

Re: Quotes for the Ignorant Masses

Source: <http://sci.tech-archive.net/Archive/sci.energy.hydrogen/2005-01/0299.html>

rarebit_at_slipgate.com

Date: 01/18/05

Date: 17 Jan 2005 21:31:34 -0800

knews4u2c...@yahoo.com wrote:

> *rare...@slipgate.com* wrote:

> > *Here's one you forgot-*

> >

> > *"knews4u2c is a huge fucking kook." - Ronald Reagan, Just before he*

> > *died*

>

> *"Ad hominem, the first resort of a loser."*

> *IITUIH2KU*

Speaking of losers-

861 losers -

This article provides an abridged version of: (1) the 21 frivolous tax arguments made by individuals to avoid paying taxes; (2) the legal authority the IRS and the courts use to reject each contention; and (3) the substantial penalties imposed on taxpayers and promoters for acting on frivolous positions.

I. The Voluntary Nature of the Federal Income Tax System

Contention #1: The filing of a tax return is voluntary.

Some assert that they are not required to file federal tax returns because the filing of a tax return is voluntary.

Proponents point to the fact that the IRS itself tells taxpayers in the Form 1040 instruction book that the tax system is voluntary. Additionally, the Supreme Court's opinion in *Flora v. United States*, 362 U.S. 145, 176 (1960), is often quoted for the proposition that "[o]ur system of taxation is based upon voluntary assessment and payment, not upon distraint."/1/

The Law and Relevant Cases

According to the commissioner, the word "voluntary," as used in *Flora* and in

IRS publications, "refers to our system of allowing taxpayers to

determine the correct amount of tax and complete the appropriate returns, rather than have the government determine tax for them."/2/ Both the Internal Revenue Code and the regulations make it clear that filing an income tax return is not voluntary./3/ larken rose

Numerous court decisions have rejected this contention. The U.S. Supreme Court in *Helvering v. Mitchell* alluded to the significance of self-assessment when it stated, "In assessing income taxes (on an annual basis), the IRS relies primarily upon the disclosure by the taxpayer of the relevant facts."/4/

The argument that the tax system is somehow voluntary has been rejected by two circuit courts of appeal and the Tax Court. The Tenth Circuit/5/ says the argument "is incorrect" and the Eighth Circuit/6/ describes the argument as "imaginative but totally without arguable merit." The Tax Court calls the argument "frivolous" and simply another "tax protester" position./7/

Contention #2: Payment of tax is voluntary.

In a similar vein, some argue that they are not required to pay federal taxes because the payment of federal taxes is voluntary. Proponents of this position argue that our system of taxation is based upon voluntary assessment and payment./8/

The Law and Relevant Cases

Sections 1, 11 and 6151 of the IRC make it clear that the payment of federal taxes is not voluntary. Section 1 imposes a tax for each taxable year on the taxable income of individuals, estates and trusts using the tax rate schedules (section 3 provides tax tables for individuals). Section 11 imposes a tax for each taxable year on the taxable income of corporations.

Moreover, when a tax return is required to be filed, the obligation to pay the tax due is outlined in section 6151. This section requires taxpayers to submit payment, without assessment or notice and demand from the Secretary, with their tax returns. larken rose

The courts have shown little patience with taxpayers who fail to file income tax returns and pay the tax due using tax protestor type arguments. These

arguments, all rejected by the courts, include (1) the filing of income tax returns and the payment of income tax are unconstitutional;^{9/} (2) payment of taxes is voluntary for American citizens;^{10/} and (3) contesting the obligation to pay taxes on religious grounds.^{11/} In other words, simply disagreeing with the IRC (even though the taxpayer understands what the Code says), is not sufficient grounds for failure to file and pay taxes. Contention #3: The IRS must prepare federal tax returns for a person who fails to file. Proponents of this argument contend that Section 6020(b) obligates the IRS to prepare a federal tax return for a person who does not file a return. Thus, those who subscribe to this contention believe that they are not required to file a return for themselves.^{12/}

The Law and Relevant Cases

Section 6020(b)(1) says the following:

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. larken rose

The courts have ruled that Section 6020(b)(1) does not require the IRS to prepare tax returns for those who fail to file. The Fifth Circuit has ruled twice on this point. In a 1981 case the court stated: "the purpose of Section 6020(b)(1) is to provide the Internal Revenue Service with a mechanism for assessing the civil liability of a taxpayer who has failed to file a return, not to excuse that taxpayer from criminal liability which results from that failure."^{13/} Later, in 1984, the court stated that "Section 6020(b) provides the Secretary with some recourse should a taxpayer fail to fulfill his statutory obligation to file a return, and does not supplant the taxpayer's original obligation to file"^{14/} The Second Circuit, in a 1990 decision, agreed with the Fifth Circuit.^{15/}

II. The Meaning of Income: Taxable Income and Gross Income

Contention #4: Wages, tips and other compensation received for personal services are not income.

