

ARE YOU LIABLE?

by Ken Hunter

ARE YOU LIABLE, under the terms of the Internal Revenue Code, (26 U.S.C. 6012), for filing a [tax] return? All kinds of people will tell you, "NO, I'm not liable for filing the return!" One guy, I asked, said "NO, HELL No, I've got a desk full of papers that tell me I'm not liable." I then asked this guy if the I.R.S. had ever told him he wasn't liable. "Well, no" he replied. Wherein, I stated, that all those papers on his desk didn't do him much good, did they?

Under the revenue code, the I.R.S. will furnish I.R.S. Forms for those people who want to confess to being a "taxpayer." One form is the "infamous" 1040 Form and it is a "confessional" for an individual. Then there is the 1041 Form, which is the confessional for a trust and last but not least is the 1042 Form, which is the confessional for a corporation. These are only forms, and have no bearing on the filing requirements under, Section 6012 of the Revenue Code.

The revenue act works like this. You're employed by a corporation, and you filled out a W-4 Form, which allowed that corporation to withhold part of your wages/salary as a "withholding tax." Did you know that there is no such thing as a "withholding tax?" But, anyway, the corporation has the money and supposedly pays over this money to the I.R.S. on a systematic basis. On the W-4 Form you used your identification number, let's face it, all slaves are numbered, and the corporation used this slave number when they reported the amount of money they withheld from your wages/salary. This reporting, by the corporation is on a Form 1099, the infamous 1099 Form. If you earned any "income" outside your work at the corporation, that company or individual is supposed to send in a 1099, allowing the I.R.S. to know that one of the slaves was employed and had earned wages/salary.

When this corporation "pays" you, they pay in a check, which you take and deposit in the local bank. This bank will notify the I.R.S. with another 1099 Form that one of the slaves is doing banking business under this slave number. So the I.R.S. has a full account of your activity for the entire year. If you're retired, you're probably still receiving a "retirement check" which compels you to do business with the bank. Therefore the I.R.S. has a full account of your financial transactions.

The trick to this whole thing, or so I thought, was not to allow any 1099's to be sent to the I.R.S. So like most Americans I developed a money making concern in the "underground" economy and dealt only in "cash" so as to prevent the 1099 from being sent to the I.R.S. Thus, as far as I was concerned, I was not required to file. The I.R.S. in most cases agreed, as they (I.R.S.) did not have any 1099's, and would send me a letter demanding "YOUR TAX RETURN," and the I.R.S. would specifically mention this 1040 Form. I would reply with a letter and the I.R.S. would reply back requesting more information. I would give the information and the I.R.S. would respond with a letter, that the matter had been resolved.

Well, this worked, but the letter never did say, if I was liable or not, and this was the underlying question that I was asking the I.R.S. So I kept asking and asking, and the I.R.S. kept refusing to answer, but kept telling me the matter of the return

was resolved. This was happening to me as an individual and it was also happening with the trust of which I was the trustee. The same procedure was used on the trust that was being used on me as an individual.

However, I still wanted the underlying question answered, was I liable for the return! I made the decision to "enlarge" the letters to the "foreign operations branch" and the "District Director at Ogden," so I hit the law books and the following is what I learned that enabled me to finally get the underlying question answered. The I.R.S. told me: "BASED ON OUR INFORMATION, YOU ARE NO LONGER LIABLE FOR FILING THIS TAX RETURN."

There was no qualification on this statement, so does the phrase "no longer liable" mean for the tax year 1989, or does it mean "forever" like in "no longer liable." You see, the letter raises some interesting questions, doesn't it? For instance the phrase "BASED ON OUR INFORMATION." This means that the I.R.S. already knew I wasn't liable, but they were just waiting to see how long it took me to figure it out. I can say I'm not required to file and you can say you're not required to file, BUT WHEN THE I.R.S. SAYS YOU'RE NOT REQUIRED TO FILE, then you're simply not required to file. Right? The term "BASED ON OUR INFORMATION" just intrigues me, because the word "information" means "knowledge," so the phrase could read "BASED ON OUR KNOWLEDGE." Question then, did the "knowledge" come from my newfound evidence that I was not required to file, which I furnished to the I.R.S., or did the I.R.S. already have the knowledge? The letter states that it was based upon "OUR information" so it stands to reason the I.R.S. didn't need the information from me, they already had it and had already programmed the computer to accept the fact that there are people in the United States that are not liable for filing a tax return.

