

## **A Brief But Bright Illumination Of The Truth About The Income Tax**

THE NATURE AND LIMITS OF THE "INCOME TAX" are not the consequence of the structure of the law or definitions therein-- it is, in fact the other way around. However, because that structure and those definitions are carefully designed to conform and confine the tax to its proper nature and limits, understanding the very easily comprehended former brightly illuminates the more difficult latter (a concise presentation of which can be found within [this document](#); see '[Cracking the Code- The Fascinating Truth About Taxation In America](#)' for a comprehensive treatment).

I'm going to briefly discuss two definitions in US income tax law-- those given by statute to the terms "wages" and "trade or business". Between them these two terms are integral to the vast majority of all "income-receipt" allegations made about Americans.

Understanding these definitions will make clear that the receipts of most Americans don't fall within either of these classes. Simple logic recognizes that because receipts that DO fall within these special classes are distinguished in the law as being subject to the tax, those receipts that DON'T fall within them are not subject. As Black's Law Dictionary puts it in its 6<sup>th</sup> edition:

*"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."*

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LET'S FIRST TAKE A LOOK at "wages"-- a term presented at 26 USC § 3401(a) and provided with a compound definition:

### *Sec. 3401. - Definitions*

#### *(a) Wages*

*For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an **employee** for his employer,...*

#### *(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.<sup>1</sup>*

<sup>1</sup> It is by Sec. 1 of the Public Salary Tax Act of 1939 that sec. 22(a) of the Internal Revenue Code (defining "gross income", and now sec. 61 of the current Code) was expanded to add "including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of the foregoing". Included in the same act is language applying the tax to officers of corporations, with those affected being

*(NOTE: Tax law actually contains two definitions of "wages", one related to "withholding" against taxes related to such receipts, and one to the receipts on which FICA and FUTA taxes fall. While the "withholding" definition above hinges on the meaning of "employee", the "FICA and FUTA" "wage" definition at § 3121(a) instead hinges on a custom definition of "employment" found at § 3121(b). However, discussing the one suffices for discussing both, for as the US Supreme Court holds in Rowan Cos. v. United States, 452 US 247 (1981), "The plain language and legislative histories of the relevant statutes indicate that Congress intended for its definition of "wages" to be interpreted in the same manner for FICA and FUTA as for income-tax withholding." Thus, while the FICA and FUTA taxes don't fall on all "wages" subject to the withholding provisions and in that sense there are two different subclasses of "wages", the nature of what qualifies as any kind of tax-relevant "wage" is the same.)*

It will be observed that the definition of "employee" deploys the term "includes", rather than the more conventional "means" often found in definitions. The reason for the use of this specialized term is to invoke a special rule of construction for "includes" found at 26 USC § 7701(c):

*(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.*

Under this rule, the term "includes" provides for what courts have described as a "calculated indefiniteness". This is the expandability of the meaning of a statutory term to things not listed in the definition (indefiniteness), but only things of the same character as those listed (calculated).

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explicitly defined in sec. 207 of the act: "a corporate agency or instrumentality, 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..."

Further, the character of all objects in the definition that are specified in that regard is that of government entities, and the canons of statutory construction dictate that the character of the corporate officers referred-to in more general terms must be construed to be the same:

"[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);

"...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."  
Gustafson v. Alloyd Co., (93-404), 513 US 561 (1995);

"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),  
Norfolk & Western R. Co. v. Train Dispatchers, 499 US 117 (1991).

In a statutory definition, the term defined is stripped of all external meaning, being left with only the specified meaning given by the custom definition.<sup>2</sup> Normally, what is listed or described in the custom definition is comprehensive and closed. But under the rule of construction at 26 USC 7701(c), the use of "includes" allows an "indefiniteness" to the scope of the custom definition in that it can embrace things of the same kind as those enumerated even though not listed, while at the same time being "calculated" in that such expansion cannot reach beyond the specialized class illustrated by the enumerated examples.

For example, under the "includes" rule the definition of "employee" at 3401(c) embraces any variety of federal worker-- even varieties not described (some of which may not even exist at the time the definition is written). All such, listed in the statutory definition or not, are within the general class defined and circumscribed by the illustrative examples that ARE listed or described.

At the same time, this "indefiniteness" in the statutory definition is "calculated" in that it can't be construed to embrace workers NOT having the characteristics of the members of the class which are listed and by which the class's nature is illustrated. This means that while any kind of federal worker can be deemed an "employee" (whose remuneration received as such qualifies as "wages") NON-federal workers, being unrepresented in the illustrative list provided by Congress, cannot be deemed to be such "employees", and the pay to such excluded workers cannot be deemed "wages".

