

## Wages (26 U.S.C. § 3401) And Substantive Regulations

### [\[Onliner For Wages\]](#)

This is one of the questions that comes up concerning the Internal Revenue Service (IRS), is do you and I have *wages*. This is a limited discussion of the term **wages** as used by the IRS in the Internal Revenue Code (IRC). Other subjects that I have researched will be stated and presumed as true to limit this issue just to *wages*.

A *term* is a specific word or words that are defined to have a particular unique use and/or application in the IRC and the United States Code (U.S.C.). Earlier law of the several States prior to the civil war was written in words so that everyone could understand the Law without the use of *terms*. But since the establishment of the provisional military governments after the civil war the different fictional jurisdictions require the use of *terms* to define and hide the Law that an average man or woman should be able to understand. And further, the Law is codified so as to terminate the prior Law (common law) and implement the Roman Civil Law known to us as Code.

Under the War Powers of the Congress and President since the Civil War, and by and through though the Reconstruction Acts after the Civil War, there are no States rights and the rights of the people as the sovereigns with a limited delegation of Power by and through a constitution to a lawful government no longer exists today. But our Constitutional Republic can be obtained again by the people petitioning and mandating that Congress and the President surrender all of their War Powers by their signatures.

The first of many problems is that the IRS is an agency. Of course for an agency to have application to us, there must be delegation of Power, which as I understand it today is by and through the Social Security Number and is probably tied into the Trading with the Enemy Act - having seen evidence of this in the regulations.

As an agency, the IRS must publish regulations in the Code of Federal Regulations (CFR) that have application to us, the people. But a very definite problem exists in that this rule of the people by legal notice in the CFR's contains basically **three** different types of regulations. The three types are the **substantive regulations**, *administrative regulations* and *interpretative regulations*. It would

also be correct to state that there are *substantive regulations* and *interpretative regulations*, which the *interpretative* include and contain housekeeping regulations and administrative type regulations.

So the next obvious question is do any of these regulations apply to me? The answer to this question is that only regulations that have the **force and effect of law** are of the class of known as **substantive regulations** that affect my individual rights and obligations. See *Chrysler v. Brown, infra*. So the next obvious determination that must be made is if the CFR's contain all of these different types of regulations, how do I identify the **substantive regulations**.

All **substantive regulations** must have a particular Act of Congress in the credits field to show the authority of the regulation. Almost all of the regulations have the bracketed "[ ]" area at the bottom regulations, but only a few of them have in **addition** to the bracketed area, an area in parenthesis "( )" with the word "Authority" followed by the U.S.C. and/or also the statute designation such as "68A Stat. 917".

Now, to hide the **substantive regulations** from detection, in the CFR's the IRS will also assemble a list of **substantive regulations** in a certain area in a list, but at the bottom of a specific regulation, you will not see the expected **substantive regulation** designation to be able to quickly make a determination if is of the **substantive regulation** type. This will be demonstrated by two lists of **substantive regulations** that are included in this article concerning wages.

#### **CFR Authority for Substantive Regulations**

Contained in the Code of Federal Regulations (hereafter "CFR") in 1 CFR §22.2, the following clearly mandates that the authority be contained in parenthesis at the bottom of the text, to wit:

**Sec 22.2 Authority citation.**

The **authority** under which an agency issues a notice shall be **cited in narrative form within text** or in **parentheses** on a **separate line following text**. [Emphasis added]

#### **Agency is Responsible for its Regulations of Authority**

Contained in the CFR's, the agency (being the IRS) is clearly responsible for the correctness of its regulations and this is found in 1 CFR § 21.41, to wit:

Sec. 21.41 Agency responsibility.

(a) **Each issuing agency is responsible for the accuracy and integrity of the citations of authority in the documents it issues.**

(b) Each issuing agency shall formally amend the citations of authority in its codified material to reflect any changes therein. **[Emphasis added]**

#### **IRS must follow the Decisions of the Supreme Court**

The reason for using the decisions of the Supreme Court of the United States versus the appellate courts of the circuits is contained in the Internal Revenue Manual in "4.10.7.2.9.8. IMPORTANCE OF COURT DECISIONS", the IRS admits that the IRS **must follow** the decisions of the Supreme Court of the United States, to wit

#### **4.10.7.2.9.8. IMPORTANCE OF COURT DECISIONS**

(Approved 5-14-99)

(1) Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.

