

When an individual goes to work the first thing the company or employer wants is a W-4.

“Withholding Agent Certificate” and the W-4

Employers and companies have become falsely convinced over the years they are required to make a withholding despite the liability of not being duly appointed a “Withholding Agent”.

So, is the employer / company a “Withholding Agent”? The answer is, probably not!

“26 USC 7701 (a)(16) Withholding Agent - The term “withholding agent” means any person required to deduct and withhold any tax under the provisions of sections 1441, 1442, 1443, or 1461.”

Title 26 USC, Subtitle F, Chapter 79 Definitions, Section 770(a)(16) “withholding agent” applies to four, and only four, sections of the IRC: § 1441; § 1442; § 1443; and § 1461.

Title 26 - INTERNAL REVENUE CODE

Subtitle A. Income tax

Chapter 3. WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATION

Subchapter A. - Nonresident aliens and Foreign Corporation

§ 1441. Withholding of tax on nonresident aliens.

§ 1442. Withholding of tax on foreign corporations.

§ 1443. Foreign tax-exempt organizations.

Subchapter B. - Application of Withholding Provisions

§ 1461 Liability for withholding tax.

(Liability clause for the ‘withholding agent’ to account for the withheld money)

There is No “Withholding Agent” for domestic Citizens: Living and working domestically, with no foreign source of income, or, Income from within a possession of the U.S., or, engaged in an excise taxable activity!

Even if a domestic Citizen did have a foreign source of income, or income from within a possession of the U.S. (Guam, Puerto Rico, etc.), or engaged in excise taxable activity, there is no “withholding agent” defined. Check the IRC (Internal Revenue Code), or any Law book, and you will NOT find a definition for a “withholding agent” for domestic Citizens. The employer is ONLY a “withholding agent” if the employee is a nonresident alien (green card)!

It would be un-constitutional for the public servants (elected and hired government employees) to enact a Law that would require (force, compel, command) an American Citizen to turn over (extract, conversion) their private property (labor, wages) without a Court Order.

From the definition of the Internal Revenue Code (IRC), the W-4 is ONLY for nonresident aliens, foreign corporations, foreign trusts, foreign partnerships, foreign entities, etc, and foreign tax exempt organizations. If you argue this in court, it would be a first impression issue as the only arguments in court have been about the 'exempt' W-4's. (See, REISMAN v. CAPLIN, 375 U.S. 440 (1964), etc.) The employee/worker has only argued § 3402(p); they have not raised the issue of "withholding agent".

NOTE: Employers and companies who fail to obtain the "Withholding Agent Certificate" on the appropriate IRS Form 2678 are not duly appointed to be a "Withholding Agent", and are not authorized to withhold from your compensation/wage. See other related issues on Taxgate.com Additionally, without a "Withholding Agent Certificate", the employer or company is presumed guilty for any alleged infraction of the statutes.

Conversely, an issued "Withholding Agent certificate" eliminates all liability and acts as a grant of immunity to the employer or company for and against any alleged presumption of wrong doing pursuant to a withholding of public money from the compensation/wage of a private citizen/employee. ... How's that for a shift of liability!

Now, why do you think employers and companies do not obtain a Form 2678 from the IRS? Why don't CPA's obtain a Form 2678 on behalf of their employer and company clients?

Approximately 25 companies of varying sizes have been personally surveyed, which include PG&E, Penny's, Granite Construction, Teichert Construction, Sears, Intel Corporation and others without finding a single employer or company with a "Withholding Agent Certificate". Yet, they all withhold!

NOTE: "Withholding Agent" is capitalized in certain instances herein as emphasis added to a title, name, or official position.

Another question is, are you a "taxpayer" or a tax payer?

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