

# Stopping Private Employer Withholding of Income Taxes

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## Resources to use against private employers who resist obeying the law or who discriminate against private employees for exercising their right to not volunteer to withhold:

-  [Federal and State Withholding Options for Private Employers](#)-pamphlet intended to be given to private employers by people who don't want to withhold or deduct federal income taxes.
- ["withholding agent" defined](#)-your "employer" is NOT a withholding agent unless you are a [nonresident alien](#) or foreign corporation, and even then, only if you elect/volunteer to withhold, since there is no statute making you [liable](#) for Subtitle A income taxes
- ["right" defined](#)
- [Equal Employment Opportunity Commission \(EEOC\)](#)-will litigate against private employers at public expense if they discriminate against you because of your decision **not** to withhold or pay taxes or obtain or use a Socialist Security Number because of your religious beliefs
- [EEOC Laws, Regulations, and Policy Guidance](#)
- [EEOC: Filing a Charge \(against an employer\)](#)
- [Title 42, Chapter 21, United States Code: Civil Rights](#)
- [8 U.S.C. §1324\(a\)\(3\)\(A\)](#)-Unfair Immigration Related Employment Practices. Protects both "U.S. citizens" and "U.S. nationals"
- ["religion" defined](#)
- [Great IRS Hoax](#), Section 4.3.2: ["Government as idolatry/religion"](#)
- [Great IRS Hoax](#), Section 5.4.4: "Your private employer isn't authorized by law to act as a federal withholding agent"

## Related steps:

- [3.14 Change your Filing Status to Nonresident alien and "Denumber" yourself](#)

## Related forms:

- [Attachment to Payroll Withholding Form](#) -use with forms W-4, W-8, S-8BEN
- [Government EEO Complaint \(related to religious discrimination based on failure to use SSNs\)](#)-Sovereignty Forms and Instructions Online, Form number 6.23. File this against federal employers who force you to use SSNs or withhold.
- [Letter to Government Employer Stopping Withholding](#)
- [Letter to Commercial Employer Stopping Withholding](#)
-  [IRS Form W-4 \(for filing EXEMPT, use only as a LAST RESORT. W-8 or W-8 BEN are preferred\)](#)
- [Affidavit of Exemption from Withholding in Lieu of W-4](#)
-  [IRS Form 8233: Exemption from Withholding on Compensation for Independent \(and](#)

### Certain Dependent) Personnel Services of a Nonresident Alien Individual

-  [IRS Form 8233 Amended](#)
-  [IRS Form 8233 Instructions](#)
-  [IRS Form W-8](#)
-  [IRS Form W-8BEN](#)
-  [IRS Form W-8BEN Amended](#)
-  [IRS Form W-8BEN Instructions](#)
-  [IRS Form W-8 Substitute](#)
-  [IRS Form W-8 Instructions](#)
-  [IRS Form W-4](#)

#### **Related articles and links:**

- [About the IRS Form W-8BEN, Form #04.202 \(OFFSITE LINK\)](#)-how to use this form for withholding
- [Correcting Erroneous Form 1099's, Form #04.005 \(OFFSITE LINK\)](#)-how to use this form for withholding
- [Correcting Erroneous IRS Form W-2's, Form #04.006 \(OFFSITE LINK\)](#)-how to correct erroneous IRS form W-2s sent to IRS by a private employer who is violating the law
- [About SSNs/TINs on Tax Correspondence, Form #04.104 \(OFFSITE LINK\)](#)
- [Why Your Government is Either a Thief or You Are a "Public Officer" for Income Tax Purposes, Form #05.008 \(OFFSITE LINK\)](#)
- ["exempt individual" defined](#)
- ["beneficial owner" defined](#)
- ["Taxpayer Identification Number" defined](#)
- ["Social Security Number" defined](#)

*"To steal from one person is theft. To steal from many is taxation."  
[Jeff Daiell]*

This section will not cover ALL of the nuances of stopping withholding in the context of ONLY "private employers", who are companies that have no contracts, agency, or relationship with the federal government. This article does not refer to "public employers", who are part of the federal or state government. The IRS admits in their Internal Revenue Manual that "private employers" are not required to enter into withholding arrangements on their website at:

[IRM 5.14.10.2 \(09-30-2004\)](#)  
*Payroll Deduction Agreements*

**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.

[\[http://www.irs.gov/irm/part5/ch14s10.html\]](http://www.irs.gov/irm/part5/ch14s10.html)

If you would like to know more about the distinctions between "private employers" and "public employers", please see the following informative pamphlet::

*Why Your Government is Either a Thief or You Are a "Public Officer" for Income Tax Purposes*, Form #05.008

<http://sedm.org/Forms/MemLaw/WhyThiefOrEmployee.pdf> (OFFSITE LINK)

If you would like in-depth and complete coverage of payroll tax withholding, please download our free book:

*Federal and State Withholding Options for Private Employers*

<http://famguardian.org/Publications/FedStateWHOptions/FedStateWHOptions.pdf>

We will therefore give you a very brief overview of some of the more important facts regarding private withholding and encourage you to download and read the above free book if you want additional in-depth information.

### **1. Summary of important Withholding Facts**

We will start this section with a summary of very important withholding facts that contains several links so that you can further research the documentation upon which they are based yourself. This summary will then be applied in the next section to develop a procedural approach towards selecting a withholding approach in the context of private employers.

