Employment Taxes

Employment taxes are likely the single most significant issue in the discussion of federal and state taxation. Hundreds of millions of Americans have taxes withheld from their paychecks. The sad truth is that most of these hard working Americans are under no legal obligation to participate in payroll withholding, and have no legal liability for the taxes concerning which withholding has been imposed upon them.

One might reasonably ask why millions of Americans participate in payroll withholding if there is no legal requirements for them to do so. The answer is as ugly as it is simple – the federal government lies, deceives, and intimidates most private employers into acting as the government's private extortionists. In this manner, the Treasury Department is able to intimidate millions of individual workers into surrendering a portion of their pay without a single Treasury official ever going to prison (as justice demands).

The way the system operates today, it is the ***employer*** who bears the legal risk for operating an extortion racket. But how much of a risk is it? The employer is the one who erroneously (and immorally) tells a worker that he cannot work unless he signs a Form W-4, thus declaring his pay subject to federal and state taxing authority. The worker cannot bring criminal charges against the employer because the charge of extortion requires the element of "intent" and most employers really do believe that they must withhold or they will be the party that gets punished by the Internal Revenue Service (IRS). The worker can bring a civil action against the employer for "conversion"[1], but how many workers want to go to trial against their employer? And even if a worker had the inclination, how many could afford the tremendous cost of such a battle?

So where's the up side here? The up side is two-fold. The first is that the truth about what the law says is getting out to employers and many employers are seeing the substantial benefits to themselves in not being witlessly manipulated by the government into stealing from their employees and being under one more needless administrative burden! The second up side is even traditional employers, who want nothing to do with the Patriot Movement or the Tax Honesty Movement, are beginning to take the position that income tax liability is something between the government and the worker, and that the company should not be stuck in the middle. With this new spirit, such firms are willing to waive payroll withholding if the worker can provide reasonable documentation to support his claim of not being subject to withholding.

Now that we've examined the prevailing circumstances, let's look at the law.

[1] An unauthorized assumption of rights and exercise of ownership over goods or personal chattel. Black's Law dictionary, 6th Ed.

Subtitle 'C' taxes (generally)

The most frequent legal attack made by Patriots upon the withholding law is that it is unconstitutional. Wrong! It is 100% constitutional. The problem (as is so often the case with tax law) is that the Executive Branch (intentionally and maliciously) applies the law to persons and circumstances Congress never intended.

So often we hear a court hold that, "The statute under review is *prima facia* constitutional". What the courts are saying when they hold that the law is "prima facia" constitutional is that there is no constitutional problem with Congress exercising such authority exactly as the statute is written and intended. The unspoken part of the holding is that the party challenging the law didn't show how it is unconstitutional when applied to *his circumstances*. In other words; yes, Congress has the Constitutional authority to exercise such powers in the circumstances for which the law was enacted, but *this circumstance* is ***not*** the one in which Congress may exercise such authority!

Federal employment tax laws are contained in Subtitle 'C' of the Internal Revenue Code (IRC). The following chapters appear in Subtitle 'C':

Chapter 21 – Federal Insurance Contribution Act [FICA] (aka: Social Security Tax)
Chapter 22 – Railroad Retirement Tax Act
Chapter 23 – Federal Unemployment Tax Act
Chapter 23A – Railroad Unemployment Repayment Tax
Chapter 24 – Collection Of Income Tax At Source On Wages
Chapter 25 – General Provisions Relating to Employment Taxes

The first thing that may strike the eye of a person seeing those chapter titles for the first time is the inclusion of Railroad Employment Taxes. One might reasonably ask why the railroads are included in this section? If you wondered about that, you're an astute observer and you are asking the right questions. One might also ask, "If railroads, why not grocery stores, or computer companies, or shoe repair stores, or all of the above, and more?" The reason railroads are there, and other enterprises aren't, is because it is a well-settled point of law (for many reasons we will not go into here) that the federal government has complete regulatory control over the railroad industry. O.K…so an industry that is little more than a federal instrumentality[2] is included in Subtitle 'C', but other private enterprises aren't. Hmmm. What's the common thread here?

