correct these false reports in the 1040NR filing using Forms #09.074, 09.075, and 09.077.
   - 3.3. Since the divorced spouse is not the DIRECT recipient of the retirement check, the actual recipient would need to cooperate with the spouse in the process of correcting these reports. Since a divorce is involved, this may be difficult.
   - 3.4. If DFAS were pressed in court to correct these FALSE information returns, the task of proving that military pay paid from DFAS in Indianapolis, IN would be a "source within the United States", because it is nowhere listed in the I.R.C. (Sections 861, 871) or the regulations thereunder as falling in that category and thus must be geographical in nature. A case brought before a court on this subject would probably cause them to lose.
4. In retort, one member said on this subject that:
   - 4.1. The place the check is issued is immaterial. Ultimately the money comes from the District of Columbia, which is the seat of government. DFAS is just a processing facility.
   - 4.2. To this we respond by saying that:
     - 4.2.1. If you want to say that the ultimate PAYOR is the District of Columbia, you didn't go back far enough. Even the District of Columbia is a mere corporate agent called "government" that is YET ANOTHER

fiction acting on behalf of its PRINCIPAL called "the State", which is true and ultimate sovereign and PAYOR. The STATE, as Principal, CREATED the "government" using the Constitution as a Trust Indenture.

4.2.2. Government as a corporation is but a trustee for the real sovereign and "state", which are PEOPLE located outside the statutory geographical "United States" in states of the Union. The STATE, consisting of PEOPLE ultimately are the REAL sponsors. Black's Law Dictionary defines the "State" as A PEOPLE, not a GOVERNMENT.

> *"**State**. **A people permanently occupying a fixed territory bound together by common-law habits and custom into one body politic** exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into international relations with other communities of the globe. United States v. Kusche, D.C.Cal., 56 F.Supp. 201 207, 208. The organization of social life which exercises sovereign power in behalf of the people. Delany v. Moralitis, C.C.A.Md., 136 F.2d. 129, 130. **In its largest sense, a "state" is a body politic or a society of men.** Beagle v. Motor Vehicle Acc. Indemnification Corp., 44 Misc.2d. 636, 254 N.Y.S.2d. 763, 765. A **body of people occupying a definite territory and politically organized under one government.** State ex re. Maisano v. Mitchell, 155 Conn. 256, 231 A.2d. 539, 542. A territorial unit with a distinct general body of law. Restatement, Second, Conflicts, §3. Term may refer either to body politic of a nation (e.g. United States) or to an individual government unit of such nation (e.g. California).*
>
> *[…]*
>
> ***The people of a state, in their collective capacity**, considered as the party wronged by a criminal deed; the public; as in the title of a cause, "The State vs. A.B."*
> *[Black's Law Dictionary, Sixth Edition, p. 1407]*

4.2.3. Government and "the state" are not synonymous. Government are the trustees while the PEOPLE are the real "state".

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

THE locality of "the State" is OUTSIDE the statutory geographical "United States" in 26 U.S.C. §7701(a)(9) and (a)(10).

4.2.4. Also, the CREATOR of a thing is the owner.

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[1] State ex rel. Nagle v. Sullivan, 98 Mont. 425, 40 P.2d. 995, 99 A.L.R. 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 U.S. 807, 98 L.Ed. 2d 18, 108 S.Ct. 53, on remand (CA7 Ill) 840 F.2d. 1343, cert den 486 U.S. 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).

https://famguardian.org/Subjects/Taxes/Remedies/PowerToCreate.htm

4.2.5. Government doesn't create anything, so they don't own what they pay people. All they do is STEAL wealth and redistribute it from their ULTIMATE sponsors, which is "the State".

4.2.6. The REAL and ultimate creators of the wealth are in the constitutional states, which are not in the GEOGRAPHICAL statutory "United States".
So NO, it's not a "U.S. source" if you trace the money all the way back to the PLACE the wealth was created and the people who created it and paid it as the only real owner.
https://famguardian.org/Subjects/Taxes/Remedies/PowerToCreate.htm

4.9 Is retired pay a privilege or not?

1. The common law requires that you have a right to avoid a "benefit" or the corresponding obligations to pay for it.

> *"Cujus est commodum ejus debet esse incommodum.*
> *He who receives the benefit should also bear the disadvantage."*
>
> *"Que sentit commodum, sentire debet et onus.*
> *He who derives a benefit from a thing, ought to feel the disadvantages attending it. 2 Bouv. Inst. n. 1433."*
>
> *Commodum ex injuri su non habere debet.*
> *No man ought to derive any benefit of his own wrong. Jenk. Cent. 161.*
>
> *Invito beneficium non datur.*
> *No one is obliged to accept a benefit against his consent. Dig. 50, 17, 69. But if he does not dissent he will be considered as assenting. Vide Assent.*
>
> *Potest quis renunciare pro se, et suis, juri quod pro se introductum est.*
> *A man may relinquish, for himself and his heirs, a right which was introduced for his own benefit. See 1 Bouv. Inst. n. 83.*
>
> *Quilibet potest renunciare juri pro se inducto.*
> *Any one may renounce a law introduced for his own benefit. To this rule there are some exceptions. See 1 Bouv. Inst. n. 83.*
> *[Bouvier's Maxims of Law, 1856;*
> *SOURCE: http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviersMaxims.htm]*

2. If you do not want the benefit and present a Form W-8 and clarify that you are selling PRIVATE property, not "personal services". and are not within the geographical "United states" nor serving as an officer of the CORPORATE United States, then any company that insists on BEHAVING as an "employer" in relation to you and thus treating you AS IF you are an "employee" is engaging in identity theft in violation of 18 U.S.C. §912.
3. It's not a privilege unless you can AVOID it. They have to give you a way to avoid it IN ALL CASES.
4. If they don't give you a way to avoid the privilege and the civil status the privilege attaches to (statutory "citizen", "resident", "person", "individual", etc), then it's slavery.
5. To suggest that imposing a civil status and it's corresponding obligations is NOT slavery is to invalidate the entire approach to choosing NRA instead of statutory "U.S. person" under 26 U.S.C. §7701(a)(30) as well.
6. In the case of retirement checks, the way you avoid it is to just not receive it or ask for it.

