

from

Was Grandpa Really a Moron?

Critical Inquiries for a New American Century

by

Peter E. Hendrickson

The Effect Of A Social Security Number



One of the most persistent, and pernicious, bits of misdirection troubling the "tax honesty" community is the notion that having a Social Security number associated with oneself, or furnishing it to someone, makes one (or one's earnings) taxable. This is simply not so.

To begin with, furnishing a Social Security number to anyone doesn't constitute an exercise of privilege-- or an exercise of anything else other than one's authority to make prospective instructions concerning one's affairs. For instance, completing a W-4 instructing anyone how one wishes withholding to be conducted IF and WHEN one should actually come to be paid "wages" doesn't make one's pay into such "wages" anymore than completing an application for a fishing license makes everything one does at the lake "fishing". It is purely prospective.

Nor is a W-4 a contract or offer to contract of any kind-- no language to this effect of any kind appears on the form. Similarly, suffering the withholding of property in connection with "Social Security" "income" taxes is obviously neither the exercise of a privilege nor the acquisition of any other kind of

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benefit, nor does IT establish a contractual relationship between the person whose property is withheld and the federal government (except insofar as the government becomes obliged to return the withheld property if properly claimed).

First of all, one is not a "recipient of federal benefits" until one actually "receives the federal benefits". (And, of course, even if one were already "receiving the federal benefits", only those measurable benefit receipts would be taxable. The fact that certain of one's receipts are taxable does not make one's other receipts taxable.)

Second, contrary to the deep-seated misunderstanding of Social Security which is carefully nurtured by the beneficiaries of the overall "income" tax scheme, no one becomes "entitled" to Social Security by making 'contributions' (or any other way). Thus, even a (necessarily tortured) argument that vestiture in a future benefit constituted an "income"-taxable activity would not apply to Social Security, because no one is legally vested with a claim against the program.

The fact is, there is no legal relationship between the tax taken under the FICA and any benefits one might be given under the same act. When Social Security is called an "entitlement", the reference is to a merely political deal-- those in Congress recognize that it would be political suicide to stop giving money away to (especially) seniors under the mantle of the FICA, and so the recipients of those handouts are "entitled" to rely on them continuing into the foreseeable future. The FICA simply imposed another tax on "income", measured by remuneration paid to a particular group of federal workers (defined in section 3121).

(This class of remuneration was given the title of "wages", more particularly, FICA "wages", and is distinguished from the "wages" defined at 26 USC 3401. 3401 "wages" make up a broad and inclusive class (remuneration paid to all federal workers), within which is the subclass of FICA "wages". That is, all federal worker's pay qualifies as 3401 "wages", but only

some also qualifies simultaneously as 3121 "wages", and is used to measure the additional "income" tax.)

All that should be needed to make this clear is to consider that, if that were the case, once someone had reached nominal "full vestiture" -- that is "40 quarters of contributions" (per the current arbitrary qualification)-- one would be finished making "contributions". If there actually was a contract involved, that would be the point at which the "contributor" would have satisfied his or her side of the bargain, with nothing more to do but wait until the payouts began. In case more is needed than that simple and straightforward logic, here is what the United States Supreme Court says on the subject in *Helvering v. Davis* 301 US 619 (1937):

"The proceeds of both [employee and employer FICA] taxes are to be paid into the Treasury like internal-revenue taxes generally, and are not earmarked in any way."

...and in *Flemming v. Nestor* 363 US 603 (1960):

"The noncontractual interest of an employee covered by the Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits are based on his contractual premium payments."

The court explains, also in *Flemming v. Nestor*, that:

"To engraft upon Social Security system a concept of 'accrued property rights' would deprive it of the flexibility and boldness in adjustment to ever-changing conditions which it demands..."

It's that simple. There is no legal relationship of any kind between taxes withheld under the auspices of the FICA, and the receipt, or possible future receipt, of Social Security benefits-- and this is true even for those whose earnings really are "wages" as that term is defined in the law.

