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[Cracking the Code](#)
[The Fascinating Truth About Taxation In America](#)
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Feeding The Hand That Bites You



"We must note here, as a matter of judicial knowledge, that most lawyers have only scant knowledge of tax law."

Bursten v. U.S., 395 F 2d 976, 981 (5th Cir. 1968)

I mentioned in the last section that the private-sector businesses who are co-opted into facilitating various elements of the scheme which are ultimately directed at others, such as executing W-2's and demanding the execution of W-9's and W-4's, have been compromised themselves early on. It is worth our while to discuss how this is done, for despite being complicit as nearly the sole force subjecting workers to the mal-administration of the "income" tax, such businesses are themselves victims (at least, to begin with), and not only as the liable actor open to bureaucratic and criminal penalties, as well as civil suits.

For instance, a typical company suckered into participating in the scheme is subjecting itself to as much as a 13.85% tax on the first \$7,000 of every workers pay, and 7.65% on the most of the rest-- its "share" of "employment taxes" and the federal "unemployment" tax-- for which it is otherwise not legally liable, as we discussed in 'Withholding The Truth'. There is also, of course, a very considerable cost in the

form of administrative expenses associated with such participation.

By one estimate, Americans spend 5.4 billion hours, at an annual cost of \$600 billion to the economy, just completing the paperwork requirements of federal taxes (James L. Payne, "Unhappy Returns: The \$600 Billion Tax Rip-Off," *Policy Review*, Winter 1992, pp. 18–22). Businesses bear 52.4% of that cost, despite being a small minority of filers, according to The Tax Foundation, in its February, 2002 report "The Cost of Tax Compliance". (That report pegs the man-hour total at a higher figure still, and observes that, "Put another way, 5.8 billion hours per year represents a work force of over 2,774,000 people, larger than the populations of Dallas (1,189,000), Detroit (951,000) and Washington, D.C. (572,000) combined, and more people than work in the agricultural industry (1.14 million), the automobile manufacturing industry (1.013 million), the computer manufacturing industry (355,830), hardware stores (170,360) and museums and art galleries (82,410) combined. This is also more people than would reside in four Congressional districts.").

These quantifiable costs are the visible expenses imposed by the scheme. The hidden costs are more significant still, and go well beyond just the opportunity costs which parallel any involuntary expenditure. These are the costs imposed in the form of regulatory busy-bodying-- the dictating of form, process, etc., in a thick, expensive and suffocating cloud of such density and scope as to be beyond description here, but which will be well known to anyone in business for themselves or to those working for others in roles of a certain sort.

Virtually all of these burdens are made possible by the river of wealth diverted into the hands of government by the "income" tax scheme. There is a direct correlation between the growth curve of the micro-managing regulatory state and that of the scheme bringing in the means by which the requisite

army of bureaucrats is hired and maintained. Without sorting among such burdens to pick those of which anyone might or should individually approve or disapprove, all are illegitimate to the degree that they are made possible through fraud, coercion, or subterfuge.

This larger issue, which as much as anything amounts to the general erosion of the rule of law, brings harm to the business community with a certain poetic justice. Having quietly let stand unchallenged a million un- (or at least ill-) founded claims of government power over the last 90 years despite being uniquely equipped with the wherewithal to fight back-- either for the sake of expediency or from being corrupted with a piece of the action-- these same business owners are now the permanent victims of the state through ever-greater peregrinations by Congress and the executive.

Almost completely unleashed by these repeated capitulations to its taking of liberties with the law (!), the government preys upon them more or less at will in the service of the political and remunerative interests of its beneficiaries. The form that these predations take-- the extraction of fines, legal concessions and control over policy-- enlarge, entrench and embolden the political support for such practices. The courts, habituated by both convention and the typical jurist's natural reluctance to swim against the tide, are generally willing to remain silent when the similarly motivated counsel for the latest victim declines to argue against the state's creative usurpations.