4.10 How to File a 1040NR and get all withholding back on military retirement

The following tools on our website describe how to file a lawfully prepared tax return at the end of the year which has no income tax on amounts withheld by the Defense Financial Accounting Service (DFAS):

1. *How to File Returns*, Form #09.074** (Member Subscriptions)
   https://sedm.org/product/filing-returns-form-09-074/
2. *Procedure to File Returns*, Form #09.075** (Member Subscriptions)
   https://sedm.org/product/procedure-to-file-tax-returns-form-09-075/

Below is some of the language in the filing describing why you deserve a full refund of all withholdings on military retirement pay:

2. REASONS WHY EARNINGS FROM MY LABOR ARE NOT INCLUDED IN GROSS INCOME ON THIS SUBMISSION

Earnings from my own absolutely owned, constitutionally protected, private labor are not included as "gross income" on this submission because:

(a) They represent property and not profit and therefore "income" within the meaning of the Sixteenth Amendment. Pollock v. Farmers Loan and Trust, 157 U.S. 429 (1895) acknowledged that taxes upon property are unconstitutional direct taxes.

(b) The U.S. Supreme Court acknowledged that involuntary taxation of labor is unconstitutional. "Every man has a natural right to the fruits of his own labor, is generally admitted; and no other person can rightfully deprive him of those fruits, and appropriate them against his will…" [The Antelope, 23 U.S. 66; 10 Wheat 66; 6 L.Ed. 268 (1825)]

(c) The labor was not performed as an agent of anyone but rather by myself and only for the benefit of myself. It is thus is not attributable to a PRINCIPAL who is a fiction with no constitutional rights under the first 8 amendments of the Constitution or who is exchanging my services for profit in the form of profit from "compensation for services" described in 26 U.S.C. §61(a)(1) or 26 U.S.C. §871(a)(1)(A).

(d) 26 U.S.C. §83 acknowledges that only profit is taxed as "income" in the case of transfers of property (such as my labor for money) by deducting the fair market value the property (labor) from the amount paid for it if the payment was to the laborer rather than the person he or she is working for. It permits an exception to this rule in which an "election" can be made to treat the WHOLE amount paid to the laborer as "income" in 26 U.S.C. §83(b)(2). However, I do NOT here make and do not consent for you to make such an election on my behalf to convert the entire amount or reimbursement for my labor into "income" or "profit" under the Sixteenth Amendment or "gross income" under the "internal revenue code". All labor in my case was executed OUTSIDE the statutory geographical "United States" and therefore does not constitute "employment" per 26 C.F.R. §31.3121(b)-3(c) and I do not consent to call it "employment" either.

(e) There are specific people like federal judges and the president, all of whose earnings are "gross income" by statute such as that found in the 1939 Internal Revenue Code, Section 22(a) and Social Security recipients in 26 U.S.C. §861(a)(8), but no such provision is provided for military retirement. Per the rules of statutory construction, without such a express statutory provision, military retirement is purposefully excluded from "gross income".

(f) I can find no place in the entire Internal Revenue Code where exchanges of any kind of property for another kind of equal value is "income" or "gross income" in a constitutional sense. It is is my understanding that Congress has no authority to even define "Income" in a constitutional or Sixteenth Amendment sense, much less EXPAND the definition to include anything that is NOT profit or is merely property such as "wages". "In order, therefore, that the [apportionment] clauses cited from article I [§2, cl. 3 and §9, cl. 4] of the Constitution may have proper force and effect …[I]t becomes essential to distinguish between what is an what is not 'income,'…according to truth and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone, it derives its power to legislate, and within those limitations alone that power can be lawfully exercised… [pg. 207]…After examining dictionaries in common use we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909, Stratton's Independence v. Howbert, 231 U.S. 399, 415, 34 S.Sup.Ct. 136, 140 [58 L.Ed. 285] and Doyle v. Mitchell Bros. Co., 247 U.S. 179, 185, 38 S.Sup.Ct. 467, 469, 62 L.Ed. 1054…" [Eisner v. Macomber, 252 U.S. 189, 207, 40 S.Ct. 189, 9 A.L.R. 1570 (1920)]

*[Procedure to File Returns, Form #09.075**; https://sedm.org/product/procedure-to-file-tax-returns-form-09-075/]*

4.11 Minimizing income tax on retirement checks

By default, the entire amount of a retirement check would go on Schecule NEC and be taxed at a 30% rate. There are very few itemized deductions that nonresident aliens can take to reduce their income tax liability.

However, "electing" to make the retirement check "effectively connected" will significantly reduce the tax to usually 1/3 of the 30% found on schedule NEC. This is because the tax table used on "effectively connected" earnings is the same one used on the IRS Form 1040. Pensions appear on line 5a of the Form 1040NR. This is therefore the most effective way we know of to reduce the tax on retirement checks paid by the national government.

Social Security also goes on Schedule NEC. If most of your earnings are Social Security, the only way to reduce the tax on those below 30% is to file as a statutory "U.S. Person". HOWEVER, there are HUGE downsides to filing as a statutory "U.S. Person", as we discuss in the following resource:

U.S. Person Position, Form #05.053 https://sedm.org/Forms/05-MemLaw/USPersonPosition.pdf

Below are just a few of the downsides and costs of changing your status to that of a U.S. Person under 26 U.S.C. §7701(a)(30):

1. Subject to income taxation on WORLDWIDE earnings, rather than only those from a federal zone or federal government source as in the case of a nonresident alien. See 26 C.F.R. §1.1-1.
2. Subject to Affordable Care Act (ACA).
3. Subject to FATCA reporting on bank accounts in foreign countries.

