

## Tax Protestor Arguments

Tax Protestor Argument	The Law	Relevant Court Cases
<p><b>Filing a return is voluntary.</b> The Form 1040 Instructions state that the tax system is voluntary, and the Supreme Court decision in <i>Flora</i> states, “taxation is based on voluntary assessment and payment, not upon distraint.”</p>	<p>The word “voluntary” refers to taxpayers’ ability to determine the correct amount of tax and complete the appropriate returns instead of having the government determine the tax. The requirements to file and pay are not voluntary, and are clearly set forth in Sections 6011(a), 6012(a) and 6072(a).</p>	<p><i>Helvering v. Mitchell</i>, 303 U.S. 391, 399 (1938)  <i>Tedder</i>, 787 F.2d 540, 542 (10th Cir. 1986)  <i>Richards</i>, 723 F.2d 646, 648 (8th Cir. 1983)  <i>Drefke</i>, 707 F.2d 978, 981 (8th Cir. 1983)  <i>Woods</i>, 91 TC 88, 90 (1988)  <i>Johnson</i>, TC Memo 1999-312  <i>Bressler</i>, TC Memo 1986-4</p>
<p><b>Paying tax is voluntary.</b> See above.</p>	<p>See above.</p>	<p><i>Wilcox</i>, 848 F.2d 1007, 1008, (9th Cir. 1988)  <i>Schiff</i>, 919 F.2d 830, 822 (2nd Cir. 1990), <i>cert. denied</i>, 501 U.S. 1238 (1991)  <i>Gerads</i>, 999 F.2d 1255, 1256 (8th Cir. 1993)  <i>Packard</i>, 7 F. Supp. 2d 143, 145 (D. Conn. 1998)</p>
<p><b>Wages and other compensation received for personal services are not income.</b> The argument is that no taxable gain occurs when a person exchanges labor for money. The individual is assumed to have basis in the labor equal to the FMV of wages received. A companion argument is that the 16th Amendment did not authorize a tax on wages and salaries.</p>	<p>For federal income tax purposes, “gross income” means all income from whatever source derived and includes compensation for services (IRC §61). Courts have consistently upheld the constitutionality of the federal income tax. Relying on this argument has been repeatedly found as “frivolous” by the courts, with criminal and civil penalties imposed.</p>	<p><i>Glenshaw Glass Co.</i>, 348 U.S. 426, 429-30 (1955)  <i>Kowalski</i>, 434 U.S. 77 (1977)  <i>Connor</i>, 898 F.2d 71, 72 (5th Cir. 1981)  <i>Reading</i>, 70 TC 730 (1978), <i>aff’d</i>, 614 F.2d 159 (8th Cir. 1980)  <i>Abrams</i>, 82 TC 403, 413 (1984)  <i>Cullinane</i>, TC Memo 1999-2  <i>Wheelis</i>, KTC 2003-203 (9th Cir. 2003)</p>
<p><b>Only foreign-source income is taxable.</b> The argument is that no federal statute exists that imposes a tax on citizens or residents of the United States for income derived from sources within the United States, and 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.</p>	<p>See above. Also see Regulation Section 1.1-1(b) which states “...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.”                       Sections 861 and 911 define the sources of income (U.S. vs. non-U.S. source income).</p>	<p><i>Great-West Life Assurance Co.</i>, 678 F.2d 180, 183 (Ct. Cl. 1982)  <i>Takaba</i>, 119 TC 285  <i>Williams</i>, 114 TC 136 (2000)  <i>Corcoran</i>, TC Memo 2002-18  <i>Aiello</i>, TC Memo 1995-40  <i>Madge</i>, TC Memo 2000-370  <i>Solomon</i>, TC Memo 1993-509</p>
<p><b>Federal Reserve Notes are not income.</b> The argument is that Federal Reserve Notes 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.</p>	<p>Article I, Section 10 of the Constitution prohibits the states from declaring as legal tender anything other than gold or silver, but does not limit Congress’ power to declare the form of legal tender. Congress has declared Federal Reserve Notes legal tender.</p>	<p><i>Rickman</i>, 638 F.2d 182, 184 (10th Cir. 1980)  <i>Condo</i>, 741 F.2d 238, 239 (9th Cir. 1984)  <i>Daly</i>, 481 F.2d 28, 39 (8th Cir.)  <i>Jones</i>, 688 F.2d 17 (6th Cir. 1982)</p>
