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THE TAX LAWYER

TAXES 11/13/2015

Beware Willful, Frivolous, Even Self-Incriminating Tax Filings

You can be called a lot of things, but in the tax world, you *do not* want to be called ‘frivolous.’ The IRS hears many frivolous arguments. The IRS does not like them, not one little bit. They even have an alphabetical [list](#) of the silliest ones that pop up regularly (hint: [taxes are constitutional, and you owe them](#)).

One of the oldest chestnuts you should try to avoid goes like this: “I can’t fill out a tax return because it would require me to admit a crime!” The IRS says you still have to fill out your [Form 1040](#). What’s more, if you make a frivolous argument, you pay the price. Apart from calling attention to yourself, the IRS can slap on a special frivolous position penalty under [Section 6702](#) of the tax code.



That was the situation one taxpayer found himself in in a recent U.S. Tax Court case, [Youssefzadeh v. Commissioner](#). It involved a curious mix of FBAR reporting and Fifth Amendment protection from self-incrimination. But the big question was whether the frivolous position penalty could be imposed.

The U.S. government takes FBAR reporting *very* seriously. So seriously, in fact, that willful failure to file an FBAR is a [crime](#). The IRS monitors these closely, even though FBARs are not, strictly speaking, tax forms. Right on Schedule B of your tax return (where you report interest income, including interest from foreign bank accounts), the IRS [asks whether you were supposed to file an FBAR for the year](#).

Mr. Youssefzadeh was apparently worried about answering that question. After all, the wrong answer might be a criminal offense. So he took the Fifth. It doesn't sound too crazy. a good idea, keep in mind that generally [refusing to provide information on a tax return because it may incriminate you is one of those frivolous positions](#).

So, the IRS imposed the frivolous position penalty, which Mr. Youssefzadeh challenged. And surprisingly, he won, sort of. As it happened, he actually *did* provide the information required by his tax return. On Schedule B, he provided the total amount of interest income, accounting for every penny he earned worldwide. He left off some of the bank information, and refused to answer some of the questions of the Schedule.

Still, his return was otherwise correct. As a result, the Tax Court found it was not "frivolous" for Mr. Youssefzadeh to invoke his Fifth Amendment privilege. He did, after all, report all of his income, pay all of his tax, and prepare all required forms! The limited, rather than general, assertion of privilege could not, therefore, be frivolous within the meaning of the statute. The penalty was struck down.

So, can you just write "Fifth Amendment" on your tax return and forget all your FBAR woes? Not hardly! For one thing, this case can't really be relied on as precedent. Besides, Mr. Youssefzadeh may have actually created more problems for himself. The best course, as with so many things in life and in taxes, is to tell the whole truth on your tax returns.

The IRS even has an app (err, [disclosure program](#)) for that! Lying is, of course, an [entirely separate crime](#), and never an option. Whatever the (dubious) wisdom of the Mr. Youssefzadeh's Fifth Amendment mashup, he only escaped the frivolous return penalty. Seems like a pyrrhic victory. After all, the IRS was probably clued in that he was *supposed* to file FBARs, and did not. That sounds an awful lot like willful conduct, whether it is frivolous or not. And [willful failure to file FBARs comes with a heavy price](#).

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