

**DEMAND FOR VERIFIED EVIDENCE OF “TRADE OR BUSINESS” ACTIVITY:  
INFORMATION RETURNS (IR)  
INSTRUCTIONS**

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1. **PURPOSE:** To gather information from a private employer, company, or financial institution which has prepared or is about to prepare an Information Return against the submitter. An Information Return is a document prepared under the authority of the [Internal Revenue Code, Section 6041](#), documenting receipt of earnings or income in connection with a “trade or business” that exceed \$600. A “trade or business” is legally defined in [26 U.S.C. §7701\(a\)\(26\)](#) as “the functions of a public office”.

[26 U.S.C. Sec. 7701\(a\)\(26\)](#)

"The term 'trade or business' [includes](#) the performance of the functions of a [public office](#)."

- 1.1. A “public office” is a fiduciary or trustee position within the United States government which makes a person into the equivalent of an uncompensated federal “employee” or “contractor”. Information Returns include IRS Schedule K-1 and forms W-2, 1042-S, 1098, and 1099.
- 1.2. Anyone who tries to connect you to such a position when you don’t want to be, is:
- 1.2.1. Acting as a federal employment and contractor recruiter and enticing you into slavery in violation of the [Thirteenth Amendment](#) prohibition against involuntary servitude.
- 1.2.2. Compelling you to become a “taxpayer”. They can be held civilly liable for any wrongful tax liability that results from the false report in a court of equity.
- 1.2.3. Compelling you to contract with the government as a voluntary agent of the government, in violation of [Article 1](#), Section 10 of the Constitution. The Internal Revenue Code Subtitle A is “private law” that only applies to those who voluntarily make themselves subject by engaging in avoidable, privileged, excise taxable activities of a “[trade or business](#)”, or who have passive earnings from within the District of Columbia. See the following for proof:
- [Requirement for Consent](#), Form #05.003  
<http://sedm.org/Forms/MemLaw/Consent.pdf>
- 1.3. The IRS Website deliberately omits the information contained in this pamphlet, presumably because they want to:
- 1.3.1. Encourage the filing of false Information Returns in order to manufacture more “taxpayers” out of innocent, law-abiding Americans who are “nontaxpayers”. This amounts to the equivalent of “compelled association” in violation of the [First Amendment](#).

*“The right to associate or not to associate with others solely on the basis of individual choice, not being absolute, <sup>1</sup> may conflict with a societal interest in requiring one to associate with others, or to prohibit one from associating with others, in order to accomplish what the state deems to be the common good. The Supreme Court, though rarely called upon to examine this aspect of the right to freedom of association, has nevertheless established certain basic rules which will cover many situations involving forced or prohibited associations. Thus, where a sufficiently compelling state interest, outside the political spectrum, can be accomplished only by requiring individuals to associate together for the common good, then such forced association is constitutional. <sup>2</sup> But the Supreme Court has made it clear that compelling an individual to*

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<sup>1</sup> § 539.

<sup>2</sup> Lathrop v. Donohue, 367 U.S. 820, 81 S. Ct. 1826, 6 L. Ed. 2d 1191 (1961), reh’g denied, 368 U.S. 871, 82 S. Ct. 23, 7 L. Ed. 2d 72 (1961) (a state supreme court may order integration of the state bar); Railway Emp. Dept. v. Hanson, 351 U.S. 225, 76 S. Ct. 714, 100 L. Ed. 1112 (1956), motion denied, 351 U.S. 979, 76 S. Ct. 1044, 100 L. Ed. 1494 (1956) and reh’g denied, 352 U.S. 859, 77 S. Ct. 22, 1 L. Ed. 2d 69 (1956) (upholding the validity of the union shop provision of the Railway Labor Act).

The First Amendment right to freedom of association of teachers was not violated by enforcement of a rule that white teachers whose children did not attend public schools would not be rehired. Cook v. Hudson, 511 F.2d 744, 9 Empl. Prac. Dec. (CCH) ¶ 10134 (5th Cir. 1975), reh’g denied, 515 F.2d 762

**become a member of an organization with political aspects [such as a “state” or the government itself, for instance], or compelling an individual to become a member of an organization which financially supports, in more than an insignificant way, political personages or goals which the individual does not wish to support, is an infringement of the individual's constitutional right to freedom of association.**<sup>3</sup> The First Amendment prevents the government, except in the most compelling circumstances, from wielding its power to interfere with its employees' freedom to believe and associate, or to not believe and not associate; it is not merely a tenure provision that protects public employees from actual or constructive discharge.<sup>4</sup> Thus, First Amendment principles prohibit a state from compelling any individual to associate with a political party, as a condition of retaining public employment.<sup>5</sup> The First Amendment protects nonpolicymaking public employees from discrimination based on their political beliefs or affiliation.<sup>6</sup> But the First Amendment protects the right of political party members to advocate that a specific person be elected or appointed to a particular office and that a specific person be hired to perform a governmental function.<sup>7</sup> In the First Amendment context, the political patronage exception to the First Amendment protection for public employees is to be construed broadly, so as presumptively to encompass positions placed by legislature outside of "merit" civil service. Positions specifically named in relevant federal, state, county, or municipal laws to which discretionary authority with respect to enforcement of that law or carrying out of some other policy of political concern is granted, such as a secretary of state given statutory authority over various state corporation law practices, fall within the political patronage exception to First Amendment protection of public employees.<sup>8</sup> However, a supposed interest in ensuring effective government and efficient government employees, political affiliation or loyalty, or high salaries paid to the employees in question should not be counted as indicative of positions that require a particular party affiliation.<sup>9</sup>

[*American Jurisprudence 2d, Constitutional law, §546: Forced and Prohibited Associations*]

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(5th Cir. 1975) and cert. granted, 424 U.S. 941, 96 S. Ct. 1408, 47 L. Ed. 2d 347 (1976) and cert. dismissed, 429 U.S. 165, 97 S. Ct. 543, 50 L. Ed. 2d 373, 12 Empl. Prac. Dec. (CCH) ¶ 11246 (1976).

Annotation: Supreme Court's views regarding Federal Constitution's First Amendment right of association as applied to elections and other political activities, 116 L. Ed. 2d 997, § 10.

<sup>3</sup> Rutan v. Republican Party of Illinois, 497 U.S. 62, 110 S. Ct. 2729, 111 L. Ed. 2d 52, 5 I.E.R. Cas. (BNA) 673 (1990), reh'g denied, 497 U.S. 1050, 111 S. Ct. 13, 111 L. Ed. 2d 828 (1990) and reh'g denied, 497 U.S. 1050, 111 S. Ct. 13, 111 L. Ed. 2d 828 (1990) (conditioning public employment hiring decisions on political belief and association violates the First Amendment rights of applicants in the absence of some vital governmental interest).

<sup>4</sup> Rutan v. Republican Party of Illinois, 497 U.S. 62, 110 S. Ct. 2729, 111 L. Ed. 2d 52, 5 I.E.R. Cas. (BNA) 673 (1990), reh'g denied, 497 U.S. 1050, 111 S. Ct. 13, 111 L. Ed. 2d 828 (1990) and reh'g denied, 497 U.S. 1050, 111 S. Ct. 13, 111 L. Ed. 2d 828 (1990).

Annotation: Public employee's right of free speech under Federal Constitution's First Amendment—Supreme Court cases, 97 L. Ed. 2d 903.

First Amendment protection for law enforcement employees subjected to discharge, transfer, or discipline because of speech, 109 A.L.R. Fed. 9.

First Amendment protection for judges or government attorneys subjected to discharge, transfer, or discipline because of speech, 108 A.L.R. Fed. 117.

