

“Information Returns” Are NEVER Sufficient Evidence Of “Income” Payments

I ask the reader in advance to forgive the promiscuous deployment of emphasis in the following discussion. I am addressing myself to a level of persistent refusal to accept facts that seems to need elevated volume in order to penetrate...

There are a number of endlessly-stubborn [CtC](#)-deniers (or tireless agents-provocateur) who do their best to promote the notion that Social Security numbers, or citizenship, or residency, or the use of certain forms are “things of substance” to the application of the “income” tax. These folks don’t know (or hope that their marks will not discover) that payments made even to those who REALLY ARE “employees” or in “employment” as these terms are defined in the tax law AREN’T automatically “wages”-- NO MATTER WHAT IS INVOLVED IN THE DEFINITION OF THOSE TERMS. Therefore, no matter what one may care to imagine about the significance of, for instance, “social security numbers” generally, the presence of one on an “information return” (or anywhere else) is evidence of NOTHING relevant to the application of the tax. The same is true of “citizenship and residency” allegations or presumptions, the use of any particular forms by anyone, or even the legal character of the payer.

The “wages” definitions in the law are the simplest to look at in order to make this inescapably obvious. Those definitions, both that of “wages” for general withholding and credit against potential liability, and that of the sub-category of “wages” subject to the FICA surtaxes, each contain EXTENSIVE EXCEPTIONS-- that is, payments for services which DON’T QUALIFY AS “WAGES” EVEN WHEN EVERY QUALIFICATION FOR BEING A “WAGES”-RECIPIENT IS TRUE OR ASSUMED, NO MATTER WHAT THOSE QUALIFICATIONS MAY BE. Therefore-- listen closely, now-- a declaration of a payment of “wages” on a W-2 is NEVER SUFFICIENT IN-AND-OF ITSELF to establish that “wages” have actually been paid, NO MATTER WHAT ELSE IS ON THE FORM, IS TRUE IN FACT, OR IS PRESUMED TRUE. Similarly, nothing one says, implies, or allows to be presumed about oneself establishes or even supports an allegation that “wages” have been paid or received (other than an outright acknowledgement).

Read the following regulatory language concerning “wages” under the FICA surtax statute closely (or even not-so-closely, since anyone over age ten should have no problem understanding this, especially with the emphasis I’m adding):

§ 31.3121(b)-4 Employment; excepted services in general.

(a) Services performed by an employee for an employer do not constitute employment for purposes of the taxes if they are specifically excepted from employment under any of the numbered paragraphs of section 3121(b). Services so excepted do not constitute employment for purposes of the taxes even though they are performed within the United States, or are performed outside the United States on or in connection with an American vessel or American aircraft, or are performed outside the United States by a citizen of the United States for an American employer. If

not otherwise provided in the regulations relating to the numbered paragraphs of section 3121(b), such regulations apply to services performed after 1954.

(b) The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services in an excepted class rendered by the employee.

Example. **A is an individual who is employed part time by B to perform services which are specifically excepted from employment under one of the numbered paragraphs of section 312(b). A is also employed by C part time to perform services which constitute employment. While no tax liability is incurred with respect to A's remuneration for services performed in the employ of B (the services being excepted from employment), the exception does not embrace the services performed by A in the employ of C (which constitute employment) and the taxes attached with respect to the wages (see §31.3121(a)-1) for such services.**

(c) For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see §31.3121(c)-1.

Is this clear enough? Payments made even to those who ARE in "employment", and who ARE receiving "wages" otherwise-- even payments made for services performed on the same day, and for the same payer-- and who therefore have met or are presumed to have met all the requirements deemed relevant to that status, be they citizenship, residency, "having" or using a SSN, or WHATEVER, sometimes DON'T QUALIFY AS "WAGES", and generate NO TAX LIABILITY.

The same is true of the "wages" definition at 3401(a), which hinges on the "employee" definition:

§ 31.3401(a)-2 Exclusions from wages.

(a) *In general.* (1) **The term "wages" does not include any remuneration for services performed by an employee for his employer which is specifically excepted from wages under section 3401(a).**

(2) The exception attaches to the remuneration for services performed by an employee and not to the employee as an individual; that is, the exception applies only to the remuneration in an excepted category.