This argument asserts that wages, tips, and other compensation received for personal services are not income, because there is allegedly no taxable gain when a person "exchanges"

labor for money. Under this theory, wages are not taxable income because people have basis in their labor equal to the fair market value of the wages they receive; thus, there is no gain to be taxed. Some take a different approach and argue that the Sixteenth Amendment to the United States Constitution did not authorize a tax on wages and salaries, but only on gain or profit./16/

The Law and Relevant Cases

In defining gross income, section 61 takes a very broad perspective.

Gross

income means all income (except as otherwise provided) from whatever source

derived including compensation for services. Furthermore, reg. section 1.61-1(a) clearly states that gross income includes income realized in any

form. The constitutionality of a federal income tax is provided in the Sixteenth Amendment to the Constitution:

The Congress shall have the power to lay and collect taxes on income from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration./17/

The constitutionality of the federal income tax has been consistently upheld

by the federal court system including the Supreme Court./18/ In fact, the

argument that wages received are not income should have been laid to rest as

frivolous and groundless when, in 1990, the Third Circuit stated that "every

court which has ever considered the issue has unequivocally rejected the

argument that wages are not income."/19/

Contention #5: Only foreign-source income is taxable.

Some maintain that there is no federal statute imposing a tax on income derived from sources within the United States by citizens or residents of the United States. They argue instead that federal income taxes are excise taxes imposed only on nonresident aliens and foreign corporations for the privilege of receiving income from sources within the United States. The premise for this argument is a misreading of Sections 861, et seq., and 911, et seq., as well as the regulations under those sections./20/

The Law and Relevant Cases

As noted above, gross income is defined in section 61 to include all income

(except as otherwise provided) from whatever source derived including compensation for services. Furthermore, reg. section 1.1-1(b) states:

Citizens or residents of the United States liable to tax. In general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States. As to tax on nonresident alien individuals, see Sections 871 and 877. Concerning sections 861 and 911, the IRS takes the position that these two sections "define the sources of income (U.S. versus non-U.S.-source income) for such purposes as the prevention of double taxation of income that is subject to tax by more than one country."/21/

The issue that only foreign-source income is taxable has been addressed numerous times by the Tax Court, which labels such assertions as "frivolous"/22/ and "reminiscent of tax-protester rhetoric that has been universally rejected by this and other courts."/23/ The Tax Court's position is that "source rules (of Sections 861 through 865) do not exclude from U.S. taxation income earned by U.S. citizens from sources within the United States."/24/ In a 1982 decision, the Court of Claims made the following observation concerning worldwide income: "the determination of where income is derived or 'sourced' is generally of no moment to either United States citizens or United States corporations, for such persons are subject to tax under Code Sections 1 and 11, respectively, on their worldwide income."/25/

Contention #6: Federal Reserve Notes are not income. Some assert that Federal Reserve Notes currently used in the United States are not valid currency and cannot be taxed, because Federal Reserve Notes are not gold or silver and may not be exchanged for gold or silver. This argument misinterprets Article 1, Section 10 of the United States Constitution./26/

The Law and Relevant Cases

The Constitution clearly gives Congress the power "to coin money, regulate the value therefore . . . "/27/ and empowers Congress "to declare the form of legal tender."/28/ The Supreme Court recognized this power back in 1884 in the Juilliard v. Greenman case:

Under the power to borrow money on the credit of the United States, and to issue circulating notes for the money borrowed, its power to define the quality and force of those notes as currency is as broad as the like power over a metallic currency under the power to coin money and to regulate the value thereof. Under the two powers, taken together, Congress is authorized to establish a national currency, either in coin or in paper, and to make that currency lawful money for all purposes, as regards the national government or private individuals./29/

Other courts have consistently stated that this argument has no merit.

The

Eighth Circuit, for example, rejected as clearly frivolous the assertion

"that the only 'Legal Tender Dollars' are those which contain a mixture of

gold and silver and that only those dollars may be constitutionally taxed."/30/ In a later decision the Eighth Circuit once again stated that

"Congress has declared federal reserve notes legal tender . . . and . . .

.

are taxable dollars."/31/

III. The Meaning of Certain Terms Used in the Internal Revenue Code

Contention #7: Taxpayer is not a "citizen" of the United States, thus not subject to the federal income tax laws.

Some individuals argue that they have rejected citizenship in the United States in favor of state citizenship; therefore, they are relieved of their federal income tax obligations. A variation of this argument is that a person is a free born citizen of a particular state and thus was never a citizen of the United States. The underlying theme of these arguments is the same: the person is not a United States citizen and is not subject to federal tax laws because only United States citizens are subject to these laws./32/

The Law and Relevant Cases

The Fourteenth Amendment to the Constitution created simultaneous state and

federal citizenship by providing that "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."

