

# FRIVOLOUS TAX ARGUMENTS? - BEWARE THE TAX MAN!

By Brian Mahany

The concept of fining people for taking frivolous tax positions sounds pretty good at first. The California Franchise Tax Board announced it was going to fine taxpayers \$5000 per offense for those who make “frivolous” arguments or attempt to “delay or impede the administration” of tax laws. The problem, of course, is allowing the government to determine what is frivolous.

Last month a prominent CPA publication used actor Wesley Snipes as an example of someone making a frivolous tax argument. There is a big problem with that analogy, however, Snipes was acquitted by a jury in Ocala, Florida on all felony tax charges against him.

It’s not just California that has jumped into the fray. The IRS also imposes monetary penalties for those they determine to take frivolous positions. In fact, they take things a few steps beyond. In addition to monetary penalties, the IRS often indicts those who make arguments they deem frivolous. If that isn’t enough they sometimes take the licenses of attorneys and accountants that present the taxpayer’s frivolous arguments.

Prominent tax freedom movement leader Joe Bannister, himself a former IRS special agent, was indicted for his “frivolous” views.

After being acquitted by a California jury, the IRS and the California licensing authorities took away his accounting license and his ability to assist taxpayers with returns.

How do we know all this? Attorney Brian Mahany was part of the legal team that successfully defended Wesley Snipes on his felony tax charges. Attorney Christopher Ertl helped defend Joe Bannister.

Our system of government was built upon a foundation of checks and balances. No matter how well intended the regulators, it is a slippery slope when the regulators suddenly become judge, jury and executioner.

The line between what is frivolous and what isn't is often blurry. The IRS thought Joe Bannister and Wesley Snipes arguments were frivolous. But a jury of their peers disagreed.

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