First Amendment protection for public hospital or health employees subjected to discharge, transfer, or discipline because of speech, 107 A.L.R. Fed. 21.

First Amendment protection for publicly employed firefighters subjected to discharge, transfer, or discipline because of speech, 106 A.L.R. Fed. 396.

<sup>5</sup> Abood v. Detroit Bd. of Ed., 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261, 95 L.R.R.M. (BNA) 2411, 81 Lab. Cas. (CCH) ¶ 55041 (1977), reh'g denied, 433 U.S. 915, 97 S. Ct. 2989, 53 L. Ed. 2d 1102 (1977); Parrish v. Nikolits, 86 F.3d 1088 (11th Cir. 1996), cert. denied, 117 S. Ct. 1818, 137 L. Ed. 2d 1027 (U.S. 1997).

<sup>6</sup> LaRou v. Ridlon, 98 F.3d 659 (1st Cir. 1996); Parrish v. Nikolits, 86 F.3d 1088 (11th Cir. 1996), cert. denied, 117 S. Ct. 1818, 137 L. Ed. 2d 1027 (U.S. 1997).

<sup>7</sup> Vickery v. Jones, 100 F.3d 1334 (7th Cir. 1996), cert. denied, 117 S. Ct. 1553, 137 L. Ed. 2d 701 (U.S. 1997).

Responsibilities of the position of director of a municipality's office of federal programs resembled those of a policymaker, privy to confidential information, a communicator, or some other office holder whose function was such that party affiliation was an equally important requirement for continued tenure. Ortiz-Pinero v. Rivera-Arroyo, 84 F.3d 7 (1st Cir. 1996).

<sup>8</sup> McCloud v. Testa, 97 F.3d 1536, 12 I.E.R. Cas. (BNA) 1833, 1996 FED App. 335P (6th Cir. 1996), reh'g and suggestion for reh'g en banc denied, (Feb. 13, 1997).

Law Reviews: Stokes, When Freedoms Conflict: Party Discipline and the First Amendment. 11 JL & Pol 751, Fall, 1995.

Pave, Public Employees and the First Amendment Petition Clause: Protecting the Rights of Citizen-Employees Who File Legitimate Grievances and Lawsuits Against Their Government Employers. 90 NW U LR 304, Fall, 1995.

Singer, Conduct and Belief: Public Employees' First Amendment Rights to Free Expression and Political Affiliation. 59 U Chi LR 897, Spring, 1992.

As to political patronage jobs, see § 472.

<sup>9</sup> Parrish v. Nikolits, 86 F.3d 1088 (11th Cir. 1996), cert. denied, 117 S. Ct. 1818, 137 L. Ed. 2d 1027 (U.S. 1997).

- 1.3.2. Increase their revenues from unlawful collection and enforcement.
  - 1.3.3. Unlawfully violate the [Fourth Amendment](#) by invading the privacy of natural persons who are “nontaxpayers” by monitoring all of their earnings so they can be terrorized, manipulated, and hunted like prey.
  - 1.3.4. Enslave and trap people into involuntary servitude to the government, in violation of the [Thirteenth Amendment](#), [42 U.S.C. §1994](#), and [18 U.S.C. §1581](#).
- 1.4. Below is what the IRS Website says on the subject of Information Returns, and notice they don’t say a WORD about the prerequisite of “trade or business” activity as a precondition to the filing of Information Returns, even though this is, in fact, the case:

*Who must file Information Returns?*

*Any person, including a corporation, partnership, individual, estate, and trust, who make reportable transactions [connected ONLY with a “trade or business”, pursuant to 26 U.S.C. §6041] during the calendar year must file information returns to report those transactions to the IRS. Persons required to file Information Returns to the IRS must also furnish statements to the recipients of the income. Filers who have 250 or more must file these returns [electronically](#) or [magnetically](#).*

*[IRS Website, A Guide to Information Returns:*

*<http://www.irs.gov/efile/article/0,,id=98114,00.html>]*

- 1.5. This form will prevent any form of coercion, duress, or involuntary servitude imposed upon you by ignorant or malicious financial institutions and thereby help you defend and protect your Constitutional rights.
2. **CIRCUMSTANCES WHEN THIS FORM IS APPROPRIATE:** Use this form when you are applying for a job or are contracting as a private contractor and the party paying for your services insists on preparing any one of the following government forms to document the transaction:
- 2.1. [IRS Schedule K-1](#). See:  
<http://www.irs.treas.gov/newsroom/article/0,,id=122581,00.html>
  - 2.2. IRS Form W-2, Wage and Tax Statement
  - 2.3. [IRS Form 1042-S](#), Foreign Person's U.S. Source Income Subject to Withholding
  - 2.4. [IRS Form 1098](#), Mortgage Interest Statement
  - 2.5. [IRS Form 1099-MISC](#), Miscellaneous Income

It’s best to present this form to the company or private employer long before they have a requirement to file information returns, usually at the time or shortly after the time that you are hired or contracted out. This will prevent them from filing false Information Returns without your knowledge and give both them and you plenty of time to read and research the law long before they attempt to do so in your case.

3. **PROCEDURE FOR USE:**

- 3.1. When you take the approach recommended in this document, a lawyer or government representative may try to deceive you about the meaning of the “word of art” called a “trade or business” by saying that the definition uses the word “includes”, and then imply that the definition is “expansive” and includes basically anything he or she wants it to include. This is an admission that the above is NOT a definition, because it is not a definition unless it describes every thing or class of thing to which it applies. When they try to deceive you in this way, direct them to the following resource and demand that they rebut the questions at the end:

*Meaning of the word “includes” and “including”, Form #05.014*

<http://sedm.org/Forms/FormIndex.htm>

- 3.2. Fill in blocks 1 through 8 of the form.
- 3.3. **Block 10:** If you are a believer, check “Heaven” for block 10. If not, check preferably the “Nonfederal areas within a state” block.
- 3.4. **Blocks 9 and 11:** If you were born in a state of the Union, do as below, otherwise, check the appropriate checks in blocks 9 and 11:

- 3.4.1. Check the “Constitutional but not statutory Citizen” block in block 9.
- 3.4.2. Check the “Nonresident alien” block in block 11.
- 3.5. Blocks 12 and 13: Sign and date the form. Keep the original and the appendix and make one copy.
- 3.6. Give the copy of the form to the private employer or company or representative who is trying to complete the Information Return against you. Tell the clerk:

*“You have elected to prepare an Information Return on this transaction. I believe that you are violating the law by doing this, based on my extensive research and as a law abiding citizen who wants to make sure you are obeying the law as well. I believe there is no law or regulation that requires you to fill out this form. I have compiled my research into a two page form that I want you to fill out BEFORE you do the Information Return. Please complete Sections 2 and 3 of the form. It will be simple and straight forward and brief and it is the ONLY way that you are going to maintain my confidence as a worker or otherwise loyal business associate. The purpose is to ensure that you are following the law on this subject, because I believe that you are not and I can prove in fact, that you are violating the law. If you are at all unsure of the answers, then I encourage you to contact your supervisor or corporate legal counsel to get any questions answered that you might have. If you discontinue your attempt to complete the form, then I will not ask you to complete this form. If you insist on preparing the Information Return, then I insist on you completing this form, and your answers will be attached to the Information Return that you submit as a protest to this unlawful action on your part. If you insist on preparing the Information Return, I will also be terminating my relationship with you, because I cannot do business with people who willfully violate the law and my personal privacy and compel me into a relationship with the government that I do not wish to be part of. I remind you that the First Amendment guarantees me a right of freedom from compelled association, which includes compelled association with the government as a ‘public officer’ and federal ‘employee’.”*

