

Your Citizenship and the IRS

by John Cobin, Ph.D. for *The Times Examiner*

August 24, 2007

According to the IRS, a taxpayer can be “out of compliance” for any number of reasons: checking the wrong box, taking a disputed deduction, misinterpreting a regulation, etc. Tax experts cannot agree among themselves what actions are “in” or “out of” compliance. Indeed, the IRS code is the most complicated and convoluted tax legislation in the world. Do you have reason to believe that you are out of compliance with the tax law from either a civil or criminal standpoint? Well, you just might be. Most of us are not tax experts and, therefore, few of us would presumably be able to determine whether or not we are in compliance.

Nevertheless, let’s take notice of four recent cases where non-filers were found to be innocent of charges brought against them by the IRS: (1) on June 27, 2005, former IRS special agent Joseph Banister, CPA was acquitted by a jury in U.S. District Court in Sacramento (Case No. S-04-435, E.D. Calif.) of charges surrounding conspiracy to defraud and assisting with the improper filing of income tax returns—note: Joe Banister does not file an income tax return, (2) on August 8, 2003, Federal Express pilot Vernice Kuglin was acquitted by a jury in U.S. District Court in Memphis for willful failure to file a tax return (Case No. 03-20111, W.D. Tenn.), (3) on July 9, 2007, Tom Cryer of Shreveport was found not guilty for “willful failure to file an income tax return” by a 12-0 jury decision in U.S. District Court (Case No. 06-C-2176, W.D. La.), and (4) on May 12, 2006, the U.S. Attorney filed an emergency motion in U.S. District Court in Peoria to drop the charges of failure to file and tax evasion against Robert Lawrence—just three days before his trial was to start (Case No. 06-CR-10019, C.D. Ill.). Isn’t it curious that important verdicts like these are not widely reported in the standard reporters like the *Federal Reporter* (F.2d)? Nevertheless, the news media has picked them up, as a simple Google search will show. Take a look!

Non-filers (who have been prosecuted or otherwise) have been interested in the meaning of the term “United States Citizen”. Which citizens are obligated to file a tax return? Here are a couple of key questions that we might all ask ourselves: (a) “Do you know of a statute that requires that *all* United States citizens who earn an income must file an income tax return with the IRS?” and (b) “How do you contemplate the term “United States Citizen” as used in the Internal Revenue Code?”

That term was a source of significant controversy, resulting in the U.S. Supreme Court ruling *In Re the Slaughterhouse Cases* (1872), 83 U.S. 36 (Wall.) and many similar rulings afterwards. This ruling has never been overturned. The Fourteenth Amendment (1868) had *granted*—rather than *recognized*—rights to life, liberty and property to certain people, mainly blacks and perhaps Chinese Coolies, who while having been born in one of the several States were not citizens and had no fundamental rights. They had been slaves—the property of other men. On the other hand, while white Americans born prior to passage of that Amendment were considered citizens merely as a matter of being born in one of the States. Black people were not. That legal doctrine was one of the more repugnant and widely-known aspects of the famous decision *Dred Scott v. Sandford* (1857), 60 U.S. 393. The Fourteenth Amendment did not confer or grant upon white Americans any new right of citizenship or any fundamental right. White people already held such rights “naturally”, just as Thomas Jefferson said in the Declaration of Independence. According to the U.S. Supreme Court, the Fourteenth Amendment only conferred citizenship and rights on recently freed slaves.

Let us recall that such racial issues—which strike us as so repulsive today—were commonplace in caselaw during the eighteenth and nineteenth centuries. For instance, all southern states had myriad cases and decisions on how much “black blood” a man could have and yet still be considered “white” (usually one-sixteenth). Like it or not, such decisions form a part of southern heritage.

The regulations for the U.S. tax code refer to United States citizens and imply the meaning of the term as contemplated in the Fourteenth Amendment. For example, it is interesting to note that in trying to interpret who owes the income tax under Title 26, the *Code of Federal Regulations* 1.1-1(c) states: “Who is a citizen. Every person born or naturalized in the United States and subject to its jurisdiction is a citi-

zen.” Compare that statement to the Fourteenth Amendment to the U.S. Constitution: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” The constructions are clearly similar.

Do you think it is fair to say that the *CFR* is effectively quoting (or at least paraphrasing) the Fourteenth Amendment in its definition of a citizen of the United States? Do you think that *CFR* 1.1-1(c) thus implies the meaning of that term as interpreted by the U.S. Supreme Court in *The Slaughterhouse Cases*? Did you receive your fundamental rights or citizenship rights through the Fourteenth Amendment? Is it fair to say, at least, that having a rudimentary understanding of citizenship is important for a primary understanding who must file a tax return?

Considerations of citizenship should give all of us some food for thought. And they might even change the way you file your taxes.