§ 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.

(2) Specified frivolous submission.--For purposes of this section--

   (A) Specified frivolous submission.--The term "specified frivolous submission" means a specified submission if any portion of such submission--

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

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

   (B) Specified submission.--The term "specified submission" means--

      (i) a request for a hearing under--

      (I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

      (II) section 6330 (relating to notice and opportunity for hearing before levy), and

(ii) an application under--

(I) section 6159 (relating to agreements for payment of tax liability in installments),

(II) section 7122 (relating to compromises), or

(III) section 7811 (relating to taxpayer assistance orders).

(3) Opportunity to withdraw submission.--If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

(c) Listing of frivolous positions.--The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

(d) Reduction of penalty.--The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

(e) Penalties in addition to other penalties.--The penalties imposed by this section shall be in addition to any other penalty provided by law.

CREDIT(S)


HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports


Amendments

2006 Amendments. Pub.L. 109-432, Div. A, Title IV, § 407(a), rewrote the section, which formerly read:

"§ 6702. Frivolous income tax return

"(a) Civil penalty.--If--

"(1) any individual files what purports to be a return of the tax imposed by subtitle A 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) is due to--
"(A) a position which is frivolous, or

"(B) a desire (which appears on the purported return) to delay or impede the administration of Federal income
tax laws,

"then such individual shall pay a penalty of $500.

"(b) Penalty in addition to other penalties.--The penalty imposed by subsection (a) shall be in addition to any oth-

Effective and Applicability Provisions

2006 Acts. Amendments to this section by Pub.L. 109-432, Div. A, Title IV, § 407(a), applicable to submissions
made and issues raised after the date on which the Secretary first prescribes a list under 26 U.S.C.A. § 6702(c), see

1982 Acts. Section 326(c) of Pub.L. 97-248, provided that: "The amendments made by this section [enacting this
section] shall apply with respect to documents filed after the date of the enactment of this Act [Sept. 3, 1982]."

LIBRARY REFERENCES

American Digest System

   Internal Revenue 5217 to 5217.55.

   Key Number System Topic No. 220.

Corpus Juris Secundum

   CJS Internal Revenue § 821, Grounds for Penalties and Amount Thereof, Generally.

RESEARCH REFERENCES

ALR Library

117 ALR, Fed. 75, Construction and Application of § 7430 of Internal Revenue Code, Providing for Award of Costs
and Fees to Prevailing Parties in Connection With Determination, Collection, or Refund of Any Tax Or...

114 ALR, Fed. 377, Construction and Application of 26 U.S.C.A. § 6701 Imposing Civil Penalties on Persons Aid-
ing and Abetting Understatement of Tax Liability.

88 ALR, Fed. 573, Construction and Application of 26 U.S.C.A. § 6673, Providing for Tax Court's Assessment of
Damages Against Taxpayer in Certain Circumstances-Modern Cases.

81 ALR, Fed. 36, What Conduct Constitutes Multiplying Proceedings Unreasonably and Vexatiously So as to War-
rant Imposition of Liability on Counsel Under 28 U.S.C.A. § 1927 for Excess Costs, Expenses, and Attorney...

84 ALR, Fed. 433, Validity, Construction, and Application of Provisions for Assessment and Review of Civil Pen-

77 ALR, Fed. 572, What Rules, Statements, and Interpretations Adopted by Federal Agencies Must be Published.

174 ALR 549, Interest Necessary to Maintenance of Declaratory Determination of Validity of Statute or Ordinance.

174 ALR 1373, Federal Tax Liens.

Encyclopedias


Forms

9 West's Federal Forms § 14032, Review of Collection Actions Proposed by the Internal Revenue Service.

1 West's Legal Forms DIV. I § 3.6, Taxpayer Appeal Process.

Treatises and Practice Aids

Casey Federal Tax Practice § 13A:40, Frivolous Returns.

Casey Federal Tax Practice § 13A:41, Judicial Review.


Casey Federal Tax Practice § 3:08.50, -- Adequacy of Return.

Casey Federal Tax Practice § 3:08.57, -- -- Penalties and Sanctions.


West's Federal Administrative Practice § 808, Subject Matters Beyond the Court's Jurisdiction.