The Citizens of the states of the Union have various inalienable rights granted by the Creator. Not only is this stated plainly in the Declaration of Independence, but it has been repeatedly recognized by the state and federal courts of this country for

[2] A means or agency used by the federal government to implement or carry out a federal law or function. Black's Law Dictionary, 6th Ed.

almost 200 years. It is only in the latter half of the 20th century that our courts started to retreat from plainly declaring the rights of American Citizens. Among these numerous inalienable rights is the right to contract out your own labor as you see fit. Another of these inalienable rights is your right to contract for the labor of others – also as you see fit. Let's look at a few examples where the courts have recognized these pre-existing inalienable rights:

> "Included in the right of personal liberty…is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other service are exchanged for money and other forms of property". Coppage v. Kansas, 236 US 1 (1915)

> "The property that every man has is his personal labor, as it is the original foundation of all other property so it is the most sacred and inviolable…to hinder his employing…in what manner he thinks proper, without injury to his neighbor, is a plain violation of the most sacred property."
> Butcher's Union Co. v. Crescent City Co., 111 US 746 (1884)

> "In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property, guaranteed by that Amendment (5th Amendment). Such liberty and right embraces the right to make contracts for the purchase of the labor of others and equally the right to make contracts for the sale of one's own labor."
> Adair v. United States, 208 U.S. 161, 172 (1908)

> "It must be conceded that there are such rights in every free government beyond the control of the state. [O]f all the powers conferred upon government, that of taxation is most liable to abuse."
> Loan Association v Topeka, 87 US 655, 663 (1874)

While we're focusing on "contracts", let's not forget that neither the states, nor the United States, have the power to interfere in a ***private*** contract, unless such contract is created to commit a criminal act (such as contracting to have another person killed).

We have now established that a Citizen's labor is his own property; property that he may contract out as he sees fit – without government interference. We've also established that it is a Citizen's right to contract for the labor of others – also without government interference. We are now aware that the government cannot interfere with private contracts. So, if all these things are true, what is contained in Subtitle 'C' of the Internal Revenue Code?

Editor's Note: *If you have not already done so, this would be an excellent time to read our piece on the Constitutional Issues of Taxation, as well as Federal Income Tax. Each has a substantial amount of information that will help you understand*

the proper application of Subtitle 'C' Employment Taxes. Parts of this article may not be as readily understood absent the information provided in those pieces.

Since a Citizen's rights can only be taxed with a direct tax, and Congress has never enacted a direct tax upon labor, the employment taxes in Subtitle 'C' must be in the nature of an excise [privilege] tax. Since Social Security taxes [FICA] are within Subtitle 'C' (employment taxes), let's start there to see what type of taxes are contained within Subtitle 'C'.

In *Helvering v. Davis*, 301 US 619 (1937), and then again in *Charles C. Steward Mach Co. v. Davis*, 301 U.S. 548, 581-82 (1937), the US Supreme Court referred to the Social Security Act as laying,

> "*…a special* ***income tax*** *upon employees to be deducted from their wages and paid by the employers*".

If you have read the Constitutional Issues of Taxation, you already know that after the adoption of the 16th Amendment, all "income tax acts" passed by Congress (under the authority of the 16th Amendment) must be an excise tax. Furthermore, despite the *Helvering Court* using of the word "special" to delineate this new income tax, it is not particularly special at all. Later in the *Helvering* decision the Court stated:

> "*The proceeds of [SS] taxes are to be paid into the Treasury like internal revenue taxes generally, and are not ear-marked in any way.*"

That Supreme Court observation can be seen today in statute at 26 USC 3501(a):

> *The taxes imposed by this subtitle shall be collected by the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections*

So despite the common public perception that a person's SS tax (which is an employment tax) goes into "their own account", the truth of the matter is that SS taxes just get dumped into the Treasury's general fund with all other federal revenues. In other words, it's not a "special" income tax; it's merely "another" income tax!

Withholding And Other Sordid Stories

What other Subtitle 'C' taxes might be of interest to us? Aside from Social Security, the only other chapter within Subtitle 'C' that would seem to be of interest to us would be in Chapter 24, entitled, "Collection Of Income Tax At Source On Wages".

Chapter 24 distinguishes itself in several ways. First, it specifies that an "income tax" is to be collected from the people who are cutting payroll checks, not from the actual owners of the property [remember, accrued pay is ***your*** property, not the employer's]. Second, it lays out the mechanism that is to be used for collecting the tax. Third, and most importantly, Chapter 24 does not impose a tax upon anyone!

