

Appendix G

Deceptive IRS Code Words

Reader's Notes:

Deceptive IRS Code Words:

"Income", "Person", "Taxpayer", "Shall", and "Must"

Learn to Decipher the Internal Revenue Code and IRS Publications

The Internal Revenue Code (IRC) is a masterpiece of deception designed to mislead Citizens into believing that individuals are subject to federal income tax. The Code was written by attorneys for the Internal Revenue Service (IRS), and contains a series of directory statutes using the word "shall", with provisions that are requirements for corporations, but not for individuals. Even members of Congress are generally unaware of the deceptive legal meanings of certain terms that are consistently used in the IRC. These terms have legal definitions for use in the IRC that are very different from the general understanding of the meaning of the words.

Lack of knowledge of these legal definitions causes misunderstanding by uninformed Citizens who are confused as to the correct interpretation of both the IRC and the true meaning of the tricky wording in IRS instructional publications and news articles. However, when you understand the legal definitions of these terms, the deception is easily recognized and the limited application of the Code becomes clear. This understanding will help you to see that filing income tax forms and paying income taxes must be voluntary acts for most Americans because the United States Constitution forbids the federal government to impose any tax directly upon individuals.

"INCOME"

Most people mistakenly believe all moneys they receive, such as wages, salaries, and tips, are "income". However, for years, IRS publication #525, entitled "Taxable and Nontaxable Income", has acknowledged that wages and salaries are NOT "income". Publication #525 states: "Wages and salaries are the main SOURCE of income for most people." In the court decision of Graves v. People of the State of New York ex rel O'Keefe, 59 S.Ct. 595 (1939), the United States Supreme Court ruled that a source of income is not income, and the source is not subject to income tax. In that decision, the Court stated: "A tax on income is not economically or legally a tax on its source." However, wages, salaries, commissions, and tips (sources) are considered to be "income" for an individual when he lists them as "income" on an IRS tax return form. When he signs the tax form under penalty of perjury, he has made a voluntary oath that his wages, salary, commissions, and tips listed on the return are "income" and that he is subject to the tax.

In the still standing decision of Brushaber v. Union Pacific Railroad Company, 240 U.S. 1, the United States Supreme Court ruled that the federal income tax is an excise tax under the Sixteenth Amendment (the income tax amendment). The Court explained that THE INCOME TAX CANNOT BE IMPOSED AS A DIRECT TAX (A TAX ON INDIVIDUALS OR ON PROPERTY) because the United States Constitution still requires that all direct taxes must be apportioned among

the States. "Apportioned" means that a direct tax is laid upon the State governments in proportion to each State's population. The Court ruled that income tax can be constitutional only as an indirect (excise) tax -- that is, a tax on profits earned by corporations or privileges granted by government. In other words, said the Supreme Court, in order for there to be "income", there MUST be profits or gains received in the exercise of a privilege granted by government. As an example, a lawyer is granted the government privilege of being an officer of the government court when he represents clients in litigation.

At law, labor is property. In fact, the Supreme Court has identified labor as man's most precious property. Therefore, the exchange of one's labor for wages or salary (which are also property) is considered by law to be an exchange of properties of equal value in which there is NO gain or profit. Such a property exchange of equal value cannot be taxed because there is no profit or gain. Also, one who works in an ordinary occupation is not a recipient of any privilege granted by government, because he is merely exercising his constitutionally guaranteed right to work and earn an living. Courts have repeatedly ruled that no tax may be placed upon the exercise of rights. Their reasoning was sensible. If the exercise of rights could be taxed, government could destroy them by excessive rates of taxation.

Items that the law includes in "income" are described in Code sections listed under the title of "Items Specifically Included in Gross Income", which covers Sections 71 through 86. Nowhere in these sections and nowhere else in the Code is there any mention of wages, salaries, commissions, or tips as being "income". For example, to deceive and intimidate waitresses into declaring their tips to be income is a double fraud. First, tips are gifts, not wages. According to the IRC, gifts are not subject to income tax. In fact, even if tips were considered to be wages, they would still not be "income" and would not be subject to an income (excise) tax unless one enters them as "income" on a tax return form.