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1. Constitutionality--Generally

This section was not unconstitutionally vague. Welch v. U.S., C.A.1 (Mass.) 1985, 750 F.2d 1101. Internal Revenue 5201

2. ---- Bill of attainder, constitutionality

This section governing penalty for frivolous return proscribed conduct only, and did not inflict punishment on specific group, and therefore was not a bill of attainder. Ueckert v. U.S., D.C.N.D.1984, 581 F.Supp. 1262, reconsideration denied. Constitutional Law 82.5; Internal Revenue 5201

Civil fine imposed upon plaintiff for filing tax return which does not contain information on which substantial correctness of self assessment may be judged did not constitute a bill of attainder. Milazzo v. U.S., S.D.Cal.1984, 578 F.Supp. 248. Constitutional Law 82.5; Internal Revenue 5201

Although this section imposing civil penalty for filing frivolous federal income tax returns was enacted because of congressional concern about activities of tax protestors, the law punishes conduct and not tax protestors as such and is not a bill of attainder. Bearden v. C.I.R., D.C.Utah 1983, 575 F.Supp. 1459. Constitutional Law 82.5; Internal Revenue 5201

3. ---- Cruel and unusual punishment, constitutionality

This section did not constitute cruel and unusual punishment with regard to taxpayers who filed frivolous return, since taxpayers were not being held for punishment after criminal conviction. Brennan v. C.I.R., E.D.Mich.1984, 581 F.Supp. 28, affirmed 752 F.2d 187. Sentencing And Punishment 1580


4. ---- Delegation of authority, constitutionality

Taxpayer's challenge to collection actions taken by Internal Revenue Service (IRS) employees, on ground that Treasury Secretary could not delegate his authority to notify taxpayers of their obligations or rights under Tax Code, had no basis in law, and thus would be dismissed as frivolous; Secretary could and had delegated much of his statutory authority and responsibilities to others. Bartley v. U.S., I.R.S., N.D.Ohio 2004, 343 F.Supp.2d 649. Internal Revenue 3004; Internal Revenue 4855

The Internal Revenue Service (IRS) is not required to provide the taxpayer with a copy of the delegation, from the Secretary of the Treasury, of authority to assess penalties. Borchardt v. C.I.R., D.Minn.2004, 338 F.Supp.2d 1040. Internal Revenue 5225

Assessment of penalty for filing frivolous federal income tax return does not violate the Internal Revenue Service's delegated powers; Secretary of Treasury has statutory authority to assess penalties and that authority may be deleg-

Since nothing in complaint or record indicated that "low level administrative agents" or "minor officials" made assessment of civil penalty for filing frivolous tax returns but, rather, authority had been properly delegated to district directors and directors of regional service centers of the Internal Revenue Service, section providing for assessment of civil penalties was not unconstitutional on ground that "low level administrative agents" assessed penalty. Tibbetts v. Secretary of the Treasury, W.D.N.C.1984, 577 F.Supp. 911. Internal Revenue 5201

5. ---- Due process, constitutionality

Internal Revenue Service notice informing taxpayer of penalty for filing of frivolous tax return did not deprive taxpayer of due process, where notice presented assessment of penalty, taxable year for which it was assessed, and statutory basis for assessment. Kahn v. U.S., C.A.3 (Pa.) 1985, 753 F.2d 1208. Constitutional Law 286

Compliance Technical Support Manager from local Internal Revenue Service (IRS) office was appropriate authority to send taxpayers notice of federal tax lien filing, and of their right to due process hearing if they wished to contest imposition of underlying frivolous return penalty. Lemieux v. U.S., D.Nev.2002, 230 F.Supp.2d 1143. Internal Revenue 5225

Taxpayer received adequate notice of his entitlement to collection due process hearing; notice was signed by representative of Internal Revenue Service (IRS), to whom Secretary of Treasury had properly delegated authority. Hoffman v. U.S., W.D.Wash.2002, 209 F.Supp.2d 1089, reconsideration denied. Internal Revenue 4855

Assessment of newly created "frivolous return" penalty did not violate taxpayer's due process rights, though IRS had failed to provide him with actual notice of newly created penalty at time he filed tax return containing "peace cred- it," where penalty created was civil one that did not impinge on taxpayer's liberty interest, and taxpayer was aware that tax credit he was claiming violated tax clause. Chamberlin v. U.S., N.D.N.Y.1987, 664 F.Supp. 663. Constitutional Law 286; Internal Revenue 5201

