ATTACHMENT A
Part A

District Director
Los Angeles Office
Internal Revenue Service
Department of the Treasury

December 28, 2000

RE: This request for a Ruling or Determination Letter is made per 26CFR601.201(a) and (e)(1).

Dear Sir or Madam,

The purpose of this request is to establish our status, as common law employees, in relation to the definition of "person" under the requirements of 26USC6012, based upon the criteria set forth in 26USC7701(a)(1)&(14), 26CFR301.7701-1, -2, -3 and -6, 26CFR31.0-2(a)(8), 26CFR31.3121(d)-1(c)(1)&(2), 26CFR31.3401(c)-1(a)&(c), and 26CFR601.103(a).

The reason for our request is founded upon six years of research into the history and progression of the federal income tax. This history is taken from the Congressional Record, Committee Reports, Court cases, Documents prepared by the Congressional Research Service, The Statistical Abstract Of The United States (1918-1998), and other cited materials. We have attached our bibliography for your review.

As you know the federal income tax is levied upon "net-income", not gross receipts or gross income. As such, it is a tax upon "the privilege of receiving gain", from business transactions or other sources of profits. Employee "wages" do not represent "net-income", nor are they derived from "business transactions" creating profit. The following statements express our point. First, from Commissioner v. Tellier 383 U.S. 687 (1966):

"The object of this bill is to tax a man's net income; that is to say, what he has at the end of the year after deducting from his receipts his expenditures or losses. …but the tax is framed for the purpose of making a man pay upon his net income, his actual profit during the year." (Citing the Congressional Record, Vol. 50, p.3849)

Second: From McDonald v. Commissioner 323 U.S. 57 (1944), Justice Black's dissenting opinion page 66-7:

"Taxation on net, not on gross, income has always been the broad basic policy of our income tax laws. Net income may be defined as what remains out of the gross income after subtracting the ordinary and necessary expenses incurred in efforts to obtain

or to keep it."

Third: From the Congressional Record of October 16, 1913 and the synopsis of the first income tax implemented under the 16th Amendment. The synopsis is by Judge Hull the person responsible for writing the Revenue Act, it is found on page 5679, Volume 50, Part 6:

"The Treasury regulations soon to be prepared will make clear to every taxpayer the requirements of the law and its application to income derived from the various kinds of business."

Our question is simple: Are we, as employees (labor for hire under the master-servant relationship, common law), classified as "Persons required to make returns of income" under 26USC6012; in other words, are we classified as "sole-proprietorships"? If so, please provide the documentation; i.e. the Constitutional basis, the Statute and the court cases upholding such classification.

My wife and I are both "common law employees" [i.e. labor for hire] working for San Bernardino County; we are not "elected or appointed officers", or independent contractors. I am also an elected board member of our local "Special District" water system and receive $100 per meeting, usually $2400 per year. I use my private vehicle for County work and am reimbursed for mileage expense. We do not fall within the phrase "through or by means of which any business, financial operation or venture is carried on", nor are we "engaged in the pursuit of an independent trade, business, or profession, in which we offer our services to the public". We do not own any business related property or real estate through or by means of which income is produced or acquired. We both, individually, fall within the classification of "labor for hire", i.e. "employee" under the legal relationship of employer and employee (common law master-servant relationship).

Under penalties of perjury, we declare that we have examined this request, including accompanying documents, and to the best of our knowledge and belief, the facts presented in support of the requested ruling or determination letter are true, correct, and complete.

Respectfully submitted,

John Gary Given Sr.

Michele Louise Given

ATTACHMENT A
Part B

This request for a Ruling or Determination Letter is also made per 26CFR601.201(a) and (e)(1). The purpose is to establish the proper procedure for filing our 1998, 1999, 2000 and 2001 W-4 forms, and is requested per 26CFR31.3402(f)(2)-1(g) through (g)(5). This request is made a part of and in addition to Attachment A, Part A.

The basis of this request is founded upon the following quotations taken from Title 26 of the Code of Federal Regulations.