The United States Treasury Department has concisely expressed this rule:

*"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*

Here's how the United States Supreme Court explains the rule:

*"[T]he verb "includes" imports a general class, some of whose particular instances are those specified in the definition."*

*Helvering v Morgan's, Inc*, 293 U.S. 121, 126 fn. 1 (1934);

*"[I]ncluding... ...connotes simply an illustrative application of the general principle."*

*Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 62 S.Ct. 1 U.S. (1941).

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<sup>2</sup> "When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning." *Stenberg v. Carhart*, 530 U.S. 914 (2000); "It is axiomatic that the statutory definition of the term excludes unstated meanings of that term." *Meese v. Keene*, 481 U.S. 465 (1987); "Of course, statutory definitions of terms used therein prevail over colloquial meanings. *Fox v. Standard Oil Co.*, 294 U.S. 87, 95, 55 S.Ct. 333, 336." *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490 (1945); "[W]e are not at liberty to put our gloss on the definition that Congress provided by looking to the generally accepted meaning of the defined term." *Tenn. Prot. & Advocacy Inc. v. Wells*, 371 F.3d 342 (6th Cir. 2004).

A number of federal circuit court rulings provide examples of this rule in operation. For instance, in *Mueller v. Nixon*, 470 F.2d 1348 (6th Cir. 1972), the Sixth Circuit analyzes the meaning of "person" under the language and structure of 26 U.S.C. § 6671(b), which deploys the "includes" term in its statutory definition:

*(b) Person defined.-The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.*

In its ruling, the Court recognizes that the special definition of "person" provided by this language is the only valid definition of the term for purposes of the statutes involved, with no other statutory, external or common definition being relevant. The Court's analysis is careful and detailed, and merits quotation at length:

*"[A]ppellant also disputes whether he could legally be held to be such a person under Sec. 6671(b) of the Internal Revenue Code, and therefore liable under 26 U.S.C. Sec. 6672, which contains this definition:*

*(b) Person defined.-The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.*

*This language does not by its specific words apply to appellant Mueller. He clearly was not an officer or employee of the corporation which owed these taxes. The government concedes this but claims that under settled case law the courts have expanded this definition to include someone who by a contract is given the full power of control associated with the powers of a corporate officer. In this respect the government relies upon Pacific National Insurance Co. v. United States, 422 F.2d 26 (9th Cir.), cert. denied, 398 U.S. 937, 90 S.Ct. 1838, 26 L. Ed.2d 269 (1970), and United States v. Graham, 309 F.2d 210 (9th Cir. 1962). This court has dealt with this same statute (and cited the Pacific National Insurance case) in Braden v. United States, 442 F.2d 342 (6th Cir. 1971). It does not appear, however, that we have passed on the question of interpreting the statutory definition of a "person" to include persons actually in control of a corporation, although only as de facto officers.*

*The definition of "person" employed by Congress is not phrased in terms of exclusion. The language, "The term 'person' . . . includes an officer or employee of a corporation, or a member or employee of a partnership," is exemplary in nature. On this point we agree with the following language of the Ninth Circuit:*

*The definition of "persons" in section 6671(b) indicates that the liability imposed by section 6672 upon those other than the employer is not restricted to the classes of persons specifically listed-officers or employees of corporations and members or employees of partnerships. "[B]y use of the word 'include[s]' the*

*definition suggests a calculated indefiniteness with respect to the outer limits of the term" defined. First National Bank In Plant City, Plant City, Florida v. Dickinson, 396 U.S. 122, 90 S.Ct. 337, 24 L.Ed.2d 312 (1969). As we said in United States v. Graham, 309 F.2d 210, 212 (9th Cir. 1962): "The term 'person' does include officer and employee, but certainly does not exclude all others. Its scope is illustrated rather than qualified by the specified examples." Pacific National Insurance Co. v. United States, supra 422 F.2d at 30. (Footnotes omitted.)"*

Mueller v. Nixon, 470 F.2d 1348 (6th Cir. 1972)

The Court recognizes that the appropriate legal question is not whether Mueller is a 'person' under *any* definition, or *any other* definition, but only whether he fits within the class created by the definition at § 6671(b). The Court finds Mueller to be a "person" solely because his particular situation placed him within the class illustrated by the enumerated list in that special definition, explicitly endorsing the Ninth Circuit position that "[The] scope [of the term "person"] is illustrated ... by the specified examples in §§ 6671(b)," and independently declaring that "The language [defining "person" in the statute] is exemplary in nature." (Emphasis added.)