Imposition of penalty for filing frivolous federal income tax return does not violate due process; taxpayers' suit challenging penalty is sufficient to protect due process rights. McCullough v. Secretary of Treasury, N.D.Miss.1985, 621 F.Supp. 750. Constitutional Law 286; Internal Revenue 5201

Statute allowing imposition of a penalty against taxpayer for filing a frivolous income tax return due to taxpayer's taking of a patently unallowable war tax deduction did not violate taxpayer's right to due process because it is overbroad, since the statute does not infringe constitutionally protected conduct. Aschenbach v. U.S., D.C.Conn.1984, 599 F.Supp. 588. Constitutional Law 286; Internal Revenue 5201

Taxpayer was not prejudiced by failure of Internal Revenue Service to specify which provisions of this section applied to penalty assessed against her, where taxpayer contested assessment of penalty on basis of constitutional and statutory challenges attendant to her "war tax deduction" and government never contended that there was any other factual basis than "war tax deduction" for imposition of penalty. Drefchinski v. Regan, W.D.La.1984, 589 F.Supp. 1516. Internal Revenue 5231


Assessment of a penalty for frivolous tax return without a prior hearing on validity of taxpayers' defense, and re-
quirement that taxpayers pay 15% of the penalty before they could obtain review of the assessment were not violations of due process. Stamp v. C.I.R., N.D.Ill.1984, 579 F.Supp. 168. Constitutional Law 286

Government’s notice informing taxpayers of penalties assessed for filing frivolous tax returns did not deprive taxpayers of due process where notice each taxpayer received cited assessment of penalty, taxable year for which it was assessed and statutory basis for assessment. Franklet v. U.S., N.D.Cal.1984, 578 F.Supp. 1552, affirmed 761 F.2d 529. Constitutional Law 286

This section providing for penalties for filing frivolous income tax returns does not, merely because of lack of hearing prior to assessment of penalty, violate due process; postassessment judicial review provides all the process that is due. Kloe v. U.S., W.D.Wis.1984, 578 F.Supp. 270. Constitutional Law 286

Plaintiffs were not denied due process of law on ground that no hearing was held on their claims of privilege against self incrimination prior to imposition of $500 fine for filing a tax return which does not contain information on which substantial correctness of self assessment may be judged. Milazzo v. U.S., S.D.Cal.1984, 578 F.Supp. 248. Constitutional Law 286

Penalty assessment and review mechanism established by this section and section 6703 of this title, which impose penalty for filing of frivolous return and require payment of 15% thereof to obtain review of the assessment determination, do not violate due process or vest judicial power in the Internal Revenue Service. Bearden v. C.I.R., D.C.Utah 1983, 575 F.Supp. 1459. Constitutional Law 80(1); Constitutional Law 286; Internal Revenue 4635; Internal Revenue 5201

Assessment of $ 500.00 penalty against taxpayer by the Internal Revenue Service (IRS) for filing frivolous tax return was valid; taxpayer did not include any of his income for year in question on his return, and taxpayer provided frivolous reasons for providing incorrect information, e.g., he argued that he did not have to submit return, despite requirement of Internal Revenue Code (IRC), that filing return violated his Fifth Amendment right against self-incrimination, and that contrary to IRC provision, IRS was required to provide statutory notice of deficiency prior to assessment of penalty. Dean v. U.S., N.D.Fla.2002, 2002 WL 3166299, Unreported. Internal Revenue 5217.30; Internal Revenue 5217.35; Internal Revenue 5220

6. ---- Equal protection, constitutionality

Statutes under which a penalty was imposed against taxpayer for filing a frivolous income tax return due to her taking of a patently unallowable war tax deduction did not violate her right to equal protection by imposing upon her a penalty which is not imposed upon other individuals who improperly report their tax liability without explaining how or why they did so. Aschenbach v. U.S., D.C.Conn.1984, 599 F.Supp. 588. Constitutional Law 229.2; Internal Revenue 5201

