
Any Volunteers?

As you read further, keep in mind that whenever I describe a particular law, regulation, practice, or procedure, I am not gratuitously "bashing" the Internal Revenue Service or any other government agency or official. I am simply trying to emphasize the potential danger in having citizens, professionals, and government officials alike who are ignorant of the requirements of the U.S. Constitution and the law. It is elected and appointed officials who are responsible for creating, interpreting, and enforcing these laws. Ultimately, however, the citizens of this country are responsible for the existence of this maze of laws and regulations because they have, and have always had, the power to change them. First, however, citizens must understand them.

In all of the years I have spent complying with and enforcing the federal tax laws, I never would have imagined that those laws are limited to promoting voluntary rather than mandatory actions by payers of the income tax. For instance, I applied for a social security number when I was a teenager just like millions of other Americans. I applied for it because I was led to believe I was required to have one in order to work. Based on my research, I have discovered that I was wrong. I filled out a Form W-4 so that taxes would be withheld from my check because I was led to believe I was required to have one in order to work. Based on my research, I was wrong about that also. I filed an income tax return not so much because I was told to file one but because everyone else was filing one and because each year the bottom of my tax return showed that the federal government owed me money (a tax refund).

And so it went, year after year. Like millions of Americans, I joined the federal income tax system not knowing what I was getting into. Rather, I relied on others to show me the way. It appears that the "others" on whom I relied were relying on others who were relying on still others. Apparently, few, if any, researched which law required them to submit these forms and pay this money - it's as if they did it because everyone else was doing it. It would be a shame if the federal income tax system turns out to be like a herd of cattle led to the cliff by a few confused bulls in the front of the herd - those in back have no idea where they are going - they are simply following the herd.

With those thoughts in mind, it is time to explain the process by which people are lead to believe they (and their tax return preparer if they use one) think they are required to withhold federal income taxes from their paychecks, file a U.S. Individual Income Tax Return, and pay federal income tax. The process used to seize bank accounts, cars, and houses without the apparent legal authority to do so will also be described.

Withholding

During World War II, a man named Beardsley Ruml, one-time chairman of the Federal Reserve Bank of New York, devised a system of withholding for a temporary "Victory Tax" to pay the expenses of the war effort. Americans felt it was their duty to support soldiers during the war and were apparently content with this temporary measure to collect federal taxes. Unfortunately, contemporary Americans

can testify to the fact that the withholding system begun over 50 years ago with the "Victory tax" has been anything but temporary.

The average American might think that there must be a good reason to have kept the temporary withholding system in place permanently. Many of us have been conditioned to think that for the good of our nation and for the smooth running of our country's revenue stream, withholding of income taxes at the source is a necessary task. Unfortunately, those so conditioned would be wrong. Wrong, in part, because Mr. Ruml, the man who created the system in the first place, admitted that the reasons for withholding of taxes have nothing to do with the good of our nation or the smooth running of the country's revenue stream. On the contrary, Ruml, in an article entitled *Taxes for Revenue Are Obsolete*, which he read in a speech before the American Bar Association and which was published on pages 35-39 of the January 1946 issue of *American Affairs*, said:

The necessity for a government to tax in order to maintain both its independence and its solvency is true for state and local governments, **but it is not true for a national government.** Two changes of the greatest consequence have occurred in the last twenty-five years which have substantially altered the position of the national state with respect to the financing of its current requirements. (Emphasis added)

The first of these changes is the gaining of vast new experience in the management of **central banks.**

The second change is the **elimination**, for domestic purposes, of the convertibility of the currency into gold.

Later in the report, I will explain more about what Ruml meant by "elimination, for domestic purposes, of the convertibility of the currency into gold." But, for purposes of this section, suffice it to say that the withholding system he devised was not meant to permit the smooth running of a revenue stream to fund federal government operations.

There is another myth about the contemporary federal tax withholding system. The myth is that the withholding of federal taxes from most people's paychecks is mandatory. Yes, I know people are fined and sometimes even jailed for not withholding taxes but, just as with the federal income tax system as a whole, the capacity of our government to point guns at us or put us in jail can not be the sole justification for compliance with these laws - that is, unless we live in a police state and the government does whatever it pleases. The simple fact is that when one researches the laws and regulations relating to the withholding of taxes from our paychecks, the language clearly indicates that, except for a small class of taxpayers, the withholding of taxes is a voluntary exercise.

How do citizens get caught up in this voluntary tax withholding system? The following scenario will help illustrate the process. Be aware that the following explanation refers to many sections of the Internal Revenue Code and federal regulations and can be very confusing. If you have trouble following the explanation, try presenting it to a friend or advisor with more experience and training in this area of the law.

Let's say that in January 1998, Mr. Tommy Smith, a high school student and resident of San Francisco, California, decides he is going to find his first job. He already has a social security number because his parents were falsely led to believe that such a number was required in order to claim a dependency exemption for him on their own tax return and applied for a number on his behalf years ago. Little did Tommy's

parents know that they could have still taken an exemption for Tommy even without a social security number. Tommy's parents, by getting their son a social security number, unknowingly took the first step in volunteering their son into the federal taxing system.