As we noted earlier, Subtitle 'C' contains six chapters. However, only the first four impose a tax:

> **Chapter 21, §3101(a)** – In addition to other taxes, there is hereby ***imposed*** on the income of every individual…
>
> **Chapter 22, §3201(a)** – In addition to other taxes, there is hereby ***imposed*** on the income of each employee…
>
> **Chapter 23, §3301** – There is hereby ***imposed*** on every employer…
>
> **Chapter 23A, §3321(a)** – There is hereby ***imposed*** on every rail employer…

Now somehow when we come to the infamous "withholding" chapter [chapter 24], Congress mysteriously forgets how to properly and lawfully impose a tax:

> **Chapter 24, §3402(a)1** – Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages…

"…*shall deduct and withhold*…"? Does that sound like the imposition of a tax to you? Isn't it odd how Congress can quite clearly "impose" a tax in the first four chapters, but (as a good friend of mine used to say) "get struck with a case of the dumb-ass" when they got to the fifth chapter? Of course, the keen observer would notice that in the first four chapters, the tax is imposed in the very first section of the chapter, but not so in Chapter 24. In chapter 24 the command to withhold (which is not the same as imposing a tax) is given in the second section. So what's in the first section? The "definitions" that control the second section (and the entire chapter). Since chapter 24 doesn't impose a tax (no matter what a few liars in black robes have ruled), the definitions in the first section might shed some light on this odd situation.

As can clearly be seen on the section shown above [§3402(a)1], the withholding is upon "wages". Certain terms are pivotal to a proper understanding of chapter 24; "wages" is one such term.

> 26 USC §3401(a) – Wages – *For purposes of this chapter, the term ''wages'' means all remuneration for services performed by an* ***employee***…

Please note that we have emphasized the statutory "term" being used to designate the wage-earner (employee).

We should take a moment at this point to remind you that these are not "words" we're dealing with, but legal "terms". So what's the difference? "Words" are defined by a standard dictionary such as Webster's, even if the word is used in a law. One resorts to the standard dictionary when one finds that the legislature has not provided its own definition for the word. However, if the legislature ***has*** provided its own definition, then we are no longer dealing with a word, but with a legal "term". In other words, "words" have their common dictionary definitions, while "terms" have the exclusive meaning given to them by the legislature, and that meaning may have little or no similarity to the dictionary definition.

So…is "employee" a word or a term? We find it defined by Congress (for use on chapter 24) at 26 USC §3401(c), so it's a term:

> **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 [federally owned or controlled] corporation.*

Do you see any private sector folks described there? We don't either. Before we go further, we should probably address the definition of "includes" since it has reared its tricky head in the above definition.

"Includes and including" are defined for the entire IRC (unless otherwise indicated) at 26 USC 7701(c):

> *"The terms ''includes'' and ''including'' when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined."*

How's that for some double-speak? Fortunately we don't need to trouble ourselves with that brain twister because the federal courts have already held that these words are (when used in the IRC) terms of "limited expansion". What that means is that the "expansion" applies to things that are already generally described in the definition of whatever is being defined, even if a thing is not specifically named in the definition.

If we examine the definition of ***employee*** (above), we note that every governmental entity listed is an entity which is within the "exclusive legislative jurisdiction of the United States", therefore if there is another type of "governmental entity" that is within the exclusive legislative jurisdiction of the United States, it can be

considered a part of the definition, even though it is not specifically listed in the definition. Got it? Good! O.K., now that we understand "includes", let's move on.

We can summarize the pertinent definitions in the following manner. "Wages" are earned only by statutorily defined persons called "employees". "Employees" are statutorily defined as people who work for any number of various governmental entities. In other words, for the purposes of chapter 24 there is no definition of "wages" as being earned by anyone in the private sector, nor is there any definition of "employee" that is anyone working in the private sector. Isn't it odd that with no mention of private persons or private employers, so many people, workers and companies alike, are under the illusion that everyone must participate in withholding? In a way, the lunacy of it boggles the mind. But how does the rest of Subtitle 'C' define pivotal definitions?

> CHAPTER 22 - RAILROAD RETIREMENT TAX ACT
> Sec. 3231. Definitions
> (a) **Employer** – For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers…
> (b) **Employee** – For purposes of this chapter, the term "employee" means any individual in the service of one or more employers for compensation…
>
> Sec. 3202. Deduction of tax from compensation
> (a) **Requirement** – The taxes imposed by section 3201 shall be collected by the employer of the taxpayer by deducting the amount of the taxes from the compensation of the employee as and when paid.