7. ---- Freedom of religion, constitutionality

Statute providing for penalty filing of frivolous tax return did not unconstitutionally infringe upon taxpayer's First Amendment right to free exercise of religion, even though taxpayer believed that any payment of money in support of war is sinful and that 36.1% of federal budget was directed to military spending, and therefore reduced her taxed obligation accordingly, claiming war tax deduction. Nelson v. U.S., C.A.6 (Ohio) 1986, 796 F.2d 164. Constitutional Law 84.5(2); Internal Revenue 5201

Taxpayer assessed a penalty for claiming a "war tax deduction" was not unlawfully penalized for expressing his moral or religious beliefs but, instead, was penalized because he filed a return containing substantially incorrect self-assessments based on a clearly unallowable credit. Wall v. U.S., C.A.8 (Iowa) 1985, 756 F.2d 52. Constitutional
Law \(\Leftrightarrow 84.5(2)\); Internal Revenue \(\Leftrightarrow 5217.40\)

Tax return in which taxpayers deducted 64% of computed tax liability upon determination that such percentage of their tax dollars would go to military spending was frivolous, and subjected taxpayers to penalty; penalty did not violate taxpayers' First Amendment rights merely because they had included with tax return letter explaining that their religious beliefs prevented them from being party to killing. Woida v. U.S., E.D.Wis.1985, 609 F.Supp. 1271. Internal Revenue \(\Leftrightarrow 5217.40\)

Section of Internal Revenue Code authorizing a penalty for filing a frivolous return did not violate taxpayer's rights guaranteed under First Amendment to free exercise of religion since it was neutral on matters of religion. Carey v. U.S., E.D.Va.1985, 601 F.Supp. 150. Constitutional Law \(\Leftrightarrow 84.5(2)\); Internal Revenue \(\Leftrightarrow 5201\)

This section did not violate free exercise clause with regard to taxpayer who claimed that her religious beliefs obliged her to claim a "war tax deduction" which she acknowledged she was not legally entitled to, since governmental interests underlying penalty statute are sufficiently compelling to outweigh impairment of asserted free exercise rights and statute employs least restrictive means of achieving such interests. Drefchinski v. Regan, W.D.La.1984, 589 F.Supp. 1516. Constitutional Law \(\Leftrightarrow 84.5(2)\); Internal Revenue \(\Leftrightarrow 5201\)

Application of penalty on taxpayers, who claimed war tax credits or deductions against their federal income tax, did not violate taxpayers' right to exercise of religion. Franklet v. U.S., N.D.Cal.1984, 578 F.Supp. 1552, affirmed 761 F.2d 529. Constitutional Law \(\Leftrightarrow 84.5(2)\)

8. ---- Freedom of speech, constitutionality

Statute providing that Internal Revenue Service may impose civil penalty for filing frivolous tax return did not infringe on First Amendment rights of taxpayer who crossed out portion of jurat above his signature stating that signature was provided "under penalties of perjury," despite contention that crossing out such portion of the jurat was pursuant to taxpayer's rights of free expression and that imposition of penalty amounted to "Marxist oriented ideology." Hettig v. U.S., C.A.8 (Mo.) 1988, 845 F.2d 794, reconsideration denied. Constitutional Law \(\Leftrightarrow 90.1(1)\); Internal Revenue \(\Leftrightarrow 5201\)

Internal Revenue Code section penalizing filing frivolous income tax return did not violate taxpayer's right to free speech, notwithstanding fact that taxpayer was not obligated to report his tax liability and his form did not inadequately supply any required financial information, where purported return contained little more than political message voluntarily submitted to the IRS. Bradley v. U.S., C.A.9 (Cal.) 1987, 817 F.2d 1400. Constitutional Law \(\Leftrightarrow 90.1(1)\); Internal Revenue \(\Leftrightarrow 5215\)

Statute which mandates imposition of civil penalty on taxpayer who files frivolous income tax return [26 U.S.C.A. § 6702] did not violate the First Amendment, as the act did not penalize protest communications since there were many other ways one could express the protest, the penalty would not apply if the taxpayer showed the correct tax but refused to pay the tax, and the maintenance and viability of the tax system was a sufficiently important governmental interest to justify incidental regulation upon speech and nonspeech communication. Collett v. U.S., C.A.6 (Ohio) 1985, 781 F.2d 53. Constitutional Law \(\Leftrightarrow 90.1(1)\); Internal Revenue \(\Leftrightarrow 5201\)


