

From
Cracking the Code
The Fascinating Truth About Taxation In America

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The Law Means What It Says



Introduction

(1) Our system of taxation is dependent on taxpayers' belief that the tax laws they follow apply to everyone and that the Internal Revenue Service will respect and protect their rights under the law. These are fundamental principles of voluntary compliance.

Internal Revenue Manual, Part 5, Collection Activity 105.4.1.2
(07/27/98)

"Inclusio unius est exclusio alterius. The inclusion of one is the exclusion of another. The certain designation of one person is an absolute exclusion of all others. ... This doctrine decrees that where law expressly describes [a] particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded."

Black's Law Dictionary, 6th edition.

It is axiomatic (and the law) that terms and phrases within a statute for which definitions are provided DO NOT have their common meanings as used therein.

"The [state supreme] court also considered that the word 'including' was used as a word of enlargement, the learned court being of the opinion that such was its ordinary sense.

With this we cannot concur."

U.S. Supreme Court, *Montello Salt Co. v. Utah*, 221 U.S. 452
(1911)

I mentioned in the foreword to this book that for decades efforts to mis-apply the income tax to receipts connected with private-sector activities have capitalized upon the widespread presumption that despite no one ever *seeing* it, some portion of the law *must* explicitly impose the tax upon them. Any who have questioned this presumption have been treated by defenders of the scheme to a little maze of circular arguments revolving around the term "includes", of which we will see a great deal as we move forward into examination of the nuts-and-bolts of the "income" tax laws. The real essence of this effort is to wear down the questioner; it offers nothing but suggested implications about other parts of the law to answer that fatal central doubt, but it is the best the schemers can do.

The principles discussed earlier in 'Regarding the Law and Its Virtues' should make addressing this nonsense unnecessary; however, it must be acknowledged that the construction of the relevant portions of the law combines sufficiently with a lifelong misinformation campaign regarding this subject to nurture a somewhat forgivable uncertainty in some. This is particularly true in light of the bellicose demeanor of those who benefit from that doubt-- it is a natural human reaction to seize upon, and not examine too closely, an even marginally plausible justification for declining to confront a snarling, rabid animal such as the IRS.

Here is the dodge: The tax laws very studiously and deliberately deploy terms with unique, custom definitions, such as “employee”, “trade or business” and “United States”. That these terms mimic normal words is itself confusing, and would itself be sufficient to quiet many objectors, particularly those who never go so far as to discover their custom-definitions (which is to say, most). At this level, inquiry ceases when confronted with, for instance, *“The law says “everyone engaged in a trade or business shall...”*.

Deeper inquiry, by which the custom meaning of key terms is revealed, is more problematic to the tax scheme, but those clarifying definitions have themselves an obfuscating element seized upon by its beneficiaries. Whether by craft or simple bureaucratic awkwardness, many of these definitions incorporate the term “includes”, as in (26) *Trade or business: The term “trade or business” includes the performance of the functions of a public office.* At this level of inquiry the skeptical are encouraged to imagine that the use of “includes” indicates that things outside the scope of the custom definition provided are incorporated within its meaning as well, by implication.

Finally, in the face of a refusal to accept the imposition of law to “implied” subjects, the beneficiaries of the scheme roll out mirrors to supplement the smoke and direct the insistent doubter’s attention to the custom definition of “includes” provided within the code (in section 7701(c)): *“Includes and including: The terms “includes” and “including” when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.”*

This is the eight-hundred-pound gorilla of obfuscation available to the “income” tax schemers. Presented within the context described, it is meant to suggest a sort of legal foundation for the imposition of the law by implication rather than specification. Really, as thus used, it’s just an elaborate formulation of the age-old legal maxim, *“Because I said so!”* The intended misunderstanding of the section is that terms

defined as "*xx includes...*" embrace all things commonly meant by the *word* being custom re-defined plus those things listed after "*includes*"-- but again, *merely by implication*. Happily, this effort to muddy the waters quickly fails under analysis. As we are about to delve into the morass of these mis-directions, it behooves us to undertake that exercise.