1. Tax withholding is ONLY on "wages" as legally defined, and not on ALL EARNINGS or everything you make. See 26 CFR §31.3401(a)-3(a).

26 CFR §31.3401(a)-3 Amounts deemed wages under voluntary withholding agreements

*(a) In general. **Notwithstanding the exceptions to the definition of wages specified in section 3401(a) and the regulations thereunder, the term "wages" includes the amounts described in paragraph (b)(1) of this section with respect to which there is a voluntary withholding agreement in effect under section 3402(p).** References in this chapter to the definition of wages contained in section 3401(a) shall be deemed to refer also to this section (§31.3401(a)-3).*

*(b) Remuneration for services. (1) Except as provided in subparagraph (2) of this paragraph, **the amounts referred to in paragraph (a) of this section include any remuneration for services performed by an employee for an employer which, without regard to this section, does not constitute wages under section 3401(a).** For example, remuneration for services performed by an agricultural worker or a domestic worker in a private home (amounts which are specifically excluded from the definition of wages by section 3401(a) (2) and (3), respectively) are amounts with respect to which a voluntary withholding agreement may be entered into under section 3402(p). See §§31.3401(c)-1 and 31.3401(d)-1 for the definitions of "employee" and "employer".*

2. The only people who can earn "wages" are those with a "voluntary withholding agreement" in place. Therefore, the only people subject to federal tax withholding on their earnings from private employment are those who volunteer.

3. The IRS form W-4 is called a "voluntary withholding agreement" in the Treasury Regulations in 26 CFR Part 31. However, the IRS W-4 form nowhere indicates that it is an "agreement" because the IRS simply does not want workers to know that their consent and agreement is required in order to take money out of their paycheck.

4. Only federal/public "employees" can be required under law to submit a W-4. Private employees cannot and should not. This is covered in the free pamphlet below:

*Why Your Government is either a Thief or You are a "Public Officer" for Income Tax*

Purposes available at:

<http://sedm.org/Forms/MemLaw/WhyThiefOrEmployee.pdf>

5. The IRS Form W-4 is the wrong withholding form to use for private employees who are not federal workers or "personnel". The correct withholding form to use for private employees is the IRS form W-8BEN. See:

<http://sedm.org/Forms/Tax/Withholding/W-8BEN/AboutIRSFormW-8BEN.htm>

6. The amount reported on the IRS Form W-2 block 2 entitled "wages, tips, and other compensation" may only lawfully indicate the amount of "[wages](#)" earned by a public/federal "employee" with which there is a voluntarily completed IRS form W-4 in place. It cannot and should not indicate ALL earnings from that particular position. These "wages" are treated as being "effectively connected with [a trade or business](#)" and are therefore taxable under the I.R.C. See our article [The Trade or Business Scam](#) at:

<http://famguardian.org/Subjects/Taxes/Articles/TradeOrBusinessScam.htm>

7. The entire amount of "wages" reported on the IRS Form W-2 MUST be included as "gross income" on a IRS return, because the regulations say so. See:

[26 CFR Sec. 31.3402\(p\)-1](#)

26	CFR	Sec.	31.3402(p)-1
Title			26
CHAPTER			I
SUBCHAPTER			C
PART			31
Subpart			E

*Sec. 31.3402(p)-1 Voluntary withholding agreements.*

*(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 Sec. 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. (b) Form and duration of agreement. (1)(i) Except as provided in subdivision (ii) of this subparagraph, an employee who desires to enter into an agreement under section 3402(p) shall furnish his employer with Form W-4 (withholding exemption certificate) executed in accordance with the provisions of section 3402(f) and the regulations thereunder. The furnishing of such Form W-4 shall constitute a request for withholding.*

8.A "withholding agent" is legally defined in 26 U.S.C. §7701(a)(16):

[TITLE 26](#) > [Subtitle F](#) > [CHAPTER 79](#) > Sec. 7701.  
[Sec. 7701. - Definitions](#)

(a)(16) Withholding agent

The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section [1441](#), [1442](#), [1443](#), or [1461](#). [See [Title 26, Subtitle A, Chapter 3, Subchapter A: Nonresident Aliens and Foreign Corporations](#)]

9. You can only become a "[Withholding Agent](#)" by having the Secretary of the Treasury sign an [IRS Form 2678](#). Few private employers even know what this form is. Therefore, they cannot lawfully withhold anything.

10. If you refuse to fill out a W-4, the IRS has NO AUTHORITY to tell your private employer to deduct or withhold at the rate of "single and zero". If they tell them that and the employer listens, then both the IRS and the private employer become liable for conspiracy to commit grand theft, involuntary servitude in violation of the Thirteenth Amendment, and recruiting a person into peonage and slavery if anything at all gets withheld. What is supposed to happen if the private employer heeds the unlawful IRS request is that under [26 CFR §31.3401\(a\)-3\(a\)](#), the private employer still earn no "wages" because he has no W-4 in place. Therefore, withholding occurs on an amount of "wages" that is "zero". Therefore, the private employee is not harmed. However, what usually happens is that the IRS will not tell private employers that they cannot record the receipt of "wages" against private employees who did not voluntarily submit a W-4. This leads the private employers in essence to steal from their workers without the authority of law and to produce reports of the receipt of "wages" that are in fact false and fraudulent. The only way a worker who has been injured in this way can respond is by submitting an [IRS Form 4852](#) to correct the erroneous report of "wages" on the W-2 and then to ask for a refund of all wrongfully and illegally withheld payroll taxes that were deducted from the improperly recorded "wages".