5 Further research on your part

1. Conducting your own search for information:
   1.1. Any discussion of the tax subject BEGINS with an examination of the 1040NR return itself and IRS Publication 515.
   https://www.irs.gov/pub/irs-pdf/f1040nr.pdf
   https://www.irs.gov/publications/p515
   1.2. A search of the above should be conducted by you BEFORE posting to this forum. Did you examine these?
   1.3. IRS Publication 519 does not directly address nonresident aliens, because not all "nonresident aliens" are "aliens" and the publication only addresses aliens.
      1.3.1. Nonresident aliens are NOT a subset of "aliens". This is covered in:

Non-Resident Non-Person Position, Form #05.020 https://sedm.org/Forms/05-MemLaw/NonresidentNonPersonPosition.pdf

      1.3.2. If nonresident aliens were, in fact, a subset of aliens, there would be no need for a SEPARATE IRS Publication 515 for them because they could be addressed by IRS Publication 519.
2. Beyond these considerations, it is up to YOU to research these issues further. We CANNOT advise "taxpayers" on this site, and any other approach described herein to this issue would involve STATUTORY "taxpayer" whores who we can't help. These people should go to a member of the tax or legal profession who only deal with government whore "taxpayers" instead. See:

Your Rights as a "Nontaxpayer", IRS Publication 1a, SEDM Form #08.008 https://sedm.org/LibertyU/NontaxpayerBOR.pdf

3. Taxpayer whores are those who file the Form 1040, who seek socialist benefits, or who invoke the CIVIL STATUTORY privileges or immunities associated with ANY civil statutory status, such as "person", "citizen", "resident", "taxpayer", "spouse" (under the family code), "driver" (under the vehicle code). See:

Why Statutory Civil Law is Law for Government and Not Private Persons, Form #05.037 https://sedm.org/Forms/05-MemLaw/StatLawGovt.pdf

4. For reasons you should NEVER fornicate with the Beast by taking its privileges or its money and why you are jeopardizing your own economic security to do so, see:

Your Lawless, Irresponsible, Anarchist Beast Government, Form #05.054 https://sedm.org/Forms/05-MemLaw/YourIrresponsibleLawlessGov.pdf

   Blacks Law Dictionary defines COMMERCE as "intercourse". The Bible refers to those who conduct commerce with the lawless government beast as "playing the harlot". The "life of luxury" mentioned in the book of Revelation is paid for with socialist "benefits", in fact. See:

Are You "Playing the Harlot"?, SEDM Blog https://sedm.org/are-you-playing-the-harlot/

5. If, during your own further research on this subject, you discover any evidence that contradicts the above, it is your duty as a member to post the information here so that our materials can be continually improved to remove errors.

6 What about spouses of military members receiving military pay as part of a divorce settlement?

Since the divorced spouse is not the DIRECT recipient of the retirement check, the actual recipient would need to cooperate with and agree with the ex spouse in the process of whatever approach the two of you decide to take based on the content of this document.

7 Rebutted Objections to this document

7.1 Defense Financial Accounting Service (DFAS) is a "U.S. source" for military retirement payments

FALSE STATEMENT:

Prove that DFAS is the source of your income and not the Department of Defense, a Department of the Executive Branch of the federal government, headquartered in D.C.

> *"Payrolling" is a term which means one company funds the payroll of another company's employees and then bills the company for reimbursement."*
> *[Snelling, Inc. v. Arico, Inc., 83 Ohio.App.3d. 89, 93 n.6 (Ohio Ct. App. 1993)]*
>
> _____
>
> *"DFAS is a working capital fund agency financed by reimbursement of operating costs from its governmental customers (mostly the military service departments) rather than through direct appropriations. DFAS remains the world's largest finance and accounting operation.[4]"*
> *[Wikipedia: DFAS; Downloaded 2/28/23;*
> *https://en.wikipedia.org/wiki/Defense_Finance_and_Accounting_Service]*
>
> ***FOOTNOTES:***
>
> *4. Defense Finance and Accounting Service. (2016, December 21). Agency Overview. Accessed on April 11, 2017.*

My IRS refund check was issued from an office in Austin Texas, but the source of the interest income on the refund is nonetheless the federal United States, in D.C.

REBUTTAL:

Prove that the PRINCIPAL making the actual payment is the government corporation, rather than the people they work for as trustees in the states called "the State" who are not WITHIN the District of Columbia.

1. The "state" as a legal person resides outside the District of Columbia and they are the real principal making the payment through their representatives. The STATE is the REAL party in interest, not its AGENT, a corporate fiction:

> *"State. A people permanently occupying a fixed territory bound together by common-law habits and custom into one body politic exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into international relations with other communities of the globe. United States v. Kusche, D.C.Cal., 56 F.Supp. 201 207, 208. The organization of social life which exercises sovereign power in behalf of the people. Delany v. Moralitis, C.C.A.Md., 136 F.2d. 129, 130. In its largest sense, a "state" is a body politic or a society of men. Beagle v. Motor Vehicle Acc. Indemnification Corp., 44 Misc.2d. 636, 254 N.Y.S.2d. 763, 765. A body of people occupying a definite territory and politically organized under one government. State ex re. Maisano v. Mitchell, 155 Conn. 256, 231 A.2d. 539, 542. A territorial unit with a distinct general body of law. Restatement, Second, Conflicts, §3. Term may refer either to body politic of a nation (e.g. United States) or to an individual government unit of such nation (e.g. California).*
>
> *[…]*
>
> *The people of a state, in their collective capacity, considered as the party wronged by a criminal deed; the public; as in the title of a cause, "The State vs. A.B."*

[Black's Law Dictionary, Sixth Edition, p. 1407]

2. "State" and "government" are NOT synonymous. SCOTUS said so in Poindexter v. Greenhow, 114 U.S. 270, 5 S.Ct. 903 (1885).