"PERSON"

People generally consider the term "person" to mean an individual only. But, IRC Section 7701, entitled "Definitions", includes a corporation, a trust, an estate, a partnership, an association, or company as being a "person". All of these legal entities are "persons" at law, so it is legally correct but very misleading when the federal income (excise) tax on corporations is described by the deceptive title of "Personal Income Tax". This misleading description leads most people to believe that it means a tax on individuals.

The legal term "person" has an even more restricted definition when used in IRC Chapter 75, which contains all the criminal penalties in the Code. In Section 7343 of that Chapter, a "person" subject to criminal penalties is defined as:

... [A]n 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.

An individual who is not in such a capacity is not defined as a "person" subject to criminal penalties. Unprivileged individuals, who do not impose the income (excise) tax upon themselves by filing returns, are not subject to the tax and they are not "persons" who can lawfully be subjected to criminal charges for not filing a return or not paying income tax.

Sections of the Code relating to the requirements for filing returns, keeping records, and disclosing information state that those sections apply to "every person liable" or "any person made liable". These descriptions mean "any person who is liable for the tax". They do not state or mean that all persons are liable. The only persons liable are those "persons" (legal entities such as corporations) who owe an income (excise) tax, and are therefore subject to the requirements of the IRC. If you substitute the word "corporation" for the term "person" (a corporation is a person at law) when reading the Code or other articles and publications relating to income tax, the true meaning of the Code becomes more apparent.

A TAX PAYER IS NOT A "TAXPAYER"

The deceptive term "taxpayer" is a legal term created by combining the words "tax" and "payer". The general understanding of the term's meaning is different from its legal definition in the IRC. Section 7701(a)(14) gives the legal definition of the term "taxpayer" in relation to income tax. It states: "The term 'taxpayer' means any person subject to any internal revenue tax." (All internal revenue taxes are excise taxes.) Note that the section does not say that all persons are "taxpayers" subject to internal revenue tax. Corporations are "taxpayers", for they are "persons" subject to an internal revenue (excise) tax.

The term "taxpayer" is used extensively throughout the IRC, in IRS publications, news articles, and instructional literature as a verbal trap to make uninformed Citizens believe that all individuals are subject to federal income tax and to the requirements of the IRC. These materials state that "taxpayers" are required to file returns, keep records, supply information, etc. Such statements are technically correct, because "taxpayers" are those legal "persons" previously described that are subject to an excise tax, but unprivileged individuals are not "taxpayers" within the meaning of the IRC.

The confusion about the meaning of the term leads most people to mistakenly assume that they are "taxpayers" because they pay other taxes such as sales taxes and real estate taxes. Those people are tax payers, not "taxpayers" as defined in the IRC. When they read articles and publications related to income tax, describing the legal requirements for "taxpayers", they erroneously believe that the term applies to them as individuals. It is very important to understand that the IRC requirements apply to IRC-defined "taxpayers" only, and not to unprivileged individuals. Corporations and other government-privileged legal entities are "taxpayers under the Internal Revenue Code"; unprivileged individuals are not, unless they voluntarily file income tax returns showing they owe taxes, thus legally placing themselves in the classification of "taxpayers". Because of its legal definition, the term "taxpayer" should never be used in relation to income tax, except to describe those legal entities subject to a federal excise tax.

"SHALL" means "MAY"

In general use, the word "shall" is a word of command with a mandatory meaning. In the IRC, "shall" is a directory word that has a mandatory meaning when applied to corporations. The IRC contains a series of directory statutes using the word "shall" in describing the actions called for in those sections of the law. The provisions of these directory statutes are requirements for corporations, because corporations are created by government and, consequently, are subject to government direction and control. Since corporations are granted the privilege to exist and operate by government-issued charters, they do not have the constitutionally guaranteed rights of individuals. This government-granted privilege legally obligates corporations to make a "return" of profits and gains earned in the exercise of their privileged operations when directed to do so by law. This is why the tax form is called a "return".