- 3.7. Next, hand the clerk who prepares or will prepare information returns the following form and INSIST that they attach it to all information returns they intend to file. It is a criminal complaint asking them to be prosecuted by the recipient of the information return:

*Criminal Complaint Attachment: False and Fraudulent Information Return, Form #04.402*  
<http://sedm.org/Forms/FormIndex.htm>

- 3.8. Be available to answer any questions from the clerk.
  - 3.8.1. If the recipient asks questions, then politely and simply answer them.
  - 3.8.2. If the recipient can’t digest the legal issues raised or questions them, suggest that the corporate counsel look read and rebut the Appendix and give you a call if they have questions. Tell them that you have all the time in the world to wait for an answer and a complete form.
- 3.9. When the clerk has completed the form, make sure you get the original, signed copy of the completed form from the clerk. Make a photocopy and give to the clerk. If they don’t have a copier, then bring two forms to the bank and have the clerk fill out both, so you can keep one.
- 3.10. After you get the original completed form from the clerk, break out the Appendix at the end and hand it to them. Explain that the appendix may answer most of their questions and that it is VERY short. Let their supervisor see it too if they are involved.

#### **4. WHY YOU DON’T WANT INFORMATION RETURNS FILED ON YOU**

- 4.1. **WARNING:** If you allow this form to be filled out and sent in, you become:
    - 4.1.1. A “taxpayer” subject to the Internal Revenue Code pursuant to 26 U.S.C. §7701(a)(14) and who is liable under the Internal Revenue Code to file a tax return.
    - 4.1.2. A likely victim of an illegal “Substitute for Return” if you do not file a tax return which accounts for the Information Return that is the subject of this transaction.
    - 4.1.3. A person engaged in a “trade or business”. See:  
<http://sedm.org/Forms/MemLaw/TradeOrBusScam.pdf>
    - 4.1.4. A federal “public officer” and Social Security trustee. See:  
<http://sedm.org/Forms/Emancipation/SSTrustIndenture.pdf>
    - 4.1.5. A “[U.S. person](#)”. See [26 U.S.C. §7701\(a\)\(30\)](#).
- If you want to avoid all of the above forms of “compelled association”, you must ensure that you provide to the private employer, financial institution, or company that is trying to prepare

the Information Return an IRS form W-8BEN that does not contain any government-issued number. This is done using the instructions below:

*About IRS Form W-8BEN, Form #04.202*

<http://sedm.org/Forms/FormIndex.htm>

- 4.2. Those who have an Information Return against them put themselves into a “privileged” status in relation to the federal government and become “effectively connected with a trade or business”, as defined in [26 U.S.C. §7701\(a\)\(26\)](#). This makes them into prima facie “taxpayers” under the Internal Revenue Code, Subtitle A. Those who are “nontaxpayers” should not allow themselves to be wrongfully identified as “taxpayers”. See: <http://famguardian.org/Subjects/Taxes/Articles/TaxpayerVNontaxpayer.htm>
- 4.3. If the private employer, company, or financial institution you are dealing with insists on calling the IRS about you giving them this form, then you should remind them that the courts have said repeatedly that what public servants say is NOT to be trusted. Therefore, it’s pointless to call the government to get an opinion about how to respond to this form. You can prove this to yourself by calling the IRS and then asking the agent to sign an affidavit agreeing to take full, complete, and personal responsibility for his recommendation before you can or will follow it. He will hang up on you! See: <http://famguardian.org/Subjects/Taxes/Articles/IRSNotResponsible.htm>

## **5. RESOURCES FOR FURTHER STUDY:**

- 5.1. *Why It is Illegal for Me to Request or Use a Taxpayer Identification Number, Form #04.022*- use this form if the filer of the information return attempts to put an SSN or TIN on the form. <http://sedm.org/Forms/FormIndex.htm>
- 5.2. *Income Tax Withholding and Reporting Training Course, Form #12.004*-comprehensive free training on legal requirements for withholding and reporting <http://sedm.org/Forms/FormIndex.htm>
- 5.3. *Tax Withholding and Reporting: What the Law Says, Form #04.103*-simple handout you can give private employers that briefly but completely describes all the legal requirements pertaining to income tax withholding and reporting: <http://sedm.org/Forms/FormIndex.htm>
- 5.4. *Federal Tax Withholding, Form #04.102*-informative pamphlet that succinctly summarizes laws on withholding. Hand it to any private employer or financial institution and demand that they rebut the questions at the end. See: <http://sedm.org/Forms/FormIndex.htm>
- 5.5. *The Trade or Business Scam, Form #05.001*-informative pamphlet that explains what a “trade or business” is and why most Americans aren’t engaged in one. See: <http://sedm.org/Forms/FormIndex.htm>
- 5.6. *Correcting Erroneous IRS Form 1042’s, Form #04.003*: describes how to correct false or erroneous 1042 reports of “gross income”. <http://sedm.org/Forms/FormIndex.htm>
- 5.7. *Correcting Erroneous IRS Form 1098’s, Form #04.004*: describes how to correct false or erroneous 1098 Mortgage Interest statements. <http://sedm.org/Forms/FormIndex.htm>
- 5.8. *Correcting Erroneous IRS Form 1099’s, Form #04.005*: Describes how to correct false or erroneous reports of “trade or business” income. See: <http://sedm.org/Forms/FormIndex.htm>
- 5.9. *Correcting Erroneous IRS Form W-2’s, Form #04.006*: describes how to correct false or erroneous W-2 Information Returns. See: <http://sedm.org/Forms/FormIndex.htm>

- 5.10. [26 U.S.C. §7434](http://www4.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007434----000-.html): Civil Damages for Fraudulent Filing of Information Returns. See:  
[http://www4.law.cornell.edu/uscode/html/uscode26/usc\\_sec\\_26\\_00007434----000-.html](http://www4.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007434----000-.html)
- 5.11. IRS Website, Information Returns article:  
<http://www.irs.gov/taxpros/content/0,,id=98185,00.html>
- 5.12. *The Meaning of the words “includes” and “including”, Form #05.014*-legal profession and government deception relating to the abuse of the word “include” within definitions such as “trade or business”:  
<http://sedm.org/Forms/FormIndex.htm>

# **CONSTRUCTIVE NOTICE WARNING**

(for filers of Information Returns)

Do not exceed your private-sector status! Any erroneous assumption and/or implication that as a private party you are authorized to act as an agent or fiduciary for the government and its laws will not save you (or your employer) from personal liability and possible civil action or criminal conviction for the violation of law you are attempting or may in this instance by the filing of a knowingly false and fraudulent information return.

The term “information return” covers a wide variety of government forms that only government employers, accounting departments and payroll organizations can be legally obligated to file with the IRS, such as IRS forms W-2, 1042-S, 1098, 1099, 8300 (CTR). These forms are prescribed by government law and those using said forms are understood to have knowledge of such government law and to work for the government in an official capacity only. Sadly many non-governmental private sector return-filers are not licensed to act in a quasi-governmental capacity as private companies. Consider this court case:

*“We must note here, as matter of judicial knowledge, that most lawyers have only scant knowledge of the tax laws.”*  
[Bursten v. U.S., 395 f 2d 976, 981 (5th. Cir., 1968)]

If most lawyers have scant knowledge of tax laws, what does that imply about accountants, payroll departments, company employees, non-lawyer tax preparers and IRS employees? Anyone challenging a filing can simply ask the filing party: You made an assumption and filed a government legal form prescribed by government law:

1. Are you licensed to practice government law?
2. Are you my legal counsel?
3. Where is your signed delegation of authority to act on behalf of government?
4. Where is your Power of Attorney to act on my behalf?
5. Are you an authorized ‘withholding agent’ as described in sections [26 U.S.C. § 1441](#), [1442](#), [1443](#), or [1461](#)?”
6. Do you have an IRS form 2678 on file signed by a delegate of the Secretary of the Treasury authorizing you to act as a “withholding agent”. If not, you are simply a private individual who is STEALING from people if they don’t consent to withholding.
7. Are you prepared to answer these “sticky” questions and possibly many more?
8. Do you realize that while acting under “color” but without actual authority of law as a voluntary agent for the government, that you consent to be bound by all the restrictions imposed upon the government, including the Bill of Rights?
9. Do you realize that you may not deduct or withhold on a nonresident alien not engaged in a “trade or business”, such as the submitter of this form, if he/she provides to you legal evidence of that status?