Claims that taxpayers are not citizens of the United States but solely citizens of a state have been dismissed summarily by the courts over the

years. A district court called the taxpayer's claim "linguistic

gymnastics."/33/ The Eleventh Circuit stated the individuals' contention was "utterly without merit."/34/ The Eighth Circuit labeled the taxpayer's argument as "plainly frivolous"/35/ and "based on discredited, tax–protestor arguments."/36/ Finally, the Tax Court described the individual's position as "baseless and wholly without merit"/37/ and represented an "absurd proposition."/38/

Contention #8: The "United States" consists only of the District of Columbia, federal territories, and federal enclaves.

Some argue that the United States consists only of the District of Columbia, federal territories (e.g., Puerto Rico, Guam, etc.), and federal enclaves (e.g., American Indian reservations, military bases, etc.) and does not include the "sovereign" states. According to this argument, if a taxpayer does not live within the "United States," as so defined, he is not subject to the federal tax laws./39/

The Law and Relevant Cases

The IRC imposes a federal income tax upon all U.S. citizens and residents, not just those living in Washington, D.C., the federal enclaves within the states, and the territories and possessions of the United States. As previously noted, reg. section 1.1–1(b) provides, "in general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by Code whether the income is received from sources within or without the United States."

The Supreme Court, in 1916, recognized that the "sixteenth amendment authorizes a direct non–apportioned tax upon United States citizens throughout the nation, not just in federal enclaves."/40/ Contention #8 has been labeled by the Ninth Circuit as having "no semblance of merit" and as representing a "patently frivolous position."/41/ The Eleventh Circuit called the contention a "twisted conclusion"/42/ and the Tax Court described it as "groundless."/43/

Contention #9: Taxpayer is not a "person" as defined by the Internal Revenue Code, thus is not subject to the federal income tax laws.

Some maintain that they are not a "person" as defined by the Internal Revenue Code, and thus not subject to the

federal income tax laws. This argument is based on a tortured misreading of the Code./44/

The Law and Relevant Cases

Section 7701 defines certain terms that appear many times in different parts of the code. According to section 7701(a)(1) the "term 'person' shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation." Furthermore, the term "taxpayer," as defined in section 7701(a)(14) means "any person subject to any internal revenue tax."

The contention that an individual is not a "person" under the IRC has been "consistently and thoroughly rejected by every branch of the government for decades"/45/ as being "frivolous and requiring no discussion."/46/

Contention #10: The only "employees" subject to federal income tax are employees of the federal government.

Some argue that the federal government can tax only employees of the federal government; therefore, employees in the private sector are immune from federal income tax liability. This argument is based on an apparent misinterpretation of Section 3401, which imposes responsibilities to withhold tax from "wages." That section establishes the general rule that "wages" include all remuneration for services performed by an employee for his employer. Section 3401(c) goes on to state that the term "employee" includes "an officer, employee, or elected official of the United States, a State, or any political subdivision thereof."/47/

The Law and Relevant Cases

Section 7701(c) states that the use of the word "includes" as used in section 3401(c) "shall not be deemed to exclude other things otherwise within the meaning of the term defined." As the Seventh Circuit observed in commenting on this taxpayer contention, "It is obvious within the context of the law the word 'includes' is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others."/48/ The Tax Court characterized Contention #10 as "nothing

but
tax protester rhetoric and legalistic gibberish."/49/ The First Circuit
said
such a contention "is meritless . . . the statute does not purport to
limit
withholding to the persons listed therein."/50/

IV. Constitutional Amendment Claims

Contention #11: Taxpayers can refuse to pay income taxes on religious or moral grounds by invoking the First Amendment.

Some argue that taxpayers may refuse to pay federal income taxes based on their religious or moral beliefs, or objection to the use of taxes to fund certain government programs. These persons mistakenly invoke the First Amendment in support of this frivolous position./51/

The Law and Relevant Cases

Although the First Amendment provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." this does not mean that taxpayers have the right to avoid federal income taxes on religious or moral grounds/52/ or because income taxes are used to finance government programs the taxpayer does not agree with./53/ The Supreme Court firmly rejected Contention #11 when it ruled in 1982 that:

[T]he broad public interest in maintaining a sound tax system is of such importance that religious beliefs in conflict with the payment of taxes provide no basis for refusing to pay, and stated that "[t]he tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief."/54/

Contention #12: Federal income taxes constitute a "taking" of property without due process of law, violating the Fifth Amendment.