(There may be some who will feel that I devote more attention to this one little word than seems reasonable. However, in light of the fact that all but a truly rarefied few private-sector persons have lost possession of at least 15% of their earnings each and every working year of their lives the diversion of which has been justified solely by a cunning misconstruction of this little word, I respectfully disagree.)

To start with, we must recognize that if a word is meant to be understood as having its common meaning, there is no need to define it at all. It is axiomatic that if a word *is* explicitly defined, it has a restricted meaning. If language such as, "*For purposes of this paragraph, the term "Fruit" includes apples, pears, and oranges.*" is used, it can only be understood as restricting the definition to those things listed, or no definition would be required; the word "*fruit*" would be understood to include apples, pears and oranges, as well as all other fruits.

Second, note that the word "*common*" (or its equivalent) is left out of the definition of "*includes*" and "*including*", creating a sophomoric circular argument. The only "*other things otherwise within the meaning of the term defined*" are those that are the same as those used to provide the definition. In other words, the "*things*" used in the definition are what establish the class to which the "*other things*" must belong in order to be included under the doctrine of 7701(c), and, as the word is being deliberately defined, the common meaning of the word must be excluded.

To see what I mean, insert the word "*common*" as follows: "*The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise with the common meaning of the term defined.*". Without it, the section is meaningless, but misleading, as intended; and furthermore, note that the statute says, "...*the meaning of the **term** defined.*"; rather than the **word** defined. If Congress had meant (and been Constitutionally able) to embrace within its definitions the *common* meaning of the words being made into legal terms it would have written 7701(c) in that way: "*The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the common meaning of the word defined.*" The *word* isn't a *term* until the provided definition has been applied, at which point its common meaning has been stripped away.

Properly understood, 7701(c) declares that, "*Includes and including: The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term as defined.*" Indeed, at one time there was a regulatory clarification of the 7701(c) definition of "includes" in 26 CFR which clearly embraced this construction (unsurprisingly long since deleted and not replaced):

26 CFR 170.59- Meaning of Terms: The terms "includes and including" do not exclude things not enumerated which are in the same general class.

The accuracy of these points is established by more than simple logic and the inadvertent forthrightness of a one-time bureaucrat (doubtless fired for his blunder). Ask yourself this: If "*Fruit*" is defined as, "*When used in this paragraph, the term "Fruit" includes turnips, carrots and broccoli.*", is it to be presumed that the term also means apples? How about if in the next paragraph one finds, "*For purposes of this paragraph the*

term "Fruit" includes apples, turnips, carrots and broccoli."

Should it be presumed that apples was included by implication in the first definition and the writer was just lazy, or ran out of typewriter ribbon? Obviously not. (If the writer had, in the first instance, said, *"For purposes of this paragraph the term "Fruit", in addition to the commonly understood meaning of the word "fruit", includes..."* or, *"... "Fruit", in addition to all fruits, includes..."* or even simply, *"... "Fruit" also includes..."*, all is different. But he did not.) No less an authority than the United States Supreme Court reminds us to refrain from reading anything into a statute when Congress has left it out:

" [W]here Congress includes particular language in one section of a statute but omits it in another ..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion. "

Russello v. United States, 464 US 16, 23, 78 L Ed 2d 17, 104 S Ct. 296 (1983) (Quoting United States v. Wong Kim Bo, 472 F. 2d 720, 722 (CA 1972))

As previously noted, some of the key definitions upon which the broadest misapplication of the law are based (regarding "wages", in this example) involve the custom legal meaning of terms like "employee", "employer" and "United States" as used in the law and reproduced in the code (all of which we will discuss in detail shortly). These sections read as follows:

3401(c) Employee

For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, 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.

3401(d) Employer

For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee [as defined above -PH] of such person...

and:

3121(e)(2) United States

The term "United States" when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

Now, keeping in mind the declaration by the Supreme Court in *Russello* (and our logical analysis), look at the following definitions in the U.S code which *are not* relied upon to mislead (at least not for the same purposes or in the same way as their counterparts which are the subjects of our discussion), and recognize that when Congress means to legislate broadly, it plainly says so:

Title 26, Subtitle D, Chapter 38, Subchapter A, Sec. 4612. [Petroleum Tax] For purposes of this subchapter- (4) United States

In general

The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

and also,

Title 20, Chapter 69, Section 6103 (Education)

As used in this chapter:

(8) Employer- The term "employer" includes both public and private employers.

