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or the failure to file a return. Numerous such claims have been shot down by the IRS, as well as the courts, in recent years.

**Ken Berry, JD** • Jul. 17, 2023



Have you ever heard someone say something similar to the following?

“I am an American citizen and I don’t have to pay any taxes. It is unconstitutional for the IRS to impose income taxes on individuals residing in this country. This was not the intent of our Founding Fathers who fought against taxes are there was no income tax in place when the Declaration of Independence was signed. I therefore refuse to pay any tax as my right as a U.S. citizen.”

This sort of argument from tax protesters won't fly. In fact, the individual may be

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down by the IRS, as well as the courts, in recent years. You have virtually no chance of winning this argument.

Some arguments are clearly frivolous positions that taxpayers may take in either a misguided or deliberate attempt to impede the government's tax administration function. Subsequently, the individual could end up facing taxes, interest and penalties, and in some cases, even criminal prosecution.

Other errors are not evident on the face of the return, but may be discovered later when the IRS matches payment documents with the recipients' returns, or audits returns for particular items. For example, an individual may fail to report wages, interest or dividend income. When the IRS later matches the payment records from employers, banks, brokerages, etc., and finds the omission, it will notify the individual about the proposed additional tax, plus interest and any applicable penalty.

Frivolous arguments include, but aren't necessarily limited to, the following five claims.

1. The federal income tax code is unconstitutional.
2. Paying income tax is strictly voluntary.
3. Bonuses aren't taxable income.
4. Taxpayers are citizens of individual states, not U.S. citizens, and therefore are exempt from federal income taxes.
5. You don't have to pay tax on religious, ethical or moral grounds.

What happens if you use a frivolous argument? You're at risk for civil or criminal penalties—or both. The civil penalty for filing a frivolous return is \$5,000.

In addition, you may face other related penalties for failures to report income, file

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- Erroneous refund claim penalty of 20% of the excess amount; and
- Fraudulent failure-to-file penalty of 15% per month

The lesson to be learned here is clear. This is NOT a road you want to go down. Paying taxes is mandatory and constitutional, so meet your obligations.

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