Some assert that the collection of federal income taxes constitutes a "taking" of property without due process of law, in violation of the Fifth Amendment. Thus, any attempt by the Internal Revenue Service to collect federal income taxes owed by a taxpayer is unconstitutional./55/

The Law and Relevant Cases

The U.S. Supreme Court asserted back in 1916 that "it is . . . well-settled that the Fifth Amendment (which provides that a person shall not be 'deprived of life, liberty, or property, without due process of law') is not a limitation upon the taxing power conferred upon Congress by the Constitution."/56/ Furthermore, in the same case the Supreme Court goes on to say "that the Constitution does not conflict with itself by conferring upon the one hand a taxing power and taking the same power away on the other by limitations of the due process clause."/57/

There are, moreover, methods available in the IRC that are designed to safeguard constitutional due process. First, the "refund method" where a taxpayer must pay the full tax assessment before being able to file a refund suit in a federal district court or the Court of Federal Claims;/58/ and second, the "deficiency method" where a taxpayer may, without paying a cent, petition the Tax Court to redetermine a tax deficiency asserted by the IRS./59/ Furthermore, the IRS Restructuring and Reform Act of 1998 provides additional protection for taxpayer's due process rights in collection matters./60/

Contention #13: Taxpayers do not have to file returns or provide financial information because of the protection against self-incrimination found in the Fifth Amendment.

Some argue that taxpayers may refuse to file federal income tax returns, or may submit tax returns on which they refuse to provide any financial information, because they believe that their Fifth Amendment privilege against self-incrimination will be violated./61/

The Law and Relevant Cases

The U.S. Supreme Court, back in 1927, stated that the taxpayer "could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank would bring him into danger of the law."/62/ In the 1970s two circuit courts of appeal ruled on the Fifth Amendment. The Second Circuit said that "the questions in the income tax

return are neutral on their face . . . hence the Fifth Amendment privilege may not be claimed against all disclosure on an income tax return."/63/ In a Tenth Circuit decision the court noted "that the self-incrimination privilege can be employed to protect the taxpayer from revealing the information as to an illegal source of income, but does not protect him from disclosing the amount of his income."/64/ The bottom line is clear -- there is no constitutional right to refuse to file a federal income tax return.

Contention #14: Compelled compliance with the federal income tax laws is a form of servitude in violation of the Thirteenth Amendment.

This argument asserts that the compelled compliance with federal tax laws is a form of servitude in violation of the Thirteenth Amendment./65/

The Law and Relevant Cases

The first section of the Thirteenth Amendment reads: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."/66/ The Tenth Circuit stated that "if the requirements of the tax laws were to be classed as servitude, they would not be the kind of involuntary servitude referred to in the Thirteenth Amendment."/67/ The Ninth Circuit agreed with the Tenth when it found that there was no merit to the argument that "the record-keeping requirements and the requirements that taxpayers shall prepare and file their tax returns, as established by the IRC and the IRS . . . amount to involuntary servitude, prohibited by the Thirteenth Amendment."/68/

Contention #15: The Sixteenth Amendment to the United States Constitution was not properly ratified, thus the federal income tax laws are unconstitutional.

This argument is based on the premise that all federal income tax laws are unconstitutional because the Sixteenth Amendment was not officially ratified, or because the State of Ohio was

not properly a state at the time of ratification. This argument has survived over time because proponents mistakenly believe that the courts have refused to address this issue./69/

The Law and Relevant Cases

As previously noted, the Sixteenth Amendment provides that "Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."/70/ There were a sufficient number of states ratifying the Sixteenth Amendment even without Ohio (only three-fourths of the states are needed). As the Ninth Circuit stated, "The Secretary of State's certification under authority of Congress that the Sixteenth Amendment has been ratified by the requisite number of states and has become part of the Constitution is conclusive upon the courts."/71/ Moreover, the highest court in the nation (as pointed out earlier) has upheld the constitutionality of the federal income tax laws passed by Congress following ratification of the Sixteenth Amendment./72/

Contention #16: The Sixteenth Amendment does not authorize a direct non-apportioned federal income tax on United States citizens.

Some assert that the Sixteenth Amendment does not authorize a direct non-apportioned income tax and thus, U.S. citizens and residents are not subject to federal income tax laws./73/

The Law and Relevant Cases

In a 1990 decision, the Tenth Circuit cited a 1916 Supreme Court ruling in which the highest court in the nation recognized that the "Sixteenth Amendment authorizes a direct non-apportioned tax upon United States citizens through the nation."/74/ The Seventh,/75/ Eighth/76/ and Ninth Circuits/77/ have all rejected this contention as being patently frivolous.

V. Fictional Legal Bases

Contention #17: The Internal Revenue Service is not an agency of the United States.