Taxpayers who were assessed penalties for claiming "war tax" credits were not penalized for expressing their political, moral or religious beliefs on their returns, or for attaching letters to their returns stating their opposition to mil-
itary spending but, rather, were penalized simply because they filed returns containing substantially incorrect self-assessments based on clearly unallowable credits. *Welch v. U.S.*, C.A.1 (Mass.) 1985, 750 F.2d 1101. Constitutional Law ◼ 90.1(1)

Assuming, arguendo, that taxpayer's "conscientious war deduction" could be qualified as speech, penalty for filing of frivolous return did not violate rights guaranteed under First Amendment to freedom of speech since penalty imposed was not related to suppression of free speech but, rather, was intended to discourage filing of frivolous returns which would impede tax collection system and since the incidental restriction on alleged First Amendment freedoms was no greater than was essential to furtherance of that interest. *Carey v. U.S.*, E.D.Va.1985, 601 F.Supp. 150. Constitutional Law ◼ 90.1(1); Internal Revenue ◼ 5217.40

Application of penalty for filing frivolous tax return did not permissibly abridge *U.S.C.A. Const. Amend. 1* right to freedom of expression of taxpayers, who claimed war tax credits or deductions against their federal income tax, and even if attempts to avoid or redirect taxes were treated as expressive activity protected by *Amend. 1*, necessities of maintaining revenue system raised compelling governmental interest adequate to overcome that fundamental right. *Franklet v. U.S.*, N.D.Cal.1984, 578 F.Supp. 1552, affirmed 761 F.2d 529. Constitutional Law ◼ 90.1(1)

9. ---- Origination clause, constitutionality


Tax Equity and Fiscal Responsibility Act, which authorizes frivolous return penalty is constitutional, although taxpayer contended statute was enacted in violation of origination clause because House of Representatives' version of bill reduced revenue, while Senate version increased revenue so that "revenue-raising" aspect of bill originated in Senate. *Wardell v. U.S.*, C.A.8 (Minn.) 1985, 757 F.2d 203. Internal Revenue ◼ 5201; Statutes ◼ 6

Penalty assessment for filing frivolous federal income tax return does not violate First Amendment guarantees of free speech and right to petition the government for redress of grievances; taxpayers, assessed a penalty based on amended return claiming they received no income or gain because their services rendered and compensation received constituted an equal exchange of value, were not penalized for expressing their ideas on tax planning and, in any event, compelling governmental interest of maintaining a revenue system suffices to override the fundamental right of freedom of expression and governing regulation is narrowly drawn to avoid unnecessary intrusion on freedom of expression. *McCullough v. Secretary of Treasury*, N.D.Miss.1985, 621 F.Supp. 750. Constitutional Law ◼ 90.1(1); Constitutional Law ◼ 91


This section and, particularly, penalty provision for filing of frivolous income tax return, was passed in compliance with the origination clause, even though, after the House of Representatives originally passed the legislation, the Senate substituted what amounted to entirely different bill. *Kloes v. U.S.*, W.D.Wis.1984, 578 F.Supp. 270. Statutes ◼ 21

This section providing for $500 fine for filing of tax return which does not contain information on which substantial
correctness of self assessment may be judged, did not violate constitutional provision stating that all bills for raising revenue shall originate in House of Representatives, but Senate may propose or concur with amendment as in other bills, in that this section did not originate in the Senate, but was born in a House of Representatives as a bill dealing with the collection of taxes, and, although bill was dramatically altered by amendment in upper house of Congress, it remained a revenue bill, regardless of whether it raised taxes or lowered them, and Senate amendments were germane to the subject matter of the bill and were not beyond the power of the Senate to propose. Milazzo v. U.S., S.D.Cal.1984, 578 F.Supp. 248. Statutes ⚬ 6

10. ---- Petition for redress of grievances, constitutionality

Internal Revenue Code penalty for filing frivolous income tax return did not violate taxpayer's First Amendment right to petition the government for redress of grievances as it in no way hindered individuals from complaining to any government official about the way taxes were spent. Bradley v. U.S., C.A.9 (Cal.) 1987, 817 F.2d 1400. Constitutional Law ⚬ 91; Internal Revenue ⚬ 5215