## **2. Overview of withholding strategy developed by and for the author**

Under [26 U.S.C. §31\(a\)\(1\)](#), all tax withholding is credited to any taxes imposed by Subtitle A of the Internal Revenue Code, including the personal income taxes. Stopping withholding can be tricky business because of the ignorance of most private [nongovernmental] private employers about the tax laws. Here is what we recommend to stop withholding, in descending order of preference. You should only pursue higher numbered options if you can't get your employer to accept the lowest numbered options and educating him or her doesn't help:

1. Withdraw or cancel your W-4, leaving them with no proof that you are allowing them to withhold income taxes. This should stop all withholding, including Social Security, Medicare, and Income taxes. The only reason this approach doesn't work is because
2. The above may not work because your employer may be concerned that they could be held liable for unpaid withholding taxes, even though no law actually does this for private employers. If they manifest this irrational fear, meet with their corporate lawyer and demand that they show you the statute that makes them liable for taxes you refuse to pay because there isn't any. Don't leave the meeting until you get a definitive answer, and inform them that if they can't show you the law, then they are involved in criminal extortion or "extortion under the color of law". Try to use this book to educate them on the error of their ways, focusing mainly on chapter 5.
3. If educating your employer doesn't help, then fill out a W-8BEN form according to the instructions we describe in section 3.5.3.14. This will declare you as a foreign person not subject to any type of income tax withholding, including Social Security, Medicare, FICA, etc. Attach the "IRS Form W-8/W-8BEN Attachment" form that we provide in section 9.8.10 to your W-8BEN.
4. If the above W-8BEN doesn't work, then fill out a W-4 Exempt and add it to the W-8BEN and the attachment in #3 above. Then check the "W-4 attachment" box at the top of the "IRS Form W-8/W-8BEN Attachment" you attached in #3 above. This attachment reflects that you are under criminal duress by your employer and makes the filing of the W-4 invalid, and modifies the meanings of words on the form to negate its affect and render it not useful as evidence in a court of law. Under IRS regulations, the employer is required to send in the W-4E to the IRS, and once they get it, they

most likely will try to send you a letter assessing a \$500 false W-4 penalty. We know, based on the discussion in section 5.4.4 of the [Great IRS Hoax](#) that the IRS has no authority to assess penalties against other than federal corporations, so you can't be held liable for this penalty but may have to do a lot of leg work convincing most ignorant IRS clerks of this reality. When you submit this form, mark "under duress" near your signature and make sure you don't put any kind of SSN on it, but instead write "NA" or "None" or "5<sup>th</sup> Amendment". If your employer twists your arm to remove the "duress" or put an SSN on the form, make sure that you get their demand in writing on company stationery with the signature of an agent of the company so that you can prove duress, and therefore not be held liable for putting the wrong number on the form or committing fraud. Another sneaky technique is to add the "under duress" to the form in original print by playing with it on your word processor before you submit it so the clerk accepting the form won't notice. Put it in an inconspicuous place they won't look. This frequently works. You may have to iterate to get the phrase to print in just the right spot before it looks perfect, but it's worth the effort if it will get you off the hook.

5.If this doesn't work, then subcontract yourself out and handle your own withholding and benefits. That way you become your own withholding agent. What can the IRS do if they send you, as your own private employer, a Notice of Levy or "Levy"? NOTHING.

6.In the event that you don't have the nerve to word the "IRS Form W-8/W-8BEN Attachment form" the way we do as a criminal complaint and decide to put your tail between your legs and bend over to allow your employer to force you to file a W-4 *without* exempt status or allowing for full withholding of federal income taxes, then you have no choice from that day forward other than to continually file 1040NR forms with zero filled in for the income amount, stating that the taxes were paid under duress and that you are a "nontaxpayer" who wants illegally extorted monies back and your employer prosecuted for theft. You should also state on your income tax return that the W-2 form is incorrect because you are not an "employee" as the word is legally defined.

**NOTE:** Whatever form you file, whether it be a W-4 or W-8, please make sure that you put "Private" under your SSN and your address on the form and stick an asterisk next to the word. At the bottom of the form, put an asterisk saying "Protected by the Fifth Amendment to the U.S. Constitution". This will keep the IRS off your back and make it very difficult, if they do get a copy of this form, to assess penalties against you if they can't locate you in their records and don't know your address. Under these circumstances, they are also not authorized to contact your employer to obtain personal information without a court order because it would be a violation of your privacy.

Before you proceed with the rest of this section, we recommend reading following sections of our [Great IRS Hoax](#) book for additional background if you haven't already read them.

- 1.Section 4.3.2 entitled "Government as idolatry/religion".
- 2.Section 5.6.8 entitled "Employment Withholding Taxes are Gifts to the U.S. government".
- 3.Section 5.6.14 entitled "Your Private Employer Isn't Authorized by Law to Act as a Federal 'withholding agent'". This section gives you some very valuable information that we won't repeat here on the subject of withholding by your employer.