Some argue that the Internal Revenue Service is not an agency of the United States but rather a private corporation, because

it was not created by positive law (i.e., an act of Congress) and that, therefore, the IRS does not have the authority to enforce the Internal Revenue Code./78/

The Law and Relevant Cases

The IRC provides the statutory support for the establishment of both the IRS and the IRS commissioner. Authority for creating the IRS is outlined in section 7801(a) which states that, "Except as otherwise expressly provided by law, the administration and enforcement of this title (i.e., the IRC) shall be performed by or under the supervision of the Secretary of the Treasury. The legitimacy of the IRS was also recognized by the Supreme Court when it stated "we bear in mind that the Internal Revenue Service is organized to carry out the broad responsibilities of the Secretary of the Treasury under Section 7801(a) of the 1954 Code for the administration and enforcement of the internal revenue laws."/79/ Moreover, pursuant to section 7803(a), the Secretary of the Treasury has the authority to appoint a commissioner of the IRS who shall carry out the administration and enforcement of the internal revenue laws.

Contention #18: Taxpayers are not required to file a federal income tax return, because the instructions and regulations associated with the Form 1040 do not display an OMB control number as required by the Paperwork Reduction Act.

Some argue that taxpayers are not required to file tax returns because of the Paperwork Reduction Act of 1980, 44 U.S.C. section 3501, et seq. ("PRA"). The PRA was enacted to limit federal agencies' information requests that burden the public. The "public protection" provision of the PRA provides that no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved does not display a current control number assigned by the Office of Management and Budget [OMB] Director. 44 U.S.C. section 3512. Advocates of this contention claim that they cannot be penalized for failing to file Form 1040, because the instructions and regulations associated with the Form 1040 do not display any OMB control number./80/

The Law and Relevant Cases

Under section 6012(a), a taxpayer with gross income greater than his or her

standard deduction plus personal exemptions is required to file a Federal income tax return annually. The Sixth,^{81/} Seventh,^{82/} Eighth,^{83/} Ninth,^{84/} Tenth,^{85/} and Eleventh Circuits^{86/} have all ruled that a taxpayer may not use Contention #18 to avoid filing a federal income tax return. As the Eleventh Circuit observed, "Congress did not enact the PRA's public protection provision to allow OMB to abrogate any duty imposed by Congress."

Contention #19: African Americans can claim a special tax credit as reparations for slavery and other oppressive treatment.

Proponents of this contention assert that African Americans can claim a so-called "Black Tax Credit" on their federal income tax returns as reparations for slavery and other oppressive treatment suffered by African Americans. A similar frivolous argument has been made that native Americans are entitled to a credit on their federal income tax returns as a form of reparations for past oppressive treatment.^{87/}

The Law and Relevant Cases

Although a significant number of tax credits have been enacted into law in recent years,^{88/} Congress has not provided for a "black tax credit." Because tax credits (like deductions) are matters of legislative grace, no credit may be claimed unless specifically provided for in the IRC. The courts have been cracking down on tax preparers and promoters of "slavery reparations" scams. Recently, the Tax Court ruled that "no provision of the IRC allows for a tax credit for slavery reparations and entered an injunction against an income tax return preparer prohibiting him from preparing returns or refund claims based on fabricated tax credits."^{89/}

Contention #20: Taxpayers are entitled to a refund of the Social Security taxes paid over their lifetime.

Proponents of this contention encourage individuals to file claims for refund of the Social Security taxes paid during their lifetime, on the basis that the claimants have sought to waive all rights to their Social Security benefits. Additionally, some advise taxpayers to claim a charitable contribution deduction as a result of their "gift" of these benefits or of the Social Security taxes to the United States.^{90/}

The Law and Relevant Cases

There is no provision in either the Internal Revenue Code or, for that matter, the United States Code, that provides for a refund of taxes paid into the Social Security Trust Fund. Furthermore, the Tax Court has ruled that individuals who waive all rights to future Social Security benefits are not allowed to claim a charitable contribution deduction./91/

VI. 'Untaxing' Packages or 'Untaxing' Trusts

Contention #21: An "untaxing" package or trust provides a way of legally and permanently avoiding the obligation to file federal income tax returns and pay federal income taxes.

Advocates of this idea believe that an "untaxing" package or trust provides a way of legally and permanently "untaxing" oneself so that a person would no longer be required to file federal income tax returns and pay federal income taxes. Promoters who sell such tax evasion plans and supposedly teach individuals how to remove themselves from the federal tax system rely on many of the above-described frivolous arguments, such as the claim that payment of federal income taxes is voluntary, that there is no requirement for a person to file federal income tax returns, and there are legal ways not to pay federal income taxes./92/

The Law and Relevant Cases

Promoters of these "untaxing" packages, as well as taxpayers who have purchased them, have been subjected to both criminal and civil penalties. Furthermore, action to enjoin promoters of abusive tax shelters is provided in section 7408(a), which states:

A civil action in the name of the United States to enjoin any person from further engaging in conduct subject to penalty under Section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or Section 6701 (relating to penalties for aiding and abetting understatement of tax liability) may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in conduct subject to penalty under Section 6700 or Section 6701.