(2) Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. **The Internal Revenue Service must follow Supreme Court decisions.** For examiners, Supreme Court decisions have the same weight as the Code.

(3) Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated. **Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers. [Emphasis added]**

Of course we must be aware of the fact that the IRM is merely directory and not mandatory upon the IRS. This will be addressed *infra*.

Also contained in this IRM, the tyranny of the IRS is clearly demonstrated as it "deems" that the "Code" and the Supreme Court decisions are the same for examiners, to the exclusion of all other courts. But the Plaintiff relies upon the adjudged decisions of the Supreme Court of the United States as the law of the land arising under Article VI of the Constitution of the United States, and though not mandatory upon the IRS, still uses the IRS Manual, *supra*, concerning the IRS's position.

#### **Substantive Regulations**

It has been held in the adjudged decision of the Supreme Court of the United States and citing other adjudged decisions of the Supreme Court of the United States that only a **substantive regulation** has the **force and effect of law** and it has a specific process accorded to it by the APA to have "**force and effect of law**" and that for said substantive regulation to be "**affecting individual rights and obligations**", the procedure must be followed explicitly. And further, to have this "**force and effect of law**", there must be a **nexus between the regulations and some delegation of the requisite legislative authority by Congress.**" And further, the "authority by governmental departments and agencies **must be rooted in a grant of such power by the Congress** and subject to limitations which that body imposes." This is found in the adjudged decision of *Chrysler Corp. v. Brown*, 441 U.S. 281, 295, 296, 301, 302, 303, (1979), to wit:

[2] It has been established in a variety of contexts that properly promulgated, substantive agency regulations have the "force and effect of law." [FN18] This doctrine is so well established that agency regulations implementing federal statutes have been \*296 held to pre-empt state law under the Supremacy Clause. [FN19] It would therefore take a clear showing of contrary legislative intent before the phrase "**authorized by law**" in § 1905 could be held to have a narrower ambit than the traditional understanding.

**FN18.** *E. g., Batterton v. Francis*, 432 U.S. 416, 425 n. 9, 97 S.Ct. 2399, 2405, 53 L.Ed.2d 448 (1977); *Foti v. INS*, 375 U.S. 217, 223, 84 S.Ct. 306, 310, 11 L.Ed.2d 281 (1963); *United States v. Mersky*, 361 U.S. 431, 437-438, 80 S.Ct. 459, 463, 4 L.Ed.2d 423 (1960); *Atchison, T. & S. F. R. Co. v. Scarlett*, 300 U.S. 471, 474, 57 S.Ct. 541, 543, 81 L.Ed. 1375 (1937).

\* \* \*

. . . to have the "force and effect of law," there must be a **nexus between the regulations and some delegation of the requisite legislative authority by Congress**

\* \* \*

In order for a regulation to have the "force and effect of law," it must have certain substantive characteristics and be the product of certain procedural requisites. The central distinction among agency regulations found in the APA is that between "substantive rules" on the one hand and "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice" on the other. [FN30] A "substantive \*302 rule" is not defined in the APA, and other authoritative sources essentially offer definitions by negative inference. [FN31] But in *Morton v. Ruiz*, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974), we \*\*1718 noted a characteristic inherent in the concept of a "substantive rule." We described a substantive rule--or a

"legislative-type rule," *id.*, at 236, 94 S.Ct., at 1074--as one "affecting individual rights and obligations." *Id.*, at 232, 94 S.Ct., at 1073. This characteristic is an important touchstone for distinguishing those rules that may be "binding" or have the "force of law." *Id.*, at 235, 236, 94 S.Ct., at 1074.

\* \* \*

That an agency regulation is "substantive," however, does not by itself give it the "force and effect of law." The legislative power of the United States is vested in the Congress, and the exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to limitations which that body imposes. As this Court noted in *Batterton v. Francis*, 432 U.S. 416, 425 n. 9, 97 S.Ct. 2399, 2405 n. 9, 53 L.Ed.2d 448 (1977)

\* \* \*

Likewise the promulgation of these regulations must conform with any procedural requirements imposed by Congress. *Morton v. Ruiz*, *supra*, 415 U.S. at 232, 94 S.Ct. at 1073. For agency discretion is limited not only by substantive, statutory grants of authority, but also by the procedural requirements which "assure fairness and mature consideration of rules of general application." *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759, 764, 89 S.Ct. 1426, 1429, 22 L.Ed.2d 709 (1969). [Emphasis added]

#### Some other Cases involving *Chrysler v. Brown* and IRS

Please take Notice that the following cases are from the purported Article I courts established by Congress in the Court of Claims and the United States Tax Court, and the United States District Court that purports to be *de jure* Article III court, but isn't. The intent presented here is to establish that these courts also acknowledge substantive regulations and *Chrysler v. Brown*, *supra.*, in cases involving the IRS and the IRC/U.S.C. sections of Title 26 U.S.C. No analysis of said cases is presented.

