



## **The Tax Protestor Movement**

Legal Tax Protestors or Illegal Tax Evaders? By David Mason and Daren Lanter  
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The IRS differentiates between legal tax protestors and illegal tax evaders. Tax evasion, not filing and not paying federal income tax, is subject to both civil and criminal sanctions. Under the banner of “the tax protestor movement,” naive and uninformed individuals are being persuaded that not filing tax returns and not paying federal income tax is legal and wise tax planning. In reality there is nothing legal or wise in what is being promoted; rather, it is an illegal and foolish action by promoters using cleverly worded sophisms to capture an unsuspecting audience. These Promoters of the tax protest movement also take advantage of the average person’s natural aversion to paying taxes. Those who buy into their arguments usually discover that they end up paying twice- first to the “tax protestor” who sells them the tax protestor materials, seminars, associate degrees, etc. (all at exorbitant prices), and then once again to the IRS or the Courts when they are required to pay their taxes and interest that they legally owe. In addition, those who willingly follow these tax protest schemes often find themselves subject to levies of huge penalties, fines, and even jail time (not to mention the emotional and mental traumas IRS audits and tax court proceedings exact on participants). These protestors of the federal income tax have been present for numerous years. However, in recent years, these schemes are being spread to Internet usage. Unfortunately, this has led to an escalation in the number of uninformed taxpayers being seduced by their arguments. The purpose of this article is to help you protect your clients from the potentially dangerous schemes of the tax protestor movement.

It is important to recognize at the outset that most of the schemes being promoted are based on a variety of false or misleading arguments based on distortions and misrepresentations of the law. The IRS Chief Counsel recently issued a report detailing many of the assertions of this movement, as well as the Courts’ response. The remainder of this article will examine some of the more frequently used arguments and the Courts’ rulings on these arguments.

## Federal Income Tax Laws are Voluntary

A primary argument raised by protestors, for noncompliance with federal income tax laws, is that the laws are voluntary. Protestors maintain that both the filing of a federal income tax return and the payment of federal income taxes are voluntary.

## Filing Federal Income Tax Return

This argument is based upon a misinterpretation of the statement that the U.S. tax system is voluntary compliance tax system. No one will dispute the statement that our income tax is a “voluntary system.” The problem is defining the term “voluntary.” Voluntary, in this context, refers to our systems of allowing the taxpayer to calculate the correct amount of the tax and determine what are the appropriate forms to file rather than the government making the determination for the taxpayers. It does not mean that individuals have the right to decide whether or not they want to file and/or whether or not they want to pay the tax. In that sense, the U.S. tax system is not voluntary. Filing of tax returns and /or paying U.S. income tax are obligations of U.S. citizens and failure to do so is a violation of the law and is subject to various criminal and civil penalties and sanctions. The Internal Revenue Code (the Law) requires the filing of tax returns and the Courts have repeatedly ruled that this argument of the tax protestor is completely without merit and groundless. Furthermore, there is no legal defense for non-payment. Section 6151 of the Internal Revenue Code codifies the obligation to pay taxes and to submit the payment with the tax return.

## Federal Tax laws are Unconstitutional

Even if the federal income tax system is not voluntary, the next argument put forth by promoters of the tax protest movement is that requiring participation in the U.S. tax system is unconstitutional. The argument is based on the belief that the federal income tax violates the Fifth Amendment, the Thirteenth Amendment, and the Sixteenth Amendment.

## Fifth Amendment

Briefly stated, the Fifth Amendment to the United States Constitution protects individuals from being “deprived of life, liberty, or property without due process of law” and also from self-incrimination. Protestors argue that both of these rights are violated when individuals are required to file tax returns and to pay federal income taxes.

Deprived of Property Without Due Process of Law. Protestors argue that collection of taxes classifies as seizure of property without due process of law. However, the Courts have consistently ruled that this argument is without merit. For instance, the Courts stat that taxpayers due process is protected in at least two different ways. First, if taxpayers disagree with the tax that is assessed against them, they have the right to sue for a refund in a United States District Court or the United States Court of Federal Claims. Second, taxpayers can elect not pay the tax and sue for due process through the United States Tax Court. Thus the argument that the U.S. tax law is

unconstitutional because it deprives individuals of property without due process of law it merit less and a distortion of the U.S. legal system.