### **3. W-4 Exempt Background**

We will now cover the information at the beginning of the preceding section in more detail so you know why we suggested them. Note that we don't recommend filing an Exempt W-4, or a W-4E except as a last resort, as we discussed in sections 3.5.4.9.4, because this may get you in trouble with IRS ultimately with a "false W-4" penalty of \$500. Sometimes, however, filling out a W-4 Exempt may be your only recourse based on an ignorant employer who won't cooperate any other way and who forces you under duress to complete and sign the form. Filling out an Exempt W-4 is like putting a target on your back saying "Shoot Me, Kick Me, and Beat Me" and sending an invitation to the IRS with your home address once a year to hurt you. Even though the instructions on the W-4 Exempt form say you only have to fill out your name and Social Security Number, write in Exempt, and sign the W-4 form, you should keep in mind that the IRS

doesn't look at the W-4 forms UNLESS they are marked exempt. Here are the instructions off their website at [http://www.irs.gov/prod/tax\\_edu/teletax/tc753.html](http://www.irs.gov/prod/tax_edu/teletax/tc753.html):

*Do **not** send it to the IRS. However, if you receive a Form W-4 on which the employee claims more than 10 withholding allowances, or claims exemption from withholding and his or her wages would normally be expected to exceed \$200 or more a week, **you must send a copy of that Form W-4 to the IRS service center with your next employment tax return along with a cover letter giving your name, address, EIN, and the number of forms included. If you want to submit the Form W-4 earlier, you can send a copy of the Form W-4 to the IRS service center. The service center will send you further instructions if it determines that you should not honor the Form W-4.***

*You should inform your employees of the importance of submitting an accurate Form W-4. **An employee may be subject to a \$500 penalty if he or she submits, with no reasonable basis, a Form W-4 that results in less tax being withheld than is required.** There is no penalty if your employee doesn't claim enough withholding allowances and has too much withheld.*

[...]

***If an employee fails to give you a completed Form W-4, you must withhold federal income tax from his or her wages, as if he or she was single and claiming no withholding allowances.***

In many cases, some private employers do not send in the W-4 Exempt to the IRS as required by the regulations. If you work for such an employer, and many do, then you are very lucky. You might want to ask your employer if they send these forms into the IRS first before you decide what course to take.

Remember the most important thing about the above: an "employee" is defined in 26 U.S.C. Section 3401(c) and section 3.6.1.2 of the Great IRS Hoax as:

*"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."*

So even if you begged your employer to withhold and filled out the W-4 to start the withholding, they STILL can't legally withhold because you aren't an "employee". The IRS doesn't tell you this in the IRS publications, and so everyone thinks when they read this that they could be fined \$500 for not paying the right amount of tax. Also, because in effect, your employer (who really isn't an "employer" by the IRC at all because you aren't an "employee") is asked to snitch on you and notify the IRS immediately by sending your W-4 in immediately if you claim exempt status, then the more information you put on this form, the easier you will make it for them to target you for harassment and prosecution for "willful failure to file", even if you don't owe tax. Also, according to the instructions on the W-4 form itself:

*"Your exemption for 20\_\_ expires February 18, 20\_\_"*

This means that you have to renew the exempt W-4 every year. No one else who is paying taxes has to renew their W-4. Why? If you are paying taxes, they get a W-2 from your employer every year and can keep track of where you are. **They know that if you are exempt, you probably aren't filing taxes either so they don't have any information about you and they want to keep track of your address to make it easy to come looking for you with their lawyers and their harassing and threatening "notice of deficiency" correspondence. QUITE FRANKLY, YOU'RE A DAMN FOOL IF YOU DO WHAT THEY TELL YOU AND GET TRICKED INTO SENDING IN ANYTHING ABOUT YOURSELF ON THIS FORM, AND YOUR FIFTH AMENDMENT PRIVILEGE OF NOT BEING COMPELLED TO INCRIMINATE YOURSELF AND YOUR FIRST AMENDMENT PRIVILEGE OF NOT BEING COMPELLED TO COMMUNICATE WITH YOUR GOVERNMENT BOTH GIVE YOU THE RIGHT TO NOT COMPLETE THIS FORM AT ALL WITHOUT FEAR OF PENALTY OR TAX, AND IF YOU DO COMPLETE IT, TO ONLY TELL THEM WHAT YOU WANT TO TELL THEM, WHICH MEANS NOTHING THEY COULD USE TO HURT YOU. That's why we advocate giving them an affidavit in exchange for the Exempt W-4, because unlike the Exempt W-4, the IRS instructions DON'T say that the affidavit to stop withholding or no W-4 at all has to be sent immediately to them.**

**The First Amendment says we have a right of free expression, which also includes the right to NOT be compelled to communicate with our government. Remember also, that the exercise of rights CANNOT be taxed or penalized by anyone, including the government, or they quite simply aren't rights! In this case, the IRS in effect penalizes you for the exercise of your First Amendment right to NOT communicate with your government by taxing you and then forcing you to reveal intimate details about your personal life and your private affairs to justify getting the money back that never should have been withheld to begin with!**

**The Fourth Amendment also says we have a right to privacy, which means that we have a right to the security of our papers and personal effects! Them asking you for this information in effect, amounts to an invasion of your privacy and YOUR papers (it's your paper, right? You filled it out!) and a search of your person for "information". You're being "frisked" for information that will certainly be used later to hurt you or at least compel you to do something, and you don't have to put up with this baloney.**

