

from

**Was Grandpa Really a Moron?**

**Critical Inquiries for a New American Century**

by

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**A "Wage" By Any Other Name Is Taxed The Same...**



It's come to my attention recently that some folks are confused by the casual use of terms like "salary" by tax agency-types in a context in which these folks expect to see the term "wages" used instead. The problem lies in mistaking the *label* for the *determinant* of the legal character of any given receipts.

The reality is that it is the legal character of the activity producing the receipts that matters, not what the receipts are called (nor what the activity is called, for that matter); and, in fact, "wages" is properly understood as a label for a *class of receipts* rather than a *type of receipt*. It is the class of all remuneration paid to those meeting the IRC chapter 24 custom-definition of "employee" for purposes of general withholding under that chapter, or, for the purposes of FICA "income" taxes in chapter 21, the class of all remuneration paid in respect of "employment" as that term is custom-defined therein.

The following excerpt from the Treasury Department regulations posted in the Federal Register edition of Tuesday, September 7, 1943, upon the revival of "withholding" by way of the 'Current Tax Payment Act of 1943', illustrates this reality. Explaining the class "wages" for purposes of the general chapter

24 withholding provisions, the regulations make clear that the label under which qualifying remuneration is paid is immaterial:

**§ 404.101 Wages—(a) In general.**  
The term "wages" means all remunerations for services performed by an employee for his employer unless specifically excepted under section 1621 (a) or section 1622 (g). See §§ 404.102 and 404.204.

The name by which the remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales or on insurance premiums, pensions and retired pay are wages within the meaning of the statute if paid as compensation for services performed by the employee for his employer.

The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus it may be paid on the basis of piece work, or a percentage of profits; and may be paid hourly, daily, weekly, monthly, or annually.

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By the way, the language above may seem confusing at first glance, in light of the exception within 3401(a) (the definition of "wages", which was originally codified in the 1943 version of the "IRC of 1939" as § 1621) presented as "(other than fees paid to a public official)":

**SUBCHAPTER D—COLLECTION OF INCOME TAX AT SOURCE ON WAGES**

**SEC. 1621. DEFINITIONS.**  
As used in this subchapter—

(a) *Wages.* The term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

However, there is no actual inconsistency. The "fees" that count as "wages" are payments made to, and for the remunerative benefit of, the "service-provider" himself. In other words, they are compensatory payments which simply happen to be going under the label of "fees". Those that are excluded

are fees being collected by the "service-provider" on behalf of the office he or she is administering. Such fees may be collected in connection with the rendering of a service, but they are not received by the "employee" as personal compensation.

For instance, a clerk handling a passport application will collect a fee which is imposed to cover the labor costs of processing the application, but that fee is paid to the United States Treasury, not to the worker. See the following additional excerpt from the Federal Register on this subject, and note the exclusion of "compensation" in the rule:

**§ 404.102 Exclusions from wages—(a) Fees paid to a public official.** Authorized fees paid to public officials, such as notaries public, clerks of courts, sheriffs, etc., for services rendered in the performance of their official duties are excepted from the definition of the term "wages" and hence are not subject to withholding. However, salaries paid such officials by the Government, or government agency or instrumentality are subject to withholding.

(See pages 51 and 52 of CtC for some related material, and the chapter 'Withholding The Truth' for the entire body of information on the subject of "wages" and the provisions of Subtitle C.)

<p style="text-align: center;"><b>Forms in which "income" (the use of federal property, privilege or prerogative, measured by the resulting gain) can be realized:</b></p>	<p style="text-align: center;"><b>Forms in which non-"income" (earnings/receipts NOT resulting from the use of federal property, privilege or prerogative) can be realized:</b></p>
<ul style="list-style-type: none"> <li>• Compensation for services, including fees, commissions, fringe benefits, and similar items;</li> </ul>	<ul style="list-style-type: none"> <li>• Compensation for services, including fees, commissions, fringe benefits, and similar items;</li> </ul>

*Was Grandpa Really a Moron?*

<ul style="list-style-type: none"><li>• Receipts derived from business;</li><li>• Gains derived from dealings in property;</li><li>• Interest;</li><li>• Rents;</li><li>• Royalties;</li><li>• Dividends;</li><li>• Alimony and separate maintenance payments;</li><li>• Annuities;</li><li>• Gains from life insurance and endowment contracts;</li><li>• Pensions;</li><li>• Gains from discharge of indebtedness;</li><li>• Distributive share of partnership gross receipts;</li><li>• Receipts in respect of a decedent; and</li><li>• Receipts from an interest in an estate or trust;</li><li>• ...plus any other form in which such a gain can come into the control of a recipient for his separate use and disposal (although not every such gain may actually be taxed).</li></ul>	<ul style="list-style-type: none"><li>• Receipts derived from business;</li><li>• Gains derived from dealings in property;</li><li>• Interest;</li><li>• Rents;</li><li>• Royalties;</li><li>• Dividends;</li><li>• Alimony and separate maintenance payments;</li><li>• Annuities;</li><li>• Gains from life insurance and endowment contracts;</li><li>• Pensions;</li><li>• Gains from discharge of indebtedness;</li><li>• Distributive share of partnership gross receipts;</li><li>• Receipts in respect of a decedent; and</li><li>• Receipts from an interest in an estate or trust;</li><li>• ...plus any other form in which such a gain can come into the control of a recipient for his separate use and disposal.</li></ul>
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