First: 26CFR601.103(a) "Summary of general tax procedure". This section sets forth the basis of the Code as being that of "self-assessment"; i.e. each "taxpayer" is to determine whether or not they are liable for the filing of a tax return and the amount of "income" reported thereon. (The purpose of Part A is to determine our status as "taxpayers" or "persons", according to the Code, so that we may properly comply with this section)

Second: 26CFR1.1-1(a) in reference to the income tax on individuals.

"In general, the tax is payable upon the basis of returns rendered by persons liable therefore (subchapter A (sections 6001 and following), chapter 61 of the Code) or at the source of the income by withholding." (The purpose of Part B is to establish the proper procedure for filing the W-4 "withholding" certificate, in compliance with the above requirements.) [Who does the phrase "or at the source of the income by withholding" apply to; the employer or the employee?]

The "withholding" provisions are attributed to the employer and the employer "made liable" for the report and payment of the taxes collected (Subtitle C, subpart E). These taxes are then allowed to the employee as a credit against the liability assessed under Subtitle A of the IRC. For the employee to be able to comply with section 601.103(a) they first must determine whether or not they are the "taxpayer" or "person" made liable for the reporting or filing of tax returns. The apparent method by which this determination is then conveyed is through the W-4 form (26CFR31.3402(f)(2)-1(a)).

The "withholding" provisions are not within themselves an "income tax", nor do they create liability for the payment of income taxes. The sole basis of liability is determined by Subtitle A (26CFR31.3402(n)-1).

The history of "withholding" pre-dates the 16th Amendment, but it was not until 1942 that such "withholding", for income tax purposes, was made applicable to the "wages" earned by employees. The income tax system in place prior to 1944 made it clear that such "wages" were not subject to taxation; being the tax was levied upon "net-income", not gross receipts. The tax today is still levied upon gross "net-income" (line 22 of the 1999 1040 tax return), but now supposedly includes the "wages" (line 7) (gross receipts) earned by employees (is this by law, or by self-assessment?).

We do not protest taxation nor do we suggest that the “Income Tax” is necessarily unconstitutional. We do, however, question the application of an “income tax” levied upon gross receipts (wages). Our “wages” are our only form of subsistence; they are in fact our yearly gross receipts. Our “wages” are not part of, nor paid out of, “net-income” or other “business” related receipts of any kind. We do not fall under the definition of “person” provided by 26CFR301.7701-1, 2, 3, or 6 or 26CFR31.0-2(a)(8), nor the description of “individual” provided by 26CFR31.3121(d)-1(c)(2) or 26CFR31.3401(c)-1(c).

Under penalties of perjury, we declare that we have examined this request, including accompanying documents, and to the best of our knowledge and belief, the facts presented in support of the requested ruling or determination letter are true, correct, and complete.

Respectfully submitted,

John Gary Given Sr.

Michele Louise Given

Supporting Statements

We do not protest taxation or the fact that taxation is not always fair. We do, however, in light of the historical information and the wording of the tax law, question the definition of "Person" under 26USC6012 and 26USC7701, as it applies to us.

The power of Congress to levy taxes is regulated by Article 1, Section 9, Clause 4, Article 1, Section 8 and the 16th Amendment. Article 1, Section 9, clause 4 prohibits any "capitation" Tax from being levied without apportionment. Article 1, Section 8 requires that all excise, impost and duty taxes be uniform throughout the United States. Lastly, the 16th Amendment provides for the taxing of "income", without apportionment. In order to determine the constitutionally of any tax, these questions must be answered: what Article of the Constitution does the particular tax fall under; is that tax levied upon the identified subject by the proper method, and: at what point does a tax cease to comply with those requirements?

The "parallel tables" of code sections lists 26CFR 31, and 301 as being identified with the 26USC7701 definitions. The "Employment Tax" sections are found in 26CFR31 and the general definitions are found in 26CFR301; the term "person" is defined in both.

The Employment Tax section defining the term "person" is 26CFR31.0-2(a)(8). It reads:

"Person includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization or group, ***through or by means of which any business, financial operation or venture is carried on***. It includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity."

