

TAX WITHHOLDING AND REPORTING: What the Law Says

1. WITHHOLDING

#	Requirement	Authority
1.1	<p>According to the IRS, private employers, including churches, are NOT required to deduct or withhold. A “private employer” is any entity that is not part of the federal government:</p> <p>IRM 5.14.10.2 (09-30-2004) Payroll Deduction Agreements</p> <p>2. Private employers, states, and political subdivisions are not required to enter into payroll deduction agreements. Taxpayers should determine whether their employers will accept and process executed agreements before agreements are submitted for approval or finalized.</p>	<p>IRS Internal Revenue Manual, Section 5.14.10.2 at: http://www.irs.gov/irm/part5/ch14s10.html</p>
1.2	<p>Withholding is only on “wages” in connection with a voluntary W-4 withholding <i>agreement</i>. An “agreement” is legally defined in Black’s Law Dictionary as a “contract”. The regulations at 26 CFR §31.3401(a)-3(a) identify the W-4 as an “agreement”, which means a “contract” to voluntarily procure “social insurance”. A “contract” is “private law” between you and the government that is enforceable ANYWHERE. It is <i>not</i> enforceable against those who DO NOT consent voluntarily.</p> <p><i>“An agreement [consent] obtained by duress, coercion, or intimidation is invalid, since the party coerced is not exercising his free will, and the test is not so much the means by which the party is compelled to execute the agreement as the state of mind induced. Duress, like fraud, rarely becomes material, except where a contract or conveyance has been made which the maker wishes to avoid. As a general rule, duress renders the contract or conveyance voidable, not void, at the option of the person coerced, and it is susceptible of ratification. Like other voidable contracts, it is valid until it is avoided by the person entitled to avoid it. However, duress in the form of physical compulsion, in which a party is caused to appear to assent when he has no intention of doing so, is generally deemed to render the resulting purported contract void.” [Am.Jur 2d, Duress, Section 21]</i></p>	<p>26 CFR §31.3402(p)-1 26 CFR §31.3401(a)-3(a) Family Guardian Cites By Topic, “wages” at: http://famguardian.org/TaxFreedom/CitesByTopic/wages.htm American Jurisprudence Legal Encyclopedia 2d, Duress, Section 21</p>
1.3	<p>The W-4 form does NOT identify itself as a “contract” because the IRS wants to DECEIVE you into thinking that your voluntary consent is NOT required.</p>	<p>IRS form W-4 at: http://famguardian.org/TaxFreedom/Forms/IRS/IRSFormw4_01.pdf</p>
1.4	<p>Anyone, including an “employer” or “private employer”, who compels you, under duress, to sign the W-4 contract is “impairing your right to contract” and instituting slavery and involuntary servitude. Such duress includes the threat to not hire or fire you. If they claim to be acting as an agent of the government, such as a voluntary “withholding agent” as defined in 26 U.S.C. §7701(a)(16), then they are violating Article 1, Section 10 of the U.S. Constitution.</p> <p><i>“Independent of these views, there are many considerations which lead to the conclusion that the power to impair contracts [either the Constitution or the Holy Bible], by direct action to that end, does not exist with the general [federal] government.” [Sinking Fund Cases, 99 U.S. 700 (1878)]</i></p>	<p>U.S. Constitution, Art. 1, Section 10 at: http://caselaw.lp.findlaw.com/data/constitution/article1/e01/ 26 U.S.C. §7701(a)(16) <i>Sinking Fund Cases</i>, 99 U.S. 700 (1878)</p>
1.5	<p>The legal definition of “wages” <i>supersedes</i> and is NOT the same as the common definition. The distinction between the legal and the common definitions of words is where most of the deception and misapplication of the tax laws originates.</p>	<p>26 U.S.C. §3401</p>
1.6	<p>The earnings of ministers are specifically <i>excluded</i> from the definition of “wages”. Therefore, ministers of churches are under no obligation to deduct or withhold</p>	<p>26 U.S.C. §3401(a)(9)</p>
1.7	<p>Those who do not submit a W-4 form signed <i>voluntarily</i> earn <i>no</i> reportable “wages” on a W-2.</p>	<p>26 CFR §31.3401(a)-3(a)</p>
1.8	<p>A person who has no tax liability should <i>not</i> withhold.</p>	<p>26 CFR §31.3402(p)-1(a)</p>
1.9	<p>If the IRS says to withhold on “wages” against those who refuse to submit a W-4, the withholding <i>must</i> be zero because the person does not earn “wages” as legally defined.</p>	<p>26 CFR §31.3401(a)-3(a)</p>
1.10	<p>The U.S. Supreme Court said that <i>no one</i> can withhold the pay of a worker without his consent:</p> <p><i>“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...”</i></p>	<p><i>The Antelope</i>, 23 U.S. 66; 10 Wheat 66; 6 L.Ed. 268 (1825)</p>
1.11	<p>The above court ruling and several others are the basis for why withholding on “wages” requires a VOLUNTARY W-4 form. Failure to procure consent, in fact, is described by the U.S. Supreme Court as slavery and involuntary servitude:</p> <p><i>“That it does not conflict with the Thirteenth Amendment, which abolished slavery and involuntary servitude, except as a punishment for crime, is too clear for argument. Slavery implies involuntary servitude—a state of bondage; the ownership of mankind as a chattel, or at least the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property, and services [in their entirety]. This amendment was said in the Slaughter House Cases, 16 Wall, 36, to have been intended primarily to abolish slavery, as it had been previously known in this country, and that it equally forbade Mexican peonage or the Chinese coolie trade, when they amounted to slavery or involuntary servitude and that the use of the word ‘servitude’ was intended to prohibit the use of all forms of involuntary slavery, of whatever class or name.” [Plessy v. Ferguson, 163 U.S. 537, 542 (1896)]</i></p>	<p><i>Plessy v. Ferguson</i>, 163 U.S. 537, 542 (1896) <i>Clyatt v. U.S.</i>, 197 U.S. 207 (1905) Bible also classifies involuntary withholding as a sin (SLAVERY) in 1 Tim. 5:18, Jer. 22: 13, James 5:1-6; and Lev. 19:13.</p>
1.12	<p>The Thirteenth Amendment prohibition against slavery and involuntary servitude DOES NOT contain an exception in the case of “taxes”. Paying for government services that people do not want and do not need is therefore the same type of slavery as black slavery.</p>	<p>U.S. Constitution, Thirteenth Amendment</p>

