

# Frivolous Tax Claims Will Cost You

**T**here are plenty of negative things you can be called in the tax world, like “aggressive” or “delinquent.” But one of the worst labels is “frivolous,” since that label can bring big penalties. Plus, promoters who encourage others to take frivolous tax positions (this can include accountants and lawyers) face additional penalties. In extreme cases, the Internal Revenue Service can even bring criminal charges!

In general, if the IRS finds your argument or tax position to be frivolous, it can mean a 20 percent accuracy related penalty and a whopping 75 percent civil fraud penalty. Plus, 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 whopping 75 percent.



**ROBERT W. WOOD** is a tax lawyer with Wood & Porter ([www.woodporter.com](http://www.woodporter.com)) in San Francisco. He has authored more than 30 books including “*Taxation of Damage Awards & Settlement Payments*” (4th Ed. 2009 [www.taxinstitute.com](http://www.taxinstitute.com)). He can be reached at [wood@woodporter.com](mailto:wood@woodporter.com).

Even frivolous *other* tax forms can cost you. You can be separately penalized for submitting even seemingly innocuous tax forms throughout the year (\$5,000 per form). If you argue frivolous tax positions in court, the court can add a \$25,000 penalty if it concludes your position is frivolous, you instituted a proceeding primarily for delay, or you unreasonably failed to pursue your administrative remedies.

It can be hard to know what tax positions are frivolous, so here are three things to know.

Forget about the Constitution: Many “frivolous” arguments start with the U.S. Constitution, such as the claim that federal income taxes constitute an unconstitutional “taking” of property without due process of law. Plus, don’t bother arguing that you do not have to file returns or provide financial information because of the protection against self-incrimination found in the Fifth Amendment.

By the same token, while the First Amendment protects freedom of speech and religion, don’t try to connect those freedoms to taxes. If you argue that you can refuse to pay income taxes on religious or moral grounds by invoking the First Amendment, you’ll lose. Expect similar results if you argue that compelled compliance with the federal income tax laws constitutes servitude in violation of the 13th Amendment (adopted in 1865 to abolish slavery). Speaking of slavery, African Americans can also forget claiming a special tax credit as reparations for slavery.

Arguing that the 16th Amendment was never “properly ratified” will also get you labeled as frivolous. In addition, don’t argue that the 16th

Amendment does not authorize a direct non-apportioned federal income tax on U.S. citizens.

Forget definitional arguments: Just about every form of definitional argument against taxes has failed. For example, claiming that taxpayers are not U.S. citizens, or that they are not taxable persons will fail. Similarly, don’t bother arguing that the only “employees” subject to federal income tax are employees of the federal government, or that the U.S. consists only of the District of Columbia, federal territories, and federal enclaves.

Also steer clear of arguments that your income isn’t really income, or that U.S. cash notes can’t be taxable. Cash may be labeled “Federal Reserve Notes,” not money, but don’t claim Federal Reserve Notes (or wages or tips) aren’t taxable income. All compensation received for personal services is taxed just like everything else.

All income is taxable in the U.S., wherever you earn it. There is a convoluted argument that foreign income is different than domestic, but don’t bother arguing that only foreign-source income is taxable. A variation of this argument is what got actor Wesley Snipes into trouble, and he is now appealing his criminal conviction.

Forget trusts, churches, and bureaucracy: Some grassroots movements claim that you can legally avoid paying taxes with certain entities, but you are better off avoiding all of this. Entities and trusts cannot make it so you can legally and permanently avoid filing federal income tax returns and paying federal income taxes. Another bizarre idea — this one with a religious flavor — says you can form a religious organization or trust for yourself, and that it can cloak you from paying federal income taxes. These do not work.

The courts have also struck down arguments that taxpayers are not required to file federal income tax returns because the instructions and regulations associated with IRS Form 1040 do not display an OMB control number as required by the Paperwork Reduction Act. Also, the argument that filing returns or paying tax is voluntary always fails. Our tax system does involve “self-assessment,” meaning that you fill out your own tax return (or pay someone to do it) and you send it in (as opposed to having all your taxes paid by withholding). However, that doesn’t mean taxes are “voluntary.” You still have to pay.

If you encounter any of these arguments (or anything else that sounds too good to be true), check it out with a qualified tax lawyer or accountant, or with the IRS. If someone convinces you that you don’t need to



**Many ‘frivolous’ arguments start with the U.S. Constitution, such as the claim that federal income taxes constitute an unconstitutional ‘taking’ of property without due process of law.**

pay taxes, you could find yourself labeled as frivolous, hit with bills for taxes, interest and stiff civil penalties, and possibly even criminal ones.

*This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*