The term "partnership and partner" is defined in 26USC7701(a)(2) as:

"The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, ***through or by means of which any business, financial operation or venture is carried on***, and which is not, within the meaning of this title, a trust or estate or corporation; and the term "partner" includes a member in such syndicate, group, pool, joint venture, or organization. (Partnership is included in 26USC7701(a)(1) "Person")

Is the qualifying statement used in the above definitions intended to be restricted to only "syndicates, groups, pools, joint ventures or other unincorporated organizations or groups, or is such statement a general requirement, pertaining to the term "person", in which not all "syndicates, groups, pools, etc. (or employees) fall?

The term "includes" is non restrictive and is interpreted as including others not listed. The one term missing is "employee". Is the "employee" (common law, master-servant

relationship) included by the term "individual" or, excluded by the qualifying statement "***through or by means of which any business, financial operation or venture is carried on"***?

The term "individual", in this case, is described in 26CFR31.3121(d)-1(c)(2) as:

"Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, ***engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public***, are independent contractors and not employees."

The terms physician, lawyer, dentist, etc. identify entities through which the natural person (owner) conducts business or provides professional services. Is the term "employee" then used to identify the entity "employee"(labor for hire under the common law), if so, is that "employee" included within the definition of "person" under 26CFR31.0-2(a)(8)? In other words, is the "employee" (labor for hire/common law) an individual "***through or by means of which any business, financial operation or venture is carried on***" and or, does that "employee", under the master-servant relationship, "***offer their services to the public***"?

According to these code sections, relating to "Employment Taxes", there are at least four qualifications belonging to the classification "individual". First: "***through or by means of which any business, financial operation, or venture is carried on***. Second: "***engaged in the pursuit of an independent trade, business, or profession***". Third: ***they offer their services to the public***. Fourth: they have the ability to hire "employees".

The general definitions are provided by 26CFR301 "Discovery of Liability and Enforcement of Title" sections 7701-1 "Classification of Organizations for federal tax purposes, 7701-2 "Business entities; definitions, 7701-3 "Classification of certain business entities, and 7701-6 "Definition; person, fiduciary. Other sections pertain to trusts and matters not here concerned with. The definition provided in 7701-6 is identical to 31.0-2 (a)(8) except for the qualifying statement, which is not included in 7701-6. The classifications provided in 7701-1, -2, and –3 all pertain to "entities", organizations, sole-proprietorships and or branches or divisions of their owners. The term "individual" is not used except in 7701-6 and the term "employee" does not appear at all in these definitions. All of the identified "entities", i.e. corporations, partnerships, associations, physicians, lawyers, and independent contractors, etc. can be placed within the classifications of 26CFR301.7701-1, -2, or –3.

The fact that the Code of Federal Regulations chose to confine its definitions to ***"organizations", "entities", "sole-proprietorships" and or a "branch or division of its owner***", is a strong indication that the terms "person" and "individual" were not intended (construed) to mean or include the employee (labor for hire), or any natural person apart from such corresponding "entity" "sole-proprietorship", "branch or division of its owner", through or by means of which any business, financial operation or venture is carried on, including the rendering of services to the public. The Pollock Cases referred

to these entities as: “business, privileges and employments” subject to excise taxes. Did the 16th Amendment convert those excise taxes levied upon privileges, measured by income, to Capitation Taxes on labor, measured by wages (gross receipts)?

Considering the history of American taxation up to 1935 and the Social Security Act, there is no supporting documentation indicating that common labor (employees) was subject to any federal taxation based upon employment. Neither the Social Security Act nor the Public Salaries Tax Act of 1939 were constitutional amendments, although the Congressional Record contains statements indicating such might be required.

The Internal Revenue Code of 1939-1953 (Income Tax Regulations) under section 39.21-1 “Meaning of net income” contained this provision:

> “Neither income exempted by statute or fundamental law (constitution), nor expenses incurred in connection therewith, other than interest, enter into the computation of net income as defined by section 21.”