§ 31.3401(c)-1 Employee.

(h) **Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 3401(a).**

Therefore, the use of any particular form; the truth or failure to proactively rebut anything about one's own status or that of one's payer, or whether or not one IS, in fact, a U.S. citizen or resident (whatever these things may mean); or the fact that one "has" or has furnished a Social Security number, or one appears on a form ARE ALL IMMATERIAL TO THE QUESTION OF WHETHER ANY GIVEN PAYMENT IS "WAGES" OR "INCOME".

A person can shout from the rooftops (or sign declarations) that he or she is a "U.S. citizen" (however defined) and/or lives in the United States (however defined), can knowingly and willingly apply for and furnish or report a Social Security number, can use federal forms, and can even work for the U.S. Department of Transportation without ANY of those things automatically making payments to him or her "wages", or even presumptively "wages". Whether any payments are "wages" is ALWAYS a "fact" question, and NEVER a "matter of law" absent additional evidence, and a mere declaration that "wages" were paid is NEVER sufficient in-and-of-itself, no matter who makes it, or how, or how it is answered (unless the answer is an acknowledgement). By the same token, a simple rebuttal, no matter how made, is ALWAYS sufficient to overcome ANY AND ALL presumptions in favor of the "information return" allegation.

Further, of course, merely establishing that amounts have been paid is NEVER sufficient to establish that those amounts constitute "wages" or "income" NO MATTER WHAT ELSE MAY BE TRUE OR PRESUMED TRUE-- for precisely the same reasons. Any amount paid even under circumstances in which payments otherwise COULD qualify as "wages" or "income" doesn't necessarily qualify as such, never does "as a matter of law" just because it has been paid and/or labeled "wages", and again, a simple rebuttal, no matter how made, is ALWAYS sufficient to overcome ANY AND ALL presumptions in favor of the "information return" allegation.

Further still, these statutory provisions and their regulatory clarifications make clear that no one can be deemed an "employee" or in "employment" relative to the tax "as a matter of law" just because he or she works for someone else, NO MATTER WHAT ELSE MAY BE TRUE OR PRESUMED TRUE. As the regulations cited above plainly say, whether one's activities qualify as those of an "employee" or one in "employment" depends on WHAT THOSE ACTIVITIES ARE, not on the mere fact of working for someone else, even if other activities conducted in connection with that very same someone might qualify.

As it says in the example given in § 31.3121(b)-4, the "excepted services" are "excepted from employment"-- that is, the performance of those services do not constitute "employment as defined in 26 USC 3121(b)"-- even though they DO meet the common definition of employment, and the person doing them IS in a common relationship of employee-employer with the person paying for such services. Thus, anyone NOT engaged in a specific class of activities ISN'T an "employee" or in "employment" as those terms are meant in the tax law, even though they do, in fact, work for another at the other's direction and control.

At bottom, an "information return" is never more than a collection of allegations requiring additional fact evidence to support them, unless acknowledged either affirmatively or by default. Nothing on them can be taken as true "as a matter of law"-- no matter who produces them, or about whom they are produced, and nothing on them becomes true "as a matter of law" no matter how they are rebutted. Every single thing on them, or about which they report, is capable of being completely wrong, or done in error (such as withholding), no matter what else is actually true or presumed true.

So, when tax agencies rely exclusively on “information returns” (or the allegations made thereon, even if repeated by whoever made them in the first place), they are NOT doing so because there is some hidden or unstated presumption being invoked to give substance to those allegations. They are doing it in the simple hope that you won’t understand what I have just pointed out-- either because you’ve never looked at the law, don’t understand the rules of evidence, or have been taken in by one of the distracting notions about SSNs, citizenship and residency, the use of certain forms, and so forth that are constantly being injected into the community.



***“Don’t pay any attention to Joe back there...
He’s just... uh... cleaning up the office...
You pay attention to me!
This ‘Cracking the Code’ book is nothing but
FALSE and FRIVOLOUS nonsense!”***