Nonetheless, every January thousands of businesses across the country pause their year-long efforts to generate and protect revenue. They take a break from the often contentious (and always expensive and resented) daily struggle to fight-- or avoid ruin in surrendering to-- the all-too-frequently lawless dictates issued by those millions of highly paid (and otherwise idle) federal and state bureaucrats as to the conduct of their

affairs. They tell their crack defensive legal teams, which in all other cases are under strict instructions to painstakingly research the intricacies of the law, to go out for coffee. Then these businesses spend a few quiet moments on self-destruction.

Obediently, and without a fuss, they participate in the annual fraud that finances those same bureaucratic infringements. Obediently, and without a fuss, these businesses sign and issue millions of sworn, but false, affidavits specifically declaring their private-sector workers to have been paid government “wages”. Obediently and without a fuss they create the legal fictions through which the federal and state governments steal some 2 trillion or so dollars and replenish the lifeblood of the assault against which these businesses battle for their survival the other 364 days of the year. In all twelve months of the year, every time they hire a new worker or pay a contractor, they will similarly throw food to their tormentors.

Why?

Well, one of the first things that the founders of new businesses will do is to march proudly to the bank to open a checking account with which to pay suppliers and workers and to process incoming receipts. One of the first things the friendly and helpful bank “employee” with whom they deal will do is ask, “Is this a business account? Yes? Well, then, what is your Employer Identification Number (EIN)?” If one hasn’t been executed already, they will produce a Form SS-4, by which the naïve new business customer can create a legal presumption that theirs is the sort of entity in need of such a number. In the interim during which the newly submitted form is being processed, the bank will be happy to use the owner’s social security number instead; but no account will be opened without a number.

We've already looked at the limited legal requirements of having and furnishing a number to others in connection to W-9's and "employment" in previous sections. Here is the remaining statutory language relating to having a number at all:

Sec. 6109. - Identifying numbers

(a) Supplying of identifying numbers

When required by regulations prescribed by the Secretary:

(1) Inclusion in returns

*Any person **required under the authority of this title to make a return, statement, or other document** shall include in such return, statement, or other document such identifying number as may be prescribed for securing proper identification of such person.*

Now, disregarding the special groups previously examined and those in the alcohol, tobacco, or firearms businesses (for all of whom special statutory assignments of liability and requirements for returns apply), here is the general statutory requirement to make a return:

Sec. 6012. - Persons required to make returns of income

(a) General rule

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)

(A)

*Every individual **having for the taxable year gross income which equals or exceeds the exemption amount**,... (what follows is essentially a series of exceptions to the requirement).*

Clearly, the general requirement to make a return, and therefore have a number, is as much dependent upon specialized, federally-connected circumstances as are the more particular requirements at which we have looked before.

This is all consistently expressed in the instructions for the Form SS-4 (Application for an Employer Identification Number):

Do I Need an EIN?

File Form SS-4 if the applicant entity does not already have an EIN but is required to show an EIN on any return, statement, or other document. For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an EIN. A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers' cooperative must use an EIN for any tax-related purpose even if the entity does not have employees.

(By now, every reader will have immediately noted that this instruction does **not** simply say, "File Form SS-4 if your business does not already have an EIN.")

The application says in its required Privacy Act notice that:

We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to comply with section 6109 and the regulations thereunder, which generally require the inclusion of an employer identification number (EIN) on certain returns, statements, or other documents filed with the Internal Revenue Service.

Compelled by the bank's intransigence (or that of a client demanding the completion of a W-9), the new entrepreneur will file the SS-4 and ask for a number -- helped

along by the expert advice of an accounting and/or legal professional happy to verify that anyone who is an "employer", or involved in a "trade or business" has to have one. The professionals won't, of course, acknowledge the quote marks around these terms. Nor will they explain that since both the form and the number are only intended for use by a government or "effectively-connected" "income" paying or receiving entity, a colorable basis for an IRS presumption that the new venture is such an entity is thereby generated.

It must be said that the Form SS-4 is more benign than most such instruments, as a signature-- to which penalties of perjury, as usual, attach-- isn't actually demanded from most of those to whom such a form is presented. No one would know that by looking at the form itself, though, nor discover it without reading to the very last of six dense pages of bureaucratese in the form of detailed instructions available upon request. I will say with virtual certainty that almost everyone who fills out the form signs it under penalties of perjury, just as, I am confident, the IRS prefers.