*“Foreign persons who provide Form W-8BEN, Form W-8ECI, or Form W-8EXP (or applicable documentary evidence) are exempt from backup withholding and Form 1099 reporting.”*  
[IRS Publication 515, year 2000, p. 3]

10. Do you realize that if the submitter provides no IRS form W-4 or only does so under duress and tells you that he is not engaged in a “trade or business”, that:
  - 10.1. He or she earns no “wages” as legally defined in 26 CFR §31.3401(a)-3(a) and 26 CFR §31.3402(p)-1?
  - 10.2. You may not truthfully report anything other than ZERO for “wages, tips, and other income” in IRS form W-2, block 1?
  - 10.3. You may not lawfully withhold ANY amount from his or her pay. Even if the IRS orders you to withhold at “single zero” or garnish his or her pay, 100% of ZERO “wages” is still ZERO.
  - 10.4. If you wrongfully withhold, you personally and not the company become legally liable to return all amounts unlawfully withheld?
  - 10.5. You may not lawfully submit an IRS form W-2 to the government, because he/she is not engaged in a “trade or business”.
  - 10.6. You are violating 26 U.S.C. §6041, which says that you may only submit an IRS form W-2 if he or she is engaged in a “trade or business”, which is defined in 26 U.S.C. §7701(a)(26) as “the functions of a public office”?
  - 10.7. You are submitting a false and fraudulent information return to the government in violation of 26 U.S.C. §7207?
  - 10.8. You become personally and civilly liable for all attorneys fees and tax liabilities caused by the false W-2 information return you submit to the government?

It is for this reason that filing parties--due to ignorance of all the implications of their actions--put themselves at great risk by filing a government form containing accusatory implications they might or might not understand. Worse yet, the IRS cannot and does not intervene to take responsibilities associated with any false information provided to third parties who contact them, and the courts refuse to hold them accountable to do this either. All risk is born by the filing party! See:

[Federal Courts and IRS' Own IRM say the IRS is NOT RESPONSIBLE for its Actions or its Words or for Following its Own Written Procedures](http://famguardian.org/Subjects/Taxes/Articles/IRSNotResponsible.htm)  
<http://famguardian.org/Subjects/Taxes/Articles/IRSNotResponsible.htm>

The filing of an information return in most instances is considered a voluntary act. Whenever anybody enters-into a voluntary arrangement with the government they are presumptively “CHARGED WITH” knowing government statutes (i.e. law U.S.C.) and regulations (i.e. CFR):

*“Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation.”* See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85, 68 S.Ct. 1, 3-4, 92 L.Ed. 10 (1947)  
[Lavin v. Marsh, C.A.Cal., 1981, US Cr Appals 9<sup>th</sup> Cir., 1981, No. 79-4163]

Can you say you know all the government statutes and regulations? What about all the attendant case-law?

From a reading of the above case-quote, if your common sense tells you that “CHARGED WITH”...presumes something other than....“innocent until proven guilty”, you are probably correct. There is an “implied obligation” involved on your behalf because of the voluntary act you did. You are safer with, “If in doubt, don't act”:

*“An individual may be under no obligation to do a particular thing, and his failure to act creates no liability but if he voluntarily attempts to act and do a particular thing, he comes under an implied obligation in respect to the manner in which he does it.”*  
[Guardian T & D Co. v. Fisher, 26 S. Ct. 186 @ 188 (1986)]

Be aware that as legal form of government, the filing of information return forms are accusatory in nature—reaching far beyond mere amount and name. The “implied obligation” upon the filing parties is specific and intimate knowledge of the people and organizations to which they are filed-upon with an understanding

sufficient to stand on federal law of the accusation. Remember: The burden of proof is on the filing party and as most filing parties are not licensed to practice law, they are hence cautioned against implication of taxation status without direct evidence.

Don't be misled into overstepping your boundaries and doing the dirty-work of the federal government. They won't come to your rescue. See the *Federal Crop Insurance* case above as a shocking reminder. The federal government is "a government of small enumerated powers" limited to operating primarily on federal territory and has limited authority in the private affairs in the states.

*"The laws of Congress in respect to those matters [Federal Income Taxation] do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government."  
[Caha v. United States, 152 U.S. 211, 215, 14 S. Ct. 513 (1894)]*

But what about NOT doing some action "supposedly" required? There are very few instances in free society whereby people are held accountable for acts they DON'T DO [assuming justification and reasonableness]. The only persons who can be prosecuted for NOT doing something are all fiduciaries of one kind or another, and you aren't a government fiduciary or "transferee" as described in [26 U.S.C. §6903](#) and neither am I in this context. Almost the entirety of the Bill of Rights and several amendments, in fact, protect us from being convicted of "things we FAILED to do." That is NOT true for voluntary acts a person does FREELY. Notice the severity associated with filing false (voluntary-act) forms (see legal notice below) yet from the Guardian case-quote above says a:

*"...failure to act creates no liability."*

Once again illustrating: If in doubt, don't act. Be aware that the rights you desire in your protection are the same as the rights you should project in the protection of others. One party can inquire into the business [i.e. affairs personal or otherwise] of another, but as a protected right, there is NO DUTY for the other party to reveal any aspect of that business [i.e. affairs personal or otherwise]. Think about this famous Supreme Court case the next time you make demands on another:

*"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. **He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation,** so far as it may tend to incriminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. **He owes nothing to the public so long as he does not trespass upon their rights"**  
[Hale v. Henkel, 201 U.S. 43 (1906)]*

There is **no duty** for anyone to divulge the nature of his or her or its *private* affairs or business or [implied] paperwork. It is not a crime and not harmful to anyone to earn a living and support yourself. The only thing the government can lawfully regulate with civil law is PUBLIC conduct of its own officers and agents. You have been deceived and enslaved by crafty lawyers using "words of art" and legalese into acting as a "public officer" in the government without compensation, and even into PAYING for the PRIVILEGE. There is no provision of law applicable to a non-fiduciary *private* person such as yourself that creates a legal duty to file such a return. Any such law would constitute involuntary servitude in violation of the Thirteenth Amendment. Based on this document, that information return will likely be false because I am NOT engaged in a "trade or business" as defined in [26 U.S.C. §7701\(a\)\(26\)](#) and you are not a "withholding agent" as legally defined in [26 U.S.C. §7701\(a\)\(14\)](#). See:

[The "Trade or Business" Scam, Form #05.001](#)  
<http://sedm.org/Forms/FormIndex.htm>

#### **TAKE HEED AND NOTICE--LEGAL WARNING—CRIMINAL AND CIVIL PENALTIES APPLY!**

I urge you to use extreme caution when filing "information returns" with the IRS! A false information return is NOT limited to just the amount. An "...information return contains implications of taxation binding on the filing party in verification thereof...". The risks associated with willfully filing false information returns include, but are not limited to:

1. [26 U.S.C. §7206](#) provides up to \$100,000 fine and 3 years imprisonment for filing false returns regardless of whether they are signed or not. *United States v. Coveney*, 995 F.2d 578, 588 (5th Cir. 1993). Further it is *not* necessary that the defendant be the same individual who actually filed the false return, as long as the defendant's willful conduct *led* to the false filing. *United States v. Kellogg*, 955 F.2d 1244, 1249 (9th Cir. 1992). While frequently the false document will be...an information return, *any* document required or authorized to be filed with the IRS can give rise to the offense. See U.S. Dept of Justice Criminal Tax Manual 13:00.
2. [26 U.S.C. §7434](#) authorizes a suit in federal court against the filer of the false information return in which the innocent victim can recover attorney fees plus any tax liabilities sustained because of the false information return.
3. [26 U.S.C. §7207](#) makes it a crime punishable by a fine of \$10,000 if you are an individual or \$50,000 for a corporation and one year in jail for filing a false information return against anyone.
4. [18 U.S.C. §912](#) makes it a crime punishable by three years in jail or a fine for impersonating or causing others to impersonate a "public officer". Anyone who has an information return filed against them is, by definition, a "public officer".
5. [42 U.S.C. §408](#) makes it a crime punishable by five years in jail and a fine for doing any of the following:
  - 5.1. 42 U.S.C. §408(a)(8): Compelling the use of a Social Security Number in the case of a nonresident alien not engaged in a "trade or business".
  - 5.2. 42 U.S.C. §408(a)(1): Reporting false "wages" on an IRS form W-2.
  - 5.3. 42 U.S.C. §408(a)(2) to (a)(3): Making a false statement.

**WARNING: If there is any question in your mind about whether you should file an information return against me, the safest route is to NOT file it.**

If you would like to learn more about the consequences of knowingly filing false information returns, which is criminal fraud, read the following article:

[Correcting Erroneous Information Returns, Form #04.001](#)  
<http://sedm.org/Forms/FormIndex.htm>

You have been duly warned:

1. If you persist by filing a false information return beyond this point, the offense becomes not only actionable, but fraudulent and subject to the criminal penalties found at [26 U.S.C. §7207](#).
2. Not to call the IRS for advice on this matter, because the courts have repeatedly said they aren't accountable for their answer. Only you can decide what to do, and that decision MUST be based ONLY upon enacted positive law. [1 U.S.C. §204](#) says the Internal Revenue Code is NOT positive law.
3. Not to rely upon any IRS form OR publication, because the IRS' own website and the courts both say you can't:

*"IRS Publications, issued by the National Office, explain the law in plain language for taxpayers and their advisors... While a good source of general information, publications should not be cited to sustain a position."*  
[IRM 4.10.7.2.8 (05-14-1999)]

4. Not to rely upon any tax professional or any industry trade publication, because the courts have said that these sources of information are not authoritative.
5. If there is any question in your mind about what you can reasonably rely upon in making your decision about what to do, I advise you to read the following authoritative pamphlet containing the government's own statements on this important subject:

[Reasonable Belief About Income Tax Liability](#), Form #05.007  
<http://sedm.org/Forms/FormIndex.htm>

If you as the recipient of this notice want to be indemnified of the risks described in this section, then I would like to offer you a lawful way to do this. I as the person submitting this notice to you would be happy to assume all consequences and liabilities for following the law PROVIDED that you honor and obey all the laws described in this section and don't withhold or report from my pay as a nonresident alien not engaged in a trade or business. I am willing to sign a written, notarized agreement with you to that affect so that you don't have to assume any legal liabilities by virtue of obeying the laws documented in this pamphlet. I am doing this because I want to make it easy and carefree for you to obey the tax laws. You are encouraged to approach me informally if you would like to negotiate the terms of such a written agreement.

On the other hand, if you insist on filing knowingly false and now fraudulent information returns and thereby refuse to read or obey the law, then I insist that you attach the following form to EVERY information return you file, which I will provide or have provided in connection with our relationship:

[Criminal Complaint Attachment: False and Fraudulent Information Return](#), Form #04.402  
<http://sedm.org/Forms/FormIndex.htm>

Failure to file the above report shall result in the additional crime of obstructing justice and make your supervisor into an accessory after the fact to the crimes described herein.

# DEMAND FOR VERIFIED EVIDENCE OF "TRADE OR BUSINESS" ACTIVITY: INFORMATION RETURN (IR)

**PURPOSE:** The purpose of this form is to formally challenge the legal requirement for the filing of an Information Return, IRS Schedule K-1, and Forms W-2, 1042-S, 1098, or 1099, against the person who submitted this form to you. The sole authority for completing Information Returns originates from [26 U.S.C. §6041](#). Recipient is asked to complete Sections 2 and 3 of this form and return the completed form signed under penalty of perjury to the person who gave you this form. Failure by the recipient to read and complete this form shall result in a minimum \$5,000 liability under [26 U.S.C. §7434](#) and criminal penalties of \$10,000 in the case of an individual and \$50,000 in the case of a corporation plus up to one year in jail under [26 U.S.C. §7207](#).

## SECTION 1: LEGAL "PERSON" AGAINST WHOM INFORMATION RETURN IS BEING ILLEGALLY FILED

(Legal person or designated representative fills out this section.)

<b>1. Name</b>			
<b>2. Institution Name</b>			
<b>3. Account number</b>			
<b>4. Current address</b>			
<b>5. City</b>		<b>6. State</b>	
<b>7. Zip</b>		<b>8. Country</b>	
<b>9. CITIZENSHIP:</b> (check only ONE option)		<b>10. DOMICILE AND RESIDENCE:</b>	
<input type="checkbox"/> Constitutional but not statutory "Citizen". "national" but not "citizen" under federal law pursuant to <a href="#">8 U.S.C. §1101(a)(21)</a> and <a href="#">8 U.S.C. §1452</a> . Born in state of the Union and am "nonresident alien" under <a href="#">26 U.S.C. §7701(b)(1)(B)</a> but NOT an "alien" under <a href="#">26 U.S.C. §7701(b)(1)(A)</a> or "resident". "Stateless Person" as per <a href="#">Newman-Green v. Alfonso Larrain, 490 U.S. 826 (1989)</a> . <i>Constitutional</i> diversity of citizenship pursuant to <a href="#">U.S. Const. Art. III, Section 2</a> , but NOT <i>statutory</i> diversity pursuant to <a href="#">28 U.S.C. §1332</a> . Rebut the following if you disagree within 30 days or you stipulate it as truth. <a href="http://sedm.org/Forms/MemLAW/WhyANational.pdf">http://sedm.org/Forms/MemLAW/WhyANational.pdf</a>		<input type="checkbox"/> Nonfederal areas within de jure state of the Union: _____ (state name). NOT part of the "State" defined in <a href="#">26 U.S.C. §7701(a)(10)</a> , <a href="#">4 U.S.C. §110(d)</a> , or <a href="#">28 U.S.C. §1332(d)</a> or of the "United States".	
<input type="checkbox"/> Statutory but not constitutional "U.S. citizen". Described in <a href="#">8 U.S.C. §1401</a> . Born anywhere in the country and domiciled in the District of Columbia or federal territory or possession.		<input type="checkbox"/> Kingdom of Heaven on Earth. I have a religious objection to having an earthly domicile within any existing, man-made government. I am a "transient foreigner" but not an "inhabitant" with respect to the man-made government having jurisdiction in the place where I temporarily live. The Bible says in Psalms 89:11-13, Isaiah 45:12, Deut. 10:14 that the Earth was created and is owned exclusively by God and NOT any man or government of men. It also says in Psalms 47:7 that God is the King of all the Earth. Therefore no one but God's Kingdom can have domicillaries because presence on the territory of the Sovereign is a prerequisite to all declarations of domicile and allegiance.	
<input type="checkbox"/> Statutory "U.S. national". Described in <a href="#">8 U.S.C. §1408</a> and <a href="#">8 U.S.C. §1101(a)(22)(B)</a> , and <a href="#">8 U.S.C. §1452</a> . Born anywhere in the country and domiciled in American Samoa or Swain's Island		<input type="checkbox"/> Not within any government on earth. I choose not to politically associate with any group or government on earth for my protection. The First Amendment to the Constitution protects my right of freedom from compelled association. I am a "transient foreigner" but not an "inhabitant" of the place where I live. See and rebut the following within 30 days if you disagree or forever be estopped from later challenging it:	
<input type="checkbox"/> Foreign National. Country: _____. Nonresident alien under <a href="#">26 U.S.C. §7701(b)(1)(B)</a>		<input type="checkbox"/> "United States" (District of Columbia, see <a href="#">26 U.S.C. §7701(a)(9)</a> and <a href="#">(a)(10)</a> )	
<input type="checkbox"/> Dual nationality. Non-citizen national of USA (NOT "U.S.") pursuant to <a href="#">8 U.S.C. §1452</a> AND the following country, nation, _____ or _____ government: _____ For description of "non-citizen national" see third item below.		<input type="checkbox"/> Federal areas within state: _____ (state name)	
<input type="checkbox"/> Dual nationality. Non-citizen national of USA (NOT "U.S.") pursuant to <a href="#">8 U.S.C. §1452</a> AND Kingdom of Heaven on Earth. For description of "non-citizen national", see next item.		<input type="checkbox"/> Foreign country or government: _____ _____ (name of foreign country or government). See <a href="#">26 U.S.C. §892(a)(3)</a> for definition of "foreign government".	
		<input type="checkbox"/> Federal territory or possession. Territory/possession name: _____	