Congress could end Social Security payouts tomorrow, and no matter how many quarters of payments someone may

have made, he or she would have no legal recourse by which to demand benefits. No one has an account at the Social Security Administration, in the sense of a reserved or claimable interest in any benefit. That the administration (or Congress) has elected to use "quarters of payments" as the nominal qualifier for receiving payments from the program is just the scheme de jure-- it could as easily be any thing else, and with just as much relationship to the benefit (from a legal standpoint) as the current scheme-- that is, none whatsoever. The designers of this tax simply settled on marketing it as though it were an insurance program, both to make it more immediately palatable, and to help create a constituency which would defend it in the future with the vigor attendant upon an imagined "ownership" interest. Without violating to the slightest degree its legal obligations under the Social Security Act or by virtue of the taxes it has collected under the name of "Social Security or Medicare contributions", Congress could announce tomorrow that benefits would henceforth be based on how many blue Volkswagens an applicant or current beneficiary had owned in the past (or owned now, for that matter).

Indeed, in 26 USC 86- *Social Security and tier 1 railroad retirement benefits* (a section within the "Items Specifically Included In Gross Income" part of Subtitle A), Congress must artificially designate Social Security benefits as to be *treated* as pension or annuity payments, for purposes of certain other sections of law, since such benefits don't actually qualify as pension or annuity payments inherently.

*(f) Treatment as pension or annuity for certain purposes
For purposes of—*

(1) section 22 (c)(3)(A) (relating to reduction for amounts received as pension or annuity),

(2) section 32 (c)(2) (defining earned income),

(3) section 219 (f)(1) (defining compensation), and

*(4) section 911 (b)(1) (defining foreign earned income),
any social security benefit shall be treated as an amount received as a pension or annuity.*

(Social Security numbers are merely a creative element of this scheme, by the way-- being nothing more than a number under which qualifying "quarters" are recorded, but suggesting to the gullible the existence of a personally-owned numbered "account" financed by the FICA tax "contributions" extracted. However, as noted above, having such a number associated with oneself creates no ownership interest in any future benefits, nor does it have any legal affect on the character of one's earnings-- that is, it does not make earnings, which otherwise are not, into either 26 USC 3121 "wages" or 26 USC 3401 "wages".)

* * *

NOTE: Some are allowing themselves to be misled or distracted in regard to this subject by references to federal-retirement-benefit-vestiture within certain statutes, such as that at 5 USC 552a:

"(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits)."

(which is, by the way, just a "this section only" specification relating to federal authority to keep records...). Being shown the terms "entitlement" and "retirement benefits", they imagine that this language constitutes evidence that Social Security is an "entitlement" in a legal sense. However, the programs referred to are not Social Security and Medicare, but rather are the *"retirement program(s) of the Government of the United States"* (provisions of which can be seen elsewhere in the same title).

* * *

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On another front, general misunderstanding of the true nature of Social Security, and of the context and meaning of language such as that in 5 USC 552a(13) is being abused with the promotion of the bizarre proposition that anyone having Social Security "income" taxes extracted from them are therefore "federal personnel", (and therefore are properly subject to the tax, in an interesting example of circular reasoning...), or are electing to be considered as such. That is, the misunderstanding of Social Security to be a legal entitlement is exploited to suggest that the reference in 5 USC 552a(13) to those *"entitled to receive immediate or deferred retirement benefits"* should be read as including people who have paid Social Security taxes (and are therefore imagined to be vested in benefits under the program). Then, goes the argument, since the subparagraph defines "federal personnel" as those *"entitled to receive either immediate or deferred retirement benefits"* (a class to which it is to be imagined those who have paid Social Security taxes belong), everyone who has paid Social Security taxes belongs, *Presto Change-O!*, to the class "federal personnel".