The I.R.S. operates by computer; the mail is opened by computer and scanned into the "instant data banks" of the I.R.S. If you're using a slave number, on these letters to the I.R.S., which I'm doing for the trusts and not doing on me as an individual, the computer will then trigger your access file and deposit the information on the letter into your access file. The same computer will analyze the information in the letter and respond to it. It is quite evident that the letters shown are "computer-generated" and the signature is "computer-generated." The signature never varies from letter to letter, or year to year. It is believed that the "first" letter I was using, which was addressed to the "foreign operations branch" was triggering the computer to send the letter, "this matter is resolved." But, this new information triggered that same computer to send the letter "NO LONGER LIABLE." Why? Well, something in the new information triggered that computer to issue that letter. Stands to reason, then, that when the computer was programmed, this information was programmed into the computer and it was further programmed that if and when it saw such a letter, or such a trigger, the computer would issue the letter "NO LONGER LIABLE." Therefore the I.R.S. already had the information. Just like they have the same information on you. The only question that I can see is triggering that computer to make the correct response.

Then, there is the term: "NO LONGER LIABLE." Does this mean forever? Does it mean that I am no longer liable for this tax return, meaning the 1040 Form, for this particular year, meaning the year 1989? Or does it mean I am no longer liable for filing this tax return 1041, forever? The important part of this whole thing is that ALL THESE TRUSTS had 1099 Forms that had been sent to the I.R.S., by other government farm agencies. The I.R.S. knew these trusts were receiving money and some of it big money, from the farm programs. That's what is important, the I.R.S. knew of the "income" and the computer already had the 1099's entered, so why did the computer trigger the letter "NO LONGER LIABLE?" Doesn't this mean that there can be "income" earning, in the United States, without a tax liability? Certainly appears that way doesn't it?

Subtitle F, Chapter 61, Subchapter A, Section 6012(a), of the Internal Revenue Code, reads as follows:

"Returns with respect to income taxes under subtitle A shall be made by the following: (1)(A) Every individual having for the taxable year a gross income of \$1,000 or more...."

That sounds easy, doesn't it? Now all I had to do was discover, who this "individual" is, or was. In the Internal Revenue Code there is a definition for most all the terms employed by the code. These definitions are based for the most part at, Subtitle F, Chapter 79, Section 7701. Then at Section 7701(a), is the definition I was looking for:

"(1) Person - The term person shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation."

Then my eyes glanced down and I read:

"(4) DOMESTIC - The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State."

Whoa, then what type of corporation is defined under 7701(a)(1)? Section 7701(a)(4) makes it perfectly clear that if the "corporation" in 7701(a)(1) was meant to include a corporation created in one of the States, say for instance the State of California, then the term "person" would have been defined as:

"(1) Person - The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or domestic corporation."

This just stymied me. If the "person" did not include a corporation created in the State of California, then why did it include me, under the definition of "individual?" Wait a minute, who said it did? Well, I assumed it meant me. I looked at the word "assume" and all I could see was ASS U ME. In researching all the definitions I discovered at Section 7701(a)(5):

"FOREIGN - The term "foreign" when applied to a corporation or a partnership means a corporation or partnership that is not domestic."

So the term "person" did not include a "foreign corporation." The term "person" did not even include a "foreign trust or foreign estate." See Section 7701(a)(31). Then look at Section 7701(a)(30):

"UNITED STATES PERSON - The term "United States person" means: (A) a citizen or resident of the United States, (B) a domestic partnership, (C) a domestic corporation, and (D) any estate or trust (other than a foreign estate or foreign trust, within the meaning of section 7701 (a)(31)."

There is something missing, isn't there? The term "United States Person" does not include an "individual." Does it? So, now I knew why the computer triggered the letter "NO LONGER LIABLE," for the trusts, because the trust was a "domestic trust" and as not an "individual" required filing under Section 6012. The same thing applies to the letter to me "personally" that I am no longer liable for filing a tax return. In that letter the "infamous 1040" is mentioned.

Only an "individual" as that term is defined at Section 7701(a)(1), is required to file. Section 6012 makes no mention of a "United States Person." Now, are you "citizen of the United States" or a "resident of the United States?" Then at Section 6039C(d)(2):

"FOREIGN PERSON - The term "foreign person" means any person who is not a United States Person."

Well, you have seen the definition of a "United States Person," so it is quite clear that the "person" who is defined at Section 7701(a)(1) is a "foreign person." Right? So, who is liable for filing the tax return, pursuant to Section 6012(a)(1)(A)? Section 6039C states that the definitions held there are for that section only. This still leaves, the citizen of the United States and the resident of the United States, a domestic corporation, a domestic partnership, etc., under the definition of a United States Person, and nowhere in this definition, Section 7701(a)(30), is there found the term "individual?" You know from Section 7701(a)(4) that if the definition at Section 7701(a)(1) included a "domestic corporation," then the definition would have stated "domestic corporation" and not just "corporation." If the term United States Person was meant to mean an "individual" then the definition would have stated so. Right? So who is the "person" at Section 7701(a)(1)? Well, if it included a "foreign corporation," then the definition would have stated "foreign corporation" instead of just "corporation." Right? Look at Section 3102(a):

"REQUIREMENT - The tax imposed by section 3101 shall be collected by the employer of the taxpayer..."