**Self-Incrimination.** Protestors also argue that the Fifth Amendment is violated when filing a federal income tax return and providing financial information to the United States government, since it may be incriminating to the taxpayer. The Courts have ruled this argument is also without merit because the questions on the tax return are “neutral on their face” and not incriminating. In fact, the Supreme Court has said “that the self-incrimination privilege can be employed to protect the taxpayer from revealing the information as an illegal source of income, but does not protect him from disclosing the amount of his income.” The Courts have repeatedly ruled that this argument is “and illegal effort to stretch the Fifth Amendment to include a taxpayer who wishes to avoid filing a return.”

### Thirteenth Amendment

Tax protestors also criticizes the tax system, which requires that individuals file and pay federal income taxes, arguing it is a form of savory or “involuntary servitude” that is forbidden by the Thirteenth Amendment to the United States Constitution. However, the Courts have consistently ruled this is a frivolous argument, “clearly unsubstantial and with out merit, and far-fetched and frivolous,” and that the federal tax system is not the type of “involuntary servitude” that is contemplated in the Thirteenth Amendment.

### Sixteenth Amendment

The most difficult legal hurdle the tax protestors movement has to clear in arguing that the tax law is unconstitutional is the Sixteenth Amendment. The Sixteenth Amendment explicitly and implicitly gives government the power to collect taxes. This amendment states that, “Congress shall have the power to lay and collect taxes on income, from whatever sources derived, without apportionment among the several states, and without regard to any census or enumeration.” The creative sophism availed of here to attempt to dismantle the Sixteenth Amendment is quite ingenious, Simply put, the argument goes as follows: the Sixteenth Amendment as never properly ratified and thus all federal income taxes are unconstitutional. A recent U.S. Appeals Court upheld a District Court’s frivolous return penalty assessment and award of attorneys’ fees to the government calling the taxpayer’s legal position on this issue “patently frivolous.” This Court went on to impose additional sanctions for “frivolous arguments in bad faith.”

### “True” Meaning of the Tax Law

Given the singular and continuing failure of the previous argument against the legality of the tax law itself, tax protestors have turned to various piecemeal attacks on the tax law in their attempts to justify their tax protests. These arguments could be grouped into two main categories: attacking the “true” meaning of income and attacking the “true” meaning of certain other terms used in the Internal Revenue Code. Although not

an exhaustive treatment of their arguments, the following discussions will give the reader a flavor of the arguments of the tax protest movement in this area.

### Compensation for Personal Services

A common argument raised is that wages and salaries (i.e., compensation for personal services) are not subject to income tax. The reasoning is based on the idea that compensation received for personal services is merely an exchange of labor for money, not an addition to wealth. Since only increases in wealth should be taxed such compensation should not be subject to tax. However, §61 of the IRC defines gross income as all income from whatever source derived, which the courts have ruled very clearly encompasses compensation for personal services. A summary of the various court labels to this type of argument might be enlightening: “frivolous argument,” “merit less,” “totally lacking in merit,” “fatuous as well as obviously incorrect,” “...Every Court which has ever considered this has unequivocally rejected the argument that wages are not income.”

### Federal Reserve Notes

Some protestors claim that the Federal Reserve note, the currency currently used in the United States, is neither gold nor silver, nor can it be exchanged for gold or silver, and therefore is not a valid currency and consequently cannot be taxed. The reasoning for this argument is derived from Article One, Section 10 of the United States Constitution, which prohibits any of the individual states from developing their own currency. However, this section clearly does not prohibit the federal government from determining a legal currency other than gold or silver. Therefore, Federal Reserve Notes are the legal tender established by Congress and are fully taxable. The courts have again labeled this argument as frivolous and without merit.

### Citizen

In another interesting twist, some tax protestors encourage individuals to take the position that they are not citizens of the United States, but rather citizens of the particular state in which they reside. If this is the case, then they are not liable to pay federal income taxes because only United States citizens must pay federal income taxes. However, the Fourteenth Amendment to the United States Constitution states, “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” As with the other tax protestor arguments, the Courts have not been persuaded. They have also labeled this as a frivolous argument.