Notice how clearly the collection provision [§3202] is worded. No shenanigans here!

> CHAPTER 23A - RAILROAD UNEMPLOYMENT REPAYMENT TAX
> Sec. 3322. Definitions
> (a) **Rail employer** – For purposes of this chapter, the term "rail employer" means any person who is an employer as defined in section 1 of the Railroad Unemployment Insurance Act.
> (b) **Rail wages** – For purposes of this chapter, the term "rail wages" means…remuneration paid…which is subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act.
> (c) **Employee representative** – For purposes of this chapter, the term "employee representative" has the meaning given such term by section 1 of the Railroad Unemployment Insurance Act.

Note the specificity being employed by Congress in providing very clear definitions. The reader is left without doubt as to whom these definitions embrace, and whom they do not! The sections we've just explored are perfectly clear as to whom they

apply and how they are to be collected. However, such is hardly the case with FICA (chapter 21) or FUTA (chapter 23) – more on those chapters later.

We wish to draw your attention to the fact that chapter 22, the Railroad Retirement Tax Act:

- ✍ Clearly "imposes" a tax [§3201(a)]
- ✍ Clearly defines the "employer" [§3231(a)]
- ✍ Defines the "employee" [3231(b)]
- ✍ Clearly lays out the instructions for the tax's collection mechanism [§3202(a)].

In a like manner, chapter 23A, The Railroad Unemployment Repayment Tax Act clearly imposes a tax, and just as clearly defines terms such as "employer", "wages", and "employee representative" that are the basis of the legislation.

These railroad tax acts are completely unambiguous. The terms employed are understood to mean exactly what they say and not even the government contends that they mean anything other than, or in addition to, that which you and I clearly understand them to mean. However, when we get to chapter 24 (withholding) and "employee" is defined as, *"…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"*, suddenly we are asked to believe that this crystal clear definition does ***not*** mean what it says, but must mean something that it does ***not*** say – that it means everyone working in the private sector – a meaning that no one in the world could possibly construe it to mean from the words Congress employed in the statute.

Further, §3402, which contains the command to withhold, does ***not*** impose a tax. Section 3401 [definitions] cannot, and does not, impose a tax because that's not what "definition sections" do. The rest of the chapter's sections, 3403 through 3406, also do not impose a tax. No language can be found in chapter 24 that even hints at the imposition of a tax. Is it not odd, if not highly suspect, that all the chapters that come before chapter 24 clearly "impose" taxes in plain and unambiguous language, but <u>chapter 24 does not impose any tax at all</u>?

So now chapter 24 presents us with two significant problems:

- ?? It does not impose a tax.
- ?? It says that withholding is only upon certain government workers.

So what does chapter 24 really do? Let's look a bit further.

As previously mentioned, §3402 commands that the ***employer*** "deduct and withhold…a tax" from the ***wage*** earning ***employees***. All of the emphasized words are pivotal in untangling what the government is really doing in chapter 24. Also, please note that the employer is to deduct and withhold ***a*** tax – not ***the*** tax, but merely ***a*** tax that is not specified anywhere in chapter 24. But which tax is the tax that is being referred to? We shall see!

As we've covered, the ***employee*** defined in chapter 24 is various government workers. However, the withholding is supposed to be upon the employee's ***wages***.

> §3401(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***…

Well…golly gosh…will you look at that! "***Wages***" are statutorily defined as being earned only by ***employees***. Hmmm. So…***wages*** are only earned by certain government workers? We can see no other way to construe the statute – can you?

Now let's take a moment and look at the odd way ***employer*** is defined:

> §3401(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***…

There's that darn pivotal word again! Everything in chapter 24 revolves around the term ***employee***. You remember that definition don't you? That's the one that speaks of nothing but government workers, but the government wants you to believe it means you and me in the private sector!

Now let's think about this for a moment. If the ***employee*** (as defined at §3401(c)) is certain government workers, then who must the ***employer*** be? Obviously the ***employer*** is any one of the various governments, government agencies, or government instrumentalities (listed in the definition of "employee") that have hired the ***employee***.

Now if you're one of those folks who thinks that this is just the lame way the government writes its laws and there's really no bad faith involved, let's look at another definition of "employer" from another area of law:

> 20 USC §6103 (subsection 8) – As used in this chapter:
> Employer – The term "employer" includes both public and private employers.