In 1998, the 1<sup>st</sup> Circuit applies these same rules of construction to the statutory term "beneficiary" found in 26 USC 643(c), in the definition of which "includes" is also deployed:

*"Plaintiff ... claims that Mrs. Ham, as the receiver of a one-third portion of Mr. Ham's estate, was not a "beneficiary" within the meaning of § 662. This contention, however, fails. For definition, 26 U.S.C. § 643(c) provides that "the term 'beneficiary' includes heir, legatee, devisee." The word "elector" (of a spouse's share) does not appear, but "includes" is not limiting. Rather, "[t]he terms 'includes' and 'including' . . . shall not be deemed to exclude other things otherwise within the meaning of the term defined." 26 U.S.C. § 7701(c). In light of this we apply the principle that a list of terms should be construed to include by implication those additional terms of like kind and class as the expressly included terms. \*fn2 This follows from the canon noscitur a sociis, "a word is known by the company it keeps." Neal v. Clark, 95 U.S. 704, 708-09 (1878)." Brigham v. United States, 160 F.3d 759 (1st Cir. 1998)*

In 1999, the Third Circuit applies the same careful and rational respect for the plain words of the law to another statutory definition in 26 USC which is worded identically to § 6671(b)-- the definition delineating persons subject to criminal offenses listed in Chapter 75 of the title. The Court faced a challenge by defendant Thayer to his qualification as such a "person" in United States v. Thayer, 201 F.3d 214 (3rd Cir. 1999). After discussing the Supreme Court's reasoning in Slodov v. United States, 436 U.S. 238 (1978)-- a case involving the application of the § 6671(b) definition-- the Circuit Court concludes:

*"[F]or purposes of [26 U.S.C.] § 7202, the term "person" is defined by identical language. See I.R.C. § 7343 ("The term 'person' as used in this chapter [I.R.C. ch. 75, encompassing §§ 7201-44] includes an officer or employee of a corporation, or a*

*member or employee of a partnership, who, as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."*). *Therefore, Thayer, as the president and majority owner of MIS and ELOP, was properly charged and convicted as a "person" under § 7202.*"  
United States v. Thayer, 201 F.3d 214 (3rd Cir. 1999) (emphasis added).

So, we can see that the words of the law as to the meaning and effect of "includes"-- and the specialized expandability but nonetheless still strictly-limited scope of definitions in which the term appears-- are clear and unambiguous to any honest and competent consideration. Further, a solid body of judicial acknowledgement to the same effect has grown over many decades.

Being clear, then, on how the definition of "employee" (and therefore "wages") is to be read, and applying the rule that when one class is specified in the law and another is not it means that the omitted class was intended to be excluded, we see that the only kind of pay-for-labor relevant to the tax is remuneration paid to *"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, an officer of a federal corporation, or any other kind of federal worker not listed.* Remuneration for labor paid outside the scope of this class doesn't qualify as "wages" and is not relevant to the tax.

The structure of the tax entirely harmonizes with this limitation, as can most readily be seen by noting that W-2s, the forms by which pay-for-labor is to be reported in the context of the tax, don't simply provide for reporting the amount paid to a worker. On the contrary, the only thing they ask to have reported is the amount of "wages" paid.

And lest there be any misunderstanding of what is meant by "wages" on the form, the statute specifying how W-2s are to be completed doesn't allow for the mistaken notion that "wages" on the form means what is commonly meant by the dictionary-defined word, which embraces ALL pay-for-labor, that of federal workers and everyone else. Instead, that statute (26 USC § 6051) explicitly instructs that the only pay to be reported is:

*(3) the total amount of wages **as defined in section 3401(a)**,*

and

*(5) the total amount of wages **as defined in section 3121(a)**,*

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NOW LET'S BRIEFLY LOOK at another key element of the tax law, the meaning of the term "trade or business". The definition given in the law to this otherwise very misleading phrase (at 26 USC § 7701) is:

*(26) Trade or business*

*The term "trade or business" includes the performance of the functions of a public office.*

Understanding the rules of construction applicable to statutory definitions we see that what is meant by the "conduct of a trade or business" in the context of tax law is conduct illustrated by the example "the performance of the functions of a public office." Because of the use of "includes" this specification can be deemed inclusive of any activity of the same character as the performance of the functions of a public office, but whether there is, or even could be, anything else meeting that rather quirky description is immaterial. If there is such an activity it is included, but much more to the point, nothing ELSE is included.