We also learned in section 5.6.8 of the [Great IRS Hoax](#) that employment withholding taxes fall in Tax Class 1, which means they are **gifts** to the government and in section 5.4 of the [Great IRS Hoax](#) we learned that such gifts fall under 31 U.S.C. §321(d). Nonetheless, private, nongovernmental employees (English definition) are still issued W-4 forms to fill out by their "employer". Is the usage of the W-4 form an admission that the wage withholding laws would apply to you? Perhaps, but the ability to file the W-4 as "Exempt" allows you to disclaim liability, if so determined, which frees you from the greater income tax (but not social security tax). But how do you determine your liability? As we learned in chapter 5 of the [Great IRS Hoax](#), there is no law making American Citizens "liable" for income taxes under Subtitle A of the Internal Revenue Code.

#### **4. Persuading Difficult or Ignorant private employers**

Before you attempt to stop withholding or even mention it to your private employer, it's best to request a written evaluation of your performance that is signed by your supervisor. If the private employer asks why you want such an evaluation, just tell him that you are very serious about your job and that you need written feedback to help improve your performance. DO NOT say anything about taxes being the reason or they may catch on to what you are doing. Once you have this in hand, you can then initiate the stop of withholding and if the evaluation is fairly good or even average, your private employer will be deprived of an opportunity to make up lame excuses to fire you that don't look like discrimination.

If your private employer says they are afraid they might be fined or held liable for not withholding payroll taxes after you withdrew your W-4, leaving them with no authority at all to withhold, then show them sections 5.6.8 through 5.6.8.9.8 of the [Great IRS Hoax](#) and convince them that they don't need to treat income to a U.S. Citizen in the 50 states as "taxable income." Make sure they know what the definition of "employee" and "employer" is and that you are a "nonresident alien" and a "U.S. national" to the foreign jurisdiction of the Internal Revenue Code. If they still continue to deduct payroll taxes, then you may need to meet with their legal counsel and explain the situation, and possibly provide a copy of this document to them. If the legal counsel can't be convinced, then file a W-8 or W-8 BEN form declaring yourself as a foreign person not subject to withholding. Note that there is no penalty for filing the W-8 or W-8BEN, like there is with the W-4, so the W-8 is the safest way to stop ALL withholding.

If the private employer still refuses to terminate all (federal, state, Medicare, social security) withholding with the W-8 or W-8BEN, then you may be able to file a W-4 Exempt, but you under all circumstances, we recommend attaching a W-8BEN and the "IRS Form W-8/W-8BEN Attachment" we provide in section 9.8.10. Be prepared to get into a tangle with the IRS over a \$500 false W-4 penalty and over the private employer being told by the IRS to withhold at the single zero rate. If your private employer still won't honor the W-4 Exempt, then you will need to litigate against them to get them to change their policy on this issue by suing them for the amount of income they are taking away from you because of their misinterpretation of the laws and violation of your Fifth amendment right not to have your property taken from you without due process of law. Neither they nor the IRS have the authority to steal your wages without a court hearing and a court order, and even if the IRS tells your private employer to deduct taxes against your will, they aren't authorized under the Fifth Amendment to do so without a garnishment and especially without any kind of documentation and just a phone call that isn't traceable to a known IRS agent.

Before you sue private employers for forcing you to withhold or the government for refunding your money back, you will need evidence to prove they are committing extortion and duress in violation of your property rights in the process of forcing you to withhold. Therefore, you should be polite at all times but firmly insist on written, signed evidence from them showing that your employment is threatened if you don't withhold. You can send this in with your tax return asking for your money back, and it will give you a great foundation to sue the government in equity for returning your unlawfully paid taxes. If they won't give you written, signed evidence, then get them on camera on an audio recorder telling you that your job is threatened if you don't withhold. Make sure they know you are recording the conversation, because some states make it a crime to record unless both parties consent (these states are called "two party" states). If they allow you to record as they talk after they were informed you were recording, then they consent to the recording implicitly. If they won't give you written evidence of their position and won't let you record the conversation, then be sure to bring a witness to hear what they are saying to you. Then after the meeting with your private employer, get the witness to sign a signed and notarized affidavit documenting what was said so you that you can admit into evidence in court. Make sure your witness is not a relative or friend, but a neutral third party, because they will have more credibility.

If the IRS sends a letter to your private employer after you file a W-4 Exempt asking him or her to withhold at the single zero withholding rate, insist on getting the name, address, and phone number of the IRS Agent and insist that your private employer obtain an affidavit from the IRS ordering your private employer to withhold at the single zero rate before they actually do it. Inform your private employer that they are liable for violating your Fifth Amendment rights if they don't get this affidavit. Make sure that in the affidavit the IRS documents why they think you are liable to pay tax and therefore, why withholding is needed. Insist on a copy of the IRS Agent's Delegation of Authority Orders (DOA's) to withhold at the single zero rate and make sure it is attached to the affidavit. Then when your private employer gets the affidavit from the IRS, get a copy of it and DRAG THE IRS AGENT'S ASS INTO COURT and prosecute him for the following (or any number of additional claims found in section 11.5):

1. Violation of rights ([18 U.S.C. 245](#)).
2. Violating your Fifth Amendment rights (which you can petition the government to correct under the First Amendment to the Constitution, called the Petition clause).

