likely to find themselves labeled a troublemaker and out pounding the pavement again. That's unless they are successfully browbeaten with an impatient, "Look, kid, you're signing on to be an employee, right? You're going to be paid wages, right? The law says all employees getting paid wages have to fill out one of these forms. Whaddayamean you're not an "employee"! Lemme see that! Oh,... I see why you're confused. You didn't notice that it says *includes* officers and employees, etc., etc.. That means that it includes *anybody else* who's an employee, too, and *anybody* who works for *anybody* is an EM-PLOY-EE! *Understand?* Trust me. Fill out the form. And stop talking to those tax-protestor nutcases."

With most of the "income" tax forms of this type, what has been said so far would cover the subject well enough, at least as regards the applicability of the instrument to private-sector workers, and I could keep this part of the book short. The W-4 is a bit more complicated, however, perhaps in the interest of pacifying the rare, legally knowledgeable cat's-paw business upon which the scheme is so reliant. As such a business might otherwise fear the legal consequences of unlawfully demanding the form as a condition for fulfilling the obligations of the contract into which it has entered with a worker, or be cognizant of the consequences of pretending to be a federal official (the only entity in connection with which a W-4 could be required), the law regarding the W-4 is equipped with what appears to be a "safe harbor" element. That element is subparagraph (p)(3)(B) of section 3402. Here it is (with emphasis added):

> *Sec. 3402. - Income tax collected at source*
> *(p)* ***Voluntary withholding agreements***
> *(3) Authority for other voluntary withholding*
> ***The Secretary is authorized by regulations to provide for withholding***

> *(A) from remuneration for services performed by an employee for the employee's employer which (without regard to this paragraph) does not constitute wages, and*
>
> *(B)* ***from any other type of payment*** *with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter, if the employer and employee, or the* ***person making and the person receiving such other type of payment, agree to such withholding****. Such agreement shall be in such form and manner as the Secretary may by regulations prescribe.* ***For purposes of this chapter (and so much of subtitle F as relates to this chapter), remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.*** (I'm confident that we can all easily think of dozens of *'other types of payments'* regarding which we would be grateful for the benefits of this provision of the law, right?)

By virtue of this provision, a nervous private-sector company might still cooperate with the scheme, presuming that it can claim it just thought it was agreeing to an optional request to withhold when accepting that W-4 and handing over to a third party money owed to a worker.

However, despite the language of 3402(p)(3)(B), the Secretary of the Treasury has promulgated *no* regulations providing for any particular "form or manner" of agreement between a "person" and another "person" (although he *has* provided several pages of such regulations for voluntary withholding agreements between "employees" and "employers" pursuant to 3402(p)(3)(A)). Therefore, the characterization of

payments made to a worker as being subject to withholding is-- wishful thinking to the contrary notwithstanding-- entirely the doing, and the risk, of the business doing the withholding. The poorly constructed language of the statute only provides for the possibility of this extra-curricular withholding pursuant to a regulatory structure-- lacking such, it is a mere will-o'-the-wisp.

Though perhaps a bit disingenuously, a worker could and would easily and credibly maintain, in the course of suing or prosecuting a business over what is no more or less than theft-by-conversion, that in addition to responding to the coercion and false claims of authority by which she was induced to execute the form, she at bottom complied because of the reasonable presumption that the W-4 would only become an active instrument if and when the business's affairs contrived to cause her pay to be effectively connected with a taxable activity. That the business instead withheld from her private-sector, untaxable receipts is entirely its own responsibility.

Needless to say, and despite 3402(p)(3)(B), the fact that a business calls payments "wages" paid to an "employee"-- and even reports them as such-- does not transform them into "income", if they are actually paid to a private-sector worker. Chapter 24 imposes no tax at all (nor does subtitle F)-- it simply provides for withholding. The amounts withheld under its provisions are credited against any liability for "income" tax which might be found to exist under the provisions of subtitle A-- in regard to which, as we know, remuneration for private-sector work is explicitly excluded. (We'll explore this area in detail later when we look at what the law says about refunds.)

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Possible rationales for its completion and submission do not change the fact that a signed W-4 becomes an instrument supporting treatment of a worker as being a "wage"-paid-"employee". Through this form, the company for whom the