1.13	Only “employees” can fill out and submit an IRS form W-4. The W-4 form, upper left corner, says “Employee Withholding Allowance Certificate”. “Private employees” can but should <i>not</i> fill out this form.	IRS form W-4, upper left corner: http://famguardian.org/TaxFreedom/Forms/IRS/IRSFormw4_01.pdf
1.14	The term “employee” is legally defined as follows: <i>“For purposes of this chapter, the term “employee” includes [is limited to] 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.” [26 U.S.C. 3401(c)]</i>	26 U.S.C. §3401(c) 26 CFR §31.3401(c)-1
1.15	A person who is not an “employee” as defined in the Internal Revenue Code DOES NOT work for an “employer” as legally defined. Instead, he works for a “private employer” who has no duty with withhold or report, according to the IRS.	26 U.S.C. §3401(d) IRM 5.14.10.2 at: http://www.irs.gov/irm/part5/ch13s10.html
1.16	What is not specifically <i>included</i> within the law itself, MUST implicitly be presumed to be purposefully <i>excluded</i> by implication: <i>“Expressio unius est exclusio alterius. A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.” [Black’s Law Dictionary, 6th Ed., p. 581]</i>	Black’s Law Dictionary, 6th Edition, p. 581 <i>Meaning of the term “includes” and “including”</i> , Form #05.014: http://sedm.org/Forms/FormIndex.htm

2. REPORTING

#	Requirement	Authority
2.1	Taxable earnings are reported on an “information return”	IRS Website at: http://www.irs.gov/taxpros/content/0_id=98185.00.html
2.2	Information returns include W-2, 1042-S, 1098, 1099, and K-1	IRS website, forms
2.3	26 U.S.C. §6041 is the ONLY legal authority for preparing information returns.	26 U.S.C. §6041
2.4	Those who knowingly file false information returns can be civilly prosecuted for fraud under Section 7434 of the I.R.C. The penalty is the greater of \$5,000 or whatever false tax liability results plus attorneys fees and costs.	26 U.S.C. §7434
2.5	The legal duty to report taxable earnings applies only to “trade or business” activity.	26 U.S.C. §6041
2.6	A “trade or business” is defined as “the functions of a public office” and not expanded anywhere else in the Internal Revenue Code to include any other thing	26 U.S.C. §7701(a)(26)
2.7	A “public officer” is a person who is acting as a government “employee” or a government “contractor”	Black’s Law Dictionary, Sixth Edition
2.8	Only “wages, tips and other compensation” are reported on IRS form W-2, Block 1	IRS Form W-2
2.9	The term “compensation” is nowhere defined in the I.R.C. but is defined in section 911 as “compensation for personal services”	26 U.S.C. §911(d)(2)
2.10	“personal services” are defined as work performed in connection with a “trade or business”	26 CFR §1.469-9(b)(4)
2.11	The IRS can only lawfully penalize the following “persons” in connection with information returns: “(b) Person defined ; The term “person”, as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. “	26 U.S.C. §6671(b)
2.12	It is a crime to compel the use or disclosure of a Social Security Number on a withholding or reporting form	42 U.S.C. §408 5 U.S.C. §552a