WOW! Congress really does know how to define "employer" to embrace both government employment and private sector employment when it wants to. Since

Congress clearly knows how to do this when it wants to, what reasonable conclusion can we draw when Congress limits the definition to *"…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"?* We leave that conclusion to you.

So let's flesh out chapter 24 a bit more:

- ?? It does not impose any tax.
- ?? It applies only to ***wages***.
- ?? ***Wages*** are only earned by an ***employee***.
- ?? An ***employee*** is a person who works for any one of numerous government entities.
- ?? An ***employer*** is one who hires any of various government workers.
- ?? An ***employer*** is required to deduct and withhold.

Since chapter 24 is so simple and straightforward, why all the confusion? Truthfully, there isn't any real confusion, except in the minds of the public. The government knows exactly what chapter 24 says and exactly what it means, and long ago they embarked on a program to deceive the public and thereby steal the property of American Citizens through subterfuge. This subterfuge has taken the form of lies [see IRS Lies in this site], threats, and deprivation of liberty. By the way, if anyone but the government did this it would be prosecutable under state and federal RICO statutes as an act of organized crime – most specifically extortion and conspiracy to commit extortion.

This subterfuge is clearly displayed when a company or a Citizen writes a letter to the IRS asking about the proper and lawful application of chapter 24. A person might write and ask if chapter 24 is applicable to a private Citizen, working for a private firm, in the private sector. If there was no subterfuge on the part of the government, the IRS would respond with something like; *"Chapter 24 of the Internal Revenue Code is only applicable to certain wage-earning government workers (employees) and their employers. Chapter 24 has no applicability to private Citizens working in a state of the Union, not employed in a government job. Chapter 24 also does not apply to private firms operating exclusively in the private sector. However, private sector workers and companies may volunteer to be considered statutory 'employees' and 'employers' by completing and submitting certain forms, such as Form W-4 for workers or Forms 941 and 940 for companies."*

Instead the IRS responds with:

> ***"It is the policy of the Internal Revenue Service not to respond to letters of the type you've written on a point-by-point basis."***
> [Actual text of a common IRS response letter]

Fraud – As distinguished from negligence, it is always positive, intentional. It comprises all acts, **omissions**, and **concealments**... It includes anything calculated to deceive by speech **or by silence**…
Black's Law Dictionary, 6th Ed.

Constructive Fraud – Constructive fraud consists in any act of commission or **omission** contrary to legal or equitable duty, **trust**, or **conscience** and **operates to injure another**.
Black's Law Dictionary, 6th Ed.

The government contends that there is no fraud because the United States Code is made public; the Code of Federal Regulations is made public; the Federal Register is made public, and the decisions of the US Supreme Court and other federal courts are made public. Of course they're all made public; that's where a lot of the information in this article has come from. However, how much value can we put on the government's claim of innocence and fair play when the Executive Branch says, *"Oh, so you read the law and you know it doesn't apply to you. Too bad; now we'll have to start taking your property administratively, and if that doesn't work, we'll come get you with men with guns and put you in jail"*. And of course the Judicial Branch simply goes along with the Executive Branch and railroads these folks into prison. If you ask us, that sort of takes the wind out of the government's claims of "openness" and "honesty". The government's action basically boils down to this statement: *"Dear American Citizen, the law is all there for you to read and understand. It may take you several thousand hours to get through it, but if you're so audacious as to actually read it, understand it, and stand upon it, and if you inadvertently make the tiniest of legal errors along the way, we will grind you into dust under the immense weight of federal power."* Yup; sure smacks of openness and fair play to us!

Where's The Tax That's Being Withheld Under Chapter 24?

As we mentioned earlier, §3402 commands that "a tax" be collected, but it never says ***which*** tax. As usual, the Code has an answer buried somewhere. Of course the Code is excess of 7,000 pages, so finding one or two relevant sentences can be a lifelong endeavor. Nevertheless, here it is!

> 26 USC §31(a) – Wage withholding for income tax purposes
> (1) In general
> The amount withheld as tax under chapter 24 shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle [which is Subtitle 'A'].

Ah ha! So much for the asinine federal judges who've held that Chapter 24 imposes its own tax. Obviously one must have tax liability under Subtitle 'A' in order for the ***employer*** [don't forget that definition!] to have valid withholding authority.

