

Donna Ford SB#131924
Assistant United States Attorney
Room 7211 Federal Building
300 North Los Angeles Street
Los Angeles, California 90012

May 18, 2004

Dear Ms. Ford

Pursuant to the attached court order we are requesting that the required scheduling conference be held no later than June 29, 2004, as we will be on vacation out of State from July 5th to July 19th.

With that conference in mind, in order to more accurately define our concerns, we have included our interpretation of the Conference Report (House Report 510) attached to H.R. 2570, the "Current Tax Payment Act of 1943". The concern is over the "clarifying amendment," referred to in all three reports, made to the definition of "wages". It appears to us that Congress made a clear distinction between wages "includible in gross income," i.e., wages taxable under chapter 1, and other forms of wages normally "exempt under the law from the tax imposed by chapter 1 of the code".

As you are aware the Statute places the burden of the tax upon "net-income," not gross income or annual receipts. We believe our "wages" do not fall under the definition of "net-income," nor does our labor constitute "service performed," as that term was used in the tax code (the reason for our request for determination of status).

The term "derived from" means to separate from something, not to produce something. In order for wages to be "derived from" something, there must be something from which they can be separated. That something must be receipts, or in the case of labor, the money produced by (exchanged for) labor. A tax placed upon that money (income), by definition, is a direct tax requiring apportionment. Whereas, a tax placed upon the "gain derived from (income)" that money, would be an indirect tax requiring uniformity. In the case of business, wages (compensation for services) to the owner are paid out of the "gross income," in fact, being a portion of the yearly net-income. It appears to us that Congress was making the clear distinction between the two forms of "wages" (income), thereby excluding the former, yet providing a method of collection for the latter. Perhaps this is why they provided for "honest mistakes" as to the determination of liability for the tax imposed by chapter 1. (See Treasury Regulation 118, section 39.21-1 and 39.22 (a) – 1(a))

The historical evidence confirms that the common laborer (common law employee) was not subject to chapter 1 income taxes, based solely upon annual wages, prior to 1942. It was the introduction of the Victory Tax, with its special definition of net-income, which brought the common law employee's wages into question. Did they know, or could they logically have been required to know, that the tax imposed by chapter 1 was upon net-income, not annual wages? We believe that had the common laborer (employee) known the requirements of the Law they would not have signed the "withholding certificate,"

thereby allowing the government to take money out of their paycheck. We, therefore, request a copy of the 1942, 1943 and 1944 (revised) "withholding certificate," along with their accompanying instructions, in order to more fully understand what Congress was "clarifying," and if, in fact, the common law employee understood that "clarification".

Another issue for discussion is the assessment of "frivolous penalties" under section 6702 of the Tax Code. As you are aware there are two parts to that section, both must be met before any assessment of penalties can be made. Our tax returns, for the years 1997 to 1999, are on file and to date have never been questioned as to their correctness. The "taxes," as shown on those returns, are fully paid and have never been questioned. Our position, as far as being "frivolous," has never been refuted. So why is the IRS sending us the attached documents? We, again, request that the pending action be frozen until the issues are resolved in a court of Law (copy attached). A copy of this letter is being forwarded to the Bensalem PA office in response to Publication 594. We would also appreciate any assistance you can provide.

Thank you for your cooperation,

John Gary Given

Michele L. Given

