

Fact Sheet #2 for War Tax Resistance Counselors

War Tax Resisters and Frivolous Penalties

Congress enacted the Tax Equity and Fiscal Responsibility Act in 1982, which included section 6702 and the IRS's Frivolous Return Program to deter tax protesters. Since about 2000, the Frivolous Return Program has been located in the IRS Service Center in Ogden, Utah. The penalty amount was \$500 until 2007 when Congress allowed an increase to \$5,000. In the 1980s some war tax resisters were slapped with the penalty for writing war tax deductions, credits, or other messages on their IRS 1040 or EZ returns. War tax resistance counselors began to encourage filers not to write protests, deductions or credits on their tax forms if they wanted to avoid the penalty. Starting in about 2003, random war tax resisters around the country (by no means all) who filed and enclosed a protest letter began to receive frivolous filing warning letters or the penalty itself. A "systemic issue" complaint was filed with the Taxpayer Advocate, which resulted in a 2013 memo from the IRS Office of Chief Counsel, "Application of Section 6702 Penalty to Taxpayer Who Files a Return with War Complaint," to distinguish between protest letters and frivolous tax returns.

Section 6702 and the Dual Requirement

SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of \$5,000 if—

(1) such person files what purports to be a return of a tax imposed by this title but which—

(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

*(B) contains information that on its face indicates that the self-assessment is substantially incorrect, **and***

(2) the conduct referred to in paragraph (1)—

(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

(B) reflects a desire to delay or impede the administration of Federal tax laws.

(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

(1) IMPOSITION OF PENALTY.—Except as provided in paragraph

(3), any person who submits a specified frivolous submission shall pay a penalty of \$5,000.

Note the "**and**" between" parts (1) and (2) which we have highlighted. Section 1 states that there must be something suspect about the return filed, AND that you are showing what the IRS considers a frivolous argument in order for the fine to apply.

If you have filled out your return as accurately as possible (whether you paid any tax due or not), then a frivolous penalty should not be applied. On August 16, 2013, the Office of Chief Counsel of the IRS issued a memo, "Application of Section 6702 Penalty to Taxpayer Who Files a Return with War Complaint," to clarify this point for IRS staff. See the memo at irs.gov/pub/irs-lafa/20133303f.pdf.

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Frivolous Positions: PURPOSE

The text of this IRS notice indicates other circumstances under which the fine can be applied, with 46 types of frivolous positions listed and discretion for the IRS to define more at any time. You can read the full document and the list of IRS frivolous claims at irs.gov/irb/2010-17_IRB/ar13.html.

Positions that are the same as or similar to the positions listed in this notice are identified as frivolous for purposes of the penalty for a "frivolous tax return" under section 6702(a) of the Internal Revenue Code and the penalty for a "specified frivolous submission" under section 6702(b). Persons who file a purported return of tax, including an original or amended return, based on one or more of these positions are subject to a penalty of \$5,000 if the purported return of tax does not contain information on which the substantial correctness of the self-assessed determination of tax may be judged or contains information that on its face indicates the self-assessed determination of tax is substantially incorrect.

Likewise, persons who submit a "specified submission" (namely, a request for a collection due process hearing or an application for an installment agreement, offer-in-compromise, or taxpayer assistance order) based on one or more of the positions listed in this notice are subject to a penalty of \$5,000.

The penalty may also be applied if the purported return or any portion of the specified submission is not based on a position set forth in this notice, yet reflects a desire to delay or impede the administration of Federal tax laws for purposes of section 6702(a)(2)(B) or 6702(b)(2)(A) (ii). The penalty will be imposed only when the frivolous position or desire to delay or impede the administration of Federal tax laws appears on the face of the return, purported return, or specified submission, including any attachments to the return or submission.

(Stories and what to do on reverse)

Background and Experiences

- In 1984 longtime war tax refuser Karl Meyer called for a “cabbage patch” response, filing a 1040 form every day for a year to defy the policy. He was assessed \$140,000 in penalties during 1984, and in February 1985 the IRS seized his station wagon in an attempt to collect on the fines. It was sold for \$1,020. Karl continues to refuse to pay for war.

- If you want to avoid the frivolous penalty NWTRCC and war tax resistance counselors encourage filers not to write protests or deductions or credits on the tax form.