11. FEDERAL TAX ENTITY TYPE: (check all that apply)			
Check	Type of tax	Defined in (Please specify if blank)	Description
<input type="checkbox"/>	"Nonresident alien"	<a href="#">26 U.S.C. §7701(b)(1)(B)</a>	A foreign national or a person born in a state of the Union domiciled in either a state of the Union or a foreign country but not on federal territory
<input type="checkbox"/>	Statutory but not Constitutional "U.S. citizen"	<a href="#">8 U.S.C. §1401</a> 26 CFR §1.1-1(c)	Born anywhere in America and domiciled on federal territory and not within a state of the Union
<input type="checkbox"/>	Statutory but not Constitutional "Resident alien"	<a href="#">26 U.S.C. §7701(b)(1)(A)</a>	A foreign national domiciled on federal territory and not within a state of the Union
<input type="checkbox"/>	Federally registered corporation		Domiciled on federal territory and not within any state of the Union. Includes entities of the United States government under <a href="#">28 U.S.C. §3002(15)(A)</a>
<input type="checkbox"/>	State-only registered corporation		Domiciled within the exclusive jurisdiction of a state on not within the "United States" as defined in 26 U.S.C. §7701(a)(9) and (a)(10)
<input type="checkbox"/>	Foreign corporation from abroad		
<input type="checkbox"/>	Common law pure trust		
<b>12. INFORMATION RETURN Target signature:</b>		I certify under penalty of perjury under the laws of my state, from without the "United States", and in accordance with <a href="#">28 USC 1746(1)</a> that the facts provided in this section are true, correct, and complete.  _____ Signature	<b>13. Date signed:</b>
<b><u>COPYRIGHT NOTICE:</u></b> The contents of this document is copyrighted and licensed information and the holder of the copyright is the submitter. It may not be shared by the government with third parties or entered into any kind of electronic information system or used by the government for any kind of tax collection activity. Only the submitter may use it as he chooses. The fee for violating the copyright is \$100,000 per incident. This letter and all attached documents have been made part of the agency administrative record and will be used for evidence in administrative and judicial proceedings at law, or equity regarding this American National <b>All of these documents must be RECORDED and maintained in Claimant's Administrative PAPER, but not electronic file.</b>			

## SECTION 2: QUESTIONS FOR CLERK PREPARING FALSE INFORMATION RETURN

**WARNING:** Sections 2 and following of this form **MUST** be completed by the person in authority at the receiving company who generates and submits Information Returns.

#	Type of tax	Valid Values	Answer
1	Do you know that the following types of IRS forms are INFORMATION RETURNS: Schedule K-1, and forms W-2, 1042-S, 1098, and 1099?	Yes/No	
2	Do you know that pursuant to <a href="#">26 U.S.C. §6041</a> , INFORMATION RETURNS can only be completed for transactions connected to a "trade or business"?	Yes/No	
3	Do you know what a "trade or business" is?	Yes/No	
4	Do you know where a "trade or business" is defined in the law?	Yes/No	
5	Is there anyone in your company who can tell you what it means?	Yes/No	
6	Please provide the definition of a "trade or business" if you answered "Yes" to the previous question.	Narrative	
7	Has your employee training educated you about what a "trade or business" is?	Yes/No	
8	What does your supervisor say a "trade or business" is?	Narrative	
9	Would you be willing to accept the definition of a "trade or business" found in the federal law if I could show it to you?	Yes/No	
10	Did you know that there is no federal law which says that an INFORMATION RETURN is required if the payment is not connected to a "trade or business", REGARDLESS of the amount?	Yes/No	
11	If you disagree with the previous question, please provide the statute or regulation that requires the filing of INFORMATION RETURNS on transactions that are NOT connected with a "trade or business".	Narrative	
12	What criteria do you use to determine whether payments are connected to a "trade or business"?	Narrative	
13	Would you allow the subject of the INFORMATION RETURN to prove to you that he/she is NOT engaged in a "trade or business"?	Yes/No	
14	If the subject of the INFORMATION RETURN could prove to you that he/she was not engaged in a "trade or business", would you then dismiss the requirement to prepare a INFORMATION RETURN?	Yes/No	
15	Is there any need to fill out a INFORMATION RETURN for someone who has no demonstrated tax liability?	Yes/No	
16	Please provide the statute and implementing regulation that gives you, a company preparing INFORMATION RETURNS, the authority to determine without my consent or participation, whether I am engaged in a "trade or business"	Fill in	Statute: _____ Implementing Regulation published in the Federal Register: _____
17	Please provide all evidence you have that I or the entity I represent are engaged in a "trade or business". Please sign all evidence under penalty of perjury as required by <a href="#">26 USC §6065</a>	Comments	

**LEGAL AUTHORITY FOR IMPUTED TAX LIABILITY ASSOCIATED WITH INFORMATION RETURN**

(Complete details to right of information required)

<b>14. Statute imposing tax</b>	26 USC § _____ State statute: _____
<b>15. Statute establishing "liability"</b>	26 USC § _____ State statute: _____
<b>16. Implementing regulation authorizing assessment</b>	26 CFR § _____ State reg: _____
<b>17. Implementing regulations authorizing levy</b> (not NOTICE of levy, but court-issued levy)	26 CFR § _____ State reg: _____
<b>18. Implementing regulation authorizing lien</b> (not NOTICE of lien, but court-issued lien)	26 CFR § _____ State reg: _____

**SECTION 3: SIGNATURE AND IDENTITY OF COMPANY EMPLOYEE COMPLETING SECTION 2 OF THIS FORM**

<b>19. Name of person completing form</b>			
<b>20. Signature of person Completing</b>	I certify under penalty of perjury under <a href="#">28 USC §1746(2)</a> as required under <a href="#">26 USC §6065</a> that the facts provided by me in sections 2 and 3 of this form are true, correct, and complete to the best of my personal knowledge, and completely consistent with the records maintained by the agency that I work for. I also certify that I have included copies of all evidence available to me which supports my answers appearing in this document.  _____ Signature _____ Date _____		
<b>21. Badge number</b>		<b>22. Phone number:</b>	
<b>23. Mail address of person completing form</b>		<b>24. Email address:</b>	
<b>25. Supervisor Name</b> (print legibly)			
<b>26. Supervisor badge number</b>		<b>27. Supervisor phone number</b>	
<b>28. Supervisor mailing address</b>		<b>29. Supervisor email address</b>	

**29. ENCLOSURES**

(Included with financial institution response)

**NOTE:** All pages of this form must be included in the response and the response MUST be signed under penalty of perjury. DO NOT use the word "frivolous" in any part of your response without providing statute and implementing regulation and Supreme Court cite (and not lower) to back up each claim. We ARE NOT interested in your opinion, but only relevant law and facts. Any other approach is frivolous.