The term "taxpayer" is defined a Section 7701(a)(14):

"The term "taxpayer" means any person subject to any internal revenue tax."

Doesn't use the term "United States Person" does it? It uses the term "any person subject to any internal revenue tax." So to be a "taxpayer" takes more than just being in the definition at Section 7701(a)(1), doesn't it?

Are you subject to any internal revenue tax imposed by Section 3101? If you're not, your employer cannot withhold. Section 3101:

"In addition to other taxes, there is hereby imposed on the income of every individual...."

So the tax imposed by Section 3101, which is to be withheld by the employer, Section 3103, is for the "individual" and not the "United States Person?" At Section 3231(b):

"EMPLOYEE - For purposes of this chapter, the term "employee" means any individual in the service of one or more employers....."

The internal revenue code is still talking about the "individual" at Section 7701(a)(1), which does not include the "United States Person" as defined at Section 7701(a)(30). So, are you an "employee?" Section 3231(d) defines when an "individual" is in the service of an employer:

"SERVICE - For the purpose of this chapter, an "individual" is in the service of an employer....."

I can go on and on, but as you can see the entire internal revenue code is for the "individual" as that term is defined at Section 7701(a)(1), which does not include you, because you are defined at Section 7701(a)(30), which does not include an "individual." Even Section 63 which deals with "taxable income" is for the "individual," and not for the United States Person.

Section 7701(a)(1) stood as the definition of a "person" in the 1924 Revenue Code and stood throughout the years, except for the addition of the term "association," until 1981. In 1981 Congress enacted Section 7701(a)(30) and therein defined the terms "citizen of the United States," "resident of the United States," "domestic corporation," "domestic trust and estate," and a "domestic partnership." It was the intent of Congress to remove these definitions from Section 7701(a)(1) and place them within the new Section 7701(a)(30). Congress, intentionally, left out the term "individual", in Section 7701(a)(30) and left it, entirely, within Section 770(a)(1). Why? Why did Congress, after all these years, change the definitions? The answer is as follows.

Title 1 of the United States Code, Section 1 defines a "person" as an "individual." However, the matter goes much deeper and stretches right into the issue of "sovereignty." In the cases Chisholm Ex'r v. Georgia, 2 U.S. 419, 2 Dall 419, 1 L.Ed. 440 (1793) ; Penhallen vs Doane's Administration, 3 Dall 54; McCullogh vs Maryland, 4 Wheat 316; the supreme court has recognized the fact that "sovereignty" remains with the "people" and resides with the "people." This principal was espoused by Chief Justice John Jay,

"...at the Revolution the sovereignty devolved on the people: and they are truly the sovereigns of the country, but they are sovereigns without subjects unless [472*] *the African* slaves among us may be so called) and have none to govern but themselves; the citizens of America are equal as fellow citizens and as joint tenants in the sovereignty.

In the "infamous" Dred Scott case, Dred Scott vs. Sanford, 60 U.S. 393 (1857) the Supreme Court of the United States was addressing the issue of WE THE PEOPLE. The Chief Justice delivered the opinion of the court and stated:

"The words people of the United States [of America] and citizen are synonymous terms and mean the same thing, they both describe the political body who, according to our republican institutes, form the sovereignty and who hold the power and conduct the government through their representatives. They are what we familiarly call the sovereign people and every citizen is one of these people and a constituent member of the sovereignty."

Some eleven years after the Dred Scott case, the court was in session on the case The Siren, 74 U.S. 152 (1868) and this case involved the steamship "Siren" which was captured while trying to run the blockade at the Port of Charleston. The United States navy placed a captain and crew aboard and was taking the Siren to Boston for proper adjudication. En route the Siren was obliged to take on coal at New York Harbor. While entering the port, the Siren struck the sloop Harper and sunk her. The blame for the accident was placed on the Siren, which was under control of the federal government. At issue was whether a "sovereign" could be sued in his own court, without his consent. The opinion was delivered by Justice Field:

"It is the doctrine of the common law, that the sovereign cannot be sued in his own court without his consent." [emphasis added]

Eleven years later, in 1879, the court was again addressing the issue of sovereignty" and this was the case Hauenstein vs Lynham, 103 U.S. 483. At issue was a treaty between the United States and Switzerland, concerning land ownership in America by a Citizen of Switzerland. Hauenstein, a Citizen of Switzerland held a title to property in the City of Richmond. He died and the state moved under the laws of escheat to seize the property, because Hauenstein, being an "alien" could not will his property to his heirs, because they were "aliens." The entire case rested on the treaty and the power of the people to make the treaty. The court stated:

"There can be no limitation on the power of the people of the United States, by their authority the State Constitutions were made, and by their authority the Constitution of the United States was established; and they had the power to change or abolish the state constitution or to make them yield to the general government and to treaties made by their authority."

