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IRS 'Tax Protester' Label Is Harder To Delete Than Lois Lerner Emails

In 1998, Congress passed a law prohibiting the IRS from labeling people as “illegal tax protesters.” In fact, Congress ordered the IRS to purge the “protester” code from its computer files on 57,000 Americans. Every year, the Treasury Department’s Inspector General reviews how well the IRS is doing at purging the protester label. It turns out the protester epithet is hard to entirely eliminate, even after all these years. The [2015 audit report](#) says a few people at the IRS still do it.

Using illegal tax protester or other similar designations may stigmatize taxpayers and may cause the IRS to be biased against them in future contacts. Congress enacted the prohibition against illegal tax protester designations because it was concerned that some taxpayers were being permanently labeled that way even though they later fixed their tax problems or stopped doing things the IRS thought were unreasonably against the tax system.



(Photo credit: AP Photo/Al Behrman)

Mostly, the IRS is careful about these hot button words now. The report says of approximately 4.8 million records and cases, there were only four instances in which IRS employees referred to taxpayers as “Tax Protester,” “Constitutionally Challenged,” or other similar designations in case narratives in the Appeals Centralized Database System.

The Inspector General recommended that the Chief, Appeals, emphasize to all Appeals employees the importance of reinforcing that taxpayers are not to be referred to as Illegal Tax Protesters or any other similar designations. In [a response to the report](#), the IRS management agreed. Of course, 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\(f\)](#)).

These days 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. (Note that the Department of Justice doesn’t face restrictions on calling people “tax protesters,” although it has also labeled them “tax defiers.”)

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. For example, [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.

In [Worsham v. Commissioner](#), a [lawyer](#) filed a tax return every year from 1989 through 2004. Then, he 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. U.S. tax laws are famously complex. It can be surprisingly difficult to separate legitimate arguments from flaky ones. And since many people do not have the technical expertise to know the difference, there's a premium put on professional advice. So whatever your position, and whoever you have relied upon, consider getting a disinterested second opinion. Many civil and criminal tax cases start with taxpayers blindly following their advisers.

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