SUPPOSE YOU WENT OUT TO YOUR MAILBOX one afternoon and found a notice from Sears, Roebuck & Co. instructing "all employees" to report to the nearest company office for a staff meeting the next day.

Would you go?

If you DON'T work for Sears?

*It'd be pretty stupid to go to the meeting if you don't work for Sears, wouldn't it?*

So, when you're presented with a notice from the United States government instructing "all employees" to do this or that, why would you do whatever it says, if you DON'T work for the United States government?

***

HOW ABOUT YOU BUSINESS OWNERS? Suppose you found a notice from Sears in your mailbox one day declaring that
"anyone to whom any employees report", and anyone who paid any contractors for services rendered or paid any dividends to stockholders, is to send information on all salaries and other payments made during the past year to the main office.

Would you send Sears such a list?

If your company is NOT a division of Sears?

*It'd be pretty stupid to send in such a list if your company isn't a division of Sears, wouldn't it?*

So, when you're presented with such a notice from United States government, why would you do what it says, if you're NOT a division of the United States government?

***

NOW, SUPPOSE YOU FOUND A NOTICE in your mailbox alerting you to the fact that someone has sent an affidavit to the Sears accounting department claiming that you were paid $50,000 by Sears last year-- and the Sears accounting department is going to debit your Sears charge account for what they figure your Christmas Club contribution, health insurance premium, retirement plan matching contribution, reserved parking space fee, and/or sundry other employee/contractor/investor-related expenses add up to.

Would you go to your local Sears store and pick up one of the "affidavit acknowledgment/correction/rebuttal forms" published by its accounting department, put $50,000 on the "amount paid to you by Sears" line on the form, spend 10.7 hours over a weekend figuring out how to take advantage of Sears company policy for reducing the related expenses for which Sears wants to charge you, and then sign the form and send it in-- feeling
pretty good about how you reduced the hit that your Sears account is going to take?

Would you do all that?

If you HADN'T gotten paid by Sears?

*It'd be pretty stupid to do all that if you hadn't actually been paid by Sears, wouldn't it?*

SO, IF SOMEBODY SENDS YOU A COPY of an affidavit they've given to the IRS or a state tax agency on which they claim that you've been paid as a federally-connected person last year--such as a W-2, 1099 or K-1, which are only used to report such payments--and it isn't actually true, why would you respond as though it is? Why wouldn't you use the IRS or state tax agency's "affidavit acknowledgment/correction/rebuttal forms" to correct, or rebut, the erroneous affidavit, both of which are among the primary functions of such forms?

*It'd be pretty stupid to do anything else, wouldn't it?*

***

**It's All In Your Mind**

LET'S PLAY A LITTLE MENTAL GAME. Imagine that you're someone who's been spared immersion in the State-dominated paradigm that controls the thinking of most 21st-century Americans. Perhaps you were educated by your loving parents rather than the government beneficiaries that operate public schools; maybe you were spared massive doses of television, as well. Perhaps you just naturally have what it takes to remain master of your own mind.

You learned to think logically and to avoid assumptions, and you learned that massive, power-obsessed institutions have
no incentive to deal with you honorably. You learned, in fact, that massive institutions, whatever their pre-dispositions, are devoid of all integrity by virtue of their size and complexity, which permits and encourages each and every actor within them to presume that someone else has taken responsibility for the moral and legal propriety of the institution's practices.

In short, you are a clear-eyed, un-"conditioned", well-educated person.

NOW, THE TIME COMES when you choose to go into business, creating some product or delivering some service, and you set about organizing a little company for this purpose. Perhaps because it is more evocative of the independent and honorable contributions of those being described, it happens that when your structural purposes required any references to the staff you hire during this organizational process, you choose to call them "workers", rather than using the more demeaning term "employees" (which evokes an unpleasant sense that those so described are mere tools in your hands-- "human resources", as it were, "employed" in the same sense as you would "employ" any other resource to suit your purposes.

A "worker" works-- he brings his skills, his efforts, his brains, his integrity and his overall ability to produce wealth to the table and trades them for liquidity. An "employee", on the other hand, is just deployed-- he is simply a cog in someone else's machine.

IN ANY EVENT, it comes to pass that all your paperwork, and your practices in the workplace, exclusively refer to those you hire as "workers" (and refer to you in the same way, of course-- even if you were inclined to view your staff as mere tools and describe them accordingly, you could hardly view yourself as an "employee"!). Consequently, when the time comes that you first find an unsolicited notice from a government tax agency in your mailbox making reference to
your "employees" you reflexively reject the application of the expression. Your first thought is, "I don't have any 'employees'!" and though you may immediately laugh at yourself for drawing what you imagine is a distinction without an intended difference, you are nonetheless prompted to a curiosity.