In 1886, two more cases came before the Supreme Court and both of these cases involved the term "sovereign." In the case Yick Wo vs Hopkins, and Woo Lee vs Hopkins, 118 U.S. 356 (1886), San Francisco Sheriff Hopkins had jailed Yick Wo and Woo Lee and deprived them of their personal liberty. As to what the court stated on the issue of "sovereignty":

"Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts." [emphasis added]

The cases cited above are just a few of the rulings made by the supreme court concerning the issue of "sovereignty" and the cases are based on Barron vs Baltimore, 7 Peters 243 and then later on by the case Fairbanks vs United States, 181 U.S. 283 and the court in all the cases said:

"Powers denied are not to be implied; they are to be obtained, if at all, from and in the same manner provided by, those who originally granted the enumerated powers, but who at the same time denied powers."

In 1909, the court in the case Kansas vs Colorado, 206 U.S. 46, the court clearly recognized the three "sovereigns" in the United States, as the federal government, the state government and WE THE PEOPLE. Under the 10th Amendment which reads as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Therefore, if *WE THE PEOPLE* surrendered the power to the general government, i.e. Congress, then the power could be reserved to the State or to the people. However, if the people denied the power to the general government, i.e. Congress, the power was either reserved to the people or delegated to a state. If the power was denied to the States and not delegated to the general government, i.e. Congress, then the power was reserved to the people.

At Article I, Section 8 WE THE PEOPLE surrendered certain powers to the general government, i.e. Congress, and one of the powers was the power to collect taxes.

"The Congress shall have power to lay and collect taxes, duties, imposts and excises....."

That's the taxing power of the general government, i.e. Congress. Is there mentioned in this power the right to lay a personal income tax on the people? No, of course there isn't, there is only the power to tax a thing. The 16th Amendment gave no new taxing power to the general government, i.e. Congress, this amendment only gave the power to tax a thing, which the Congress already had, and the power to tax this thing without uniformity or regards to apportionment. There is no power to lay and collect a tax on WE THE PEOPLE. However, WE THE PEOPLE surrendered to the general government, i.e. Congress the power to make all laws needful and necessary to carry into effect the powers so delegated. Congress took this power and passed a law that made a "person" liable for the collection and paying over of the "income tax."

The question is whether or not a "sovereign" can be named and made subject to a statute or law, under the term "person." This very issue was before the court in the case United States vs Cooper Corp, 318 U.S. 600 (1941). The case involved the term

"person" as it was used in Section 7 of the Sherman Antitrust Act. The court answered:

"The precise question for decision, therefore is whether by the use of the phrase "any person," Congress intended to confer upon the United States the right to maintain an action for treble damages against a violator of the Act.

Since in common usage, the term "person" does not include the sovereign, statutes employing the phrase are ordinarily construed to exclude it. Citing from United States vs Fox, 94 U.S. 315. [emphasis added]

The above cited case was in 1941 and the Fox case was even earlier than that. So the court, for some time, was recognizing the fact that a "sovereign" cannot be named, in a statute, under the term "person." Six years after the Cooper case, the court was again answering the question on the term "person" and this was in the case United States vs Mine Workers, 330 U.S. 258 (1947). The court upheld in the Cooper case -- that the term "person" cannot and does not include the "sovereign." Then in 1979, in the case Wilson vs Omaha Indian Tribe, 442 U.S. 653, the court again, upheld the decision in Cooper.

The case WILL v. MICHIGAN DEPT. OF STATE POLICE, 491 U.S. 58 (1989) again, addressed the issue of the word "person." At issue was the Civil Rights Act, 42 U.S.C. 1983, and whether the term "person," as used in that Act, included the State of Michigan. The original case was dismissed by the trial court, stating that the term "person" did not include the sovereign State of Michigan. The Michigan Appellate court upheld the trial court and the issue went to the Michigan Supreme Court and the decision was again upheld. Will, then appealed, on writ of error to the United States Supreme Court and the court made it perfectly clear that the term "person" does not include the "sovereign" and for the sovereign to be bound by the statute, the sovereign must be "specifically" named.

These cases forced Congress to change the definitions and remove the "sovereign" WE THE PEOPLE from under the definition of the term "person."

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Supreme Court Justice Robert H. Jackson, "I do not understand the government to contend that it is any less bound by the obligation than a private individual would be..." *"It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error."* Perry v. United States, 204 U.S. 330, 358. (Emphasis added.)