Just as W-2s are explicitly confined to reports of only statutorily-defined "wage" payments (and reports made on the forms of payments which really don't qualify as such "wages" are therefore erroneous), the statutory reporting requirements of "trade or business" payments are narrowly and carefully confined (emphasis added):

*Sec. 6041 - Information at source*

*(a) Payments of \$600 or more*

*All persons **engaged in a trade or business** and making payment in the course of **such trade or business** to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income ... ..of \$600 or more...shall render a true and accurate return...*

Plainly, if this language weren't designed to invoke and be limited by the special definition of "trade or business", this section would read:

*Sec. 6041 - Information at source*

*(a) Payments of \$600 or more*

*All businesses making payment to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income ... ..of \$600 or more...shall render a true and accurate return...*

Other related statutory specifications are the same:

*Sec. 6041A. - Returns regarding payments of remuneration for services and direct sales*

*(a) Returns regarding remuneration for services*

*If -*

*(1) any service-recipient **engaged in a trade or business** pays in the course of **such trade or business** during any calendar year remuneration to any person for services performed by such person, and*

*(2)The aggregate of such remuneration paid to such person during such calendar year is \$600 or more,*

*then the service-recipient shall make a return...*

Plainly, if this language weren't designed to invoke and be limited by the special definition of "trade or business", this section would relevantly read:

*[If] any business pays during any calendar year remuneration to any person for services performed by such person,*

The instructions accompanying the reporting forms themselves are even more explicit:

***Trade or business reporting only.*** Report on Form 1099-MISC only when payments are made ***in the course of your trade or business.***

We see, then, that the application of the tax to what REALLY qualifies as the proceeds of a "trade or business" is in precise harmony with the real meaning of "wages". Both are confined to exercise of governmental economic activities.

That confinement is, in turn, in harmony with what the very name of the tax itself shouts out to anyone who actually gives it a moment's thought. It is, after all, plainly declared to be a "federal income" tax.

That confinement is also in complete harmony with, and illustrative of, the nature and limits of the tax as imposed by the US Constitution in Article 1: Sec. 2, Clause 3 and Sec. 9, Clause 4.

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I HOPE THIS DISCUSSION HAS helped to make clear the strict legal limits under which the "income tax" operates and to which it perfectly conforms.

Understanding these things is all that is needed to recognize that anyone who acts or talks in disrespect of these limits-- regardless of his or her costume, title or position-- is acting either in ignorance or defiance of the law

Understanding these things is all that is needed to know that anyone who respects the American structure of limited government under the rule of law is obliged as a matter of civic responsibility and proper regard for his or her dignity and God-given rights to liberty and property to act in accordance with the limits under which the tax operates and to which it must conform, and to insist that others do the same.

Finally, understanding these things is all that is needed to recognize the obligation of each person to take responsibility for his or her own actions. No one can fail to understand this paper or its points, and therefore no one can evade personal responsibility under the pretense that



the law is just too complex or nuanced, so he or she must (and rightly can) defer to the opinion of some "expert" such as an attorney, CPA, government bureaucrat or judge.

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NOW THAT YOU UNDERSTAND the nature and limits of the income tax, and a bit about the manner in which that nature and those limits are implemented in the tax law, take the next step. Get introduced to the mechanics of the application of the tax (and how it often comes to be misapplied, and what can be done about that), by reading the little story of [Bob's Bicycles](#).

After that, I hope that you will move on to ['Cracking the Code- The Fascinating Truth About Taxation In America'](#) and ['Was Grandpa Really a Moron? Critical Inquires for a New American Century'](#) and get the whole story of the "income tax" and its real relationship to the average American. You'll learn that contrary to all you've ever felt about the tax, it is perfectly benign and fully-Constitutional, just as has been briefly demonstrated here.

You'll also learn in much more detail that the tax doesn't fall on what you've always been led to believe that it does by those whose business (whose "trade or business", in fact) is to maximize the amount of revenue flowing from other people's pockets into those of the state. Just as importantly, you'll learn exactly how the tax comes to be misapplied to earnings that don't qualify, the critical role YOU have always played in making this happen to YOU, and how the misapplication can be stopped and its past effects rectified.

Finally, and most importantly, you'll learn how the whole structure of limited government under the rule of law established by America's founders relies on you knowing and acting-on this information. I look forward to welcoming you into the company of the many Americans who have already risen to this critical civic responsibility and have not only regained control over their own wealth but have taken charge of where their beloved country is going.

-Pete Hendrickson