### Untied States

Using a variation of the previous argument, some protestors assert that because the states are independent and self-governing, they are not included in the United States. These protestors then argue that the United States consists of only the District of Columbia, the federal territories, and federal land within foreign countries. As a result, protestors argue that only individuals who reside in those areas are U.S. taxpayers,

responsible for paying federal income taxes. Contrary to this argument is the federal tax law, which claims jurisdiction over all U.S. citizens and residents, not just those residing in specified geographical locations. This argument has also uniformly failed to impress the Courts and is viewed by the uniformly failed to impress the Courts and is viewed by the Courts as merely another of the many frivolous and merit less contentions of the promoters of the tax protest movement.

### Employee

Another interesting attempt to create havoc with the tax law is to encourage employees to claim non-employee status. With this claim, protestors argue that only federal government employees are employees subject to income tax withholding. As has been demonstrated with many of the other arguments, this argument of the tax protest movement is founded on a misinterpretation of a portion of the tax law, in this case, IRC §3401(c). This section states that the term employee includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof. Important point to note is the word “includes.” The intent of the word “includes” was not to limit the definition, but rather to make sure the term employee *encompasses* “an officer, employee, or elected official of the United States, a State, or any political subdivision therefore.” In the past, there was some question whether federal employee were employees for purposes of the employment tax rules. Congress included this term to clarify that the answer was an unequivocal affirmative. As with all their other frivolous arguments, tax protestors have been singularly unsuccessful in convincing the courts of the merit of this argument.

In summary, regardless of the aggressiveness with which these claims made by promoters of the tax protest movement are put forth, it is important to note that the tax protestor movement has never prevailed in a court of law on any of their arguments. This is due, at least in part, because the arguments that have been put forth by the movement are not based upon sound legal reasoning. The arguments are at best misinterpretations and distortions of the law, and the courts have repeatedly and consistently ruled that it is impossible to “legally” remove oneself from the U.S. tax system.

### Untaxing Techniques

Regardless of the continued legal failures, tax protest promoters continue to aggressively market what are commonly termed “untaxing packages.” These untaxing packages take various forms including that of trusts. Usually, the promotion material includes claims that these “untaxing packages” are failsafe means of legally and permanently removing oneself from the federal income tax system. A brochure from a recent untaxing scheme claims their associate degree program “teaches you the simple step-by-step method to legally eliminate your Form 1040 income tax” (the normal fee individuals pay the promoter for the untaxing scheme varies from around \$200 to upwards of \$20,000). The promoter of one type of scheme claims this “legal untaxing” can be accomplished through “building a defense through correspondence.”

This involves the filing of various “legal” documents with and individual’s employer, bank, and even the IRS itself. The IRS and the Courts response are to view these schemes as outright tax evasion and conspiracy. For example, the promoters of such schemes, as well as the individuals who willfully buy into these packages, have been subjected to criminal (including jail time) as well as civil penalties for their actions. In a recent case, a promoter of phony tax trusts received a 10-½ year sentence. In another case involving the marketing of an untaxing package by The Pilot Connection Society (TPCS), the court imposed criminal penalties including imprisonment for two individuals who were convicted of conspiracy to defraud the government and of aiding and abetting in the filing of fraudulent Form W-4’s.

### Penalties

In recent Years, the IRS has been given additional power to combat these attacks on the U.S. tax system. Congress has passed additional penalty provisions in the hopes of deterring more individuals from bringing forth frivolous protests. For example, individual taxpayers may be subject to a \$500 fine for filing a frivolous tax protest. In addition, as previously mentioned, participants in the various tax protestor “untaxing schemes” could also face jail time for tax evasion. Moreover, tax practitioners are those who promote such schemes also face fines and penalties as well as criminal prosecution for conspiracy against the U.S. Government.

### Conclusions

Although the arguments made by protestors of federal income tax laws may appear valid on the surface, and even though they appeal to the aversion most taxpayers feel towards paying tax and may actually be promoted by licensed professionals such as attorneys and accountants, and investigation and examination of the Courts’ response to such arguments show that these arguments are frivolous. Furthermore, the courts will never uphold such attempts to undermining the U.S. tax system. Both taxpayers and tax practitioners must be aware of the tax protest movement, the “untaxing packages,” as well as the frivolous nature of their arguments.

J. David Mason is and Associate Professor and Karen Lamter is a graduate assistant at Southern Illinois University Edwardsville. Article reproduced from the Taxpro Quarterly Journal Spring 2002 issue.

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