3. Mailing threatening communications ([18 U.S.C. 876](#))—it's threatening to be told your pay will be stolen from you if you don't "volunteer" to give it away by filling out a W-4 form.
4. Taking more money than is owed ([26 U.S.C. 7214](#))—they haven't even demonstrated or documented a tax liability, and yet they're taking your money anyway. What kind of justice is that?
5. Receiving the proceeds of extortion ([18 U.S.C. 880](#))—taking your pay without your consent and threatening legal action if you don't provide it is extortion.
6. Blackmail ([18 U.S.C. 873](#)).
7. Taking of property not based on law (26 CFR 601.106(f)(1)).

However, you will be at a big disadvantage in court at this point if you haven't previously established a prima facie case against income tax liability as we described in section 3.5.4.9. Be careful how you do this or it could blow up in your face. Without a clear trail of evidence in your administrative record with the IRS showing over the years the history of your understanding of the tax laws and your understanding of your lack of tax liability, it will be difficult to defend your position in court.

On the other hand, if your private employer understands this document, then he will realize that you are not an "employee" (within the meaning of the IRC) and it is OK for you to not file a W-4 "volunteering" to have income taxes deducted from your pay because you have no income from foreign or corporate sources and therefore have no "gross income" or "taxable income". Smart private employers who you have taken the time to educate will also understand that you filing a W-8 or W-8BEN takes them off the hook to withhold ALL federal taxes from your wages, including medicare, social security, FICA, and federal income tax. Smart private employers will also realize that if you file a W-8 or don't give them any W-4 authorizing withholding, they consequently don't need to prepare or file a W-2, because the amount in block 10, "wages, tips, and other compensation", will consistently be zero with no gross income. You can't have "wages" if you aren't an "employee" as defined in the internal revenue code.

If your private employer won't cooperate with you in eliminating your W-4, here are some additional tactics you can use:

1. Change private employers and don't give your new private employer your social security number. If they threaten to fire you or not hire you, then report them to the Department of Justice for discrimination. The case of *EEOC v. Information Systems Consulting*, Case number CA3-92-0169, which we talked about in section 2.6.2 (entitled "Social Security is Voluntary Not Mandatory"), resulted in a private employer being criminally prosecuted for discrimination by the Department of Justice for refusing to hire a person who wouldn't provide their social security number.
2. Tell them you moved and that the address they have on file is incorrect but that you won't give it to them. Or give them a bogus address. That way, when the IRS gets your W-2 with a bad address and doesn't get your 1040, they won't know how to find you.
3. Tell them the social security number they have for you is incorrect but don't tell them the correct one.
4. If your private employer insists that you sign or maintain a signed non-exempt W-4 form, then just write "duress" next to your signature in pen (so they can't change it or remove it). This invalidates your signature because it implies that you were forced or coerced (dstraint) to sign under threat in violation of your due process rights under the 5<sup>th</sup> Amendment. This will let you off later when you apply for a refund of amounts withheld illegally and against your will.

If your private employer won't accept no W-4 or an affidavit letter from you because the IRS instructions say above to withhold at the single zero rate, and if you decide to fill out an Exempt W-4 as your only option, and if you are too chicken to prosecute the IRS or your private employer for violating your Fifth Amendment and other rights by them compelling your private employer to withhold at single zero, you are admonished to do the following:

1. DO NOT put your social security number on the form and replace that space with the word "PRIVATE". Put an asterisk next to the word and a note at the bottom of the form saying: "Protected

from disclosure by the First, Fourth, and Fifth Amendment". Read them the following warning if they give you a bad time about not providing your social security number:

*Federal Law, Section 7 of Public Law 93-579 provides that: It shall be unlawful for any Federal, State or local government agency to deny to any individual any **right** [First, Fourth, Fifth Amendment], benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number. Federal courts have ruled the Privacy Act applies equally to the private sector.*

**Warning**, you are in violation of Federal Law and persisting with your demand may lead to your arrest and/or civil damages! The law provides that you can be held personally responsible and liable, as well as your company or agency.

*There is no law requiring an individual to obtain or use a social security number. Your requirement and/or demand that I provide a social security number to you is a violation of one or more of the following laws: 4 CFR 83.9; 5 USC Sec. 552a; 7 CFR 1.123; 7 USC Sec. 2204g; 14 CFR 1212.604; 17 CFR 249.501a; 19 CFR 118.11; 19 CFR 122.25; 19 CFR 24.5; 24 CFR 5.212; 28 CFR 16.53; 28 CFR 513.31; 28 CFR 700.25; 29 CFR 70a.10; 29 CFR 71.12; 31 CFR 1.32; 31 CFR 501.806; 32 CFR 270.19; 32 CFR 310.20; 32 CFR 311.5; 32 CFR 316.6; 32 CFR 317.20; 32 CFR 323.5; 32 CFR 505.2; 32 CFR 701.108; 32 CFR 806b.9; 38 CFR 1.575; 38 CFR 3.216; 38 USC Sec. 5101; 39 CFR 266.4; 45 CFR Part 801; 47 CFR 0.554; 49 CFR 10.29.*