Taxpayers' constitutional right to petition government for redress of grievances is not violated by federal statute authorizing Internal Revenue Service to impose civil penalty of $500 on any individual filing purported tax return which contains information facially indicating that self-assessment is substantially incorrect and relies on frivolous position. Stelly v. C.I.R., C.A.5 (Tex.) 1986, 804 F.2d 868, certiorari denied 107 S.Ct. 1352, 480 U.S. 907, 94 L.Ed.2d 522. Constitutional Law ⚬ 91

This section did not violate rights under U.S.C.A. Const.Amend. 1 of freedom of expression, and freedom to petition government for redress of the grievances, with regard to taxpayer who claimed unallowable "war tax deduction" due to her desire to fully disclose and explain her beliefs to Internal Revenue Service, and to protest compelled payment of taxes for military spending against her religious beliefs, since this section is within constitutional power of the government, it furthers an important and substantial governmental interest, the governmental interest is unrelated to suppression of free expression, and this section is narrowly drawn to further governmental interest without unnecessary intrusion on freedom of expression; moreover, this section did not deprive taxpayer of significant alternative means of presenting her grievance and expressing her objections to collection of taxes for military expenditures. Drefchinski v. Regan, W.D.La.1984, 589 F.Supp. 1516. Constitutional Law ⚬ 90.1(1); Constitutional Law ⚬ 91; Internal Revenue ⚬ 5201


This section imposing $500 fine for filing tax return which did not contain information on which substantial correctness of self assessment could be judged did not infringe on plaintiff's right to petition the government for redress of grievances. Milazzo v. U.S., S.D.Cal.1984, 578 F.Supp. 248. Constitutional Law ⚬ 91; Internal Revenue ⚬ 5201

Provisions of this section and section 6703 of this title imposing civil penalty for frivolous income tax returns and requiring payment of 15% thereof to obtain review of assessment determination do not infringe constitutional right to petition the government for redress of grievances. Bearden v. C.I.R., D.C.Utah 1983, 575 F.Supp. 1459. Constitutional Law ⚬ 91; Internal Revenue ⚬ 4635; Internal Revenue ⚬ 5201

11. ---- Separation of powers, constitutionality
Penalty imposed for filing frivolous federal income tax return does not violate separation of powers doctrine by granting to the executive branch, i.e. the Internal Revenue Services, the judicial power of assessing penalties; assessment action is subject to judicial review. McCullough v. Secretary of Treasury, N.D.Miss.1985, 621 F.Supp. 750. Constitutional Law \( \Rightarrow 52 \); Internal Revenue \( \Rightarrow 5201 \)

This section providing for imposition of a penalty for filing of frivolous income tax return does not violate doctrine of separation of powers. Vaughn v. U.S., W.D.La.1984, 589 F.Supp. 1528. Constitutional Law \( \Rightarrow 52 \); Internal Revenue \( \Rightarrow 5201 \)

This section providing that $500 fine shall be assessed if tax return is filed which does not contain information on which substantial correctness of self assessment may be judged did not violate the principle of separation of powers by conferring judicial power on members of the executive branch and making the Internal Revenue Service a "law unto itself." Milazzo v. U.S., S.D.Cal.1984, 578 F.Supp. 248. Constitutional Law \( \Rightarrow 62(13) \); Internal Revenue \( \Rightarrow 5201 \)

This section providing for assessment of civil penalty for filing frivolous tax return did not violate separation of powers doctrine and was not unconstitutional on ground that assessments were levied without notice, hearing and in violation of the due process clauses of U.S.C.A. Const. Amends. 5 and 14 in that taxpayer may immediately apply for a refund of penalty and if such is denied he has full access to the courts. Tibbetts v. Secretary of the Treasury, W.D.N.C.1984, 577 F.Supp. 911. Constitutional Law \( \Rightarrow 286 \); Internal Revenue \( \Rightarrow 5201 \)

12. ---- Vagueness, constitutionality

Term "self-assessment" as used in this section does not render this section unconstitutionally vague. Drefchinski v. Regan, W.D.La.1984, 589 F.Supp. 1516.