<p><b>The taxpayer is not a “citizen” of the United States, and is therefore not subject to federal income tax laws.</b> This argument is used by individuals who claim they have rejected United States citizenship in favor of state citizenship. Some also argue that a person is a free born citizen of a particular state, and was therefore never a citizen of the United States. Since the individual is not a citizen of the United States, they are not subject to federal tax laws.</p>	<p>The 14th Amendment states “...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.” The Fourteenth Amendment establishes simultaneous state and federal citizenship.</p>	<p><i>Sloan</i>, 939 F.2d 499, 500 (7th Cir. 1991), <i>cert. denied</i>, 502 U.S. 1060, <i>reh’g denied</i>, 503 U.S. 953 (1992)  <i>Ward</i>, 833 F.2d 962 1538, 1539 (11th Cir. 1987), <i>cert. denied</i>, 485 U.S. 1022 (1988)  <i>Sileven</i>, 985 F.2d 962 (8th Cir. 1993)  <i>Bland-Barclay</i>, TC Memo 2002-20  <i>Solomon</i>, TC Memo 1993-509</p>
<p><b>The “United States” consists only of the District of Columbia, federal territories and federal enclaves.</b> The argument is that the United States consists only of D.C., federal territories (e.g., Puerto Rico, Guam, etc.) and federal enclaves (e.g., American Indian reservations, military bases, etc.) and does not include “sovereign” states. If an individual does not live in one of the defined areas, the individual is not subject to federal tax.</p>	<p>The Internal Revenue Code imposes tax on all United States citizens and residents, not just those who reside in D.C., federal territories and federal enclaves. Courts have uniformly rejected the argument as frivolous.</p>	<p><i>In re Becraft</i>, 885 F.2d 547, 549-50 (9th Cir. 1989)  <i>Ward</i>, 833 F.2d 1538, 1539 (11th Cir. 1987), <i>cert. denied</i>, 485 U.S. 1022 (1988)  <i>Barcroft</i>, TC Memo 1997-5, <i>appeal dismissed</i>, 134 F.3d 369 (5th Cir. 1997)</p>



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<b>A taxpayer is not a “person” as defined by the Internal Revenue Code, thus not subject to income tax.</b> The argument is based on a tortured misreading of the tax Code.	Section 7701(a)(1) defines “person” to include an individual, trust, estate, partnership or corporation. Arguments that an individual is not a “person” have been uniformly rejected by the courts.	<i>Karlin</i> , 785 F.2d 90, 91 (3rd Cir. 1986), <i>cert. denied</i> , 480 U.S. 907 (1987) <i>Biermann</i> , 769 F.2d 707, 708 (11th Cir.), <i>reh’g denied</i> , 775 F.2d 304 (11th Cir. 1985) <i>Smith</i> , TC Memo 2000-290 <i>Studley</i> , 783 F.2d 934, 937 n.3 (9th Cir. 1986)
<b>The only “employees” subject to federal income tax are employees of the federal government.</b> The argument is based on a misinterpretation of the withholding requirements set forth in Section 3401(c), which states that the term “employee” includes “an officer, employee or elected official of the united States, a State or any political subdivision thereof.	Although Section 3401(c) states that government employees fall under the rule, the language does not eliminate the withholding requirement for other employees.	<i>Latham</i> , 754 F.2d 747, 750 (7th Cir. 1985) <i>Sullivan</i> , 788 F.2d 813, 815 (1st Cir. 1986) <i>Peth v. Breitzmann</i> , 611F. Supp. 50, 53 (E.D. Wis. 1985) <i>Pabon</i> , TC Memo 1994-476