Check	Enclosure description	Mandatory/optional
<input type="checkbox"/>	Completed form (Sections 2 and 3 completed)	Mandatory
<input type="checkbox"/>	All evidence available to recipient of this form proving that target of INFORMATION RETURN is engaged in a "trade or business". Evidence must be signed under penalty of perjury by a person with first hand knowledge of the facts upon which the determination was based. See Section 2, question 17 for details	Mandatory
<input type="checkbox"/>	Photocopies of any guidance and/or policy documents from recipient of this form describing the proper procedure for completing a "INFORMATION RETURN"	Mandatory

**63. REFERENCES:**

<b>Family Guardian-Tax Fraud Prevention page:</b> <a href="http://famguardian.org/Subjects/Taxes/taxes.htm">http://famguardian.org/Subjects/Taxes/taxes.htm</a>	<b>Liberty University:</b> <a href="http://sedm.org/LibertyU/LibertyU.htm">http://sedm.org/LibertyU/LibertyU.htm</a>
<b>Great IRS Hoax, Form #11.302:</b> <a href="http://sedm.org/Forms/FormIndex.htm">http://sedm.org/Forms/FormIndex.htm</a>	<b>Citizenship, Domicile, and Tax Status Options, Form #10.003</b> <a href="http://sedm.org/Forms/FormIndex.htm">http://sedm.org/Forms/FormIndex.htm</a>

## APPENDIX: ANSWERS TO THE MEANING OF “TRADE OR BUSINESS”

(Target of INFORMATION RETURN should read and discuss the following with the recipient of the form AFTER they complete Sections 2 and 3 of the form, sign, and return it)

1. Information Returns include the IRS Forms W-2, 1042-S, 1098, and 1099.
2. Meaning of the term “[trade or business](#)”:

[26 U.S.C. Sec. 7701\(a\)\(26\)](#)

*“The term ‘trade or business’ [includes](#) the performance of the functions of a [public office](#).”*

3. Based on the above, those engaged in a “trade or business”, are engaged in a “public office” and become agents and fiduciaries of the federal government:

*“As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer.”<sup>10</sup> **Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from a discharge of their trusts.**<sup>11</sup> **That is, a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves.**<sup>12</sup> **and owes a fiduciary duty to the public.**<sup>13</sup> **It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual.**<sup>14</sup> Furthermore, it has been stated that any enterprise undertaken by the public official which tends to weaken public confidence and undermine the sense of security for individual rights is against public policy.<sup>15</sup>”*

[American Jurisprudence Legal Encyclopedia, 63C Am.Jur.2d, Public Officers and Employees, §247]

4. Legal requirement for providing Information Returns (INFORMATION RETURNS):

[TITLE 26 > Subtitle F > CHAPTER 61 > Subchapter A > PART III > Subpart B > § 6041](#)  
[§ 6041. Information at source](#)

(a) Payments of \$600 or more

**All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section 6042 (a)(1), 6044 (a)(1), 6047 (e), 6049 (a), or 6050N (a) applies, and other than payments with respect to which a statement is required under the authority of section 6042 (a)(2), 6044 (a)(2), or 6045), of \$600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.**

5. For details describing the government scandal in connection with the use of the word “trade or business”:  
The “Trade or Business” Scam, Form #05.001; <http://sedm.org/Forms/FormIndex.htm>
6. There is no other statute within the Internal Revenue Code or implementing regulation within the Treasury Regulations which provides authority to file Information Returns OTHER than [26 U.S.C. §6041](#). Therefore, ALL Information Returns, including IRS forms W-2, 1042-S, 1098, and 1099, all have as a prerequisite receipt of earnings connected with a “trade or business” and a “public office” in the United States government.
7. Based on the above, those who are NOT engaged in a “trade or business” may not lawfully have any Information Returns filed against them and if they do, the party against whom it was filed has civil standing under [26 U.S.C. §7434](#) to sue for the greater of \$5,000 or the attorneys fees and damages associated with the false or fraudulent filing of the Information Return.

Title 26, Internal Revenue Code

[§ 7434. Civil Damages For Fraudulent Filing Of Information Returns.](#)

(a) In General-

*If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.*

(b) Damages-

<sup>10</sup> State ex rel. Nagle v Sullivan, 98 Mont 425, 40 P2d 995, 99 ALR 321; Jersey City v Hague, 18 NJ 584, 115 A2d 8.

<sup>11</sup> Georgia Dep't of Human Resources v Sistrunk, 249 Ga 543, 291 SE2d 524. A public official is held in public trust. Madlener v Finley (1st Dist) 161 Ill App 3d 796, 113 Ill Dec 712, 515 NE2d 697, app gr 117 Ill Dec 226, 520 NE2d 387 and revd on other grounds 128 Ill 2d 147, 131 Ill Dec 145, 538 NE2d 520.

<sup>12</sup> Chicago Park Dist. v Kenroy, Inc., 78 Ill 2d 555, 37 Ill Dec 291, 402 NE2d 181, appeal after remand (1st Dist) 107 Ill App 3d 222, 63 Ill Dec 134, 437 NE2d 783.

<sup>13</sup> United States v Holzer (CA7 Ill) 816 F2d 304 and vacated, remanded on other grounds 484 US 807, 98 L Ed 2d 18, 108 S Ct 53, on remand (CA7 Ill) 840 F2d 1343, cert den 486 US 1035, 100 L Ed 2d 608, 108 S Ct 2022 and (criticized on other grounds by United States v Osser (CA3 Pa) 864 F2d 1056) and (superseded by statute on other grounds as stated in United States v Little (CA5 Miss) 889 F2d 1367) and (among conflicting authorities on other grounds noted in United States v Boylan (CA1 Mass) 898 F2d 230, 29 Fed Rules Evid Serv 1223).

<sup>14</sup> Chicago ex rel. Cohen v Keane, 64 Ill 2d 559, 2 Ill Dec 285, 357 NE2d 452, later proceeding (1st Dist) 105 Ill App 3d 298, 61 Ill Dec 172, 434 NE2d 325.

<sup>15</sup> Indiana State Ethics Comm'n v Nelson (Ind App) 656 NE2d 1172, reh gr (Ind App) 659 NE2d 260, reh den (Jan 24, 1996) and transfer den (May 28, 1996).

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of--

(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing),

(2) the costs of the action, and

(3) in the court's discretion, reasonable attorneys' fees.

(c) *Period For Bringing Action-*

Notwithstanding any other provision of law, an action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only within the later of--

(1) 6 years after the date of the filing of the fraudulent information return, or

(2) 1 year after the date such fraudulent information return would have been discovered by exercise of reasonable care.

