

## 10 Tax Protester Claims To Avoid

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The news coverage of Andrew Joseph Stack, the software engineer who crashed his private plane into an Internal Revenue Service office building in Austin, refers to him as a "tax protester." But don't expect the IRS to call him that.

In 1998, Congress prohibited the IRS from labeling individuals "illegal tax protesters" and ordered it to purge the "protester" code from the computer files of 57,000 Americans. But

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lawmakers didn't stop the IRS or the courts from imposing stiff penalties on those who make traditional protest arguments or take other positions that the IRS deems to be "frivolous."

In fact, while there are plenty of negative things you can be called in the tax world - for example "aggressive" or "delinquent" - one of the worst to be called is "frivolous." In IRS lingo it's about as bad as you can get, just shy of the other "f" word, "fraudulent."

In the tax world, frivolity can be darned expensive. In general, if the IRS finds your argument or tax position to be frivolous, it can mean a 20% accuracy-related penalty (under Internal Revenue Code section 6662); and a whopping 75% civil fraud penalty (section 6663). If you take a position deemed frivolous on an amended return asking for money back, you can also be hit with a 20% erroneous claim for refund penalty (section 6676). On top of all this, if you file your return late and it includes frivolous positions, the usual penalties for fraudulent failure to timely file an income tax return can be tripled up to another whopping 75% (section 6651(f)).

Moreover, these days it's not only frivolous tax returns that trigger penalties but frivolous *other tax forms*, too. Under section 6702, there's a \$5,000 penalty for frivolous tax returns and you can be separately penalized for sending in even seemingly innocuous tax forms throughout the year.

Court positions are affected as well. If you argue frivolous tax positions in court, the court can impose a penalty of up to \$25,000 if it concludes that: 1) your position is frivolous, or 2) you instituted a proceeding primarily for delay, or 3) you unreasonably failed to pursue your administrative remedies. (In other words, you went to court without going through all IRS appeals procedures first.)

In the law's eyes, even worse than taking a frivolous tax position is encouraging others to do so. That can bring a whole raft of additional penalties. Promoters can include some accountants, tax lawyers, and (obviously) people who organize tax protester movements. Fortunately, there's not too much of this, but the IRS takes a very dim view of it when it does occur and can even bring criminal charges. (Note that the Department of Justice doesn't face restrictions on calling people "tax protesters," although it has also labeled them "tax defiers.")

How does a normal taxpayer know what is frivolous? The IRS publishes its own list of frivolous positions, but here are 10 things you should know about frivolous tax positions:

### 1. Don't argue our tax system is voluntary.

Yes, our tax system mostly involves "self-assessment," meaning that you fill out your own tax return (or pay someone to do it) and you send it in (as opposed to having all your taxes paid by withholding). Still, that doesn't mean taxes are voluntary in the traditional sense. This argument, both for filing returns and for paying tax, always fails. Don't try it.

### 2. You can't take the fifth.

Several no-go arguments are based on the Fifth Amendment to the Constitution. Forget arguing that federal income taxes constitute a "taking" of property without due process of law. Plus, you can't argue that you do not have to file returns or provide financial information because of the protection against self-incrimination found in the Fifth Amendment.

### **3. Don't claim Federal Reserve Notes (or wages or tips either!) aren't taxable "income".**

There are variations of this flaky argument, but it usually starts with the notion that your income isn't really income, and that U.S. cash notes can't be taxable. The cash you carry in your wallet may be labeled "Federal Reserve Notes," not money, but get over it. Plus, don't try to argue that pay for services can't be taxed. Wages, tips and other compensation received for personal services are taxed just like everything else. (For background reading, see *Uncle Sam's Surprise: Unexpected Sources Of Taxable Income.*)

### **4. Forget definitional arguments.**

Just about every form of flaky definitional argument against taxes has failed. For example, don't claim that taxpayers are not U.S. citizens, or that even if they are, they are not taxable persons. Wrong! Also in the no-go category are claims that the U.S. consists only of the District of Columbia, federal territories, and federal enclaves. Also don't bother arguing that the only "employees" subject to federal income tax are employees of the federal government. All of these positions are frivolous.

### **5. Don't fall for the foreign vs. domestic income line.**

All income is taxable here, wherever you earn it. So forget arguing that only foreign-source income is taxable, making your domestic income exempt. There is a convoluted argument that foreign income is different, but don't bother. This has variations, but this is the one that got actor Wesley Snipes in trouble and facing a three-year prison sentence. (He's now appealing his conviction on three misdemeanor tax fraud counts.)

### **6. The First Amendment won't help you in a tax case.**

The First Amendment to the U.S. Constitution protects freedom of speech and religion. But don't try to connect those freedoms to taxes. If you argue that you can refuse to pay income taxes on religious or moral grounds by invoking the First Amendment, you'll lose.

### **7. The Thirteenth Amendment is no help either.**

You can forget arguing the Thirteenth Amendment, too. Some have argued that compelled compliance with the federal income tax laws constitutes servitude in violation of the Thirteenth Amendment, adopted in 1865 to abolish slavery. Not true. Speaking of slavery, African Americans can forget claiming a special tax credit as reparations for slavery and other oppressive treatment. That argument too is frivolous.

### **8. Ditto the Sixteenth Amendment.**

Next in the frivolous constitutional hit parade is the Sixteenth Amendment, but it too will get you labeled as frivolous. First, you can give up on arguing that this amendment was never properly ratified, making the federal income tax unconstitutional. Second, don't argue that the Sixteenth Amendment does not authorize a direct non-apportioned federal income tax on U.S. citizens. These arguments will fail.

### **9. The paperwork reduction argument has been shredded.**

It sounds a bit like a Monty Python routine or something out of George Orwell's *1984*, but also do not waste time (as some tax protesters do) arguing about the little OMB control numbers or Paperwork Reduction Act Notices appearing on most federal forms. The courts have struck down arguments that taxpayers are not required to file federal income tax returns because the instructions and regulations associated with IRS Form 1040 do not display an OMB control number as required by the Paperwork Reduction Act.

### **10. Avoid entity arguments. You are not a church.**

There are some grassroots movements claiming you can legally avoid paying taxes with certain entities. Avoid all of this. One promotes a type of "untaxing" package or trust that suggests you can legally and permanently avoid the obligation to file federal income tax returns and pay federal income taxes. No way. Another bizarre idea - this one with a more religious flavor - says you can form a "corporation sole" (sometimes called a "ministerial trust") for yourself (a type of entity usually reserved for the head of a church), and that it can cloak you from paying federal income taxes. Forget it. Stack, the Austin pilot, appears to have gotten involved originally in a "home church" scheme.)

If you encounter any of the claims above - or anything else that sounds too good to be true - it probably is. Check it out with a qualified tax lawyer or accountant, or check with the IRS. The bottom line is that if someone tells you for some reason you don't need to pay taxes, you could find yourself labeled as frivolous and hit with a possibly ruinous bill for back taxes, interest and stiff civil penalties.