

The “Willful Failure to File” Scam!

How many times have you read articles [usually around the first quarter of the year!] concerning people being convicted of Willful Failure to File charges? Over the years, we’d guess you’ve read quite a few such articles. If you’re a member of the Patriot community, you’ve probably read a lot more of these articles than the average American. These articles are part of an annual publicity ritual of the IRS and the media intended to intimidate Citizens into filing income tax returns. The fact that most Citizens don’t actually owe any income tax is a matter of complete indifference to both the government and the media.

How many Americans do you suppose file their income tax returns each year out of nothing more than the fear of being incarcerated if they don’t? Out of roughly 100 million potential taxpayers, we suspect that quite a few fall into that category. If only 5% of the public falls into that category, that’s 5,000,000 people filing returns out of fear of going to jail.

Many Americans believe that the government will only prosecute them if they’ve broken a law. The belief is completely false. The US government will prosecute you for any number of reasons; you having actually committed a crime is only one possible reason, and is **not** an essential reason in the eyes of government prosecutors. Attaining the goals handed down by their political masters, and maintaining the power base of those in control are far more essential elements to a US Attorney than whether or not you’ve actually committed a crime.

"Americans are no longer secure in law - the justice system no longer seeks truth and prosecutors are untroubled by wrongful convictions."

Paul Craig Roberts (former Asst. Secretary of the Treasury)

Willful Failure to File is a perfect example of a charge that the government brings against a private Citizens even though the US Attorney knows that in most cases the Citizen is not guilty of the charge.

26 USC §7203 [Willful Failure to File]:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both

A fine of \$25,000 or a jail sentence of not more than a year! Scary stuff! Of course the question is, can the US Attorney prosecute you for such a thing? Let's find out!

You will note that the section begins with the words, "Any **person** required under this title...". We've highlighted "person", and underlined "required", because they are the key elements of the charge.

As we've discussed in other parts of this site, the term "person" can be defined in various ways; each definition suitable for the specific purpose of the statute in which it is employed. Before we can determine if **you** are subject to prosecution for Willful Failure to File, we need to know if you fall within the definition of "person" as defined for use in §7203. Additionally, because it is the "**person required**" to file, the definition will need to include the exact nature of who is "required" to file returns under the internal revenue laws of the United States.

§7203 is a part of Chapter 75 of the Internal Revenue Code (IRC). While most IRC chapters contain between 3 and 10 sections, Chapter 75 [entitled, "Crimes, Other Offenses, & Forfeiture"] has 59 sections! §7203 is the third section of the chapter – right up at the front. So where might we find the definition of "person" as used within the third section of the chapter? Where else - in the 58th section of the chapter – 55 sections after the offense statute!

Isn't it grand how the government does everything it possibly can to keep you from knowing the truth and being able to defend yourself from an unlawful attack? And to be perfectly clear, there are many statutes wherein pivotal definitions are provided right in the body of the statute so that people will not be confused. But those are places where it serves the interest of the government that you not be confused. When it comes to Willful Failure to File, the government will go to great lengths to make sure you are as confused and ill-informed as possible. It's much easier for the government to unlawfully prosecute you when you don't really understand what's going on.

So why would the government bury the definition of "person" (as used within §7203) 55 sections **after** the offense statute? Let's look and see what they're hiding!

26 USC §7343 [Definition of the term "Person"]:

The term "person" as used in this chapter [chapter 75] 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.

Whoa! Did you get that?! The term "person" is defined as "*an officer or employee of a corporation, or a member or employee of a partnership*". How many people have gone to jail for Willful Failure to File when they were just regular old folks working

for an ordinary living and were **not** officers or employees of a corporation or partnership? The answer is, **thousands**.

But wait...there's more! Even if one **is** an officer or employee of a corporation or partnership, such person must still be "**under a duty to perform the act in respect of which the violation occurs**". In other words, that officer or employee must hold a position within the company in which he is tasked with overseeing and completing the company's obligations under the internal revenue laws of the United States. This can be seen in the plain language of the definition wherein it states, "...**who as such officer, employee, or member is under a duty to perform the act**".

Further, such a person must be **aware** that he has been tasked with such a responsibility (either by operation of law or by appointment) and he must have a **belief** [Cheeks doctrine] that he is "required", on behalf of the company, to perform certain acts under the law. If he has such a belief, and fails to carry out his lawful responsibilities, only then is he liable for prosecution under §7203.

Let's take a moment and discuss the use of the word, "includes" in the definition of "person" at §7343. The federal courts have consistently held that "includes" (as used within the IRC) is a term of "**limited** expansion". [See 26 USC §7701(c) for the specific definition of "includes".] As such, the definition of "person" can "include" people who are within the same legal parameters, even though they are not specifically named in the definition. An example of this might be the trustee of a statutory trust that has incurred income tax liability. [See the [Trusts](#) section within this site to understand the meaning of a "statutory trust".] In that circumstance, the trustee would be the equivalent of a corporate officer because he would be the person "under a duty to act" on behalf of the statutory fiction, and thus would be included in the meaning of "person", as defined at §7343.

The definition of "includes" (as defined within the IRC) allows the government to use "definitions" not so much to define what a thing is, but rather to establish a "category" of things that can be embraced by the term.

As an example, let's look at a fictitious definition:

51 USC §1:

Food – *The term "food" as used within this section includes peaches, pears, and apples.*

Under the IRC definition of "includes", the term "food" could also embrace nectarines, persimmons, guavas, etc. However, the term "food" (as defined) could not be construed to embrace a steak, or asparagus, because the category clearly established by language of the definition is "fruit". Meat and vegetables cannot be a

part of the term “food”, because they fall outside the “category” established by the definition.

To bring this discussion back to “person” (as defined at §7343), we find the “category” established is:

An individual who holds a position within a statutory fiction of law (e.g. corporations, LLPs, etc.), and that position imposes a duty upon him to conduct certain acts, on behalf of the fiction, in accordance with the internal revenue laws of the United States.

Based on this definition, an ordinary American Citizen, who is under no duty to perform any act on behalf of another, under the internal revenue laws of the United States, is not a “person” for the purposes of Willful Failure to File [§7203].