If they look in your personnel record to find your SSN or mailing address because you wouldn't supply it on your W-4 form, then tell them that they are violating the Privacy Act of 1974 because they are divulging private and personal information about you to third parties absent your consent. Tell them this violates your Fourth Amendment right to privacy of your papers and personal effects in your personnel record. Remind them that the ONLY information they can legally put into their payroll system as far as taxes on your pay is concerned is what you put on the W-4 form, which did NOT include your Socialist Security Number. If they violate your privacy and your wishes and take your SSN out of your personnel record and give it to the IRS anyway by disregarding what you wrote on your W-4 ("PRIVATE"), tell them you will sue them for violation of the laws indicated above *immediately*. Don't worry about the IRS. They can't prosecute you for 26 U.S.C. 7201 "tax evasion" by you refusing to disclose your SSN because doing this would penalize you for exercising your Fourth Amendment right to privacy, which is illegal. This was confirmed by the U.S. Supreme Court below in **Harman v. Forssenius**, 380 U.S. 528 at 540, 85 S.Ct. 1177, 1185 (1965):

*"It has long been established that a State [or the U.S. Government] may not impose a penalty upon those who exercise a right guaranteed by the Constitution." Frost & Frost Trucking Co. v. Railroad Comm'n of California, 271 U.S. 583. "Constitutional rights would be of little value if they could be indirectly denied,' Smith v. Allwright, 321 U.S. 649, 644, or manipulated out of existence,' Gomillion v. Lightfoot, 364 U.S. 339, 345."*

2. DO NOT, under any circumstances put your mailing address in block 1 of the form. Instead, put "PRIVATE" with an asterisk next to it. Why? Because the reverse side of the form says: "*Routine uses of this form include giving it to the Department of Justice for civil and criminal litigation [AGAINST YOU!], to cities and states, and the District of Columbia for use in administering their tax laws*". This statement is there for a reason. They are putting you on notice, rather blandly, that you are waiving your 5<sup>th</sup> Amendment rights to not be compelled to incriminate yourself, which can only be done voluntarily and without coercion. Remember that the main purpose of the Department of Justice is to

PROSECUTE CRIMES, and the 5<sup>th</sup> Amendment says you can't be compelled to incriminate yourself. Don't let your private employer incriminate you either by filling in any part of the form in for you. There's no law that says your private employer has to do anything with the form if you won't fill it out.

3. Attach your "Affidavit and Request to Stop Tax Withholding" letter to the W-4 and write at the top of the W-4 form "Not valid without the attached letter and all enclosures". See sections 9.8.4 through 9.8.5 for example letters.

## **5. Litigating Against Stubborn and Abusive private employers**

The heart of our income tax system is *voluntary self assessment and payment* and not [distrain](#), according to the Supreme Court in *Flora v. United States*, [362 U.S. 145](#) (1959). Here is the legal definition of "[voluntary](#)":

*voluntary*: "Unconstrained by interference; unimpelled by another's influence; spontaneous; acting of oneself. *Coker v. State*, 199 Ga. 20, 33 S.E.2d 171, 174. Done by design or intention. Proceeding from the free and unrestrained will of the person. Produced in or by an act of choice. Resulting from free choice, without compulsion or solicitation. The word, especially in statutes, often implies knowledge of essential facts. Without valuable consideration; gratuitous, as a voluntary conveyance. Also, having a merely nominal consideration; as, a voluntary deed."  
[*Black's Law Dictionary, 6<sup>th</sup> Edition, page 1575*]

Anything that is "voluntary" must also be consensual. Here is the legal definition of "consent":

*consent*. "A concurrence of wills. Voluntarily yielding the will to the proposition of another; acquiescence or compliance therewith. Agreement; approval; permission; the act or result of coming into harmony or accord. Consent is an act of reason, accompanied with deliberation, the mind weighing as in a balance the good or evil on each side. It means voluntary agreement by a person in the possession and exercise of sufficient mental capacity to make an intelligent choice to do something proposed by another. It supposes a physical power to act, a moral power of acting, and a serious, determined, and free use of these powers. Consent is implied in every agreement. It is an act unclouded by fraud, duress, or sometimes even mistake.

*Willingness in fact that an act or an invasion of an interest shall take place. Restatement, Second, Torts §10A.*

*As used in the law of rape "consent" means consent of the will, and submission under the influence of fear or terror cannot amount to real consent. There must be an exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. And if a woman resists to the point where further resistance would be useless or until her resistance is overcome by force or violence, submission thereafter is not "consent".*

See also *Acquiescence; Age of consent; Assent; Connivance; Informed consent;*" [voluntary](#).  
[*Black's Law Dictionary, Sixth Edition, page 305*]

The submission of W-4 or W-8 withholding forms must be voluntary or they are fraudulent and invalid and inadmissible as evidence in court, even if they don't say you were under duress on their face when you signed them. See *Weeks v. United States*, [232 U.S. 383](#) (1914). It is quite common for private employers to attempt to intimidate or coerce you to either submit or not to submit a specific income tax withholding form that they, not you, designate or to tell you what you must put on this form or which form you must submit. Such coercion, when not authorized by law, is called duress and it is almost always:

1. A civil rights violation that is an injury you can sue for. It's based on discrimination against you that is based on your religious faith and your national origin as a "U.S. national".
2. A First Amendment violation, because you are being told how and when you can or must communicate with your government.
3. The creation of a religion in the workplace called "government" in violation of the First Amendment, which prohibits the government from establishing a "religion". See section 4.3.2 of the Great IRS Hoax for further details on this fascinating subject. Whenever the government makes itself into a "superior being" that is above the people and demands allegiance or tribute, then it has become idolatry and an artificial, man-made god to be worshipped. This act is most repugnant to Christians, who are not allowed to put any man-made god or idol above their god, or to obey any law that conflicts with God's law as documented in the Bible.