**Case 1.** In the Court of Claims, we find *American Standard, Inc v. The United States*, 602 F.2d 256 (1970) quoting *Chrysler v. Brown*. As a separate point of interest in this case "The UNITED STATES" is used, versus "UNITED STATES of America" as used in the district and circuit courts. Some of the sections in said case are, to wit:

The delegation of rulemaking power is presently found in I.R.C. s 1502, as follows:

The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of **corporations** making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. **[Emphasis added]**

There are **substantive regulations** for said fictional entities under I.R.C. sec 1502, as it should be.

Another section from *American Standard*, to wit:

5 U.S.C. s 553(b), (c) and (d) requires that notice of proposed rulemaking be published in the Federal Register 30 days prior to the adoption of a regulation. Such notice includes 'either the terms or substance of the proposed rule or a description of the subjects and issues involved.' 5 U.S.C. s 553(b)(3). The purpose of this procedure is 'to assure fairness and mature consideration of rules of general application,' NLRB v. Wyman- Gordon Co., 394 U.S. 759, 764, 89 S.Ct. 1426, 1429, 22 L.Ed.2d 709 (1969), and to give affected members of the public an opportunity to comment. See Texaco, Inc. v. FPC, 412 F.2d 740, 744 (3d Cir. 1969). **A substantive rule is invalid if it is not promulgated in accordance with the notice requirements of the APA. See Chrysler Corp. v. Brown, 441 U.S. 281, ---, 99 S.Ct. 1705, 1723--1725, 60 L.Ed.2d 208 (1979).** **[Emphasis added]**

\* \* \*

**This is a delegation of law-making authority, as distinguished from mere interpretation of law, and any failure to follow prescribed \*270 statutory procedure makes the regulation void as to anyone adversely affected by it.** Chrysler Corp. v. Brown, 441 U.S. 281, 99 S.Ct. 1705, 60 L.Ed.2d 208 (1979). Defendant does not deny that the change makes a material shift in the tax liability of many consolidated groups. It only says the change is neutral in its overall effect on the revenue. Thus the change operates to shift a tax burden (here, a substantial one) from some groups to others. **[Emphasis added]**

**Case 2.** In the United States Tax Court in *Capitol Federal Savings & Loan Association & Subsidiary v. Commissioner of Internal Revenue*, 96 T.C. 204 (1991), we find these sections in said case concerning *Chrysler v. Brown* and the IRS, to wit:

We note at the outset that a substantial body of law exists regarding the judicial review of agency discretion. **Agencies are not required, at the risk of invalidation of**

their actions, to follow all of their rules. United States v. Caceres, 440 U.S. 741, 754 n. 18 (1979). Generally, agencies are bound by regulations having the force and effect of law. Chrysler Corp. v. Brown, 441 U.S. 281, 295 (1979); Vitarelli v. Seaton, 359 U.S. 535 (1959); Service v. Dulles, 354 U.S. 363 (1957); United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954); Boulez v. Commissioner, 810 F.2d 209, 215 (D.C. Cir. 1987), affg. 76 T.C. 209 (1981).

It is well established, however, that general statements of policy and rules governing internal agency operations or "housekeeping" matters, which do not have the force and effect of law, are not binding on the agency issuing them and do not create substantive rights in the public. Sullivan v. United States, 348 U.S. 170 (1954) (Attorney General's Circular Letter on seeking criminal indictments under income tax laws); \*217United States v. Will, 671 F.2d 963, 967 (6th Cir. 1982) (Internal Revenue Manual); Einhorn v. DeWitt, 618 F.2d 347, 349-350 (5th Cir. 1980) (Statement of Procedural Rules); United States v. Thompson, 579 F.2d 1184 (10th Cir. 1978) (Attorney General's prosecutorial guidelines); United States v. Fritz, 580 F.2d 370 (10th Cir. 1978) (Attorney General's prosecutorial guidelines); Smith v. Commissioner, 478 F.2d 398 (5th Cir. 1973) (Statement of Procedural Rules); Rosenberg v. Commissioner, 450 F.2d 529, 531 (10th Cir. 1971), affg. a Memorandum Opinion of this Court (Statement of Procedural Rules); United States v. Lockyer, 448 F.2d 417 (10th Cir. 1971) (Internal Revenue Manual); Luhring v. Glotzbach, 304 F.2d 560 (4th Cir. 1962) (Statement of Procedural Rules); Cataldo v. Commissioner, 60 T.C. 522, 523 (1973), affd. per curiam 499 F.2d 550 (2d Cir. 1974) (Statement of Procedural Rules); Flynn v. Commissioner, 40 T.C. 770, 773 (1963) (Statement of Procedural Rules).

