



## Robert W. Wood

THE TAX LAWYER

Aug. 7 2012 — 9:48 am

### Protest? Sure, But NOT When It Comes To Taxes

“Tax protestor” doesn’t sound principled like a 1960s sit-in. In fact, **no one** should want to be called a tax protestor—it puts all your tax arguments in the dustbin. For decades the IRS waged a war with those denying its authority. Name-calling became a big issue.



In [1998](#), Congress actually **prohibited** the IRS from labeling people as “illegal tax protesters.” Congress even ordered the IRS to purge the “protester” code from the computer files of 57,000 Americans. However, IRS employees still to use the epithet in their case narratives.

So says a report issued by the Treasury’s watchdog [Treasury Inspector General for Tax Administration](#). See [Fiscal Year 2011 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations](#). The continued use of “Illegal Tax Protester” and similar labels stigmatizes taxpayers, causing IRS employees to be biased against them. The report found 38 cases where 34 employees called taxpayers “[Tax Protester](#),” “Constitutionally Challenged,” or something similar. See [Should IRS Dare To Speak “Tax Protestor” Name?](#)

Whatever you call them, anyone who makes frivolous tax arguments may have to pay big time. In general, if the IRS finds your argument or tax position is “frivolous,” it means a 20% accuracy-related penalty (under [Section 6662](#)); perhaps even a whopping 75% civil fraud penalty ([Section 6663](#)). A frivolous position on an amended return asking for money back can trigger a 20% penalty for an erroneous claim for refund ([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% ([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 ([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](#). Still, a surprising number of people make these arguments. [Scott Grunsted](#) claimed his wages weren’t taxable. His argument: the Federal Government can only tax income that is federally connected and not from the private sector. Nope, he lost.

More recently, there’s [Worsham v. Commissioner](#), where a [lawyer](#) filed a tax return every year from 1989 through 2004. Then he concluded he wasn’t required to file returns or pay taxes. As a result, he didn’t. The IRS said he was just a protestor making frivolous and groundless arguments.

Maybe, said the court, but since it was his first batch of flaky arguments, the court just warned him! He did have to pay taxes, penalties and interest, but not the big penalties reserved for people formerly known as protestors.

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached at [Wood@WoodLLP.com](mailto: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.*