However, directory words in the Code merely imply that individuals are required to perform certain acts, but directory words are not requirements for individuals when a mandatory interpretation of the directory words would conflict with the constitutionally guaranteed rights of individuals. Courts have repeatedly ruled that in statutes, when a mandatory meaning of the word "shall" would create a constitutional conflict, "shall" must be defined as meaning "may". The following are quotes from a few of these decisions. In the decision of Cairo & Fulton R.R. Co. v. Hecht, 95 U.S. 170, the U.S. Supreme Court stated:

As against the government the word "shall" when used in statutes, is to be construed as "may," unless a contrary intention is manifest.

In the decision of George Williams College v. Village of Williams Bay, 7 N.W.2d 891, the Supreme Court of Wisconsin stated:

"Shall" in a statute may be construed to mean "may" in order to avoid constitutional doubt.

In the decision of Gow v. Consolidated Coppermines Corp., 165 Atlantic 136, the court stated:

If necessary to avoid unconstitutionality of a statute, "shall" will be deemed equivalent to "may"

Sections 6001 and 6011 of the IRC are cited in the Privacy Act notice in the IRS 1040 instruction booklet in order to lead individuals to believe they are required to perform services for tax collectors. Note the use of the word "shall" in the following sections of the Code:

Section 6001 states:

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and requirements as the Secretary may from time to time prescribe.

Section 6011 states:

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary.

Note that Sections 6001 and 6011 apply to "every person liable" and "any person made liable", but not to "individuals". However, THERE IS NO SECTION IN THE IRC THAT MAKES INDIVIDUALS LIABLE FOR PAYMENT OF INCOME TAX because any law imposing a federal tax on individuals would be unconstitutional, for it would violate the taxing limitations in the U.S. Constitution which prohibit direct taxation of individuals by the federal government. People are often confused when reading the Code because, under Subtitle A, Chapter 1, which covers income taxes, Part 1 of Subchapter A has the misleading title of "Tax on Individuals". The title is misleading because Part 1 imposes the tax on "income", but contains no requirement for individuals to pay it. But an individual becomes a "person liable" for the tax when he files an income tax form, thereby swearing that he is liable for (owes) the tax.

The Privacy Act notice in the instruction booklet for IRS Form 1040 also shows that disclosure of information by individuals is not required. The notice states:

Our legal right to ask for information is Internal Revenue Code sections 6001 and 6011 and their regulations.

The IRS does not say that those sections require individuals to submit the information; those sections only give the IRS the authority to ask for it.

Section 6012 states:

Returns with respect to income taxes under Subtitle A shall be made by the following: (1)(A) Every individual having for the taxable year gross which equals or exceeds the exemption amount"

Subsections (2) through (6) list corporations, estates, trusts, partnerships, and certain political organizations as also being subject to this section.

Any requirements compelling unprivileged individuals to keep records, make returns and statements, or to involuntarily perform any other services for tax collectors, would be violations of constitutionally guaranteed rights.

The Thirteenth Amendment to the United States Constitution forbids compelling individuals to perform services involuntarily. The Amendment states:

Neither slavery nor involuntary servitude, except as punishment for crimes whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The Fourth Amendment in the Bill of Rights of the United States Constitution states that the people's right to privacy of their papers shall not be violated by government. To compel individuals to disclose information taken from their papers would violate this right.

The Fifth Amendment in the Bill of Rights protects the right of individuals not to be required to be witnesses against themselves. To compel individuals to disclose information by submitting statements or information on a tax return form, all of which could be used against them in criminal prosecutions, would violate their Fifth Amendment right.

These examples show some constitutional conflicts that would result from defining the word "shall" as meaning "is required to". Thus, "shall" in the above mentioned statutes must be interpreted as meaning "may". Consequently, for individuals, keeping records, making statements, and making returns are clearly voluntary actions that are not required by law.