- In 2010 a few war tax resisters (WTRs) received warning letters, and despite following steps that should have cleared the fine, the IRS went ahead and imposed the \$5,000 penalty. The IRS then began to demand the fine be paid before it could be appealed.

- In 2011 a NWTRCC activist filed a complaint online to the Taxpayer Advocate Service Systemic Advocacy Management. The complaint questioned the application of the frivolous penalty when a filer has enclosed a letter of protest with their accurate form. In August 2013, the IRS legal office issued a memo, “Application of Section 6702 Penalty to Taxpayer Who Files a Return with War Complaint,” (irs.gov/pub/irs-lafa/20133303f.pdf) to clarify for their workers that the penalty does not apply in this situation.

- After the release of the 2013 memo three WTRs who paid the penalty or had it seized received full refunds—with interest! Each had filed IRS Form 843 Request for Abatement. (See NWTRCC newsletter, Aug./Sept. '13; April/May '14, nwtrcc.org/mtap.php)

- It's important to argue wrongful imposition of the penalty. In 2008 a first-time resisting couple withheld \$50 from their tax due and sent a letter with their 1040 explaining their war tax resistance protest. The IRS responded with a frivolous filing warning letter, and the couple complied with the IRS demand to refile and pay the tax. Despite that they were slapped with the \$5,000 penalty—each. The couple did not pay the penalty but immediately called the IRS to complain, filed a complaint with the Taxpayer Advocate office, and contacted their Congress person's office. The fine was eventually lifted, but the stress was hard to get over.

- One thing that distinguishes war tax resisters regarding frivolous arguments is our protest against war taxes but not necessarily taxation. The IRS refers to “*erroneous legal positions that taxpayers should refrain from using as an excuse to avoid paying their taxes.*” As opposed to claiming exemption from taxes, which sets off IRS alarm bells, WTRs are objecting to how taxes are being spent. Many WTRs do pay taxes through redirection. Unfortunately there is no legal allowance for redirection.

- Generally NWTRCC's counseling information in this area applies only to war tax resisters. We are not able to track all the ways the IRS applies the fine to tax protests and we warn that writing protests on the 1040 form, filing blank or “zero” returns, applying for refunds based on questionable methods or “creative” uses of IRS forms can lead to frivolous penalties, as can continual correspondence sent to the IRS using arguments they consider frivolous. It may not be right, but the IRS has rather broad power to apply the fine.

What To Do

There seem to be two types of letters that the IRS sends in response to what they consider to be frivolous returns.

One is a “**warning**” letter, which says something like, *This is in reply to your correspondence dated.... We have determined that the arguments you raised are frivolous and have no basis in law. Federal courts have consistently ruled against such arguments....*

The “**threat**” letter is headlined:

*We may assess a \$5,000 frivolous filing penalty against you
File a corrected [year] Form 1040 tax return immediately*

- If you receive a general warning letter, you can probably ignore it. One person in the Tax Advocate office told us that one warning letter is not unusual. It is not recorded in an individual's tax records. For reassurance, you can call the 800 number on the letter and ask what it means and why you got it. It is probably best not to reply in writing with your conscientious objection to war taxes unless you are willing to court the \$5,000 penalty for frivolous correspondence.

- If you receive the “threat” and want to avoid the penalty, some response is probably necessary. Call the 800 number on the letter to ask why you got it. If you sent a letter of protest and are confident your return was filed accurately, you should not have to refile. On the phone or in correspondence, refer to the 2013 memo mentioned at left and below.

- If the penalty was applied erroneously, you can request a waiver authority to abate the penalty because the IRS made a mistake in applying the penalty, based on the language in the 2013 memo. If the money was paid or seized, you can send in a request for an abatement (Form 843) to the frivolous penalty program: Internal Revenue Service, Attn: FRP M/S 4450, 1973 N. Rulon White Blvd., Ogden, UT 84404.

- If you received the \$5,000 penalty, you can use IRS Form 14402 to request a reduction of the penalty to \$500.

- It seems reasonable to deduce that the IRS has carried out the “frivolous” policy in a random and inconsistent way. Some IRS employees may have a limited understanding of the regulation, or perhaps they just don't like seeing a letter sent with a return. The staff in the Frivolous Return Program was to be retrained as regards the 2013, memo, but time will tell if war tax resisters continue to have problems.

- Please contact the NWTRCC office. We continue to track IRS activity in this area, and your story will be helpful to our understanding of the best actions to take.

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