3. REASONABLE BELIEF ABOUT LIABILITY

#	Requirement	Authority
3.1	The IRS says you CANNOT and SHOULD NOT rely on any IRS publication or form as a reasonable belief about tax liability: “IRS Publications, issued by the National Office, explain the law in plain language for taxpayers and their advisors... While a good source of general information, <u>publications should not be cited to sustain a position.</u> ”	IRS Internal Revenue Manual, Section 4.10.7.2.8 at: http://www.irs.gov/irm/part4/ch10s11.html
3.2	IRS “publications” include IRS forms, booklets, and the entire IRS website.	
3.3	Federal courts say that “taxpayers” cannot rely upon any statement by a federal employee as a basis for belief about what the law requires of them.	Pamphlet entitled “Reasonable Belief About Liability”, form #05.007 at: http://sedm.org/Forms/FormIndex.htm

4. WHAT THIS MEANS

1. The company is classified as a “private employer”, which means they are not part of the government and have no contracts or agreements with the government that might make them into a “public office”, or an entity engaged in a “trade or business”. [IRM 5.14.10.2](#) says they are not required to deduct or withhold.
2. The company may decide to become a “voluntary withholding agent”, but may *not* lawfully compel workers, including pastors, to do any of the following without recruiting others into involuntary servitude and slavery in violation of the [Thirteenth Amendment](#) and [42 U.S.C. §1994](#):
 - 2.1. Use or compel disclosure or use of a Social Security Number. This is a violation of [42 U.S.C. §408](#) and [5 U.S.C. §552a](#).
 - 2.2. Sign W-4 “voluntary withholding agreements”. They aren’t voluntary if the person is compelled to sign.
 - 2.3. Deduct or withhold against the wishes of the worker. This is slavery and a Biblical Sin (see [1 Tim. 5:18](#), [Jer. 22: 13](#), [James 5:1-6](#); and [Lev. 19:13](#)).
3. The company may not lawfully:
 - 3.1. Put a nonzero amount in block 1 of a W-2 for “wages” if the party did not submit a W-4 (see [26 CFR §31.3401\(a\)-3\(a\)](#)) or if the worker is a minister of the gospel (see [26 U.S.C. §3401\(a\)\(9\)](#)).
 - 3.2. Include a social security number on any government form or send the form in against the will of the worker. This violates the Privacy Act, [5 U.S.C. §552a](#) and [42 U.S.C. §408](#).
 - 3.3. Identify or associate the earnings of any worker with a “public office” or a “trade or business” by filing an information return against them, if they in fact are not a government employee or worker and did not voluntarily sign a W-4. This is a violation of [26 U.S.C. §6041](#).
4. The information returns filed against a pastor or company worker are **FALSE** because:
 - 4.1. They contain nonzero amounts in block 1 for “wages”. See section 1 above.
 - 4.2. According to [26 U.S.C. §3401\(a\)\(9\)](#), pastors and ministers of the gospel do not earn “wages” as legally defined.
 - 4.3. Worker does not have a W-4 form on file, and therefore earns no “wages” according to [26 CFR §31.3401\(a\)-3\(a\)](#).
 - 4.4. Worker is not engaged in a “public office” and does not wish to associate his private life or his private earnings with the government as an “employee” or contractor, because he would be committing perjury on a federal form, under penalty of perjury if he were to sign and submit an IRS form W-4.
5. The information returns filed by the company against the worker violates [26 U.S.C. §7434](#) because they are false, and thereby subject the company to civil liability for false information returns.
6. The only party violating the law is the company in this case, if they:
 - 6.1. Refuse to read and heed the written law. The Bible says on this subject:
“One who turns away his ear from hearing the law, even his prayer shall be an abomination.” [[Prov. 28:9](#), Bible, NKJV]
 - 6.2. Are relying on sources of belief that are not credible, according to both the IRS and the federal courts. See Section 3 above.
 - 6.3. Refuse the pastor or the accused the opportunity to present and describe the laws they are violating, which implies that their infractions are willful and deliberate violations of the law.
 - 6.4. Have repeatedly tried to distract attention away from the law using slander, unsubstantiated false allegations.
 - 6.5. Have violated the requirements of God’s law on this matter, by withholding the “wages” of workers. See [1 Tim. 5:18](#), [Jer. 22: 13](#), [James 5:1-6](#); and [Lev. 19:13](#).

5. FURTHER INFORMATION

1. Where you can read any one of the laws for yourself:
[Legal Research Sources](#)
<http://famguardian.org/TaxFreedom/LegalRef/LegalResrchSrc.htm>
2. Simplified but more detailed treatment on withholding:
[Federal Tax Withholding](#), Form #04.102. 33 pages.
<http://sedm.org/Forms/FormIndex.htm>
3. Detailed treatment of legal requirements of withholding:
[Federal and State Tax Withholding Options for Private Employers](#), Form #04.101. 572 pages. Free download from:
<http://sedm.org/Forms/FormIndex.htm>
4. How to form an informed opinion about what the tax laws require of us:
[Reasonable Belief about Tax Liability](#), Form #05.007
<http://sedm.org/Forms/FormIndex.htm>
5. Detailed, authoritative research on what the law requires, formatted in small memorandums to make it easy to digest. See section 5 of the link below:
<http://sedm.org/Forms/FormIndex.htm>