

Withholding Agents & W-4's

by Americans For Freedom

Whenever government ignores the welfare of its citizens, it's inevitable that its citizens will stop ignoring – and start studying – their government. As a result, government will serve the people or reap the whirlwind of its indifference and arrogance. Here's some research from one group of citizens motivated to study government that could potentially destroy the current tax system.

Could the average American pay his income and social security taxes in one payment every April 15th? Of course not. Most of us live a hand-to-mouth existence with small savings, large credit card debts, and little to sustain us beyond our faith in God and the hope of next week's paycheck. If we didn't pre-pay our taxes on a weekly "layaway plan" (withholding), most of us would be too broke to pay a single annual tax bill every April 15th.

More importantly, Americans would probably riot if they were collectively faced with personal bankruptcy, fines and even incarceration based on exorbitant taxes every April 15th. In other words, so long as government

takes "little bites" of \$100 a week out of our paychecks (total \$5,200 per year), we don't notice or complain too much. But if we had to cough up a single tax payment of \$5,200 on April 15th we would 1) realize how much government takes, and 2) fill the Potomac with a mixture of high-nitrate fertilizer and diesel fuel.

Point: Withholding (pre-paying your potential income taxes each week) is our tax system's foundation. Without withholding, the current tax system would collapse.

As most employers and employees know, the W-4 form that's signed when a new employee is hired is a withholding *agreement* which allows employers to withhold part of each employee's income from each paycheck and forward that withholding to the government. Historically, those American employees who object to having some of their money withheld and sent to Washington before the legitimate tax liability is even determined, have challenged the

validity of the W-4 agreement with arguments based on 26 USC 3402(p) – Internal Revenue Code (IRC), Income Tax Collected At Source, Voluntary Withholding Agreements (see, *Reisman v. Caplin*, etc.). Generally, these challenges fail. However, there may be another basis for challenging the W-4 withholding agreements.

When we go to work, the first thing the company wants is a W-4. Over the years, companies have become convinced that they are a "withholding agent". *But are companies truly "withholding agents"?*

Here's what our study group learned about withholding agents from the IRC: "withholding agent" applies to four and *only* four, IRC sections:

"26 USC 7701(a)(16) Withholding agent — The term 'withholding agent' means any person required to deduct and withhold any tax under the provisions of sections 1441, 1442, 1443, or 1461."

Those four sections are found in Title 26 - Subtitle A. - Income tax, Chapter 3. - Withholding of Tax on Nonresident Aliens

and Foreign Corporations:

"Subchapter A. - Nonresident aliens and Foreign Corporation

"1441. Withholding of tax on *nonresident aliens*.

"1442. Withholding of tax on *foreign* corporations.

"1443. *Foreign* tax-exempt organizations

"Subchapter B.- Application of Withholding Provisions

"1461. Liability for withheld tax." (This section does not define additional "withholding agents"; it merely establishes liability for withheld money.)

Note that there is no "withholding agent" for *domestic Citizens* living and working domestically unless they have income from a *foreign* source or from within a U.S. possession (Guam, Puerto Rico, etc.), or engaged in an excise taxable activity (alcohol, tobacco, firearms,

etc.). Even if a domestic Citizen did have income from a foreign source or from a U.S. possession or was engaged in excise taxable activity, there is still be no legally defined "withholding agent".

Check the IRC or any law book and you will not find a definition for a "withholding agent" for *domestic* Citizens. Why? Because it would be unconstitutional for public servants (elected and hired government employees) to enact a law (or definition) that would "mandate" (force, compel, command) an American Citizen to turn over (extract, conversion) their private property (labor, wages) without a court order. (Of course, they could "voluntarily" pre-pay their taxes.)

Therefore, judging by the IRC, it appears that the W-4 is mandatory for nonresident aliens, foreign corporations, trusts, partnerships, etc., and foreign tax exempt organizations -- but not for

domestic citizens. Because most challenges to W-4 withholding have been unsuccessfully based on 26 USC 3402(p), if your argument is based on the definitions in 26 USC 7701(a)(16), you might create a case of first impression in which the courts had no ready precedent for ruling against you.

GO GET'EM

Whether the Income Tax is itself mandatory or voluntary may be debatable, but this article's research suggests that W-4 "agreements" and employees' propensity to "pre-pay" their taxes through withholding is voluntary. If the average American refused to voluntarily pre-pay his taxes, our current tax system would collapse.

For more information, contact Americans For Freedom at 2740 Marconi Ave. #167, Sacramento, Cal., 95821. ■

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The Nexus

What's a "nexus"? Some sort of demon like a "succubus"? A Korean knockoff of the Japanese Lexus automobile? No.

"Nexus" is a term popular within elements of the constitutionalist community. Unfortunately, "nexus" is not defined in Black's Law Dictionary (Rev. 4th), but the similar terms "nexi" and "nexum" are:

"Nexi. In Roman law, bound; bound persons. . . . insolvent debtors as were delivered up to their creditors, by whom they might be held in bondage until their debts were discharged."

"Nexum. In Roman law, . . . a formal contract, involving a loan of money, and attended by peculiar consequences . . . to have included the special form of conveyance called "mancipatio."

"Mancipatio. In Roman law, . . . a formal process . . . to perfect the sale or conveyance of res Mancipi, (land, houses, slaves, horses, or cattle.)" [Emph. add.]

And "mancipate" (not "emancipate") is defined as "To enslave; to bind; to tie."

Suffice to say that a "nexus" is intended to indicate the law, contract, or presumption that binds (even enslaves) one person to do the will of another. If a

nexus exists, you are bound. Absent a nexus, you are free.

The following are a collection of various proposed "nexi" which are believed by some to bind free Americans to the will of the federal government in ways that are allowed by -- but contrary to the spirit of -- the Constitution. Here's a sample of opinions on what the nexus is.

For example, Kenneth Creamer bumped heads with the IRS in court and lost. With the benefit of hindsight, he believes he's seen the error of his ways as well as the nexus which enables the IRS to collect and enforce the income tax on average people. Mr. Creamer believes that key centers on understanding on how the IRS manages to "convert" our "wages" (which should be tax free) into "income" which can be taxed. Once again, another student/victim of the IRS concludes that Social Security is the mysterious nexus that makes us liable to pay income taxes.

This is a good news bad news story. The good news is that the Silver Bullet has finally been found. The bad news is that it is aimed at us. To make mat-

ters worse, it was fired at the general public in 1935 and there was not one indication or fanfare that a war on productivity had been declared. In fact, it was publicized as a "free lunch," "old age insurance," etc. The gun that fired the silver bullet was the Federal Insurance Contributions Act (FICA).

The Supreme Court has ruled several times that Social Security (FICA) is not an insurance program but simply another income tax that finds its way into the general fund. It has been well documented that SS is really an income tax and should be no surprise to most people. In fact, recently many researchers have declared that the SS program has a link into the 1040 form because a person requesting a benefit from the government has qualified himself to pay an excise tax on wages for the privilege. Although this argument has some merit, it is not the core of the Silver Bullet congress fired at us. The essence of the bullet is that it comes to us in the form of a trap. A trap that we "volunteered" ourselves into just as neatly as the rats that followed the Pied Piper into the river.

The jaws and powerful