The courts have found these "untaxing" packages to be nothing more than fraudulent tax schemes. The Tax Court in quoting a circuit court of

appeal
decision, said that "no reasonable person would have trusted this
scheme to
work."/93/ In its ruling against taxpayers who promoted a "De-Taxing
America
Program," the Seventh Circuit stated:

[W]e conclude that the statements the appellants made in the
Just Say No advertisement were representations concerning the
tax benefits of purchasing and following the De-Taxing America
Program that the appellants reasonably should have known were
false./94/

Moreover, the Eighth and Tenth Circuits concluded that the use of
trusts as
a means of legally and permanently "untaxing" oneself was a sham./95/

Penalties for Pursuing Frivolous Tax Arguments

Both civil and criminal penalties may be imposed on those individuals
who
act on frivolous positions. Interestingly, those taxpayers who do in
fact
act on these positions may get hit harder than those individuals who
are
mere promoters. Using poetic words the Seventh Circuit observed, "Like
moths
to a flame, some people find themselves irresistibly drawn to the tax
protestor movement's illusory claim that there is no legal requirement
to
pay federal income tax. And, like moths, these people sometimes get
burned."/96/

The IRC contains both accuracy-related and fraud penalties. The
accuracy-related penalty, outlined in section 6662, amounts to 20
percent of
the underpayment attributable to any failure to make a reasonable
attempt to
comply with the tax law or any disregard of rules and regulations. A
civil
fraud penalty is provided for in section 6663 and is equal to 75
percent of
the amount of underpayment attributable to fraud. Furthermore, tax
preparers
who act on frivolous or groundless positions may, like their clients,
be
subject to penalties.

A \$ 500 penalty is provided in section 6702 for taxpayers who maintain
a
frivolous position on a return. Congress enacted section 6702 in

response to
the rapid growth of deliberate defiance of the tax laws by tax
protesters.

Moreover, Congress enacted section 6673 to allow the courts to impose a
penalty of up to \$ 25,000 for bringing frivolous cases before the
courts.

The purpose of section 6673, as described by the Seventh Circuit, is
to:

[I]nduce litigants to conform their behavior to the
governing rules regardless of their subjective beliefs.
Groundless litigation diverts the time and energies of judges
from more serious claims; it imposes needless costs on other
litigants. Once the legal system has resolved a claim, judges
and lawyers must move on to other things. They cannot endlessly
rehear stale arguments . . . [T]here is no constitutional
right to bring frivolous suits. . . . People who wish to
express displeasure with taxes must choose other forums, and
there are many available./97/

Section 6673 gives judges considerable clout. The Tax Court recently
imposed
the maximum penalty in *Madge v. Commissioner*:

[A]fter having warned the taxpayer that continuing with his
frivolous arguments — that he was not a taxpayer, that his
income was not taxable, and that only foreign income was
taxable — would likely result in a penalty, the court imposed
the maximum \$ 25,000 penalty./98/

In another rather recent decision, the Tax Court imposed stiff
penalties on
both the taxpayer and the taxpayer's attorney in *The Nis Family Trust*
v.
Commissioner:

[C]oncluding that the Nis chose "to pursue a strategy of
non-cooperation and delay, undertaken behind a smokescreen of
frivolous tax-protester arguments," the court imposed a
\$ 25,000 penalty against them, and also imposed sanctions of
more than \$ 10,600 against their attorney for arguing frivolous
positions in bad faith./99/

Conclusion

Although "The Truth About Frivolous Tax Arguments" currently addresses
21
frivolous (i.e., groundless) contentions about the legality of not
paying
taxes or filing returns, the list of arguments will surely grow in the

future. Tax protestors who refuse to pay their share of taxes, not because they misunderstand the tax laws, but because they disagree with them, will continue to offer frivolous arguments based on linguistic gymnastics. As one court called them, "imaginative arguments, but totally without arguable merit." Taxpayers and their advisors (i.e., CPAs and attorneys) need to understand that not only will the courts rebuke such contentions in the future, they will continue to impose significant fines and penalties on taxpayers and their advisors for pursuing frivolous positions.

FOOTNOTES

/1/ "The Truth About Frivolous Tax Arguments" (TTAFTA), p. 4. See also K.

Misiewicz and J. Wittenbach, "The Judicial Scrutiny of Constitutional Defenses for Income Tax Non-Compliance," *The Review of Taxation for Individuals*, Vol. 5, No. 4 (Autumn 1981), pp. 325-337.

/2/ *Id.*, p. 4.

/3/ Sections 6011(a), 6012(a), et seq. and 6072(a). See also Treasury Reg. 1.6011-1(a).

