



Robert W. Wood THE TAX LAWYER

TAXES | 5/13/2013

IRS Targeted 'Tea Party' But Can't Even Use 'Tax Protester' Name

The IRS apology for unfairly targeting Tea Party groups for hot button terms like “tea party” and “patriot” will be discussed for months. Rightly so, since much of the story and much of the fumbling ‘it wasn’t intended-it was low-level-not political-just misunderstanding’ was hard to fathom. Sometimes the cover-up is worse than the crime.



Photo credit: wikimedia.org

But as numerous commentators have pointed out, the IRS does wield enormous power. Those three little IRS initials arguably cause more heart palpitations for more Americans than the CIA, FBI, DOJ or any other three initials. Seeing IRS on an envelope or business card at your doorstep may reduce you to a sweating mass of nerves.

Even if these tea party groups weren’t burned, the mere fact that they are now revealed to have been subject to unusual rafts of questions should be explained by someone. The low-level self-instigated IRS people just in Cincinnati? If you believe all of that blather perhaps you should respond to all the IRS emails you receive asking for all your personal data.

This is no tempest in a teapot. Ironically, the IRS is terribly sensitive to labels, which makes this all the more incredible. In [1998](#), Congress actually **prohibited** the IRS from labeling individuals as “illegal tax protesters,” ordering the IRS to purge “protester” codes from its computer files.

However, IRS employees continue to use the epithet in their case narratives. See [Fiscal Year 2011 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations](#). This report says “Illegal Tax Protester” and similar terms stigmatizes taxpayers and causes IRS bias. The report found 38 instances in which 34 IRS employees referred to “Tax Protester,” “Constitutionally Challenged,” or similar name-calling.

Being a Tea Partier or Patriot may sound less pejorative, but any labeling seems dangerous. It reminds me of another word not in the verboten category: frivolous. If the IRS finds your tax position “frivolous,” it means a 20% accuracy-related penalty under [Section 6662](#) of the tax code; and a whopping 75% civil fraud penalty via [Section 6663](#). A frivolous position on an amended return asking for money back triggers a 20% erroneous claim for refund penalty via [Section 6676](#).

If you file your return late with frivolous positions, the usual penalties (for fraudulent failure to timely file an income tax return) can be **tripled** up to another whopping 75% by [Section 6651\(f\)](#). Moreover, apart from tax returns, frivolous **other** tax forms can trigger penalties too. There’s a \$5,000 penalty for frivolous tax returns via [Section 6702](#), and you can be **separately** penalized even for sending seemingly innocuous tax forms.

How does a normal taxpayer know what’s frivolous? The IRS publishes its [own list of frivolous positions](#). Hopefully being in a Tea Party group—or any lawful group for that matter—won’t label you.

Contact me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.