Revenue procedures generally have been held to fall into such latter class of nonbinding rules, and courts have refused to invalidate the Commissioner's determinations arising out of his failure to abide by them. Cleveland Trade Co. v. United States, 421 F.2d 475, 481-482 (6th Cir. 1970); Geurkink v. United States, 354 F.2d 629, 632 (7th Cir. 1965); Schwager v. Commissioner, 64 T.C. 781, 787 (1975); Collins v. Commissioner, 61 T.C. 693, 701 (1974); Crocker v. United States, 323 F. Supp. 718, 722-723 (N.D. Miss. 1971). See also sec. 601.601(d)(2)(i)(b), **Statement of Procedural Rules**; Rev. Proc. 89- 14, 1989-1 C.B. 814 (definition of a revenue procedure). [Emphasis added]

Also Notice in this case the IRM, and other procedural Rules of the Attorney General, etc., do not have the force and affect of law. Also note that the Commissioner's determinations will not be invalidated if in conflict with the IRM, etc.

**Case 3.** In the United States District Court in the case of *First Federal Savings and Loan Associatin of Pittsburgh v. Goldman's and the United States of American Internal Revenue Service*, 644 F.Supp 101(1986), we find *Chrysler v. Brown* and the IRS. Also interesting in this case is the defendant, being "The United States of America Internal Revenue Service" used altogether as one common entity. In this case we find the infamous sections of title 26 being sections 6331 and 6334 being addressed and it is a great example of an Attorney asking the wrong question by using the IRM as an authority and losing their case for his clients. Contained in this case, we find the following, to wit:

**Generally, a regulation or procedure is binding upon an agency when it has the force and effect of law. *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1962). A regulation has the force and effect of law when it is promulgated by an agency pursuant to a mandate or delegation of authority by Congress and involves individual rights or obligations. *Chrysler Corp. v. Brown*, 441 U.S. 281, 99 S.Ct. 1705, 60 L.Ed.2d 208 (1979). Conversely, interpretive rules, general statements of policy, or rules of agency organization, procedure or practice are not binding upon the agency. *Chrysler, supra*. The courts also have recognized a distinction between mandatory procedures, which are binding upon the agency, and directory procedures, which have no binding effect upon the agency. See, e.g., *\*103Reph v. United States*, 615 F.Supp. 1236 (N.D.Ohio 1985); *Luhring v. Glotzbach*, 304 F.2d 560 (4th Cir.1962).**

**[3][4] The procedures set forth in the IRM do not have the effect of a rule of law and, therefore, are not binding upon the IRS. The manual is not promulgated pursuant to any mandate or delegation of authority by Congress. Even if the manual was promulgated pursuant to a Congressional mandate or delegation of authority, the provisions applicable to this case are procedural in nature and do not convey upon the taxpayer any substantive right or obligation. Moreover, the provisions in the IRM are directory rather than mandatory. See, e.g., *Reph, supra* (and cases cited therein).**

**We conclude that the pertinent procedures of the IRM are not binding upon the IRS and convey no rights to taxpayers. Therefore, the Goldmans cannot challenge any alleged noncompliance with these procedures, and the levy of the IRAs, authorized by § 6331, was lawful. Accordingly, the motion of the government for summary judgment is granted.. [Emphasis added]**

**Case 4.** In the United States Tax Court in the case of *Miller v. Commissioner of Internal Revenue*, 81 T.C.M. (CCH) 1258 (2001) we find *Chrysler v. Brown* and the IRS. Contained in said case is the following, to wit:

In the face of **hornbook law** that respondent's procedural rules, including the reopening procedures under Rev. Proc. 94-68 and section 4023.2 of the **Manual, supra, are merely directory, not mandatory**, see *Collins v. Commissioner*, 61 T.C. 693, 700-701, 1974 WL 2767 (1974), and that **compliance with directory procedural rules is not essential to the validity of a statutory notice**, so that an alleged violation of these rules provides no basis for invalidating a statutory notice of deficiency, *id.*, petitioner cites *Chrysler Corp. v. Brown*, 441 U.S. 281, 99 S.Ct. 1705, 60 L.Ed.2d 208 (1979), for the proposition that respondent's reopening procedures in Rev. Proc. 94-68, 1994-2 C.B. 803, should have "the force and effect of law".