/4/ *Helvering v. Mitchell*, 303 U.S. 391, 399 (1938).

/5/ *United States v. Tedder*, 787 F.2d 540, 542 (10th Cir. 1986).

/6/ *United States v. Richards*, 723 F.2d 646, 648 (8th Cir. 1983), and *United States v. Drefke*, 707 F.2d 978, 981 (8th Cir. 1983).

/7/ *Woods v. Commissioner*, 91 T.C. 88, 90 (1988), and *Johnson v. Commissioner*, T.C. Memo. 1999-312, 78 T.C.M. (CCH) 468, 471 (1999).

/8/ TTAFTA, p. 5.

/9/ *United States v. Bressler*, 772 F.2d 287, 291 (7th Cir. 1985).

/10/ *Wilcox v. Commissioner*, 848 F.2d 1007, 1008 (9th Cir. 1988), and *United States v. Gerads*, 999 F.2d 1255, 1256 (8th Cir. 1993).

/11/ *Packard v. United States*, 7 F. Supp.2d 143, 145 (D. Conn. 1998).

/12/ TTAFTA, p. 7.

/13/ *United States v. Lacy*, 658 F.2d 396, 397 (5th Cir. 1981).

sci.energy.hydrogen: Re: Quotes for the Ignorant Masses

- /14/ Moore v. Commissioner, 722 F.2d 193, 196 (5th Cir. 1984).
- /15/ Schiff v. United States, 919 F.2d 830, 832 (2nd Cir. 1990).
- /16/ TTAFTA, p. 8–9.
- /17/ U.S. Constitution Amendment XVI.
- /18/ Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 429–30 (1955),
and
Commissioner v. Kowalski, 434 U.S. 77 (1977).
- /19/ United States v. Connor, 898 F.2d 942, 943–44 (3d Cir.), cert.
denied
497 U.S. 1029 (1990).
- /20/ TTAFTA, p. 12.
- /21/ Id., p. 12.
- /22/ Takaba v. Commissioner, 119 T.C. 285 (2002).
- /23/ Williams v. Commissioner, 114 T.C. 136, 138 (2000).
- /24/ Corcoran v. Commissioner, T.C. Memo. 2002–18, 83 T.C.M. (CCH)
1108,
1110 (2002).
- /25/ Great–West Life Assur. Co. v. United States, 678 F.2d 180, 183
(Ct. Cl.
1982).
- /26/ TTAFTA, p. 13–14.
- /27/ U.S. Constitution, Article 1, Section 8, clause 5.
- /28/ U.S. Constitution, Article 1, Section 10.
- /29/ Juilliard v. Greenman, 110 U.S. 421, 448 (1884).
- /30/ United States v. Daly, 481 F.2d 28, 30 (8th Cir.), cert. denied
414
U.S. 1064 (1973).
- /31/ United States v. Rifen, 577 F.2d 1111 (8th Cir. 1978).
- /32/ TTAFTA, p. 15.
- /33/ O'Driscoll v. IRS, 1991 U.S. Dist. LEXIS 9829, at *5–6 (E.D. Pa.
1991).

sci.energy.hydrogen: Re: Quotes for the Ignorant Masses

/34/ *United States v. Ward*, 833 F.2d 1538, 1539 (11th Cir. 1987), cert. denied 485 U.S. 1022 (1988).

/35/ *United States v. Sileven*, 985 F.2d 962 (8th Cir. 1993).

/36/ *United States v. Gerads*, 999 F.2d 1255, 1256 (8th Cir. 1993).

/37/ *Bland–Barclay v. Commissioner*, T.C. Memo. 2002–20, 83 T.C.M. (CCH) 1119, 1121 (2002).

/38/ *Solomon v. Commissioner*, T.C. Memo. 1993–509, 66 T.C.M. (CCH) 1201, 1202–03 (1993).

/39/ TTAFTA, p. 16.

/40/ *Brushaber v. Union Pacific R.R.*, 240 U.S. 1, 12–19 (1916).

/41/ *In re Becraft*, 885 F.2d 547, 549–50 (9th Cir. 1989).

/42/ *United States v. Ward*, 833 F.2d 1538, 1539 (11th Cir. 1987).

/43/ *Barcroft v. Commissioner*, T.C. Memo. 1997–5, 73 T.C.M. (CCH) 1666, 1667.

/44/ TTAFTA, p. 17.

/45/ *United States v. Studley*, 783 F.2d 934, 937 n. 3 (9th Cir. 1986).

/46/ *United States v. Karlin*, 785 F.2d 90, 91 (3d Cir. 1986), cert. denied 480 U.S. 907 (1987).

/47/ TTAFTA, p. 18–19.

/48/ *United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985).