This section imposing penalty for filing frivolous tax return is not void for vagueness. Franklet v. U.S., N.D.Cal.1984, 578 F.Supp. 1552, affirmed 761 F.2d 529. Internal Revenue \( \Rightarrow 5201 \)

For purposes of this section imposing penalties for filing of frivolous income tax returns, term "frivolous" is capable of sufficiently precise meaning so as not to be unconstitutionally vague. Kloes v. U.S., W.D.Wis.1984, 578 F.Supp. 270. Internal Revenue \( \Rightarrow 5201 \)

13. Rules and regulations

Internal Revenue Service's failure to publish in Federal Register interpretive guidelines for this section imposing penalty for filing a frivolous tax return did not violate freedom of information provisions, section 552(a)(1)(D) of Title 5, where any interpretation of this section applicable to instant taxpayers, who claimed war tax credits or deductions against their federal income tax, would only reiterate Congress's plainly expressed intent that war tax reductions be considered frivolous. Franklet v. U.S., N.D.Cal.1984, 578 F.Supp. 1552, affirmed 761 F.2d 529. Internal Revenue \( \Rightarrow 5201 \)

14. Generally

Statute allowing imposition and collection of a penalty against a taxpayer for filing a frivolous income tax return did not violate rights of taxpayer, against whom the penalty had been assessed because she took a patently unallowable war tax deduction, to complain to government officials and did not penalize her expression of political or moral beliefs but merely penalized the filing of a legally incorrect return which was not due to mistake or inadvertence and which was not based on a legally supportable position. Aschenbach v. U.S., D.C.Conn.1984, 599 F.Supp. 588. Internal Revenue \( \Rightarrow 5217.40 \)

This section providing for penalties for filing of frivolous income tax returns is applicable only where taxpayer has filed what purports to be a tax return, and where return either fails to contain sufficient information to judge whether self-assessment of taxes is correct or contains information which, on its face, shows that self-assessment is incorrect, and deficiencies which appear on return are due to either a position which is frivolous or a desire, apparent from face of the return, to delay or impede administration of the tax laws. Kloes v. U.S., W.D.Wis.1984, 578 F.Supp. 270.

Internal Revenue § 5217.15

15. Returns within section

All tax returns, including amended returns, are subject to statute allowing assessment of civil penalties against taxpayer who files frivolous tax return. Colton v. Gibbs, C.A.9 (Nev.) 1990, 902 F.2d 1462. Internal Revenue § 5217.15

Taxpayer, who reported no income despite attached Form W-2 indicating that he received in excess of $25,000 in wages, and who filed request for refund of tax with unsigned Form 1040, was subject to penalty for filing frivolous tax return; documents submitted constituted "purported return" within meaning of penalty statute. Kelly v. U.S., C.A.1 (N.H.) 1986, 789 F.2d 94. Internal Revenue § 5217.20

Although taxpayer did not submit actual tax return or schedule for profit or loss from business or profession, documents he submitted were numbered with reference to tax return form and schedule and since stated purpose in submitting those documents was to obtain tax refund, documents constituted a "purported return" within purview of statute providing for civil penalty to be assessed against taxpayer for filing of frivolous return. Sullivan v. U.S., C.A.1 (N.H.) 1986, 788 F.2d 813. Internal Revenue § 4477

Even though taxpayer wrote words "not a return" on form 1040 he had filed to obtain refund of taxes withheld from his wages, the form would be construed as a "purported" return for purposes of penalty statute. Olson v. U.S., C.A.9 (Alaska) 1985, 760 F.2d 1003. Internal Revenue § 5217.20

Statute authorizing penalty for filing frivolous return applied where taxpayers filed separate forms 1040, claimed no income, claimed refund of all federal income and social security taxes that had been withheld during the year, did not sign returns, and wrote on signature lines "not a tax return (see attached letter)." Lovell v. U.S., C.A.7 (Wis.) 1984, 755 F.2d 517. Internal Revenue § 5217.35