*Chrysler Corp. v. Brown*, 441 U.S. at 302 (quoting *Morton v. Ruiz*, 415 U.S. 199, 232, 235, 236, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974)), establishes that a regulation or procedure has the force and effect of law when it is promulgated by an agency as a " 'substantive rule' " or a " 'legislative-type rule' " pursuant to a mandate or delegation by Congress " 'affecting individual rights or obligations.' " Conversely, "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice" are not binding upon the agency. *Id.* at 301. Courts have long recognized the distinction between mandatory procedures, which are binding on the agency, and directory procedures, which are not. See *Cleveland Trust Co. v. United States*, 421 F.2d 475 (6th Cir.1970); *Geurkink v. United States*, 354 F.2d 629 (7th Cir.1965); *Luhring v. Glotzbach*, 304 F.2d 560 (4th Cir.1962); *Collins v. Commissioner, supra*; *Notaro v. United States*, 71 AFTR 2d 93- 659, 93-1 USTC par. 50,030 (N.D.Ill.1992); *First Fed. Sav. & Loan Association v. Goldman*, 58 AFTR 2d 86-5612, 86-2 USTC par. 9624 (W .D. Pa.1986).

We are satisfied under the weight of authority that we need not reexamine the well-established law to this effect. [Emphasis added]

**Case 5.** See also *National Treasury Employee Union and U.S. Department of Treasury Internal Revenue Service*, 42 F.L.R.A. 377, citing *Chrysler v. Brown* substantive regulations and for said substantive regulation to have "force and effect of", there must be a nexus between the regulations and some delegation of the requisite legislative authority by Congress.

**Case 6.** In the United States District Court in *National Treasury Employee Union v. Regan*, 685 F.Supp. 1346, we find *Chrysler v Brown* and the IRS and the following, to wit:

The APA requires agencies to comply with notice and comment requirements whenever they engage in "rulemaking." 5 U.S.C. § 553. The APA's broad definition of the term "rule" includes "virtually every statement an agency may make." *Avoyelles Sportsmen's League, Inc. v. Marsh*, 715 F.2d 897 (5th Cir.1983); 5 U.S.C. § 551(4). Exceptions to the notice and comment requirements are generally read narrowly. *Baylor University Medical Center v. Heckler*, 758 F.2d 1052, 1058 (5th Cir.1985). One exception is that the notice and comment requirements apply to "substantive" or "legislative" rules, but not agency statements which are merely "interpretive." 5 U.S.C. § 553(b)(3)(A). *Chrysler Corporation v. Brown*, 441 U.S. 281, 302, 99 S.Ct. 1705, 1718, 60 L.Ed.2d 208 (1979); *Avoyelles*, *supra* at 908; *Batterton v. Marshall*, 648 F.2d 694 (D.C.Cir.1980).

[13] Interpretive rules are non-binding agency statements as to what the agency believes a statute, order, or regulation means. *Avoyelles*, *supra*, 648 F.2d at 702; *Chamber of Commerce v. OSHA*, 636 F.2d 464 (D.C.Cir.1980). Interpretive rules "only provide a 'clarification of statutory language,' " ... "the interpreting agency only 'reminds affected parties of existing duties.' " *Chamber of Commerce*, *supra*, 636 F.2d at 469, quoting *Joseph v. United States Civil Service Commission*, 554 F.2d 1140, 1153 (D.C.Cir.1977) and *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 876 n. 153 (D.C.Cir.1979).

[14] Substantive or legislative rules, on the other hand, implement a statute or rule. *Chamber of Commerce*, *supra*, 636 F.2d at 469. They "grant rights, impose obligations, or produce other significant effects on private interests." *Batterton v. Marshall*, *supra*, 648 F.2d at 702. Substantive rules may only be issued by agencies which, like defendant OPM, have legislative rule-making authority. *Ibid.* [Emphasis added]

Notice that "rules" are quite broad, and also notice that **substantive regulations** grant rights, impose obligations, or produce other significant effects on private interests, see *Batter v. Marshall*, *supra*.