This curiosity is enhanced by your having noted that the use of the term "employee" in the correspondence you have received has an artificial flavor. There is no "conversational" character to its use. Rather than being one of several synonyms used interchangeably to describe those for whose labors your company is trading, "employee" is used invariably, and sometimes awkwardly. Indeed, its use has the feel of nothing so much as that of a legal term. The fact that the use of the term is alien to your own well-established habit makes this awkward artificiality much more pronounced to your eye than it would be to someone else's.

In turn, this perception of the deliberate and careful use of a legal term brings into sharp relief the fact that the correspondence in question has the character of a demand, as from a superior to a subordinate; or as though reflective of some obligation of contract. Those accustomed to thinking of their associates as "employees", being spared your visceral rejection of the correspondence's applicability, are that much less likely to be struck by its inaptness in this other respect, but you are now serendipitously alert to every nuance.

Thus, where others might forego the exercise due to not having had their hackles raised as yours have been (and due to a cognitively dissonant tendency to assume that when others act, it is only after having taken pains to ensure that they are doing so appropriately-- in other words, to assume that others HAVE engaged in the "due diligence" which the complacent object of their attentions is himself choosing NOT to exercise...), you are prompted to a painstaking "due diligence". Off you go to the library.
Part II

NOW, THE OBJECT OF YOUR INTEREST is the meaning of "employee" as used in the context of federal taxes, because that's what the notice you received was about. So you don't go to the local public library, where you might consult a dictionary-- instead you go to your nearest law library, where you can consult the statutes which explain and control the authority under which the notice was issued.

Once in the law library, you don't waste any time even looking in the legal dictionaries. The notice you're seeking to decipher doesn't allege a contractual, equity or tortuous issue. That is, nothing on the notice declares or even suggests that it was produced because of something you've done to someone else, or because of some duty to the sender which you accepted as part of an agreement or based on some equitable claim.

On the contrary, the notice just reeks with that inescapable, bizarre odor of something that would be sent from a superior to a subordinate-- as though it was sent by a company HQ to a branch office pursuant to some routine (and thus, written) internal policy. (Furthermore, the notice-- which is concerned with something called an "Employee Withholding Exemption Certificate"-- actually references a "Section 3402" of "26 USC", which you recognize as a federal statutory designation.)

So, "common-law" or other generic legal definitions such as will be found in a legal dictionary MIGHT eventually be found to be applicable, but where statutes are involved, it is to "statutory definitions" that one must look first. Only if any given term has no customized definition does one look outside the statutes for its meaning.

YOUR HUNT BEGINS in "Title 26" of the "United States Code"-- aka the "United States Internal Revenue Code". You're working with a digitized version of the "code", so you're spared
flipping through thousands of pages in dozens of volumes to run down "section 3402"— it appears on your screen in nano-
seconds: § 3402. Income tax collected at source.

You scan through the 6,584-word section and you find just one "definitions" portion—a brief subparagraph offering definitions of "Supplemental unemployment compensation benefits", "Annuity" and "Sick pay", which explain the meaning of these terms as used in the preceding subparagraph providing for the treatment of certain payments as though they were payments of "wages", upon the request of the recipient. No definition of "employee" is provided, either in this subparagraph or anywhere else in "Section 3402"...

Concluding that you'll have to move to the law dictionaries next, you idly scroll back to the top of section 3402 before closing the window and notice that the section is actually a part of a "chapter" of Title 26. Having learned long ago the old folk-wisdom parsing of "assume" ("To assume is to make an ass out of u and me..."), and therefore unwilling to take for granted that the definition of a term used in a statutory section will necessarily be found in that same section (especially now that you know that the section is just part of a larger chapter), you click on the link to the chapter contents...

Bingo! Right at the top: "$ 3401. Definitions". You click on THAT link, and immediately find that not only are you now in the right place, but it's a richer informational mine-shaft than you would have had any reason to expect, because Lo and Behold! Not only is there a chapter-wide definition of "employee" provided, but even "wages"— which you hadn't ever suspected of having a special meaning in any tax law— is custom-defined here. And "employer", too! You resolve to return to those intriguing entries at some point in the future.

