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THE TAX LAWYER

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### The Gun-Toting IRS

The IRS wields enormous power, but should agents be armed too? With all of the controversy facing the IRS and the tax system these days, it can seem doubly scary to contemplate tax collectors being armed. As Prof. Paul Caron noted here, [First Circuit Sidesteps Question of Authority of IRS Agents to be Armed When Enforcing the Tax Law](#).



He was commenting on a criminal tax case, [United States v. Adams](#). There, the First Circuit affirmed Charles Adams' conviction for conspiracy to defraud the United States by obstructing payroll tax collections and tax evasion. The lower court sentenced Mr. Adams to four years in prison in October 2012, despite his claim that evidence against him should be suppressed. He argued the IRS agents carried guns that were not allowed by [law](#).

Not all IRS agents are armed, of course. It's only the Criminal Investigation Division, and they arguably need them. Yet even within that group there's been some criticism. According to one government audit, [IRS Agents 'Accidentally' Discharged Guns 11 Times](#) between 2009 and 2011.

Some resulted in property damage or personal injury, claimed the report. What's more, agents *accidentally* fired their guns more times than they did intentionally, said the Treasury Inspector General for Tax Administration. That would be a worry for any law enforcement agency.

But Mr. Adams still touched a nerve about the IRS carrying guns. The court called him a tax protester, but his argument wasn't crazy. He said the statute

allows agents to carry guns when enforcing laws relating to alcohol, tobacco and firearms. This was just a tax search, he claimed.

But the court avoided considering it and affirmed Mr. Adams' conviction. Meanwhile, the IRS initials alone can cause more heart palpitations than the CIA, FBI, DOJ or any other three initials. Just seeing "IRS" on an envelope or business card at your doorstep could reduce you to a sweating mass of nerves, with or without a firearm.

After all the Tea Party targeting talk, it is worth noting that labels matter. In fact, the IRS is supposed to be especially sensitive to labels. In [1998](#), Congress actually prohibited the IRS by law from labeling individuals as "illegal tax protesters."

Congress even ordered the IRS to purge "protester" codes from its computer files. However, IRS employees continue to use the epithet in their case narratives. See [Fiscal Year 2011 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations](#). This report says "Illegal Tax Protester" and similar terms stigmatizes taxpayers and causes IRS bias.

The report found 38 instances in which 34 IRS employees referred to "Tax Protester," "Constitutionally Challenged," or similar name-calling. Being a Tea Partier or Patriot may sound less pejorative, but any labeling seems dangerous.

Yet a word that is not off-limits is *frivolous*. If the IRS finds your tax position frivolous, it means a 20% accuracy-related penalty under [Section 6662](#) of the tax code; and a whopping 75% civil fraud penalty via [Section 6663](#). A frivolous position on an amended return asking for money back triggers a 20% erroneous claim for refund penalty via [Section 6676](#).

If you file your return late with frivolous positions, the usual penalties (for fraudulent failure to timely file an income tax return) can be tripled up to another whopping 75% by [Section 6651\(f\)](#). Apart from tax returns, frivolous other tax forms can trigger penalties too. There's a \$5,000 penalty for frivolous tax returns via [Section 6702](#), and you can be separately penalized even for sending seemingly innocuous tax forms.

How does a normal taxpayer know what's frivolous? The IRS publishes its [own list of frivolous positions](#). But in our vastly complicated tax system, people rely on advisers, and it's hard to know who and what to

believe. Relying on promoters can be dangerous, as Wesley Snipes had to learn the hard way. See [Wesley Snipes Freed—Tax Lessons Remain](#).

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