Tommy learns that ABC Company is looking for a dependable office clerk and is given an interview. Tommy does well in the interview and is hired. ABC Company's personnel manager, having been dutifully informed by the company's tax advisor that one is "required," gives Tommy a Form W-4, Employee's Withholding Allowance Certificate to fill out. Tommy, who assumes the form is "required" for employment, fills out the Form W-4. What he doesn't realize is that completion of the Form W-4 is not "required" for his employment at ABC Company. Further, Tommy does not realize that the Form W-4 represents a voluntary agreement between Tommy and his employer to have income tax withheld from his paycheck.

Now if ABC Company's tax advisor had researched the actual law and regulations governing withholding income tax from Tommy's paycheck, rather than simply following the herd, the advisor may have been able to advise ABC Company of an alternative treatment for Tommy's withholding. Guidance for the treatment of Tommy's withholding can be found in the Internal Revenue Code, Subtitle C, Chapter 24 - Collection of Income Tax at Source on Wages.

Section 3403 of Chapter 24 reads, in part, as follows:

SEC. 3403. Liability for tax

The employer shall be liable for the payment of the tax **required to be deducted** and withheld under this chapter, and shall not be liable to any person for the amount of any such payment. (Emphasis added)

As with most sections of the Internal Revenue Code, the language of Section 3403 is very confusing. Section 3403 is not only confusing but it seems to be a contradiction in terms. It gives little guidance as to what amount, if any, should be withheld from Tommy's paycheck. Rather, it only directs that for those taxes "required to be deducted," "the employer shall be liable." Perhaps Section 3402 of Chapter 24, entitled Income Tax Collected At Source will help determine Tommy's withholding situation. It reads, in part:

SEC. 3402. Income tax collected at source

(a) Requirement of withholding. -

(1) In general. - Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall-

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

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

At first glance, one might think that Section 3402 is the law that requires withholding of income taxes from Tommy's paycheck. After all, Section 3402 (a) (1) specifically states that "every employer making payment of wages shall deduct and withhold upon such wages a tax ..." Does "every employer" mean every employer?

Does "wages" mean the money most Americans receive in their paychecks? Fortunately, Chapter 24 also includes Section 3401 - Definitions. Let's see if Section 3401 will shed some light on what amounts, if any, are required to be withheld from Tommy's paycheck. Section 3401 reads as follows:

SEC. 3401. Definitions

(a) Wages. For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer . . . (Emphasis added)

Section 3401 (a) describes what we all can understand to be wages, namely "all remuneration for services performed." But Section 3401 (a) also says that the "remuneration" comes from services performed by an "employee" for his "employer." At Section 3401 (c) and (d), the terms "employee" and "employer" are defined:

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

(d) Employer. For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person . . .

One would think that the terms "United States" or "State" wouldn't have to be defined but, again, because we are dealing with the Internal Revenue Code, nothing should be taken for granted. There is no definition of "United States" or "State" in Chapter 24 of the Internal Revenue Code. However, those terms are defined in Chapter 79 - Definitions, as follows:

SEC. 7701 Definitions

(a) When used in this title [Title 26, The Internal Revenue Code], where not otherwise distinctly expressed or manifestly incompatible with the intent thereof . . .

(9) United States. The term "United States" when used in a geographical sense includes only the States and the District of Columbia. (Emphasis added)

(10) State. The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out the provisions of this title. (Emphasis added)

Tommy was hired as an office clerk for ABC Company in San Francisco. He is clearly not an "officer, employee, or elected official of the United States" "or any political subdivision thereof" especially if, according to Section 7701 (a) (9), the United States includes "only the States and the District of Columbia. Tommy clearly is not an "officer, employee, or elected official" of a "State" or "any political subdivision thereof" if, according to Section 7701 (a) (10), a State "shall be construed to include the District of Columbia."

Many people might assume that the term "include," as used in Section 7701 (a) (9) and (10), is used to better define which employers and employees are subject to federal income tax withholding. In other words, which specific employers are required by law to withhold federal income taxes and which specific employees are required to have federal income tax money withheld. Unfortunately,

the opposite is true.

Whenever the words "include" or "includes" appear in the Internal Revenue Code (IRC), extreme caution should be exercised. The reason for caution is that there is a consistent pattern of confusion, murkiness, and lack of specifics whenever "include" or "includes" is used. Here are a couple of examples. Remember Section 7701(a)(9) above? It says:

United States.-The term "United States" when used in a geographical sense includes only the States and the District of Columbia. (Emphasis added)

Although our friend Tommy doesn't live in the District of Columbia, he might have assumed that his home state of California was one of the "States" in the definition. As I said, however, extreme caution should be used and nothing should be assumed. As I explained above, Section 7701(a)(10) isn't much help in clarifying Section 7701(a)(9) since it refers right back to the District of Columbia:

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

Tommy, let alone the average taxpayer, should be concerned with this lack of clarity in the withholding law. They should be even more concerned that the IRC seems to get murky and confusing when the subject of income taxes comes up yet the IRC is **very clear when the subject of excise or other clearly constitutional taxes is addressed.** For example, notice how "United States" is defined in Chapter 38, Section 4612 of the IRC - Environmental Taxes:

SEC. 4612 Definitions and special rules

(a) Definitions.-For purposes of this subchapter-

(4) United States.-

(A) In general.-The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. (Emphasis added)

Notice how the term "United States" is defined in Section 4612(a)(4)(A) with crystal clarity when it relates to an environmental excise tax that is beyond constitutional question. It is plainly evident from this section that lawmakers considered it necessary and prudent to clearly define "United States" as "the 50 States" in this section about definitions and special rules. However, as the first few words from Section 4612 advise, this definition of "United States" is only "for purposes of this subchapter." Why didn't those same lawmakers think it was necessary and prudent to clearly define "United States" in Section 7701(a)(9), which helps define who is required to have federal income taxes withheld from their check under Section 3402?

Another example is the definition of the word "State." Notice how the term "State" is defined in Chapter 61, Section 6103 of the IRC - Information and Returns:

SEC. 6103 Confidentiality and disclosure of returns and return information

(b) Definitions.-For purposes of this section-

(5) State.-The term "State" means (A) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands ... (Emphasis added)

It is plainly evident from this section that lawmakers considered it necessary and prudent to clearly define a "State" as "any of the 50 States" in this section about confidentiality and disclosure of returns. However, as the first few words from Section 6103 advise, this definition of "State" is only "for purposes of this section." Why didn't those same lawmakers think it was necessary and prudent to clearly define "States" in Section 7701 (a) (10), which helps define who is required to have federal income taxes withheld from their check under Section 3402?

Based on this analysis, it is clear that none of the sections mentioned so far require that income taxes be withheld from Tommy's paycheck. I searched through all of Chapter 24 of the IRC - Collection of Income Tax at Source on Wages, for any other law, which might require Tommy to have income taxes withheld from his paycheck. I only found Section 3402 (q), that dealt with withholding of gambling winnings, and Section 3405 that dealt with pensions, and Section 3406 that dealt with interest and dividends. None of these sections applied to Tommy employment situation, an employment situation replicated millions of times across the United States by people who have money withheld from their own checks.

I also found Section 3402 (f) (2) (A), which, at first glance, looked like it might have been the section that required Tommy to have income taxes withheld from his paycheck. It reads, in part:

(2) Exemption certificates.-

(A) On commencement of employment.-On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

However, this section suffers from the same problem as the others. It refers to an "employee" and an "employer" which I have already shown you should not be applicable to Tommy's situation because he does not reside in the District of Columbia and therefore does not fall within the definition of "employee."

The only section that I did find which would apply to Tommy's situation is Section 3402 (p) Voluntary Withholding Agreements, which states:

Voluntary Withholding Agreements. - The Secretary [of the Treasury] is authorized by regulations to provide for withholding -

(1) from remuneration for services performed by an employee for his employer which (without regard to this subsection) does not constitute wages, and

(2) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter, if the employer and the employee, or in the case of any other type of payment the person making and the

person receiving the payment, **agree to such withholding. Such agreement shall be made** in such form and manner as the Secretary may **by regulations** provide. (Emphasis added)

The applicable Federal regulation 31.3402(p)-(1)(a), provided by the Secretary of the Treasury, further explains the withholding agreement:

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

Since no one told Tommy that completing and signing this agreement with his employer to have income taxes withheld from his paycheck was voluntary, Tommy filled out the Form W-4 agreement, signed it, and joined millions of other wage earners who witness the ever increasing gap between their gross pay and their net pay, believing he had no other choice.

In late January or early February of 1999, ABC Company sends Tommy a Form W-2, Wage and Tax Statement, which shows how much gross pay Tommy received during 1998 and how much taxes were withheld from his paycheck. Tommy, an "A" student in math, is amazed at how much money has been taken out of his paycheck throughout 1998. When Tommy complains to his parents about how much has been taken, his parents tell him not to worry. They tell him that if he files a federal income tax return, he will probably get a "refund" of some of the taxes he paid. Liking the sound of getting some of his money back, Tommy takes the next step down the yellow brick road of the voluntary income tax system without even realizing the consequences of his actions. Understandably, all this teenager is thinking about is the few hundred dollars he will get refunded to him. Unfortunately, young Tommy has no idea what he will have to give up in order to get his money back. The following sections will illustrate just what Tommy and millions like him get themselves into as they are drawn deeper and deeper into the voluntary system.

Filing of Federal Income Tax Returns

Previously, I explained the issues relating to the 5th Amendment to the U.S. Constitution and how it relates to the filing of federal income tax returns. But what specific law does the Internal Revenue Service (as well as most CPAs, attorneys, and judges) rely on to make the American people believe they are required to file federal income tax returns? Exhibit 1 illustrates the three Internal Revenue Code (IRC) sections which purport to require the average American to file U.S. Individual Income Tax Returns - Internal Revenue Code, Subtitle F, Chapter 61 - Information and Returns, Sections 6001, 6011, and 6012. The Internal Revenue Service refers to these sections in the income tax booklet sent to taxpayers in the mail each year. You will find it under the