So what creates Subtitle 'A' liability? A while back, the IRS responded to a Privacy Act Request that was demanding proof of an individual's Subtitle 'A' liability. The requester received a very unusual but informative response:

> "The Internal Revenue Code is not positive law. It is special law, applicable to those who have chosen to make themselves liable for the income tax by entering into contracts with the U.S. Government. Those who are not involved in a 'trade or business' with the U.S. Government are not required to file a return under Subtitle A."

Need we say more? If you've read Original Intent's articles on The Constitutional Issues of Taxation and Federal Income Tax, the legal concepts should be starting to dovetail for you now – you should be able to start seeing the big picture taking shape!

Anyone who contracts with the federal government to perform work will end up with Subtitle 'A' tax liability. If a person performs work as an independent contractor, he must provide a TIN, or be subject to back-up withholding [see §3406]. All *information returns* will be in the form of a 1099 (or a similar form).

Anyone who contracts with the federal government, or any government entity that is ultimately under the "exclusive legislative jurisdiction of the United States" [see Federal Jurisdiction on this site] as an ***employee*** will be subject to the withholding provision of chapter 24, §3402, because he has created Subtitle 'A' liability for himself. Section 3402 authorizes the withholding, and §31(a) tells us which tax is being withheld. A Form W-4 is required of such an ***employee*** and their ***wages*** will be reported on a Form W-2.

Regulations for determining if a person is a contractor or an employee [see 26 CFR 31.3401(c)-1] are for the use of the government ***employer*** defined at 26 USC §3401(d), and ***not*** for private employers.

We've been saying for years that all federal tax forms are only applicable to the following circumstances:

- ✍✍Direct financial involvement with the United States government.
- ✍✍Payments made/received from certain federally regulated financial markets.
- ✍✍Foreign business activities in the United States.
- ✍✍Conducting domestic business in certain federally regulated businesses (Subtitle D & E matters).

Form 1099 is for reporting payments made by a governmental entity to a person acting as an independent contractor to that governmental entity. It is ***not*** for reporting the money paid by John's Shoe Repair to Vinnie The Plumber! Form W-4 is to be completed and signed by certain government employees, ***not*** by the workers at Fred's TV Repair. Form W-2 is for governmental entities to report the ***wages*** they have paid to their ***employees***, but it is ***not*** to be used to report the compensation paid to the workers at Joe's Computer Repair. In fact, all "reportable payments" [see §3406 and Federal Income Tax] relate solely to the four categories shown above. If what you're doing is not within one of those four categories, it's ***not*** a "reportable payment".

FICA and FUTA

As we close this article, let's briefly explore the remaining two chapters of Subtitle 'C' – chapters 21 and 23, FICA and FUTA respectively.

Chapter 24 (withholding) derives its authority from the fact that one is receiving money from the public treasury and is thus subject to the regulatory controls that accompany such a financial "nexus" with the federal government. By contrast, the FICA and FUTA statutes find their authority in the government's territorial powers. Both of these taxes are based not upon ***what*** you do, but ***where*** you do it.

Both FICA and FUTA are based on wages, but in these statutes the definition of "wages" is different than in chapter 24. Let's look at the differences:

> 26 USC 3121(a) – Wages: For purposes of this chapter, the term "wages" means all remuneration for ***employment***…

We know it's looking familiar, but trust us, there is a difference coming into view!

> 26 USC 3121(b) – Employment: For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either (i) ***within the United States***…(goes on to talk about service on "American vessels", "American aircraft", or for "American employers" overseas).

Unless you're working on a US flagged ship, or a US registered aircraft, or working overseas for a business owned by a non-American Citizen, the only thing that constitutes "employment" is working for someone "within the United States". Accordingly, all we have to do is find out how Congress has defined the legal term "United States" for use within chapter 21 [FICA]. Let's shift to the regulations for that definition because the one that appears in the regulations is far more specific than the one that appears in the Code. In the regulations, the definition of State

appears first and is helpful in understanding the definition of United States, so we've included both.

26 CFR 31.3121(e)-1: State, United States, Citizen

(a) When used in the regulations in this subpart, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Territories of Alaska and Hawaii before their admission as States, and (when used with respect to services performed after 1960) Guam and American Samoa.
(b) When used in the regulations in this subpart, the term "United States", when used in a geographical sense, means the several states (including the Territories of Alaska and Hawaii before their admission as States), the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. When used in the regulations in this subpart with respect to services performed after 1960, the term "United States" also includes Guam and American Samoa when the term is used in a geographical sense. The term "citizen of the United States" includes a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa.