3. Taxation is based SOLELY on domicile, and the party receiving the payment is not domiciled in DC. Only the OFFICE falsely imputed to him/her called "taxpayer", "citizen", "resident", "person", is under 4 U.S.C. §72 and Federal Rule of Civil Procedure 17(b).

> *"**The obligation of one domiciled within a state to pay taxes there, arises from unilateral action of the state government in the exercise of the most plenary of sovereign powers, that to raise revenue to defray the expenses of government and to distribute its burdens equably among those who enjoy its benefits. Hence, domicile in itself establishes a basis for taxation. Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable from the responsibility for sharing the costs of government. See Fidelity & Columbia Trust Co. v. Louisville, 245 U.S. 54, 58; Maguire v. Trefry, 253 U.S. 12, 14, 17; Kirtland v. Hotchkiss, 100 U.S. 491, 498; Shaffer v. Carter, 252 U.S. 37, 50.** The Federal Constitution imposes on the states no particular modes of taxation, and apart from the specific grant to the federal government of the exclusive 280*280 power to levy certain limited classes of taxes and to regulate interstate and foreign commerce, it leaves the states unrestricted in their power to tax those domiciled within them, so long as the tax imposed is upon property within the state or on privileges enjoyed there, and is not so palpably arbitrary or unreasonable as to infringe the Fourteenth Amendment. Kirtland v. Hotchkiss, supra.*

> *"Taxation at the place of domicile of tangibles located elsewhere has been thought to be beyond the jurisdiction of the state, Union Refrigerator Transit Co. v. Kentucky, 199 U.S. 194; Frick v. Pennsylvania, 268 U.S. 473, 488-489; but considerations applicable to ownership of physical objects located outside the taxing jurisdiction, which have led to that conclusion, are obviously inapplicable to the taxation of intangibles at the place of domicile or of privileges which may be enjoyed there. See Foreign Held Bond Case, 15 Wall. 300, 319; Frick v. Pennsylvania, supra, p. 494. And the taxation of both by the state of the domicile has been uniformly upheld. Kirtland v. Hotchkiss, supra; Fidelity & Columbia Trust Co. v. Louisville, supra; Blodgett v. Silberman, 277 U.S. 1; Maguire v. Trefry, supra; compare Farmers Loan & Trust Co. v. Minnesota, 280 U.S. 204; First National Bank v. Maine, 284 U.S. 312.*
> *[Lawrence v. State Tax Commission, 286 U.S. 276 (1932); SOURCE: https://scholar.google.com/scholar_case?case=10241277000101996613]*

Yes, Lawrence above is about state taxes. But the income tax is the equivalent of a state tax per Downes v. Bidwell because it is imposed by default in the District of Columbia:

> *"Loughborough v. Blake, 5 Wheat. 317, 5 L.Ed. 98, was an action of trespass or, as appears by the original record, replevin, brought in the circuit court for the District of Columbia to try the right of Congress to impose a direct tax for general purposes on that District. 3 Stat. at L. 216, chap. 60. **It was insisted that Congress could act in a double capacity: in one as legislating [182 U.S. 244, 260] for the states; in the other as a local legislature for the District of Columbia. In the latter character, it was admitted that the power of levying direct taxes might be exercised, but for District purposes only, as a state legislature might tax for state purposes; but that it could not legislate for the District under art. 1, 8, giving to Congress the power 'to lay and collect taxes, imposts, and excises,' which 'shall be uniform throughout the United States,' inasmuch as the District was no part of the United States. It was held that the grant of this power was a general one without limitation as to place, and consequently extended to all places over which the government extends; and that it extended to the District of Columbia as a constituent part of the United States.** The fact that art. 1 , 2, declares that 'representatives and direct taxes shall be apportioned among the several states . . . according to their respective numbers' furnished a standard by which taxes were apportioned, but not to exempt any part of the country from their operation. 'The words used do not mean that direct taxes shall be imposed on states only which are represented, or shall be apportioned to representatives; but that direct taxation, in its application to states, shall be apportioned to numbers.' That art. 1, 9, 4, declaring that direct taxes shall be laid in proportion to the census, was applicable to the District of Columbia, 'and will enable Congress to apportion on it its just and equal share of the burden, with the same accuracy as on the respective states. If the tax be laid in this proportion, it is within the very words of the restriction. It is a tax in proportion to the census or enumeration referred to.' It was further held that the words of the 9th section did not 'in terms require that the system of direct taxation, when resorted to, shall be extended to the territories, as the words of the 2d section require that it shall be extended to all the states. They therefore may, without violence, be understood to give a rule when the territories shall be taxed, without imposing the necessity of taxing them.'"*

> *"There could be no doubt as to the correctness of this conclusion, so far, at least, as it applied to the District of Columbia. This District had been a part of the states of Maryland and [182 U.S. 244, 261] Virginia. It had been subject to the Constitution, and was a part of the United States[***]. The Constitution had attached to it irrevocably. There are steps which can never be taken backward. The tie that bound the states of Maryland and Virginia to the Constitution could not be dissolved, without at least the consent of the Federal and state governments to a formal separation. The mere cession of the District of Columbia to the Federal government*

relinquished the authority of the states, but it did not take it out of the United States or from under the aegis of the Constitution. Neither party had ever consented to that construction of the cession. If, before the District was set off, Congress had passed an unconstitutional act affecting its inhabitants, it would have been void. If done after the District was created, it would have been equally void; in other words, Congress could not do indirectly, by carving out the District, what it could not do directly. The District still remained a part of the United States, protected by the Constitution. Indeed, it would have been a fanciful construction to hold that territory which had been once a part of the United States ceased to be such by being ceded directly to the Federal government."

[. . .]