**Case 7.** In the United States District Court in *United States of America v. Burlington Resources Oil and Gas Co.*, 86 A.F.T.R.2d 2000-5282, we find the *Chrysler v. Brown* and the IRS, and the following, to wit:

Generally, agencies are bound only by regulations having the force and effect of law. It is well established, however, that general statements of policy and rules

governing internal agency operations or "housekeeping" matters, which do not have the force and effect of law, are not binding on the agency issuing them and do not create substantive rights in the public. *Chrysler Corp. v. Brown*, 441 U.S. 281, 295, 99 S.Ct. 1705, 60 L.Ed.2d 208 (1979); *Vitarelli v. Seaton*, 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed.2d 1012 (1959); *Service v. Dulles*, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *Boulez v. Commissioner*, 810 F.2d 209, 215 (D.C.Cir.1987), affg. 76 T.C. 209, 1981 WL 11356 (1981).

\*10 The Internal Revenue Manual's provisions are not mandatory on either the IRS or the taxpayer. *United States v. Will*, 671 F.2d 963, 967 (6th Cir.1982) (IRM provisions are not mandatory and do not confer any rights upon taxpayers); *United States v. Arthur Andersen & Co.*, 598 F.2d 610 (2d Cir.1979); *Rosenberg v. Commissioner of Internal Revenue*, 450 F.2d 529, 532- 33 (10th Cir.1971) (revenue procedures are directory and not mandatory); *Cleveland Trust Co. v. United States*, 421 F.2d 475, 481-82 (6th Cir.), cert. denied, 400 U.S. 819, 91 S.Ct. 35, 27 L.Ed.2d 46 (1970). *United States v. Caceres*, 440 U.S. 741, 754 n. 18, 99 S.Ct. 1465, 59 L.Ed.2d 733 (1979). [Emphasis added]

The "nexus between the regulations and some delegation of the requisite legislative authority by Congress" is found in the following cases examining and citing *Chrysler v. Brown*, to wit:

1. *National Ass'n of Pharmaceutical Mfrs. V. Food and Drug Administration*, 637 F.2d 877 (2<sup>nd</sup> Circuit)(1981); and,
2. *U.S. Walter Dunlap & Sons, Inc*, 800 F.2d 1232 (3<sup>rd</sup> Circuit)(1986); and,
3. *Parkridge Hospital, Inc. v. Califano*, 625 F.2d 719 (6<sup>th</sup> Circuit)(1980); and,
4. *Save Our Valley v. Sound Transit*, 335 F.3d 932 (9<sup>th</sup> Circuit)(2003) in dissent; and,
5. *Jackson v. First Federal Sav. Of Arkansas, F.A.*, 709 F.Supp. 887 (E.D.Ark)(1989); and,
6. *J.H. Lawrence Co. v. Smith*, 545 F.Supp. 421 (D.Md.)(1982); and,
7. *S.J. Groves & Sons Co. v. Fulton County*, 696 F.Supp 1480 (N.D.Ga.)(1987); and,
8. *Brookwood Medical Center, Inc. v. Califano*, 470 F.Supp. 1247 (N.D.Ga)(1979); and,
9. *National Ass'n of Pharmaceutical Mfrs. V. Food and Drug Administration*, 487 F.Supp 412 (S.D.N.Y)(1980); and,

10. *U.S. v. Mikolaitis*, 682 F.Supp 798 (M.D.Pa.)(1988).

It is now self-evident that there must be a nexus between the Congress and the regulation if a regulation is to have force and effect of law and to be a substantive regulation. It is also self-evident that the IRS is not exempted from said mandatory requirements of substantive regulations and the Administrative Procedure Act (APA).

**26 U.S.C. § 3401 - Substantive Regulations**

Now, with it established that the only way for us to determine if a particular regulation has application to us is to look up the particular IRC/U.S.C. section and then to find the **substantive regulation(s)** promulgated by the IRS pursuant to said IRC/U.S.C. section, let us check on 26 U.S.C. § 3401.

The only section of 26 U.S.C. § 3401 that has any **substantive regulations** is 26 U.S.C. § 3401(a)(6), to wit:

"(a)(6) for such services, performed by a **nonresident alien individual**, as may be designated by regulations prescribed by the Secretary;" **[Emphasis added]**.