The "argument" concludes with the proposition that THIS is the clever mechanism by which Americans are made subject to the "income" tax (without any effort to address the fact that it is not merely "federal personnel" who are actually so subject, nor even are "federal personnel", except insofar as they engage in taxable activities). To describe the reasoning is to make clear its illegitimacy.

Much as was done by with the abuse of the language of the first half of Treasury Decision 2313 to push the "861 argument" (see 'A Cheap and Nasty Scam' elsewhere in this volume), this distraction relies on its audience not verifying its assertions, and thus not noticing that the immediately preceding subparagraph of the very same section of statute DOES reference mere welfare programs such as Social Security. That subparagraph specifically denominates programs of this sort as

"federal benefit programs", distinguishing them from "retirement programs of the Government of the United States" (and without any references therein to "federal personnel"):

"(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals;"

Although it is not necessary to further illuminate this distinction, elsewhere in the same statute a competent researcher will find language clearly doing just that, such as the following subparagraph of 5 USC 552a(o)(1):

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

- (i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and*
- (ii) applicants for and holders of positions as Federal personnel,*

By the way, look at what the IRS has to say to those federally-connected entities making payments to persons whom they have no reason to believe have ever been associated with a Social Security number:

Frequently Asked Questions about Backup Withholding

What is a Taxpayer Identification Number (TIN)?

A TIN is one of the following four numbers.

- 1. A Social Security Number (SSN)*
- 2. An Employer Identification Number (EIN)*
- 3. An IRS individual taxpayer identification number (ITIN). Aliens who do not have an SSN, and are not eligible to get one should get an ITIN. Form W-7, Application for IRS Individual Taxpayer*

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Identification Number, is used to apply for an ITIN.

- 4. An Adoption Taxpayer Identification Number (ATIN). An ATIN is a temporary tax identification number issued for a child born in the U.S. An ATIN is used as an identifying number if the child is not eligible for an SSN.*

What should I do if a payee refuses or neglects to provide a TIN?

Begin backup withholding immediately on any reportable payments. Do the required annual solicitation (request) for the TIN. Backup Withhold until you receive a TIN.

Should I backup withhold on a payee who is a nonresident alien?

Yes. A nonresident alien is subject to backup withholding unless you have a signed Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, or W-8, Certificate of Foreign Status, on file. Nonresident aliens are subject to backup withholding, and identified via Form W-8BEN.

Note the revealing qualifier in the language above: "***Begin backup withholding immediately on any reportable payments.***" The issue is the nature of the activity in connection with which the payment is made (which is typically presumed to be a "taxable activity" when the payor is-- or is presumed to be-- a federal entity)-- NOT whether or not the payee has or has furnished a Social Security number.

DATE

Social Security Administration

Philadelphia Region

"Committed to Quality and Creativity in Public Service"

Refer to:

401 E. Louthier Street
Carlisle, PA 17013
(717) 243-0085 Ext.:
May 22, 1998

Mr. Mark R. James

Dear Mr. James:

I am responding to your recent inquiry concerning the requirements for a person to have and use a Social Security Number.

There is no law on the books which requires a person to have a Social Security Number. The Social Security Administration (SSA) issues numbers to persons who properly request them. SSN's are issued to report earnings and serve as taxpayer identification numbers. Once an SSN is issued SSA has no control over who might ask for the number.

The Internal Revenue Service (IRS) uses the SSN for tax collection purposes. Penalties and requirements are given in the Internal Revenue Code and IRS regulations. Employers can be penalized for non compliance of tax laws.

I have enclosed a copy of a few pages from SSA's Program Operations Manual which deal with the topic. Any questions you have about the use of the SSN should be directed to the IRS.

Sincerely,



Richard L. Hewitt
District Manager

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SOCIAL SECURITY

COPY

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QR3572

January 27, 2009

The Honorable Gus Bilirakis
House of Representatives
Washington, D.C. 20515

Dear Mr. Bilirakis:

This letter is in response to your inquiry on behalf of Mr. C [redacted] D [redacted], who contacted you concerning the need for a Social Security number (SSN).

