

# Section 6651.—Failure to File Tax Return or to Pay Tax

(Also Sections 6662, 6663, 6673, 6702, 7201, 7203, 7206, and 7408.)

**Frivolous tax returns; constitutionally based arguments.** This ruling emphasizes to taxpayers and to promoters and return preparers that a taxpayer cannot avoid income tax by making frivolous constitutionally based arguments.

## Rev. Rul. 2005-19

### PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal tax liability by claiming that the federal income tax is unlawful because it violates one or more provisions of the United States Constitution, or that they have a constitutional right not to comply with the federal tax laws. The Service is also aware that promoters, including return preparers, are advising or recommending that taxpayers take frivolous positions based on these arguments. Some promoters market a package, kit, or other materials that claim to show taxpayers how they can avoid paying income taxes based on these and other meritless arguments.

This revenue ruling emphasizes to taxpayers and to promoters and return preparers that a taxpayer cannot avoid income tax by making frivolous constitutionally based arguments.

The Service is committed to identifying individuals who attempt to avoid

or evade their federal tax obligations by taking frivolous positions, including frivolous constitutional positions. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through its Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil and criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether a court injunction should be sought to halt these activities. Other information about frivolous tax positions is available on the Service website at [www.irs.gov](http://www.irs.gov).

### ISSUES

1. Whether a taxpayer may refuse to file a federal income tax return, or to pay federal income tax, based on claims that the federal income tax is unconstitutional?

2. Whether a taxpayer may refuse to file a federal income tax return based on the claim that the requirement to do so violates the prohibition against self-incrimination contained in the Fifth Amendment to the U.S. Constitution?

### FACTS

1. Taxpayer A is a United States citizen who resides in state X. A attended seminars on the federal tax system sponsored by S, an attorney. S made claims at these seminars that the federal income tax is unconstitutional because: (a) the Sixteenth Amendment to the U.S. Constitution, which authorizes a federal income tax, was not properly ratified by the states; (b) the federal income tax violates the due process clause of the Fifth Amendment to the U.S. Constitution; and (c) the payment of taxes is a form of involuntary servitude or slavery prohibited by the Thirteenth Amendment to the U.S. Constitution. Based on these constitu-

tionally-based positions promoted by S, A filed a Form W-4, *Employee's Withholding Allowance Certificate*, with A's employer that claimed excess exemptions so that little or no federal income tax would be withheld from A's wages in 2004. Taxpayer A earned \$40,000 of taxable income in 2004. Relying on these constitutionally-based positions promoted by S, A did not file a federal income tax return for 2004.

2. Taxpayer B is a United States citizen who earned \$40,000 in taxable income in 2004. On B's 2004 Form 1040, federal income tax return, B wrote "Fifth Amendment privilege" on each line and did not report any taxable income for the year.

### LAW AND ANALYSIS

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. U.S. CONST. amend. XVI. The United States Supreme Court has upheld the constitutionality of the income tax laws enacted subsequent to ratification of the Sixteenth Amendment. *See, e.g., Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1 (1916) (relying on the Sixteenth Amendment in holding that the income tax provisions of the Tariff Act of 1913 were not unconstitutional).

Promoters who claim that the federal income tax is unconstitutional often make frivolous arguments that there were defects in the ratification of the Sixteenth Amendment by the states. There are a number of variations on these frivolous arguments: (i) versions of the Amendment ratified by the states contained defects in spelling, punctuation, wording, or capitalization; (ii) state legislatures did not follow proper procedures in ratifying the amendment; (iii) state governors did not sign the amendment; (iv) one or more of the states that ratified the Amendment was not legally a state; and (v) the Amendment does not contain an enabling clause. These arguments have no merit, and courts have consistently rejected all challenges to the constitutionality of the federal income tax following enactment of the Sixteenth Amendment. *See Knoblauch v. Commissioner*, 749 F.2d 200, 201 (5th

Cir. 1984) (“Every court that has considered this argument has rejected it.”). Arguments to the contrary are frivolous.

The Fifth Amendment prevents the federal government from taking property without due process of law. U.S. CONST. amend. V. Due process generally includes a right to notice and an opportunity to be heard. The Supreme Court has held that the procedures contained in the Internal Revenue Code fully satisfy the due process rights of taxpayers. See *Phillips v. Commissioner*, 283 U.S. 589, 595–99 (1931) (“The right of the United States to collect its internal revenue by summary administrative proceedings has long been settled. Where, as here, adequate opportunity is afforded for a later judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the government have been consistently sustained.”). The argument that due process requires a hearing before tax has to be paid or can be withheld from wages is frivolous.