The only substantive regulations under 26 U.S.C. § 3401 in total, i.e. being 26 U.S.C. § 3401(a)(6) are the following:

1. **26 CFR 1.1441-2** [Nonresident Aliens and Foreign Corporations] issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6); and,
2. **26 CFR 1.1441-3** [Nonresident Aliens and Foreign Corporations] issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(1); and,
3. **26 CFR 1.1441-4** [Nonresident Aliens and Foreign Corporations] issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6);; and,
4. **26 CFR 1.1441-5** [Nonresident Aliens and Foreign Corporations] issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(b)(11); and,
5. **26 CFR 1.1441-6** [Nonresident Aliens and Foreign Corporations] issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6); and,
6. **26 CFR 1.1441-7** [Nonresident Aliens and Foreign Corporations - **Withholding Agent Defined - IMPORTANT**] issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(1); and,
7. **26 CFR 1.1461-1.** [Nonresident Aliens and Foreign Corporations] issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6)); and,

8. **26 CFR 1.1461-2** [Nonresident Aliens and Foreign Corporations] issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(1); and,
9. **26 CFR 1.1462-1** [Nonresident Aliens and Foreign Corporations] issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(1); and,
10. **26 CFR 31.3401(a)(6)-1** [Collection of Income at the Source - Nonresident Aliens Individuals] issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6); and,
11. **26 CFR 301.7605-1** [Discovery of Liability and Enforcement of Title Examination and Inspection [still nonresident alien because of 1441(c)(4) and 3401(a)(6)]] issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(1); and,
12. **26 CFR 301.7701-16** [Definition of **Withholding Agent - See 1.1441-7(a), supra., IMPORTANT** ] issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(1).

**26 U.S.C. § 1441** is the withholding of tax on nonresident aliens, and 26 U.S.C. § **1441(c)(4)** as used *supra.*, is as follows:

"**(4) Compensation of certain aliens.**--Under regulations prescribed by the Secretary, compensation for personal services may be exempted from deduction and withholding under subsection (a)."

**26 U.S.C. § 7701** is definitions used in the Title 26, and 26 U.S.C. § 7701(b)(11) is as follows;

"**(b) Definition of resident alien and nonresident alien:**  
**(11) Regulations.**--The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection."

**26 U.S.C. § 7701(1)** is as follows:

**(1) Regulations relating to conduit arrangements.**--The Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by this title.

**Do you and I have Wages as used in  
26 U.S.C. § 3401 by the IRS**

As can be clearly demonstrated, the only substantive regulations under **Wages** in 26 U.S.C. 3401 is concerning nonresident aliens and foreign corporations, and nonresident individuals. This is exactly as it should be to comply with the Constitution of the United States, the laws of the United States made pursuant thereof, and the 16<sup>th</sup> Amendment.

And further, the withholding agents are any person, U.S. or foreign that has control of an item of income of a foreign person. See 26 CFR 301.7701-16 and 26 CFR 1.441-7. There is no other definition of "withholding agent" that I can find in the regulations. This one is correct, as the substantive regulation is under 26 U.S.C. § 7701 of the definitions in Title 26 with the Act of Congress definition of "withholding agent" being contained in 26 U.S.C. § 7701(a)(16) with all of the withholding agent code sections contained therein being 1441, 1442, 1443 and 1461, which encompasses only all nonresident and foreign corporations.

So, therefore **we have substantive regulations for domestic corporations, we have substantive regulations for nonresident aliens and foreign corporations, and we have substantive regulations for nonresident individuals. But we have no substantive regulations that exist that touch you or me concerning wages**, therefore we can not have and must not have **wages** as defined and used under the perceived authority of the IRS as found in 26 U.S.C. § 3401.

Isn't it interesting that people volunteer for income taxes to which there is no Law under the substantive regulations mandating said compliance except for nonresident aliens and foreign corporations and nonresident individuals. And then for those people that choose not to volunteer, the IRS under the Notice of Lien/Levy process uses the substantive regulations of the Alcohol, Firearm, and Tobacco (ATF) of 26 U.S.C. § 6331, 6334, 6334, and 6343 without disclosing same and it not being understood by us, with the penalties under 26 U.S.C. § 6651 of the ATF.

Ralph Kermit Winterrowd 2<sup>nd</sup>