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THE TAX LAWYER

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### To Avoid Fate Of Wesley Snipes, Skip Tax Protester Arguments

Some people find the term offensive, but “tax protesters” or “tax deniers” generally voice arguments that are so out-there the IRS has a *special* category. In IRS lingo “frivolous” is about as bad as you can get, just shy of the other “f” word, “fraudulent.” Using these f words can get darned expensive and possibly even involve jail time. Look at [Wesley Snipes](#).

If the IRS finds your argument or tax position frivolous, it can mean a 20% accuracy-related penalty ([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](#)). Plus, if you file your return late including 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\(f\)](#)).

It’s not only frivolous tax returns but frivolous *other* tax forms that trigger penalties. 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 (that is, went to court without going through all [IRS appeals procedures](#) first).

Just in time to make you think *before* you file your tax return the IRS has released [IR-2011-23](#) updating [The Truth about Frivolous Tax Arguments](#). Here's the skinny:

### **Arguments to Avoid:**

- **Our Federal Income Tax System is Voluntary.** This is fundamental stuff and is self-explanatory.
- **Definitional Arguments Based on the Meaning of “Taxable Income” and “Gross Income.”** It's hard to summarize all of these, but the common thread is offbeat definitions. For example, don't argue that wages, tips, and other compensation received for personal services are not income. Also avoid saying that Federal Reserve Notes are not income, or that only foreign-source income is taxable, making your domestic income exempt. This has variations, but this is the one that got Wesley Snipes in trouble.
- **Definitional Arguments About Terms in the Internal Revenue Code.** These are creative, but, tough to sell. Avoid arguing that: a taxpayer is not a “citizen” of the United States and thus not subject to the federal income tax laws. Avoid claiming that the “United States” consists only of the District of Columbia, federal territories, and federal enclaves. Don't argue that the only “employees” subject to federal income tax are employees of the federal government.
- **Steer Clear of Constitutional Amendment Claims.** Give these a miss too. There are many based on the First, Fifth, Thirteenth and Sixteenth Amendments to our Constitution. They include such “nice try” claims as: Taxpayers can refuse to pay income taxes on religious or moral grounds by invoking the First Amendment; Federal income taxes constitute a “taking” of property without due process of law; and compelled compliance with the federal income tax laws is servitude violating the Thirteenth Amendment.

- **Other “Fictional” Legal Theories.** The IRS calls these fictional and it’s easy to see why. This group includes such also-rans as: the IRS is not an agency of the United States; and taxpayers are not required to file a federal income tax return because the instructions to [Form 1040](#) and tax regulations don’t display an OMB control number as required by the [Paperwork Reduction Act](#). Also avoid claiming you’re a church, and don’t buy in to “untaxing” trusts or other deals that sound, well, like [infomercials](#).

For more, see:

[Ten Tax Protester Claims To Avoid](#)

[Wesley Snipes And The TaxDef War](#)

[Ten Ways To Audit Proof Your Tax Return](#)

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