"Indeed, the practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect [182 U.S. 244, 279] that the Constitution is applicable to territories acquired by purchase or conquest, only when and so far as Congress shall so direct. Notwithstanding its duty to 'guarantee to every state in this Union a republican form of government' (art. 4, 4), by which we understand, according to the definition of Webster, 'a government in which the supreme power resides in the whole body of the people, and is exercised by representatives elected by them,' Congress did not hesitate, in the original organization of the territories of Louisiana, Florida, the Northwest Territory, and its subdivisions of Ohio, Indiana, Michigan, Illinois, and Wisconsin and still more recently in the case of Alaska, to establish a form of government bearing a much greater analogy to a British Crown colony than a republican state of America, and to vest the legislative power either in a governor and council, or a governor and judges, to be appointed by the President. It was not until they had attained a certain population that power was given them to organize a legislature by vote of the people. In all these cases, as well as in territories subsequently organized west of the Mississippi, Congress thought it necessary either to extend to Constitution and laws of the United States over them, or to declare that the inhabitants should be entitled to enjoy the right of trial by jury, of bail, and of the privilege of the writ of habeas corpus, as well as other privileges of the bill of rights."
[Downes v. Bidwell, 182 U.S. 244 (1901)]

Its a tax on THE GOVERNMENT not "the State". It's not a tax on a GEOGRAPHY, but upon THE GOVERNMENT itself!

"It was held that the grant of this power was a general one without limitation as to place, and consequently extended to all places over which the government extends; and that it extended to the District of Columbia as a constituent part of the United States."
[Downes v. Bidwell, 182 U.S. 244 (1901)]

Government can only tax or regulate ITS OWN PROPERTY AND AGENTS. Justice demands that they leave PRIVATE property ALONE because their MAIN job is PROTECTING private property per the Declaration of Independence.

The national government does not extend into the state but is limited by Constitution Article 1, Section 8, Clause 17 and 4 U.S.C. §72 to District of Columbia.

THEIR RESPONSE:

The government will not have to prove any of that. You will lose and perhaps go to prison making this argument.

You take their money, you have no leg to stand on as far as questioning where the money they pay you came from. it is none of your business and certainly not a defense against your tax obligations

OUR RESPONSE:

Prove that the real party in interest is the corporation in DC, (the "government") rather than its principal (the "State") in the states who actually produce the wealth that really pay all of the bills of the corporation that SERVES them as an agent and NOT a principal.

I don't have to question anything. These should be obvious facts you can't deny.

Everything always comes down to threats like you will go to jail instead of actual facts.

THEIR RESPONSE:

You are insane.

OUR RESPONSE:

When you're dealing the crazies in D.C., it's contagious and seems to have infected you. "You're insane" is always the last line of defense when you don't have real evidence to defend yourself.

If your employee as an agent pays someone a check, who really paid the bill if they work for you? DUUUH.

Public officers in DC are AGENTS, not PRINCIPALS. That's what "representative government" based on republican principles and DELEGATION of powers from the true sovereigns, THE PEOPLE, really means.

Stop talking and thinking like a DC crazy who thinks THEY are in charge instead of the REAL sovereigns in the states that they work for as a PUBLIC SERVANT.

The SERVANT (agent) cannot be greater than the MASTER (principal), is what our boss Jesus said on this subject. You are trying to invert that relationship and make public servants into masters and replace a republic with a dulocracy.

> *"Remember the word that I [Jesus] said to you, 'A [public] servant [AGENT] is not greater than his [sovereign] master [PRINCIPAL in the states who is OUTSIDE DC].'"*
> *[John 15:20, Bible, NKJV]*

To treat "government" as the principal is the practice IDOLATRY and defy the literal commands of Jesus. Blasphemy

Either THE PEOPLE are the PRINCIPAL, or the GOVERNMENT as a fiction and corporation is. You can't have it both ways.

> ***In the discussion of such questions, the distinction between the government of a State and the State itself is important, and should be observed. In common speech and common apprehension they are usually regarded as identical; and as ordinarily the acts of the government are the acts of the State, because within the limits of its delegation of power, the government of the State is generally confounded with the State itself, and often the former is meant when the latter is mentioned. The State itself is an ideal person, intangible, invisible, immutable. The government is an agent, and, within the sphere of the agency, a perfect representative; but outside of that, it is a lawless usurpation. The Constitution of the State is the limit of the authority of its government, and both government and State are subject to the supremacy of the Constitution of the United States, and of the laws made in pursuance thereof. So that, while it is true in respect to the government of a State, as was said in Langford v. United States, 101 U.S. 341, that the maxim, that the king can do no wrong, has no place in our system of government; yet, it is also true, in respect to the State itself, that whatever wrong is attempted in its name is imputable to its government, and not to the State, for, as it can speak and act only by law, whatever it does say and do must be lawful. That which, therefore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but is the mere wrong and trespass of those individual persons who falsely speak and act in its name. It was upon the ground of this important distinction that this court proceeded in the case of Texas v. White, 7 Wall. 700, when it adjudged that the acts of secession, which constituted the civil war of 1861, were the unlawful acts of usurping State governments, and not the acts of the States themselves, inasmuch as "the Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States;" and that, consequently, the war itself was not a war between the States, nor a war of the United States against States, but a war of the United States against 291*291 unlawful and usurping governments, representing not the States, but a rebellion against the United States**. *This is, in substance, what was said by Chief Justice Chase, delivering the opinion of the court in Thorington v. Smith, 8 Wall. 1, 9, when he declared, speaking of the Confederate government, that "it was regarded as simply the military representative of the insurrection against the authority of the United States." The same distinction was declared and enforced in Williams v. Bruffy, 96 U.S. 176, 192, and in Horn v. Lockhart, 17 Wall. 570, both of which were referred to and approved in Keith v. Clark, 97 U.S. 454, 465.*
> *[Poindexter v. Greenhow, 114 U.S. 270, 5 S.Ct. 903 (1885)]*

THEIR REPONSE:

Maybe you should just refuse to take their money.

OUR RESPONSE:

Look at the conclusions of this document. That's kind of what we hint at.

That, in fact, has been our approach SO FAR.

It's tempting to oversimplify things. You seem to do that too much, however. We're trying to show you the situation is a LOT more complicated than it appears.