You will notice that Alaska and Hawaii were included as "States" until the time they became "states of the Union". At that time, they ceased to be "federal States", which is what is being defined above.

One can easily see that the "United States" being defined above is not the "states of the Union" that you and I live in. The "United States" that is being defined above are those "federal areas" that are under the "exclusive legislative jurisdiction of the United States". [See Article I, Section 8, Clause 17, and Article IV, Section 3, Clause 2, of the US Constitution.] Remember, when legislating as the national government for the states of the Union, Congress can only exercise specific delegated authority, but when legislating only for federal areas, Congress is free to act in any way it sees fit unless it is specifically barred from such actions by the Constitution. In other words, FICA and FUTA taxes cannot be imposed upon the Citizens of the states of the Union (while working in a state) because such legislation would not be constitutional. After all, as we covered in the first several pages of this article, the Citizens of the states of the Union possess a common law right to work and the federal government cannot defeat or alter that right. However, citizens and residents of places that "belong" to the United States government have no such common law rights and the government may impose a tax upon such people to work, or to hire others to work for them. Accordingly, the imposition of FICA and FUTA taxes is geographically based, and does not affect Citizens of a state of the Union working in the states or firms domiciled within a state of the Union.

Of course, when it comes to federal law – which is applicable only when the U.S. has jurisdiction – Citizens keep "volunteering" into federal jurisdiction, even when the government has none to begin with. This can be done in a myriad of ways, but when it comes to tax law, most Americans "volunteer" into the system by giving out their SSN, which is an *identifying number* for tax purposes (see 26 CFR 301.6109-1(a)). Most people give out their SSN without a thought as to the legal consequences of doing so. For more information on this zombie-like condition that afflicts millions of Americans, see our article on Federal Income Tax.

Employer Identification Number (EIN)

Many firms that have no obligations under Subtitle 'C' create their own legal duties by applying for an EIN. Applying for and receiving an EIN means that you've requested to be considered as an "employer" (as defined at (§3401(d)) and that you wish to be bound by the regulations which govern employers, employees, and payroll tax matters. In short, you cease to be a "private employer".

Most private firms are under no obligation to be considered "employers" and are free to return the EIN to the Secretary of the Treasury and cancel their obligations under their former EIN. However, like most transactions with the IRS, it must be done properly in order to be effective. If Original Intent can be of service to you in this area, please don't hesitate to contact us.

Summary

- Subtitle 'C', Employment Taxes, covers several different taxes.
- Only 4 out of the 6 chapters "impose" taxes.
- 2 out of those 4 deal with railroad taxes and do not affect most Americans.
- FICA and FUTA are the only two general taxes in Subtitle 'C'.
- FICA and FUTA are geographically based in federal areas, and are not required of Citizens of the states of the Union while working in a state of the Union.
- The chapter that commands withholding (chapter 24) does not impose any tax upon anyone.
- 26 USC 31(a) reveals that chapter 24 is authorized to withhold only Subtitle 'A' taxes.
- If a person has no Subtitle 'A' liability, chapter 24 has no authority.

- Persons who contract to perform work for the federal government will have Subtitle 'A' liability.

- A person who accepts an offer of employment with various government entities becomes the "employee" defined in chapter 24 (§3401(c)).

- An "employee" (as defined at §3401(c)) earns "wages" (defined at §3401(a)).

- It is upon an employee's wages that withholding is to be accomplished.

- Forms such as the W-4 and W-2, are intended exclusively for the use of the "employer" (as defined at §3401(d)), not for private sector firms.

- EINs are exclusively for identifying "employers" (as defined at (§3401(d)). They have no proper role in the private sector.

- By acquiring an EIN, a private firm is requesting to be considered as an "employer" (as defined at (§3401(d)) and is then bound by the applicable regulations.

- A private firm may "cancel" their EIN and free themselves from the burdens of being considered an "employer" (as defined at (§3401(d)).

- The act that starts the ball rolling on the legal presumption of personal income tax liability, where no such liability actually exists, is giving one's SSN to a requester who then uses the number to file an *information return*. The *information return* creates the legal presumption of income subject to federal or state taxing authority.

- Such presumptions are rebuttable. Original Intent can assist in properly rebutting these presumptions. Contact Us.

We hope that this article has been helpful to you in better understanding federal employment taxes. If this article has been helpful to you, please pass this URL on to others. http://www.originalintent.org/empltax.shtml