

Murphy a Boon for Protesters, Critics Say

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The headline-grabbing court decision that declared a piece of the Internal Revenue Code unconstitutional is likely to breathe new life into the tax protest movement, according to some legal observers.

Legal analysts interviewed by Tax Analysts predicted that protesters will flood the court system with new challenges to the legitimacy of the income tax, following the D.C. Circuit Court of Appeals' ruling in *Marrisa Murphy v. IRS*. In its widely panned opinion, the appeals court held last week that section 104(a)(2) is unconstitutional to the extent that it permits the government to tax compensation that is unrelated to lost wages or earnings. (For related news coverage, see p. 822. For related news analysis, see p. 825.)

"I expect tax protesters must be salivating over the *Murphy* decision," said Robert Wood, a tax lawyer with the law firm of Wood & Porter in San Francisco. (For a related practice article by Wood, see p. 850.)

"It is impossible to overstate the potential damage caused by this decision — in my 15-plus years in this business, this decision takes the cake for judicial mischief," said Paul Caron, a professor at the University of Cincinnati College of Law who runs the popular TaxProf Blog (<http://taxprof.typepad.com>). "It undoes much of the work over the past 20 years by Congress, courts, IRS, and [Justice Department] in stamping out the tax protester movement."

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Critics noted that the decision contains a hint of a popular theory among protesters: that "income" only includes items that represent economic profit, such as dividends, rents, and royalties. As such, they expressed concern that the decision could be read as a validation of the popular antitax argument that wages paid for an individual's labor are not taxable.

Some protesters "are firmly convinced that wages aren't income because it's an even exchange," argued George Mundstock, a professor at the University of Miami School of Law.

Based on the reactions of two of the most widely recognized leaders of the protest movement, it sounds like critics' concerns are justified.

"The money that we receive for our labor is merely compensation for our loss of human capital. Given the logic of the *Murphy* decision, compensation from the loss of human capital must also be excluded from taxation on constitutional grounds," said Bob Schulz, a noted antitax activist and founder of the We the People Foundation for Constitutional Education.

'The same people who were going to file frivolous suits are still going to be doing it; they're just going to throw this into the hopper. Nobody with any sense is going to be encouraged,' said Evans.

Peymon Mottahedeh, president and founder of Freedom Law School in California, called *Murphy* a "very, very good case." Mottahedeh's school offers courses on how to avoid paying income taxes, with titles like "Beat the IRS Now!!!"

Like Schulz, Mottahedeh also expressed hope that the case might lead to a reevaluation of the legal definition of income.

"The court in [*Murphy*] took 4 pages of small print footnotes discussing the intent of the framers in the Sixteenth Amendment. They could take the same time to look at the income tax issue when it comes to taxing our wages and labor," he said.

Caron said that unless the decision is reversed, it will generate a similar chorus of "I told you so" from the antitax crowd. He speculated that *Murphy* will spawn a new generation of protesters who will tie up vast government resources as they wage war in the courts.

"They see [*Murphy*] as opening the doors to holding a good chunk of the income tax as unconstitutional," said James Maule, a professor at Villanova University School of Law.

Schulz agreed that *Murphy* could bring new legal challenges.

"I think this decision may signal an opening of the proverbial 'Northwest Passage' for the tax honesty movement," Schulz commented. "The case opens the door to judicial inquiry into a critical aspect of the individual income tax and the IRS's purported legal authority to tax all forms of income, regardless of source."

Despite the excitement of the antitax set, Dan Evans, a Philadelphia lawyer and outspoken critic of the tax resistance movement, downplayed the significance of the decision.

"I really don't think it changes anything in the legal landscape," Evans said. "The same people who were going to file frivolous suits are still going to be doing it; they're just going to throw this into the hopper. Nobody with any sense is going to be encouraged."

Evans shared the opinion of many that *Murphy* will eventually be overturned, and he expressed skepticism that other circuits would follow the ruling. He characterized the decision as a harmless arrow in the protesters' quiver of futile legal arguments.

"Tax protesters will seize onto anything," Evans said. "They just love any decision that supports the notion that there are things that Congress can't tax. Any win gets them all excited, because 99.99 percent of the time they lose." ■