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Not Paying Taxes To Protest Trump? Watch Out For IRS

Can you refuse to pay your federal income taxes if you dislike President Trump, or want him to release his tax returns? Even ardent protesters probably know they will have to pay, and pay even more because of the delays and penalties. There are histories to tax protests [collected here](#). Attempting to tap into those traditions, some are saying that they [will not pay, withholding taxes to fight Trump](#). Best case, you will get penalties and interest added to your tax bill. Chances of prosecution are probably small, but make no mistake, you will still have to pay. Anti-Trump rallies are [planned](#) for 15 April, the normal tax day. One big focus, it appears, remains public access to President Trump's tax returns.

The right to protest may be fundamental, but tax protests seem to be treated differently than many others. Despite free speech protections, some arguments about taxes seem almost as incendiary as yelling 'fire' in a crowded theater. Tax protests come in all shapes and sizes. From throwing tea into Boston Harbor, paying the IRS in dollar bills, etc. One man [set his flock of chickens loose](#) in an Oregon tax office in protest.



Protestors gather outside the World Trade Center in Portland, Ore., Tuesday, Jan. 24, 2017.

Surprisingly, the IRS is prohibited by law from labeling people as “illegal tax protesters.” In 1998, Congress even ordered the IRS to purge “protester” from its files. Yet the label remains hard to eliminate, according to an [audit report](#). Using illegal tax protester or other similar designations can stigmatize taxpayers. Congress thought some people were being permanently called tax protesters even though they later stopped acting out. But IRS employees still occasionally refer to taxpayers as “tax protester,” “constitutionally challenged,” or other designations. The report says all IRS employees need reminders not to use ‘illegal tax protester’ or similar labels. In [response](#), IRS management agreed.

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.” If the IRS finds your argument or tax position to be frivolous, it can mean a 20% accuracy-related penalty under [Section 6662](#); and a whopping 75% civil fraud penalty under [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 75% ([Section 6651\(f\)](#)). It is 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 penalties. Promoters can include some accountants, tax lawyers, and people who organize tax protester movements. The feds can even bring criminal charges. The IRS publishes a [list of frivolous positions](#). Still, a surprising number of people make these arguments. For example, [Scott Grunsted](#) claimed the

federal government can only tax income that is federally connected and not from the private sector. Nope, he lost.

In [Worsham v. Commissioner](#), a lawyer concluded that he wasn't required to file returns or pay taxes. The IRS said he was a protester making frivolous and groundless arguments. Since it was his first batch of flaky arguments, the court just warned him. He had to pay taxes, penalties and interest, but not the big penalties reserved for people formerly known as protesters. Not all cases of this sort end this happily. It can be surprisingly difficult to separate legitimate arguments from flaky ones. So whatever your position, consider getting a disinterested second opinion. Many civil and criminal tax cases start with taxpayers blindly following their advisers. Remember Wesley Snipes?

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.