(d) *Copy Of Complaint Filed With IRS-*

Any person bringing an action under subsection (a) shall provide a copy of the complaint to the Internal Revenue Service upon the filing of such complaint with the court.

(e) *Finding Of Court To Include Correct Amount Of Payment-*

The decision of the court awarding damages in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.

(f) *Information Return-*

For purposes of this section, the term 'information return' means any statement described in section 6724(d)(1)(A).'

8. IRS guidance found in the instructions for the IRS Form 1099 confirm the above conclusions:

**"Trade or business reporting only.** Report on Form 1099-MISC only when payments are made in the course of your trade or business. Personal payments are not reportable. You are engaged in a trade or business if you operate for gain or profit. However, nonprofit organizations are considered to be engaged in a trade or business and are subject to these reporting requirements. Nonprofit organizations subject to these reporting requirements include trusts of qualified pension or profit-sharing plans of employers, certain organizations exempt from tax under section 501(c) or (d), and farmers' cooperatives that are exempt from tax under section 521. Payments by federal, state, or local government agencies are also reportable."

[IRS Form 1099-MISC Instructions, 2005, p. 1

<http://famguardian.org/TaxFreedom/Forms/IRS/IRSForm1099Inst.pdf>]

9. IRS form 1098 instructions also confirm that this form is only for use in connection with a "trade or business":

**Who Must File**

File this form if you are engaged in a **trade or business** and, in the course of such **trade or business**, you receive from an individual \$600 or more of mortgage interest on any one mortgage during the calendar year. **You are not required to file this form if the interest is not received in the course of your trade or business.** For example, you hold the mortgage on your former personal residence. The buyer makes mortgage payments to you. You are not required to file Form 1098.

[IRS Form 1098 Instructions, p. 1]

10. As far as IRS Form W-2 "wage" reporting, [26 U.S.C. §3401](#) defines the term "wages" as used on this form as follows. Note that earnings not connected with a "trade or business" are NOT included:

[TITLE 26 > Subtitle C > CHAPTER 24 > § 3401](#)  
[§ 3401. Definitions](#)

(a) Wages

For purposes of this chapter, 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 (including benefits) paid in any medium other than cash; **except that such term shall not include remuneration paid—**

[ . . . ]

(4) **for service not in the course of the employer's trade or business** performed in any calendar quarter by an employee. . .

You will note that the term "employer" is defined in [26 U.S.C. §3401\(d\)](#) as a person who has "employees" and the term "employee" is then defined in 26 CFR §31.3401(c)-1 as a person who works for the federal government.

[26 CFR §31.3401\(c\)-1 Employee:](#)

"...the term [employee] includes officers and employees, whether elected or appointed, of the United States, a [federal] State, Territory, Puerto Rico or any political subdivision, thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term 'employee' also includes an officer of a corporation."

[SOURCE: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=29e687a70481e8b30367480f5172f400&rgn=div5&view=text&node=26:15.0.1.1.1&idno=26#26:15.0.1.1.1.5.15.29> ]

Therefore, unless your workers are "public officers" engaged in a "trade or business" and working for the federal government, then they aren't "employees" as defined in the Internal Revenue Code and don't earn "wages". This is also confirmed by 4 U.S.C. §72, which says that all "public offices" shall be exercised in the District of Columbia and no place else except as expressly authorized by law. There is not law enacted by Congress that that allows for your workers to become "public officers" engaged in a "trade or business" in any place other than the District of Columbia.

[TITLE 4 > CHAPTER 3 > § 72](#)

[§ 72. Public offices; at seat of Government](#)

*All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law.*

11. IRS Instructions on the W-2 confirm the above conclusions by saying:

**General Instructions for Forms W-2 and W-3**

**Who must file Form W-2.**

*Employers must file Form W-2 for wages paid to each employee from whom:*

- *Income, social security, or Medicare tax was withheld or*
- *Income tax would have been withheld if the employee had claimed no more than one withholding allowance or had not claimed exemption from withholding on Form W-4, Employee's Withholding Allowance Certificate.*

[IRS Instructions for Form W-2 and W-2, 2006, p. 2, Cat. No. 25979S]

You will note that if the private worker not engaged in a "trade or business" submits a W-8BEN to you and does not submit a W-4, except under duress, then you may not lawfully withhold or report anything on a W-2 and the person does not earn "wages" as defined in the previous item #7:

*"Foreign persons who provide Form W-8BEN, Form W-8ECI, or Form W-8EXP (or applicable documentary evidence) are exempt from backup withholding and Form 1099 reporting."*

[IRS Publication 515, Year 21000, p. 3]

The above is also confirmed by the regulations themselves, which state:

Title 26: Internal Revenue

[PART 1—INCOME TAXES](#)

[nonresident alien individuals](#)

[§ 1.872-2 Exclusions from gross income of nonresident alien individuals.](#)

(f) Other exclusions.

**Income which is from sources without [outside] the United States [District of Columbia, see 26 U.S.C. 7701(a)(9) and (a)(10)], as determined under the provisions of sections 861 through 863, and the regulations thereunder, is not included in the gross income of a nonresident alien individual unless such income is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual.** To determine specific exclusions in the case of other items which are from sources within the United States, see the applicable sections of the Code. For special rules under a tax convention for determining the sources of income and for excluding, from gross income, income from sources without the United States which is effectively connected with the conduct of a trade or business in the United States, see the applicable tax convention. For determining which income from sources without the United States is effectively connected with the conduct of a trade or business in the United States, see section 864(c)(4) and §1.864-5.

What makes your worker "foreign" is that he/she/it is not engaged in a "trade or business":

[26 U.S.C. §7701\(a\)\(31\)](#)

(31) Foreign estate or trust

(A) Foreign estate

*The term "foreign estate" means an estate the income of which, from sources without the United States [which is defined in 26 U.S.C. §7701(a)(9) and (a)(10) as the District of Columbia, which is where all "public offices" must be held in accordance with 4 U.S.C. §72] **which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.***

12. Conclusions based on above evidence:

12.1. INFORMATION RETURN's are for tracking people employed or contracting with the federal government who are performing the functions of their "public office":

*"As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer. **Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from a discharge of their trusts. That is, a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves, and owes a fiduciary duty to the public. It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual.** Furthermore, it has been stated that any enterprise undertaken by the public official which tends to weaken public confidence and undermine the sense of security for individual rights is against public policy.<sup>16</sup>"*  
[American Jurisprudence Legal Encyclopedia, 63C Am.Jur.2d, Public Officers and Employees, §247]

12.2. There is no definition or amplification anywhere in Title 26 of the United States Code that expands the definition of the term "trade or business" to encompass anything other than a "public office" in the government. Therefore, the phrase means what it says and says what it means, based on the rules of statutory construction, which say on this subject:

*"**Expressio unius est exclusio alterius.** A maxim of statutory interpretation meaning that **the expression of one thing is the exclusion of another.** Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. **When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.** Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."  
[Black's Law Dictionary, Sixth Edition, p. 581]*

12.3. If you would like to learn more about the subjects discussed in this short treatise, please consult the following FREE pamphlet available at:

[Federal and State Tax Withholding Options for Private Employers, Form #04.101](http://sedm.org/Forms/FormIndex.htm)  
<http://sedm.org/Forms/FormIndex.htm>

<sup>16</sup> Indiana State Ethics Comm'n v Nelson (Ind App) 656 NE2d 1172, reh gr (Ind App) 659 NE2d 260, reh den (Jan 24, 1996) and transfer den (May 28, 1996).