"HAVING" INCOME

According to the wording of Section 6012 previously discussed, it is a directory statute which pertains to the filing of income tax returns, and applies only to those individuals "having income". Since the word "having" has no deceptive legal definition in the Code, its legal meaning is the same as its customary meaning in general use. Although dictionaries define the word "have" as meaning "possess" or "hold in one's possession", the IRS fraudulently misinterprets "having income" as meaning "receiving gross receipts" when applying Section 6012 to individuals.

To better understand the meaning of "having income", consider this example: If during one year a corporation receives ten million dollars (gross receipts) from the sales of its products, and has expense items of nine million dollars, the corporation has a profit (income) of one million dollars. When tax liabilities are determined at the end of the year, the corporation has (possesses) an increase in its assets (a gain) of one million dollars. But, if the corporation's expenses equalled its gross receipts, it would then have (possess) no profit or gain (income) and it would owe no income tax.

Now, consider another example: If during one year an individual receives fifteen thousand dollars in wages (gross receipts) from the sale of his labor, and has expenses of fifteen thousand dollars to sustain himself and his family, he then has (possesses) no increase in assets. Although he has (possesses) nothing more than he had at the beginning of the year, IRS agents consider him as "having income" of fifteen thousand dollars. IRS agents ignore the fact that his wages were not income according to their own publications!

"MUST" means "MAY"

Most people have never studied the IRC and their understanding of the law is generally based on hearsay, newspaper articles and IRS instructional materials. These instructions make frequent use of the deceptive word "must" in describing the things that the IRS wants you to do, because "must" is a

forceful word that people mistakenly believe to mean "are required". Very few people realize that "must" is a directory word similar to "shall" and that, in IRS instructions to the public, it means "may", the same as the word "shall".

In the legal definition of the word "must" in Black's Law Dictionary, it states:

... [I]t is often used in a merely directory sense, and consequently is a synonym for the word "may" not only in the permissive sense of that word, but also in the mandatory sense which it sometimes has.

Because of the constitutional conflicts explained earlier in this article, the word "must", similar to the word "shall", cannot have a mandatory meaning for individuals. It therefore means "may" when used in IRS instruction publications.

The IRS instructions for Form 1040 state that you "must" file a return if you have certain amounts of income. IRS withholding instructions state that employers "must" withhold money from paychecks for income tax, "must" withhold social security tax (an income tax also), and "must" send to the IRS any W-4 withholding statement claiming exemption from withholding, if the wages are expected to usually exceed \$200 per week. An understanding of the legal meaning of the word "must" exposes the deception by the IRS and makes it clear that the actions called for are voluntary actions for individuals that are not required by law. If these actions were required by law, the instructions would not use the word "must", but would say that the actions were "required".

FREE SOVEREIGN CITIZENS

Prior to the American Revolution, the American colonists were subjects of the English Kings and were subject to their orders and edicts. But, according to the Declaration of Independence and the United States Constitution, the Citizens of our country are free sovereign individuals. They are not subjects of government, nor are they subject to mandatory direction or control by the federal government. Except for duties such as military draft and jury duty, the federal government has no authority to require unprivileged individuals to perform services for government.

There is no section in the IRC requiring individuals to pay income tax or file income tax returns, because the federal government has no constitutional authority to impose any tax directly upon individuals or to require them involuntarily to keep records, make statements, make returns, or perform any acts for the convenience of federal tax collectors. But, if an individual files a return, his voluntary action of signing the form, thereby swearing under penalty of perjury that he owes the tax, is an acknowledgement under oath that he is subject to the tax (a "taxpayer") and is therefore subject to the directory statutes of the IRC.

The reader should remember the legal definitions of the various terms and the information about the rights of Citizens presented in this article whenever he reads the IRC and other materials relating to income tax in order to better understand the correct meaning of whatever they read.

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AND MESSAGE BELOW.

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