Clearly, even if one were to be generous in interpreting 7701(c)'s definition of *"includes and including"* and grant it the

effect of limited expansion assumed under the old regulatory clarification to which I previously referred, (and which is, by the way, still deployed in the regulations for Title 27, at 27 CFR 72.11):

Meaning of Terms: The terms "includes and including" do not exclude things not enumerated which are in the same general class,

that effect does not bring non-federal persons and places into the ambit of the terms we are discussing. Instead, the most that could be said in that regard is that in addition to the listed varieties, "employee" in Section 3401 also refers to other federally-connected workers whose descriptions are not specifically listed (and "employer" the agencies for which they work); and that "United States", as used in 3121, can be understood to include other federal territories and possessions similarly left off the enumerated list.

In fact, this is the only construction consistent with the relevant doctrines expressed by the United States Supreme Court as:

"[W]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words" Circuit City Stores v. Adams, 532 US 105, 114-115 (2001),

"Under the principle of ejusdem generis, when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration." Norfolk & Western R. Co. v. Train Dispatchers, 499 US 117 (1991),

and

"...a word is known by the company it keeps (the doctrine of noscitur a sociis). This rule we rely upon to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving

"unintended breadth to the Acts of Congress." Jarecki v. G. D. Searle & Co., 367 US 303, 307 (1961)"
Gustafson v. Alloyd Co. (93-404), 513 US 561 (1995).

Applying these principles of statutory construction, we see that the language of 26 USC 7701(c) providing for the inclusion of "things otherwise within the meaning of the term defined" effectively constitutes the "general words", or "general term" referred to by the Supreme Court in the Circuit City and Norfolk & Western rulings, which are then followed by the specifically enumerated things listed in the given definition. Look again the definition of "employee" at 26 USC 3401(c):

For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, 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 a [paid] officer of a corporation. [meaning a "United States" corporation only, by the way-- more on that and the "paid" thing later in 'Withholding The Truth'...]

It is clear that the common characteristic of those in the enumerated list of "employees" in this special definition is that of being someone paid by the federal government (or an entity created and/or controlled by the federal government) for services rendered.

When we proceed to incorporate the provisions of 7701(c) (as properly illuminated by the doctrines outlined above) we get:

For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, 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. The term "employee" also includes "things not enumerated which are in this same general class" (that is, "other things otherwise within the meaning of the term as defined").

No further expansion can be admitted:

"It is axiomatic that the statutory definition of the term excludes unstated meanings of that term." U.S. Supreme Court, Meese v. Keene, 481 U.S. 465 (1987)

Finally, though it is irrelevant to the logical analysis of section 7701(c) (other than to underscore its relevant meaninglessness), it's worth observing that a declaration that SOME thing(s) shall not be deemed to be *excluded* does not mean that any particular thing must or should be deemed to be *included*-- especially when what we are encouraged to ASSUME is meant to be included could easily have been explicitly provided for. After all, what 7701(c) DOESN'T say is, *"Includes and including: The terms "includes" and "including" when used in a definition contained in this title shall be construed as expanding the class represented by the common meaning of the word defined with the addition of the explicitly listed items."*-- language by which Congress could have avoided a lot of confusion if this is what it actually meant.

For that matter, Congress could have simply defined "includes" and "including" in the tax law as expressly non-limiting, as it has done elsewhere:

28 USC 3003- Rules of Construction

(a) For purposes of this chapter

(1) the terms "includes" and "including" are not limiting;

and,

11 USC 102- Rules of Construction

In this title-

...

(3) "includes" and "including" are not limiting.

That it did not must be given proper significance. As the United States Supreme Court observes,

"The construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong, especially when Congress has refused to alter the administrative construction, and such deference is particularly appropriate where an agency's interpretation involves issues of considerable public controversy and Congress has not acted to correct any misperception of its statutory objectives." CBS, INC. v FCC, 453 US 367 (1981)

The existing language has been on the books for more than 79 years, and Congress has revised the law, the code, and the related regulations many, many times during that period.