No ill will intended. But we want to show people the DEEP arguments on both sides, my friend, and you are helping very much in doing that through this debate. Thank you.

THEIR RESPONSE:

It's tempting to grasp at straws and go beyond the bounds of reason, which you do too much.

There is zero chance this argument you are making would succeed.

And you better have reasonable basis for your argument or you could be sanctioned up to $25k by the Court.

You do not have reasonable basis in the law for arguing the pay is excluded under I.R.C. 872.

You don't have reasonable basis to claim Congress intended to exclude military retirement pay from gross income in the case of a nonresident alien.

And Congress could have used words like "located in the United States" if only the geographical sense of United States was intended. The stated intent of 16th Amendment was to tax the national government without interference from the SCOTUS treating it as a direct tax requiring apportionment.

OUR RESPONSE:

No question that Congress can regulate the use of property it owns. That's the basis of the ENTIRE civil code, which is their creation and their property.

Why Statutory Civil Law is Law for Government and Not Private Persons, Form #05.037
https://sedm.org/Forms/05-MemLaw/StatLawGovt.pdf

HOWEVER, beyond the point that the property is PURCHASED with labor of equal value by me, it ceases to be public. There is no authority to turn around beyond that point of PURCHASE and UNILATERALLY CONVERT any portion of that private property to PUBLIC property so that it can be taxed or regulated AFTER it is earned. That would be a violation of the contract, a taking.

The ability to regulate or tax PRIVATE property of those protected by the constitution is a taking within the meaning of the Fifth Amendment without compensation or consent. The fact that it is IN THEIR HANDS doesn't mean it's THEIR property or public property, or that they can change its character unilaterally without the consent of the person who earned it before it is paid..

That's called being an "Indian giver". The essence of it is RESERVING a property interest in everything you pay others or that they earn, and forcing them to "return" a kickback to remove the public portion from your custody. That is how I intent do approach them: PAY THEM money as a GRANT (franchise) beyond the tax and bundle it with the tax, and then PURCHASE the ability to regulate THEM in doing so. Then I'll sit back and watch them HELP ME defeat their own program of being an "Indian giver" by the same tactics as they are using. Fight fire with fire. That's the Sun Tzu approach.

Further, the government cannot make a condition of employment that unconstitutionally extends their taxing power into the states. They can't use economic duress to exceed the authority delegated by the Constitution. 4 U.S.C. §72 and Article 4, Section 4 don't allow them to "invade the states" with civil statutory public officer fictions called "taxpayers", "citizens", "residents", and "persons" in order to extend their taxing powers, even WITH consent procured through economic COERCION contained with an employment agreement.

> *He [the TYRANT king] has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance."*
> *[Declaration of Independence, 1776]*

If unconstitutional income taxes exercised EXTRATERRITORIALLY within the legislatively but not constitutionally "foreign" state of the Union DO NOT "eat out our substance", I don't know what DOES! Congress cannot do INDIRECTLY by contract what they cannot do DIRECTLY and do EXACTLY what the Declaration complained the King of England was doing that initiated the American Revolution to begin with that started our country:

> *"**It is almost unnecessary to say, that what the legislature cannot do directly, it cannot do indirectly**. The stream can mount no higher than its source. The legislature cannot create corporations with illegal powers, nor grant unconstitutional powers to those already granted."*
> *[Gelpcke v. City of Dubuque, 68 U.S. 175, 1863 WL 6638 (1863)]*

> *"Congress cannot do indirectly what the Constitution prohibits directly."*
> *[Dred Scott v. Sandford, 60 U.S. 393, 1856 WL 8721 (1856)]*

> *"In essence, the district court used attorney's fees in this case as an alternative to, or substitute for, punitive damages (which were not available). **The district court cannot do indirectly what it is prohibited from doing directly**."*
> *[Simpson v. Sheahan, 104 F.3d. 998, C.A.7 (Ill.) (1997)]*

> *"**It is axiomatic that the government cannot do indirectly (i.e. through funding decisions) what it cannot do directly.**"*
> *[Com. of Mass. v. Secretary of Health and Human Services, 899 F.2d. 53, C.A.1 (Mass.) (1990)]*

> *"Almost half a century ago, this Court made clear that the government "may not enact a regulation providing that no Republican ... shall be appointed to federal office."* Public Workers v. Mitchell, 330 U.S. 75, 100, 67 S.Ct. 556, 569, 91 L.Ed. 754 (1947). *What the *78 **First Amendment precludes the government**2739 from commanding directly, it also precludes the government from accomplishing indirectly. See Perry, 408 U.S., at 597, 92 S.Ct., at 2697 (citing Speiser v. Randall, 357 U.S. 513, 526, 78 S.Ct. 1332, 1342, 2 L.Ed.2d. 1460 (1958))**; see supra, at 2735."*
> *[Rutan v. Republican Party of Illinois, 497 U.S. 62, 110 S.Ct. 2729, U.S.Ill. (1990)]*

> *"Similarly, **numerous cases have held that governmental entities cannot do indirectly that which they cannot do directly. See *841 Board of County Comm'rs v. Umbehr, 518 U.S. 668, 674, 116 S.Ct. 2342, 135 L.Ed.2d. 843 (1996) (holding that the First Amendment protects an independent contractor from termination or prevention of the automatic renewal of his at-will government contract in retaliation for exercising his freedom of speech); El Dia, Inc. v. Rossello, 165 F.3d. 106, 109 (1st Cir.1999) (holding that a government could not withdraw advertising from a newspaper which published articles critical of that administration because it violated clearly established First Amendment law prohibiting retaliation for the exercising of freedom of speech); North Mississippi Communications v. Jones, 792 F.2d. 1330, 1337 (5th Cir.1986) (same).** The defendants violated clearly established Due Process and First Amendment law by boycotting the plaintiffs' business in an effort to get them removed from the college."*
> *[Kinney v. Weaver, 111 F.Supp.2d 831, E.D.Tex. (2000)]*

You said if a military retiree takes the government's money I don't have a leg to stand on. That goes both ways or it goes NO way. Equality of treatment is the foundation of the constitution. If you REALLY believe in "equitable principles" you have expressed, this is the ULTIMATE form or equity.