The Social Security Act does not require a person to have an SSN to live and work in the United States, nor does it require an SSN simply for the purpose of having one. However, if someone works without a number, we cannot properly credit the earnings for the work performed, and the worker may lose any potential entitlement to Social Security benefits.

Other laws require people to have and use SSNs for specific purposes. For example, the Internal Revenue Code (26 U.S.C. 6109 (a) and applicable regulations (26 CFR 301.6109-1 (d)) require a person to get and use a number on tax documents and to furnish it to any other person or institution (such as an employer or a bank) that is required to provide the Internal Revenue Service (IRS) information about payments to that person. There are penalties for failure to do so. The IRS also requires employers to report the number with employees' earnings. In addition, people filing tax returns for taxable years after December 31, 1994, generally must include the number of each dependent.

The Privacy Act regulates the use of SSNs by government agencies. They may require a number only if a law or regulation either orders or authorizes them to do so. Agencies are required to disclose the authorizing law or regulation. If the request has no legal basis, the person may refuse to provide the number and still receive the agency's services.

We hope that this information will help you respond to Mr. D [redacted]. Please let us know if we can be of further assistance.

[redacted]

Sincerely,

Sheryll Ziporkin

Sheryll Ziporkin
Associate Commissioner
Office of Public Inquiries

Think about this as well: A Social Security number is assigned to most people as a minor, if not at birth, by action of another party (a parent, usually). There is no provision in law for expunging the number, its assignment, or the records associated with it by the government (in the sense of simply

wiping them all out because the individual involved wishes them gone). Does anyone really imagine that a minor child can be thus made irrevocably subject to a tax-- or any other legal consequence or effect? This is absurd.

Further, let's not forget the decades of implementation and enforcement of the "income" tax before the institution of Social Security and its numbers in the late 1930s...

The simple and sordid reality is that to the extent that it is not just a tax-agency seeding of the "tax honesty" community with deliberate distractions and disinformation, notions about the "income"-tax-related significance of Social Security numbers are just erroneous "theories" in search of facts, rather than facts being considered in the formulation of legitimate theories.

P. S. The fact that a payor may have an EIN ("Employer Identification Number")-- or that such a payor's payee may use such a number to help identify the payor-- is also immaterial to the issue of the "income" tax, as regards payments made to another. Although only actual "taxpayer" entities need such numbers, they are used for several purposes not necessarily involving "employment", "employees", or activity as an "employer". This is pointed out in the Internal Revenue Manual:

4.6.1.2.2 (06-20-2002)

Employer Identification Number (EIN)

1. *The EIN is a nine-digit number issued by IRS to identify the tax accounts of employers and certain others that have no employees. The digits are arranged as follows: 00-0000000. For more information, see Publication 1635, Understanding Your EIN.*
2. *An EIN is required if a taxpayer:*
 - A. *Pays wages to one or more employees, including household employees;*
 - B. *Is required to have an EIN to use on any return, statement, or other document, even*

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if not an employer; e.g., withholding agent required to withhold taxes;

C. Files a Schedule C, C-EZ, or F and has a Keogh plan or is required to file excise, employment, information, or alcohol, tobacco, and firearms returns. See the instructions to Form SS-4, Application for Employer Identification Number, for the complete list of taxpayers who must have an EIN.

Needless to say, what a payor chooses to believe to be true about itself does not establish anything as true about anyone else, even someone who uses an applied-for and assigned "EIN" in identifying that payor. If your neighbor informed you that he was known to the town council as "The Queen of Sheba", and you, having occasion to do so used the title when communicating with the town council, your neighbor would not thereby become the Queen of Sheba. Nor would you become a Sheban (or whatever) simply using that title, or by virtue of doing business with your eccentric neighbor...