FOR NOW, OF COURSE, "EMPLOYEE" is your focus.

This is what you read:

(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.

Upon seeing these words, you can't help but smile. Now the demeanor of the notice, as a command from a superior to a subordinate, makes sense. Obviously, the agency that sent it to you has mistaken your company for one of its own operations!

Even leaving aside the fact that this had all been a purely academic exercise in the first place (since you don't actually have any legal relationship with the tax agency or government involved), the class of "employees" with which the notice is concerned is revealed by this definition as being that of people working for (or at least, paid-for-services-rendered by), the government whose agency had sent it (or its subsidiaries). No other type of actor is listed. (As a sole proprietorship, the "corporate officer" reference wouldn't have anything to do with your company in any event, but even were your company incorporated, the context in which that reference appears, and the accompanying specifications, make clear that only officers of federal corporations like Fannie Mae or the RTC are meant even without looking more closely into that provision at the moment.)

The definition DOESN'T say: "In addition to others within the common meaning of "employee", or even just, "Employee" also includes...". Instead, the definition in the statute plainly and unambiguously identifies the objects of its attention, with no expansive modifiers at all.

As a businessman well-acquainted with reading, writing and occasionally litigating contracts and other legal instruments of the same "specifications/obligations" character as statutes, you are well aware that clarity is the very essence of such
instruments. After all, they are created to express and respect jurisdictional limits, and vagueness or the appearance of overreach in such instruments risks rendering the entire affected clause-- and everything dependent on it-- inoperable and unenforceable.

Further, you know that when used in such "specifications/obligations" instruments, "includes" is a naturally restrictive term. In fact, you remember having looked into the very subject of federal legal doctrine regarding "includes and including" on a prior occasion, mostly due to having enjoyed the dry wit of Chief Justice John Marshall when expressing that fact in one of the earliest cases ever ruled on by the United States Supreme Court-- that of United States v. The Schooner Betsey and Charlotte in 1808. Disparaging (before flatly denying) the proposition that "including" was to be taken as being "expansive" in its effect, rather than restrictive, Marshall says,

"It [is argued that] the word "including" means "moreover", or "as well as"; but if this was the meaning of the legislature, it was a very embarrassing mode of expressing the idea."

You know that this (frankly self-evident) rule of construction is re-iterated by the Supreme Court elsewhere as well. Further, you recall the similarly self-evident rule-- that any term defined without modifying language specifying that its common meaning is retained loses every vestige of that common meaning-- has also been flatly observed by the Supreme Court in the face of periodic efforts to argue the contrary by "creative" litigants. In the case of Stenberg v. Carhart, for instance, in 2000, the court says,

"When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning."
In the 1987 case of Meese v. Keene, the court is even more declaratory:

“It is axiomatic that the statutory definition of the term excludes unstated meanings of that term.”

This principle is so obvious that in 1945, the court makes its relevant observation almost conversationally:

“Of course, statutory definitions of terms used therein prevail over colloquial meanings.”

What's more (and what is, in fact, fully sufficient to make the whole point all by itself), context and jurisdiction rule everything in the construction and application of statutory language. You know that if, for instance, you were to declare a tax on the profits of all lemonade-stands operated on any driveway, the meaning of "driveway" in that context would obviously be confined to YOUR driveways, and wouldn't extend to those of anyone else, regardless of your failure to be more specific. As the United States Supreme Court has pointed out,

“Words having universal scope, such as 'every contract in restraint of trade,' 'every person who shall monopolize,' etc., will be taken, as a matter of course, to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch.” American Banana Co. v. United Fruit Co., 213 U.S. 347 (1909)

While the U.S. Congress is perfectly free to issue dictats in regard to its own workforce (whether called "employees" or otherwise), it obviously hasn't got the same authority in regard to everyone else's...

**Part III**

However, alert now to the fact that the legislators of the "tax title" are not scrupulous about making sure that related specifications are in forthright proximity to each other, but must
be hunted down, almost as though they were intended to be overlooked, you go to the further trouble of running a search on the whole, ugly mess, looking for any other "definitions" sections that might reveal that something else isn't quite what it superficially might be mistaken to be. After a moment or two a list appears, rocking you back in your seat. 741 "definitions" links! All in this one title!

Two hours later, you've narrowed things down to one single definition relevant to that of "employee" at 3401(c): A custom definition of "includes" and "including" in section 7701, a list of "title-wide" definitions applicable wherever an alternative, narrower-application definition for the same defined term isn't found. At first glance, this special definition of "includes" seems a tautology:

"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."