Requirement for Equal Protection and Equal Treatment, Form #05.033 https://sedm.org/Forms/05-MemLaw/EqualProtection.pdf

Justice ITSELF requires equality of TREATMENT of ALL.

What is "Justice", Form #05.050 https://sedm.org/Forms/05-MemLaw/WhatIsJustice.pdf

Thus, an entire government can have no more rights than a single human being, because ALL of its authority was delegated FROM the people.

> *Nemo dat qui non habet. No one can give who does not possess. Jenk. Cent. 250.*
>
> *Nemo plus juris ad alienum transfere potest, quam ispe habent. One cannot transfer to another a right which he has not. Dig. 50, 17, 54; 10 Pet. 161, 175.*
>
> *Nemo potest facere per alium quod per se non potest. No one can do that by another which he cannot do by himself.*
>
> *Qui per alium facit per seipsum facere videtur. He who does anything through another, is considered as doing it himself. Co. Litt. 258.*
>
> *Quicpuid acquiritur servo, acquiritur domino. Whatever is acquired by the servant, is acquired for the master. 15 Bin. Ab. 327.*
>
> *Quod per me non possum, nec per alium. What I cannot do in person, I cannot do by proxy [the Constitution]. 4 Co. 24.*
>
> *What a man cannot transfer, he cannot bind by articles [the Constitution].*
> *[Bouvier's Maxims of Law, 1856; SOURCE:*
> *http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviersMaxims.htm]*

7.2 "gross income" includes retirement and pensions for EVERYONE under 26 C.F.R. §1.61-11

FALSE STATEMENT:

"Gross income" includes retirement and pensions for EVERYONE under 26 C.F.R. §1.61-11.

REBUTTAL:

1. 26 C.F.R. §1.61-11 says the following on the taxability of military retirement:

> *26 C.F.R. § 1.61-11 - Pensions.*
>
> *§ 1.61-11 Pensions.*
>
> ***(a)* In general.**
>
> ***Pensions and retirement allowances paid either by the Government or by private persons constitute gross income unless excluded by law**. Usually, where the taxpayer did not contribute to the cost of a pension and was not taxable on his employer's contributions, the full amount of the pension is to be included in his gross income. But see sections 72, 402, and 403, and the regulations thereunder. When amounts are received from other types of pensions, a portion of the payment may be excluded from gross income. Under some circumstances, amounts distributed from a pension plan in excess of the employee's contributions may constitute long-term capital gain, rather than ordinary income.*
>
> ***(b)* Cross references.**
>
> *For the inclusion of pensions in income for the purpose of the retirement income credit, see section 37 and the regulations thereunder. Detailed rules concerning the extent to which pensions and retirement allowances are to be included in or excluded from gross income are contained in other sections of the Code and the regulations thereunder. Amounts received as pensions or annuities under the Social Security Act (42 U.S.C. ch. 7) or the Railroad Retirement Act (45 U.S.C. ch. 9) are excluded from gross income. For other partial and total exclusions from gross income, see the following:*
>
> ***(1)** Annuities in general, section 72 and the regulations thereunder;*
>
> ***(2)** Employees' annuities, sections 402 and 403 and the regulations thereunder;*

(3) References to other acts of Congress exempting veterans' pensions and railroad retirement annuities and pensions, section 122.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6856, 30 FR 13316, Oct. 20, 1965]

2. This regulation implements 26 U.S.C. §61, which begins with the language: "Except as otherwise provided in this subtitle".
3. 26 U.S.C. §871, IN THE CASE OF NONRESIDENT ALIENS ONLY, in fact "otherwise provides" a different definition of "gross income".
4. This regulation is therefore limited to statutory "U.S. persons" (the DEFAULT status in the I.R.C.) and does not apply to nonresident aliens.
5. 26 U.S.C. §871, in turn, does NOT directly mention pensions or retirement, and thus they are EXCLUDED by the rules of statutory construction:
https://www.law.cornell.edu/uscode/text/26/871
6. Under I.R.C. Section 861(a)(3) compensation for labor or personal services performed in the United States shall be treated as income from sources within the United States.
7. Under I.R.C. Section 864(b) performing personal services within the United States is included in the meaning of a "trade or business within the United States."
8. HOWEVER, "personal services" itself is defined as services performed in connection with a "trade or business", so this is a tautology:

26 C.F.R. §1.469-9 Rules for certain rental real estate activities.

(b)(4) PERSONAL SERVICES. Personal services means any work performed by an individual in connection with a trade or business. However, personal services do not include any work performed by an individual in the individual's capacity as an investor as described in section 1.469-5T(f)(2)(ii).

See: https://famguardian.org/TaxFreedom/CitesByTopic/PersonalServices.htm

So "personal services" is "the functions of a public office" that's included in gross income under I.R.C. Section 872, whether we call it "wages" or not. Serving as a serviceman who is not a statutory "employee" under 5 U.S.C. §2105 does not constitute such "personal services" or "the functions of a public office", except perhaps if they are an commissioned officer or volunteer by misrepresenting their status as an "employee" in submitting a W-4.

You also haven't explained why 26 U.S.C. §861(a)(8) making social security "gross income" is even necessary if 26 C.F.R. §1.61-11 makes all pensions taxable anyway. They wouldn't need this provision if social security was treated as the pension described in 26 C.F.R. §1.61-11.

The answer is that 26 U.S.C. §861 applies to BOTH statutory "nonresident aliens" (26 U.S.C. §7701(b)(1)(B)) and "U.S. Persons" (26 U.S.C. §7701(a)(30)), but 26 U.S.C. §61 limits itself to "U.S. persons" by default.