<b>Taxpayers can refuse to pay income taxes on religious or moral grounds by invoking the First Amendment.</b>	The First Amendment states that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. It does not provide the right to refuse to pay income taxes based on objections to how the money is used.	<i>Lee</i> , 455 U.S. 252, 260 (1982) <i>Ramsey</i> , 992 F.2d 831, 833 (8th Cir. 1993) <i>Wall</i> , 756 F.2d 52 (8th Cir. 1985)
<b>Federal income taxes constitute “taking” of property without due process.</b> The argument is that income tax represents a “taking” without due process, which is a violation of the Fifth Amendment.	The U.S. Supreme Court stated in <i>Brushaber v. Union Pacific R.R.</i> (1916) that “it is...well settled that [the Fifth Amendment] is not a limitation upon the taxing power conferred upon Congress by the Constitution...” The Supreme Court has subsequently upheld the constitutionality of administrative procedures set forth in the Internal Revenue Code.	<i>Flora</i> , 362 U.S. 145, 175 (1960) <i>Goza</i> , 114 TC 176 <i>Pierson</i> , 115 TC 576 <i>Davis</i> , TC Memo 2001-87 <i>Roberts</i> , 118 TC 365
<b>Taxpayers do not have to provide information because of protection from self-incrimination under the Fifth Amendment.</b>	There is no constitutional right to refuse to file an income tax return. In <i>United States v. Sullivan</i> , the U.S. Supreme Court 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.”	<i>Schiff</i> , 612 F.2d 73, 83 (2nd Cir. 1979) <i>Brown</i> , 600 F.2d 248, 252 (10th Cir. 1979) <i>Neff</i> , 615 F.2d 1235, 1241 (9th Cir.), <i>cert. denied</i> , 447 U.S. 925 (1980) <i>Sochia</i> , 23 F.3d 941 (5th Cir. 1994)
<b>Compelled compliance with federal income tax laws amounts to involuntary servitude in violation of the Thirteenth Amendment.</b>	Courts have consistently found that the comparing tax law to slavery is frivolous.	<i>Porth v. Brodrick</i> , 214 F.2d 925, 926 (10th Cir. 1954) <i>Ginter v. Southern</i> , 611 F.2d 1226 (8th Cir. 1979) <i>Kasey</i> , 457 F.2d 369 (9th Cir. 1972)
<b>The 16th Amendment was never ratified, thus federal income tax laws are unconstitutional.</b> The argument is that the 16th Amendment was not officially ratified because the State of Ohio was not properly a state at the time of ratification.	The 16th Amendment gives Congress the right to lay and collect taxes on income. Even if there was a question about Ohio’s status, only three-fourths of states are needed to ratify an Amendment. There were enough states needed to ratify the Amendment even without Ohio.	<i>Miller</i> , 868 F.2d 236, 241 (7th Cir. 1989) <i>Knoblauch</i> , 749 F.2d 200, 201 (5th Cir. 1984), <i>cert. denied</i> , 474 U.S. 830 (1986) <i>Foster</i> , 789 F.2d 457 (7th Cir.), <i>cert. denied</i> , 479 U.S. 883 (1986)
<b>An “untaxing” package or trust provides a way to permanently opt out of the obligation to file and pay federal income tax.</b> Promoters sell the “untaxing” packages or trusts, usually for a hefty fee.	Promoters of “untaxing” schemes, as well as willful taxpayers, have been subjected to criminal penalties for their actions. Courts have consistently held that the underlying claims are frivolous.	<i>Andra</i> , 218 F.3d 1106 (9th Cir. 2000) <i>Clark</i> , 139 F.3d 485 (5th Cir.), <i>cert. denied</i> , 525 U.S. 899 (1998) <i>Robinson</i> , TC Memo 1995-102 <i>King</i> , TC Memo 1995-524 <i>Raymond</i> , 228 F.3d 804, 812 (7th Cir. 2000), <i>cert. denied</i> , 121 S. Ct. 2242 (2001) <i>Kaun</i> , 827 F.2d 1144 (7th Cir. 1987) <i>Krall</i> , 835 F.2d 711 (8th Cir. 1987) <i>Scott</i> , 37 F.3d 1564 (10th Cir. 1994)