But, being the well-educated fellow that you are, you recall another Supreme Court ruling (Helvering v Morgan's, Inc, 293 U.S. 121, 126 fn. 1 (1934)), in which the court observes:

"[T]he verb "includes" imports a general class, some of whose particular instances are those specified in the definition. This view finds support in § 2(b) of the Act, which reads: "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."

...and another (Federal Land Bank of St. Paul v. Bismarck Lumber Co. 314 U.S. 95, 62 S.Ct. 1 U.S. 1941), referencing and re-iterating the substance of the earlier observation:

"[I]ncluding... ...connotes simply an illustrative application of the general principle."
...and then yet another (Massachusetts v. EPA, 549 U.S. 497 (2007)), doing the same yet again:

“The word “including” can indeed indicate that what follows will be an “illustrative” sampling of the general category that precedes the word. Federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 U.S. 95, 100 (1941).”

That is, when "includes" or “including” is deployed in a definition, the enumerated items that follow "illustrate"--identify, and thus establish-- the characteristics of the class which the defined term creates and represents. In other words, the listed items establish the "general principle" of the custom-term's application (while at the same time, of course, any common meaning of the word being made into a statutorily-defined "term" has been entirely removed thereby...). The class can be considered expandable by other items not listed which share the characteristics of those which are--that is, "things otherwise within the meaning of the term defined", but not by anything else. As the Treasury Department has helpfully explained,

"Meaning of Terms: The terms “includes and including” do not exclude things not enumerated which are in the same general class" 27 CFR 26.11 and 27 CFR 72.11, and previously also published in 26 CFR 170.59.

In sum, the provisions of 7701(c) make "includes" into a term of expansion, but only of LIMITED expansion--not one which contradicts the Supreme Court's ruling in United States v. The Schooner Betsey and Charlotte in 1808. (Were definitions incorporating "includes" and "including" meant to be read as meaning "as well as", it would have been accomplished without the bother of making a special rule of construction for "includes" and "including" by the simple addition of an appropriate chapter or section preamble of, "In addition to those within its common meaning: -" and an "also" to each use of either term where this
meaning was intended; or the special rule of construction for the terms at 7701(c) would have been written to read something like:

*Includes and including: The terms "includes" and "including" when used in a definition contained in this title shall be construed as adding members of the class that follows to those embraced by the common meaning of the preceding word or phrase...*)

Applying all this to the "employee" definition at 3401(c), you find that:

- "Employee" begins as an empty vessel, devoid of any pre-existing meaning by virtue of having been selected to receive a custom, statutory definition (a point rather heavily underscored in this particular case, where "federal employees" are enumerated in the statutory definition-- something obviously pointless if "employee" retained its common meaning...).

- The enumerated items in the definition after "...includes..." illustrate the class to which the newly-minted statutory term "employee" applies.

- All the enumerated items illustrating the class are government-connected entities even (you discover after a little further research) the "officers of corporations" reference, which concerns "a corporate agency or instrumentality" which is one "(a) a majority of the stock of which is owned by or on behalf of the United States, or (b) the power to appoint or select a majority of the board of directors of which is exercisable by or on behalf of the United States" per the Public Salary Tax Act of 1939.

You sit back in your chair, nodding to yourself. Just as you had concluded previously, the sender of the notice has
indeed mistaken your company for one of its own operations, and your workers for its "employees".

Pulling the notice that had set you off on this exploration out of your briefcase, you read it through again, in light of your research. The thing purports to instruct you to require all "employees" to fill out a federal form before beginning work...

You can't help but smile ruefully and shake your head over having had to spend an afternoon looking this all up. Having now verified the nature of the mistake involved in the notice being sent to you in the first place, you're very conscious of what should have been your first thought on reading the thing when it arrived: Who in his right mind would entertain for a moment the idea that some government has the lawful authority to require anyone that is not one of its own creatures, or under contract with it, to fill out a government form in connection with engaging in personal economic activity, such as trading personally-owned time, skills and effort for other goods? The very idea is ludicrous.

Sighing over your lost time, but reflecting on the fact that you've at least had a nice reminder of the importance of remaining clear-eyed about core issues in a world in which others can't be relied upon to do the same, and in which silly mistakes like you being sent a notice by the federal government concerning its own "employees" can and will happen, you shut down the computer you've been using and get up to go. You drop the notice in the trash, and head back to work.

*****

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