7.3 IRS "The Truth About Frivolous Tax Arguments", Item 4

We also looked at the cases cited by the IRS re:

IRS "The Truth About Frivolous Tax Arguments"

4. Contention: Military retirement pay does not constitute income.

Eligible, retired United States military personnel may receive military retirement pay (MRP) from the agency responsible for disbursing these payments, the Defense Finance and Accounting Service (DFAS). Some individuals argue that MRP does not constitute income for federal income tax purposes.

The Law: The Internal Revenue Code defines gross income as "all income from whatever source derived, including . . . pensions." I.R.C. §61(a)(11). Military retirement pay is pension income within the meaning of section 61. Wheeler v. Commissioner, 127 T.C. 200, 205 n.11 (2006); see also Eatinger v. Commissioner, T.C. Memo. 1990-310.

Relevant Case Law:

> *Wheeler v. Commissioner, T.C. Memo. 2010-188, 100 T.C.M. (CCH) 180 (2010) – the Tax Court imposed a $25,000 penalty under section 6673(a)(1) because the taxpayer continued to argue that his military retirement pay was not income and that he did not need to file federal income tax returns.*

> *Mathews v. Commissioner, T.C. Memo. 2010-226, 100 T.C.M. (CCH) 336 (2010) – in addition to penalties for failure to file and pay taxes, the Tax Court imposed a $500 penalty under section 6673(a)(1) against Mr. Mathews for his "frivolous" argument that his military retirement pay, including an amount garnished by the state for child support, was not income.*
> *[IRS "The Truth About Frivolous Tax Arguments", Section I.B.4; SOURCE: https://www.irs.gov/pub/irs-utl/2022-the-truth-about-frivolous-tax-arguments.pdf]*

All of these cases involved either a non-filer (thus the deficiency was presumed correct) or other issues. Not one case was decided on the merits of the retirement pay being income

> *"A. Whether Petitioner's MRP Is Includable in Gross Income Section 61(a)(11) expressly defines gross income to include pensions. Petitioner's "Military retirement pay is pension income within the meaning of sec. 61(a)(11)." Wheeler v. Commissioner, 127 T.C. 200, 205 n. 11 (2006), affd. 521 F.3d 1289 (10th Cir. 2008); see also Eatinger v. Commissioner, T.C. Memo. 1990-310; sec. 1.61-11, Income Tax Regs."*
> *[Mathews v. Commissioner, No. 3074-09, at *7 (U.S.T.C. Oct. 19, 2010)]*

Further, the IRS' own website says they are NOT bound by Tax Court Rulings such as all the above they quote, and therefore their *The Truth About Frivolous Tax Arguments* is, ITSELF, FRIVOLOUS!

> *Internal Revenue Manual*
> *Section 4.10.7.2.9.8 (05-14-1999)*
> *Importance of Court Decisions*
>
> *1. Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.*
>
> *2. Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code.*
>
> *3. Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers.*

8 Conclusions

If you want to play it safe and behave responsibly, ultimately the only LOW MAINTENANCE approach you can take is that if you are receive a retirement payment from the national government, you should PRESUME that it's a "U.S. source" and thus "gross income" paid to a nonresident alien member under 26 U.S.C. §§871 and 872. As far as state taxation, no tax would be owed on that payment in the case of a nonresident alien member, because it does not derive from a source within the state for a nonresident filer.

If you don't like having to deal with government legal strings inevitably attached to everything the government pays you, then you may wish to consider not receiving the payment.

If you want your cake and eat it too, by receiving the payment and yet not accepting the legal strings attached to the payment created by usually FALSE information returns, then you may want to duke this out in court. If you do, you are guaranteed to lose if you approach them as anything OTHER than a constitutional "person" and never a civil statutory "person".

If you want to spent a lot of time arguing and litigating to destroy the "indian giving" the government does with money they OWE you that you PURCHASED with your PRIVATE labor of equal value, by all means take that route, but be prepared to spend a lot of time arguing with prejudiced and presumptuous public servants who want to steal from you and violate their oath to protect PRIVATE property as public officers. The resources in this document provide a starting point for that ultimately endless court battle trying to get public servants to do their ONLY job, which is to protect your private property, labor, and earnings from being converting public property without your consent, as described in:

Separation Between Public and Private Course, Form #12.025
https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf

9 Resources for Further Research and Rebuttal

If you would like to study the subjects described herein further, we highly recommend the following resources:

1. *How to File Returns*, Form #09.074** (Member Subscriptions)-describes how to file a 1040NR tax return and nearly all withholdings back.
   https://sedm.org/product/filing-returns-form-09-074/
2. *Procedure to File Returns*, Form #09.075** (Member Subscriptions) -describes how to file a 1040NR tax return and nearly all withholdings back.
   https://sedm.org/product/procedure-to-file-tax-returns-form-09-075/
3. *DOD Retirement Pay Request Letter*, Form #04.227** (Member Subscriptions)-example document how to apply the information in this document to applying for retired military pay.
   https://sedm.org/product/dod-retirement-pay-request-letter-form-04-227/
4. *Defense Financial Accounting Service (DFAS) Website* -pay military retirements exclusively
   https://www.dfas.mil/
5. *Wikipedia: Defense Financial Accounting Service (DFAS)*
   https://en.wikipedia.org/wiki/Defense_Finance_and_Accounting_Service
6. *Military and War Topic Page*, Family Guardian Fellowship
   https://famguardian.org/Subjects/Military/Military.htm
7. *Military and War News Articles*, Family Guardian Fellowship
   https://famguardian.org/category/news/military-and-war/
8. *How is Military Retirement Handled by COMPLIANT Members Only*, SEDM Forums
   https://sedm.org/forums/topic/how-is-military-retirement-handled/
9. *Veterans Administration Benefit Application*, Form #06.041
   https://sedm.org/Forms/06-AvoidingFranch/10-10EZ-fillable-Amended.pdf