“The power to tax involves the power to destroy” (McCulloch v. Maryland, 17 US 4, Wheat). The power to destroy involves the power to take by taxation, in that there are no Constitutional restraints placed upon Congress as to the amount or percentage of the tax levied. Consider the results in relation to today’s income tax.

Congress has the power and authority to take 100% of income, however they have limited themselves to “taxable income”. So what is the effect on each “person”? In the case of corporations (artificial persons) there is no adverse effect, in that they retain their capital and their ability to continue to operate, as the tax is levied only upon their “profits”. In the case of “business, trades and professions (independent contractors), there is no adverse effect upon the business entity (net-income), so long as the owner has sufficient capital to support themselves. What about the laborer, the “employee’ under the master-servant relationship, common law? A tax of 100% of taxable income would be devastating. Does the 16th Amendment allow Congress to take 100% of the “employee’s” (labor for hire, common law) wages, while at the same time prohibit them from taking anything more than the “net-income” or profits acquired by other “persons”?

Supporting Documentation

Congressional Record of 1909, Volume 50, SJR25, SJR39 and SJR40 (16th Amendment). Congress rejected the proposal of deleting the reference to "direct tax" in Article 1, Section 2, clause 4, and to "and other direct" in Article 1, Section 9, clause 3, which would have made the income tax a "direct tax" on property. Congress never did proposed deleting the reference to "capitation taxes", which would have made the income tax a Capitation tax on labor (people).

Congressional Record of October 9, 1942, Volume 88, page 7987. Statement of Senator George of Georgia: The Victory Tax

If we are going to depart during this war, as an emergency matter, from the concept which has run through our tax system, that is to say, imposing a tax on net-income, there would seem to me to be little or no purpose to the pending proposal if no one would be reached who is not subject to the net-income tax provisions of the bill as passed by the House and as reported to the Senate. In other words, if it would not bring in additional taxpayers; if it would not reach the vast number of income producers who will not pay taxes on net-income, there would seem to be very little reason in departing from the net-income system and going to the gross-income system in collecting a tax."

A "gross income" (meaning "all that come in") tax upon an "employee" is a capitation tax, whereas a "net-income" tax is an excise tax upon the "privilege" of receiving gain. The two are entirely different in principle as well as application.

H.R. 1 (1926) Revenue Act of 1926

Historical information. Changed the definition of "Person" by exchanging the term "natural person" for the term "individual".

H.R. 7260 (1935) Social Security Act

Old Age Security: retirement contributions (enforced savings) and employment excise taxes.

H.R. 2762 (1939) Consolidate and Codify the Internal Revenue Laws

Consolidated the Social Security "taxes" into the internal revenue tax structure.

H.R. 3790 (1939) The Public Salaries Tax Act of 1939

Unilateral agreement allowing States to tax federal elected and appointed officers and employees in exchange the federal government would tax State elected and appointed officers and employees. Meaning those "employees" who were elected or appointed.

H.R. 10039 (1940) The Revenue Bill of 1940

Changed the basis for filing tax returns from "net-income" to "gross-income", but did not change the tax from a "net-income" tax to a "gross-income" tax. Lowered the "Personal Exemption" to below the average "wage" earned by employees.

H.R. 7378 (1942) The Revenue Bill of 1942

Implemented an enforced savings plan called “The Victory Tax Act”, the beginning of income tax withholding on employee wages. Again lowered the “Personal Exemption”.

H.R. 3637 (1943) The Revenue Act of 1943

Vetoed by the President, overridden by Congress and then superseded by the Act of 1944.

H.R. 4646 (1944) The Individual Income Tax Bill of 1944

Repealed the Victory Tax, moved “employee wages” into the normal tax on net income by creating the term “adjusted gross-income”. Changed the basis of the tax from “net-income” to Taxable Income, and made permanent the withholding provisions on employee wages.

CRS Report for Congress (1992) #92-303A “Frequently Asked Questions”

Provides answers to specific questions regarding the Federal Income Tax.

J.M. Maguire (1934) “Taxing the Exercise of Natural Rights”

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Historical view of taxation through numbers

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