The federal income tax only requires payment of taxes on a person’s income. It does not force a person to labor involuntarily, or to labor at all. The Thirteenth Amendment prohibits slavery and involuntary servitude, except as punishment when convicted of a crime. U.S. CONST. amend. XIII. The Thirteenth Amendment does not proscribe taxation. See *Abney v. Campbell*, 206 F.2d 836, 841 (5th Cir. 1953) (The specification, that the act violates the Thirteenth Amendment by imposing involuntary servitude upon an employer of domestic servants, seems to us far-fetched, indeed frivolous.”). Moreover, a prison sentence for failing to file a federal income tax return is not prohibited by the Thirteenth Amendment. See *United States v. Drefke*, 707 F.2d 978, 983 (8th Cir. 1983) (“The Thirteenth Amendment, however, is inapplicable where involuntary servitude is imposed as punishment for a crime.”). Failing to file a federal income tax return or to pay federal income tax based on the argument that it would constitute involuntary servitude is frivolous.

The Fifth Amendment provides that in a criminal case a person may not be compelled to be a witness against himself. U.S. CONST. amend. V. This generally means that a person cannot be forced to answer a question if the answer will be used against

that person in a criminal prosecution. Courts have routinely held, however, that the Fifth Amendment provides no basis for failing or refusing to file a tax return. *United States v. Stillhammer*, 706 F.2d 1072, 1076–77 (10th Cir.1983) (“[T]he Fifth Amendment does not serve as a defense for failing to make any tax return, and a return containing no information but a general objection based on the Fifth Amendment does not constitute a return as required by the Code.”). The remote possibility that a taxpayer’s statement on a tax return might be used as evidence in a future criminal prosecution will not relieve a taxpayer from the obligation to file a tax return and properly report income and pay tax due. See *California v. Byers*, 402 U.S. 424, 427–29 (1971) (“[T]he remote possibility of incrimination is insufficient to defeat strong policies of disclosure called for by” government regulatory scheme.). Additionally, involvement in illegal activities will not relieve a person of the duty to file a federal income tax return because income earned from illegal activities is subject to the federal income tax. *United States v. Sullivan*, 274 U.S. 259, 263–64 (1927) (“It would be an extreme if not an extravagant application of the Fifth Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in crime.”).

#### CIVIL AND CRIMINAL PENALTIES

In determining the correct amount of tax due, the Service will include income that taxpayers attempt to exclude based on frivolous constitutional arguments. In addition to liability for tax due plus statutory interest, individuals who claim tax benefits on their returns based on these and other frivolous arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6651 additions to tax for failure to file a return, failure to pay the tax owed, and fraudulent failure to file a return; (2) the section 6662 accuracy-related penalty, which is equal to 20 percent of the amount of taxes the taxpayer should have paid; (3) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (4) a \$500 penalty under section 6702 for filing a frivolous return; and (5) a penalty of up to \$25,000 under section 6673 if the

taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on these positions also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201, for which the penalty is a significant fine and imprisonment for up to 5 years; (2) willful failure to make a return or pay tax under section 7203, for which the penalty is a significant fine and imprisonment of up to 1 year; or (3) making false statements on a return under section 7206, for which the penalty is a significant fine and imprisonment for up to 3 years.

Persons, including return preparers, who promote these frivolous positions and those who assist taxpayers in claiming tax benefits based on these frivolous arguments may face penalties and may be enjoined by a court pursuant to sections 7407 and 7408. Potential penalties include: (1) a \$250 penalty under section 6694 for each return prepared by an income tax preparer who knew or should have known that the taxpayer’s argument was frivolous (or \$1,000 for each return if the return preparer’s actions were willful, intentional or reckless); (2) a penalty under section 6700 for promoting abusive tax shelters; (3) a \$1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (4) criminal prosecution under section 7206, for which the penalty is a significant fine and imprisonment for up to 3 years for assisting or advising about the preparation of a false return or other document under the internal revenue laws.

#### HOLDINGS

1. The Sixteenth Amendment to the U.S. Constitution was properly ratified and authorizes the federal income tax. Filing a federal income tax return and paying federal income tax does not constitute the taking of property without due process of law under the Fifth Amendment to the U.S. Constitution. Filing a federal income tax return, paying federal income tax, and incarceration for failure to comply with federal income tax obligations is not involuntary servitude or slavery prohibited by the Thirteenth Amendment to the U.S. Constitution. Arguments to the contrary are frivolous.

2. A taxpayer may not properly refuse to file a federal income tax return based on the claim that the requirement to do so violates the prohibition against self-incrimination of the Fifth Amendment to the U.S. Constitution. Arguments to the contrary are frivolous.

## DRAFTING INFORMATION

This revenue ruling was drafted by the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-7950 (not a toll-free call).