The IRS has floated a ridiculous "supporting explanation" of all this to the effect that the use of *"includes [whatever]"* in key places in the code is because of doubts at one time as to whether public-sector entities were covered by the IRC. This proposition might have a little hang time if the relevant references were found in an addendum or supplement (and if it could be credibly asserted that anyone would otherwise have doubted that, for instance, the guy sorting mail at the Senate Office Building is an employee within the common meaning of the word), but not when they constitute the sole definition of the term. There IS no other list to which the public-sector references can be added; they ARE the list, and they have been since 1862. (The IRS doesn't attempt to explain why, if what it suggests is true, Congress didn't spare us our doubts and simply add one little section applying to the whole code saying, *"Public sector workers, officials and organizations are to be considered subject to the requirements of this title in the same fashion as are private citizens and organizations."*)

For example, although originally introduced in section 86 of the Revenue Act of 1862, the “wage” withholding specified in that section was abandoned early in the 20th century. The practice was re-introduced by way of the Current Tax Payment Act of 1943 on June 9, 1943. The definition of “employee” which we have been discussing on the preceding pages is taken from that act. The act provided for an addition to chapter 9 of the IRC of 1939 code of what later became codified as subchapter 24 of the current IRC, with the “employee” definition denominated as subparagraph (c) of section 1641.

Material related to the new act was promptly published in the Federal Register, as is the case with all such enactments. Here is how the “employee” definition is described in the register edition of Tuesday, September 7, 1943 (page 12267):

SUBCHAPTER D-- COLLECTION OF INCOME TAX AT SOURCE OF WAGES

SEC. 1621. DEFINITIONS

As used in this subchapter--

* * * * *

(c) Employee. The term “employee includes an officer, employee, or elected official of the United States, a State, Territory, 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.

* * * * *

§ 404.104 Employee. The term “employee” includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term specifically includes officers and employees whether elected or appointed, of the United

States, a State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

Plainly, this definition has always covered federal workers as discussed above, and only such workers. Plainly, not only is "includes" NOT deployed in this definition in order to ADD federal workers to anything, but there WAS no previously operating definition or withholding protocol of this kind to which they could be added.

The simple, tawdry fact is that Congress wants to spend lots of your money-- and even though it can't seize that money from you legally, it is perfectly willing to set up a system by which you are led to believe that it can, and about which you will have great difficulty discovering the truth. Dwell on this a while and the nuances of the phrase "voluntary compliance" will suddenly become clear. What it refers to is you "voluntarily" allowing yourself to be characterized as a recipient of public-sector privilege, and then complying with requirements that attach to that status.

From about this point on, we're going to be reading a fair bit of the Internal Revenue Code. As we do, ask yourself, "*Why is it written like this? Is it written like this because it means what its beneficiaries want me to believe that it means, or is it written like this because it doesn't mean what its beneficiaries want me to believe that it means?*"

Recognize that it is no coincidence that at every point in the code where Congress would clearly be exceeding its lawful authority if the section meant what it is hoped you will *think* it means, a key *apparent* ambiguity makes an appearance. Suddenly, at such points, we see "includes" in a definition that

conveniently fails to mention or comprehend private citizens; or vague, complicated references to those "made liable" similarly shy of inconvenient, clarifying details. Suddenly there will be a confusion of references to other sections and subsections, and elaborate qualifiers and modifiers running hundreds or thousands of words in which the one pertinent element is buried. Keep this in mind, and don't be fooled.

"When the words of a statute are unambiguous, the first canon of statutory construction [that courts must presume that a legislature says in a statute what it means and means in a statute what it says there] is also the last, and judicial inquiry is complete." United States Supreme Court, Connecticut National Bank v. Germain, 503 US 249 (1992)

(For that matter, even when the words of a tax-related statute DO happen to be ambiguous:

"In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen." United States Supreme Court, Gould v. Gould, 245 US 151 (1917)...

Now, on to the Code...