Even without a signature, of course, the very act of completing and submitting the form works against the submitter-- both in its creation of the presumption noted earlier, and in serving as an announcement to the schemers of a new target in play. A bank or client compelling the submission of an SS-4 is, in that latter respect, akin to a Chamber of Commerce insisting that as a condition of membership, notice of the opening of one's new shop be sent to the gang of hoodlums running the protection racket in that particular district.

However, I will point out that just as a worker pressured to execute a W-4 doesn't transform themselves into an "employee" and their pay into "wages", requesting an EIN doesn't make one an "employer", any more than buying a fishing license makes one a fisherman. Even having acquired a license one might never get around to actually fishing. Regulatory requirements associated with the pastime don't

come into play because you have the license-- they come into play when and because you actually put a hook in the water, or drag out a fish.

Nonetheless, and particularly regarding demands for such filings, forms and submissions that DO require a signature, I will suggest that prudence dictates leaving declarations of status to the party alleging an obligation. In other words, if the IRS, or anyone, says that some instrument **must** be executed on or by which is made a statement such as, "I Am A U.S. person", or "[the named party] was paid \$_____ in wages (as defined in section 3401)", etc., it is only sensible and proper for the responding party to send the asserting party the relevant information and let **it** fill out and sign the form.

For instance, a business owner, at the end of the year, could send records of amounts paid to workers-- carefully avoiding the use of any possibly misleading legal terms such as "employee", "wages", etc.-- to the IRS along with blank "Wage and Tax Statement" forms and let the agency, as a good public servant, prepare and distribute them. Similarly, someone of whom a signed W-9 is being demanded could provide a copy of their birth certificate or business papers-- along with an affidavit regarding the withholding question-- and let whoever is making the demand fill out and execute the form.

In light of the fact that such declarations are often dependent upon complex legal distinctions, and significant liabilities are attendant upon error, it is only appropriate that the insistent government experts make such determinations, with the lay party confining its participation in the process to challenging any such as might be made incorrectly. After all, if the respondent really IS an "employer", or whatever, its acknowledgment or denial of the fact is meaningless-- it's true regardless of that party's attitude and with or without its signature.

Upon receiving a Form SS-4, the IRS will promptly and helpfully begin sending the new business Form 941's, ("Employer's Quarterly Federal Tax Return") and Form 8109's (Federal Tax Deposit Coupon) with which to fulfill the obligations attendant upon the status implied by the submission, and will express considerable umbrage if those properly executed forms (and the associated tax payments) don't show up in the agency's mailbox in a timely fashion.

The service doesn't wait for cause before expressing itself. These forms arrive accompanied by a selection of regulatory language in a "What If I'm Late Making A Payment?"-type Q & A format, carefully calculated to nip-in-the-bud any questions about the legal applicability of the whole program. It is the rare entrepreneur who will find himself with the stomach, not to mention the time, to explore the matter thoroughly, especially since the deposit schedule typically demands action within a month. Most just do what they think they're being told, and budget for the loss, rather than throw the forms away as they should.

Once the first compliant theft-by-conversion withholding is carried out against a worker by the new business, the formation of a complex and entangling web of prima facie evidence is well under way. A whip-saw is created between the company's lawful obligations to its workers and the assertions of a notoriously irrational and bellicose agency demanding continuing offenses.

The typical company in this situation embraces the "mysterious law" syndrome, puts its head in the sand, and defers to the bellicose behemoth. When challenged by a worker whose contract it is violating, such a company will fall back behind the "expert" advice that got it into the situation in the first place and the misleading and superficially ambiguous selections of statutory and regulatory language provided for such purposes by the IRS. Many will also deploy the implicit threat of retaliation typically faced by any "troublemaking"

worker in an effort to simply make the conundrum go away. Such a company quickly becomes an entrenched component of the scheme, and an enemy of the truth and the rule of law.