Such acts of duress on the part of private employers amounts to blatant workplace discrimination against you based on your religious beliefs, if you are like the majority of people who read and use this book.

When it comes to discrimination, smarter and more experienced private employers will be very subtle and indirect about doing it while the ignorant ones will be obvious. The presence of the discrimination amounts to illegal duress and coercion against you and also amounts to a civil rights violation. Fraud or duress also vitiates and nullifies anything you do while you are under the influence of it.

*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. [1] 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, [2] and it is susceptible of ratification. Like other voidable contracts, it is valid until it is avoided by the person entitled to avoid it. [3] 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. [4]"*

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[1] *Brown v Pierce*, 74 US 205, 7 Wall 205, 19 L Ed 134

[2] *Barnette v Wells Fargo Nevada Nat'l Bank*, 270 US 438, 70 L Ed 669, 46 S Ct 326 (holding that acts induced by duress which operate solely on the mind, and fall short of actual physical compulsion, are not void at law, but are voidable only, at the election of him whose acts were induced by it); *Faske v Gershman*, 30 Misc 2d 442, 215 NYS2d 144; *Glenney v Crane* (Tex Civ App Houston

(1st Dist)) 352 SW2d 773, writ ref n r e (May 16, 1962); *Carroll v Fetty*, 121 W Va 215, 2 SE2d 521, cert den 308 US 571, 84 L Ed 479, 60 S Ct 85.

[3] *Faske v Gershman*, 30 Misc 2d 442, 215 NYS2d 144; *Heider v Unicum*, 142 Or 416, 20 P2d 384; *Glennay v Crane* (Tex Civ App Houston (1st Dist)) 352 SW2d 773, writ ref n r e (May 16, 1962)

[4] *Restatement 2d, Contracts § 174*, stating that if conduct that appears to be a manifestation of assent by a party who does not intend to engage in that conduct is physically compelled by duress, the conduct is not effective as a manifestation of assent.

[*American Jurisprudence 2d, Duress, Section 21*]

Gathering evidence of the duress in the form of written correspondence and eye witnesses is very important under the circumstances because this is the only way you will prevail in court. It's therefore important to keep a journal of what went on in pen and insist that all communications about the issues of withholding or your job between you and your private employer be in writing and signed.

Now we'll give you a list of the more common tactics that private employers may use against those who choose not to withhold or pay federal or state income taxes. If your private employer attempts any of the tactics listed below or attempts to influence your decision to submit or not to submit either a W-4 or W-8 or W-8BEN tax withholding form, then he is exercising duress and coercion, because as we said in section 5.4.14 of the [Great IRS Hoax](#), he has no authority even to volunteer to be a "[withholding agent](#)" as defined in [26 U.S.C. §7701\(a\)\(16\)](#):

1. Threatens to **not** hire you based on tax issues.
2. Threatens to **fire** you based on tax issues.
3. Threatens to withhold a recommendation if you seek employment elsewhere.
4. Threatens to withdraw your next pay raise based on tax issues.
5. Assigns you to less desirable duty as a way to coerce you to change your mind about tax issues.
6. Refuses to promote you or promotes others less experienced ahead of you, and won't explain why.
7. Threatens to report you to the IRS.
8. Illegally honors an IRS request or a regulation to initiate withholding at the single zero rate if you refuse to submit a form. This regulation only applies to elected or appointed officers of the U.S. government inside the federal zone. It does not apply to persons or private employers who are outside the federal zone or to private, non-federal private employers.
9. Accepts your withholding form stopping withholding and then subsequently fires you quickly thereafter, and claims some lame excuse like "We needed someone with more experience." You can head this off by getting in writing from your private employer a written evaluation BEFORE you stop withholding, so they will have to contradict themselves in order to do this. Don't tell them when you ask for the written evaluation that you are considering stopping withholding.
10. Talks to anyone, including the company lawyer, about doing any of the above.

Discrimination is against federal law and the federal government has a whole agency that does nothing but prosecute and intimidate private employers for discriminating against their employees. This federal agency is called the [Equal Employment Opportunity Commission \(EEOC\)](#), and they get most of their jurisdiction from the commerce clause of the Constitution found in Article 1, Section 8, Clause 3. Their website is at:

<http://www.eeoc.gov/>

If you have been discriminated against by your private employer as described above, we encourage you to file a formal complain with the EEOC at the following web address:

<http://www.eeoc.gov/facts/howtofil.html>

Be careful. If you show your private employer this section and he knows what you are up to, he may invent an excuse to fire you and make it look like a performance problem so he doesn't have to pay the legal fees needed to litigate against you. Some of our readers have complained of this.

Lastly, if your interactions with the [EEOC](#) are unfruitful in getting your private employer to cooperate, then another option is to sue them yourself, preferably in state court, for a violation of civil rights. We are working on some pleadings that you can easily fill in and file for yourself but are not yet complete.

<http://famguardian.org/TaxFreedom/Instructions/4.13StopEmployerWH.htm>