/49/ *Pabon v. Commissioner*, T.C. Memo. 1994–476, 68 T.C.M. (CCH) 813, 816 (1994).

/50/ *Sullivan v. United States*, 788 F.2d 813, 815 (1st Cir. 1986).

/51/ TTAFTA, p. 20.

/52/ *United States v. Ramsey*, 992 F.2d 831, 833 (8th Cir. 1993).

/53/ *Wall v. United States*, 756 F.2d 52 (8th Cir. 1985).

/54/ *United States v. Lee*, 455 U.S. 252, 260 (1982).

/55/ TTAFTA, p. 21.

/56/ *Brushaber v. Union Pacific R.R.*, 240 U.S. 1, 24 (1916).

/57/ *Id.*

/58/ Sections 7422(e), 1341, and 1346(a).

/59/ Section 6213(a).

/60/ Pub. L. 105–206, section 3401, 112 Stat. 685, 746.

/61/ TTAFTA, p. 22.

/62/ *United States v. Sullivan*, 274 U.S. 259, 264 (1927).

/63/ *United States v. Schiff*, 612 F.2d 73, 83 (2d Cir. 1979).

/64/ *United States v. Brown*, 600 F.2d 248, 252 (10th Cir. 1979).

/65/ TTAFTA, p. 23.

/66/ U.S. Constitution Amendment XIII.

/67/ *Porth v. Brodrick*, 214 F.2d 925, 926 (10th Cir. 1954).

/68/ *Kasey v. Commissioner*, 457 F.2d 369 (9th Cir. 1972).

/69/ TTAFTA, p. 24.

/70/ U.S. Constitution Amendment XVI.

/71/ *United States v. Stahl*, 792 F.2d 1438, 1441 (9th Cir. 1986).

/72/ *Brushaber v. Union Pacific R.R.*, 240 U.S. 1 (1916).

/73/ TTAFTA, p. 26.

/74/ *United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990),
cert.
denied 500 U.S. 920 (1991). See also *Brushaber v. Union Pac. R.R.*, 240
U.S.
1, 12–19 (1916).

/75/ *Lovell v. United States*, 755 F.2d 517, 518 (7th Cir. 1984).

/76/ *Broughton v. United States*, 632 F.2d 706 (8th Cir. 1980).

/77/ *In re Becraft*, 885 F.2d 547 (9th Cir. 1989).

/78/ TTAFTA, p. 26.

sci.energy.hydrogen: Re: Quotes for the Ignorant Masses

- /79/ Donaldson v. United States, 400 U.S. 517, 534 (1971).
- /80/ TTAFTA, p. 27–28.
- /81/ United States v. Wunder, 919 F.2d 34 (6th Cir. 1990).
- /82/ Salberg v. United States, 969 F.2d 379 (7th Cir. 1992).
- /83/ United States v. Holden, 963 F.2d 1114 (8th Cir.), cert. denied 506 U.S. 958 (1992).
- /84/ United States v. Hicks, 947 F.2d 1356, 1359 (9th Cir. 1991).
- /85/ Lonsdale v. United States, 919 F.2d 1440, 1445 (10th Cir. 1990).
- /86/ United States v. Neff, 954 F.2d 698, 699 (11th Cir. 1992).
- /87/ TTAFTA, p. 28–29.
- /88/ See sections 21 through 38 and section 53.
- /89/ United States v. Foster, 2002–2 U.S.T.C. (CCH) para. 50, 785 (E.D. Va. 2002).
- /90/ TTAFTA, p. 30.
- /91/ Crouch v. Commissioner, T.C. Memo. 1990–309, 59 T.C.M. (CCH) 939 (1990).
- /92/ TTAFTA, p. 31.
- /93/ Robinson v. Commissioner, T.C. Memo. 1995– 102, 69 T.C.M. (CCH) 2061, 2062 (1995). See also Hanson v. Commissioner, 696 F.2d 1232, 1234 (9th Cir. 1983).
- /94/ United States v. Raymond, 228 F.3d 804, 812 (7th Cir. 2000), cert. denied, 121 S. Ct. 2242 (2001).
- /95/ United States v. Krall, 835 F.2d 711 (8th Cir. 1987) and United States v. Scott, 37 F.3d 1564 (10th Cir. 1994).
- /96/ United States v. Sloan, 939 F.2d 499, 499–500 (7th Cir. 1991).
- /97/ Coleman v. Commissioner, 791 F.2d 68, 72 (7th Cir. 1986).

sci.energy.hydrogen: Re: Quotes for the Ignorant Masses

/98/ TTAFTA, p. 52. See *Madge v. Commissioner*, T.C. Memo. 2000-370, 80 T.C.M. (CCH) 804 (2000).

/99/ TTAFTA, p. 54. See *The Nis Family Trust v. Commissioner*, 115 T.C. 523, 545-46 (2000).