Where documents filed by plaintiff were official tax forms completed in detail, it was proper to treat form in question as "purported return" for purposes of Internal Revenue Code provision for civil penalty for filing of frivolous income tax return, notwithstanding disclaimer added by the taxpayer that document filed was merely request for refund of taxes erroneously collected and did not purport to be tax return. Madison v. U.S., C.A.11 (Fla.) 1985, 752 F.2d 607, rehearing denied 758 F.2d 573. Internal Revenue §§ 4477; Internal Revenue § 5217.20

Form 1040 filed to obtain refund of taxes withheld from taxpayers' wages, for which filing of a return is necessary, was a "purported return" for purpose of assessment of fine for filing frivolous return, despite fact that taxpayers wrote on forms the words "not a tax return." Davis v. U.S. Government, C.A.5 (Tex.) 1984, 742 F.2d 171. Internal Revenue §§ 4470; Internal Revenue § 5217.20

A request for a tax refund sent to the Internal Revenue Service, to which was appended a Form 1040 and W-2 statements, were elements of a purported return under this section. Holker v. U.S., C.A.8 (Minn.) 1984, 737 F.2d 751. Internal Revenue §§ 5217.20

Taxpayer's filing of amended tax return form claiming that wages were not income for tax purposes constituted filing of "purported return" for purposes of statute providing that civil penalty will be assessed against individual who
files what purports to be a return of the tax imposed that contains information which on its face indicates that self-assessment is substantially incorrect due to a frivolous position, and thus, penalty was properly assessed against taxpayer. Tickel v. U.S., E.D.Tenn.1986, 633 F.Supp. 833, affirmed 815 F.2d 706. Internal Revenue 5217.20

Since taxpayer's stated purpose was to obtain a refund, documents submitted with his tax return, which included a tax protestor's form, would be deemed purported tax returns for purposes of 26 U.S.C.A. § 6702 affixing a penalty against any taxpayer for filing a frivolous return. Myers v. U.S. Government, S.D.Tex.1985, 618 F.Supp. 353. Internal Revenue 5217.20

Unsigned tax forms which contained the words "for information (informal) purposes only/not a return" in the signature space fit definition of "what purports to be a return of the tax" for purposes of this section. Nichols v. U.S., D.C.Minn.1983, 575 F.Supp. 320. Internal Revenue 5217.45

16. Withdrawn returns

Taxpayer's attempt to withdraw amended returns shortly after filing did not prevent Internal Revenue Service from assessing penalties for filing of frivolous returns. Branch v. I.R.S., C.A.8 (Mo.) 1988, 846 F.2d 36. Internal Revenue 5217.15

17. Information indicating incorrectness

Taxpayers' amended return, asserting inflation adjustment to interest income, contained information that facially indicated that self-assessment was substantially incorrect and relied on frivolous position, such that Internal Revenue Service could impose $500 penalty for its filing. Stelly v. C.I.R., C.A.5 (Tex.) 1986, 804 F.2d 868, certiorari denied 107 S.Ct. 1352, 480 U.S. 907, 94 L.Ed.2d 522. Internal Revenue 5217.35

Completed and signed form 1040, filed to obtain refund of taxes withheld from wages, and containing information on its face indicating that self-assessment was substantially incorrect and that taxpayer's conduct was based on position which was frivolous, fell within scope of Internal Revenue Code provision defining "frivolous income tax return" [26 U.S.C.A. § 6702]. Hyslep v. U.S., C.A.11 (Fla.) 1985, 765 F.2d 1083. Internal Revenue 5217.35

Internal Revenue Service properly imposed $500 civil penalty on taxpayer who filed tax return reflecting obviously incorrect self-assessment based on patently frivolous legal theory that Congress was not empowered to levy tax on wage and salary income, and which included words "For Information only [sic] Not a Return" on signature line. Anderson v. U.S., C.A.5 (Tex.) 1985, 754 F.2d 1270. Internal Revenue 5217.15

It was apparent from face of taxpayer's complaint that his income tax return was frivolous, the return containing information on its face indicating that the self-assessment was substantially incorrect and taxpayer's conduct being based on position that was frivolous within meaning of Internal Revenue Code provision for civil penalty for frivolous return. Madison v. U.S., C.A.11 (Fla.) 1985, 752 F.2d 607, rehearing denied 758 F.2d 573. Internal Revenue 5217.35

Taxpayers who filed tax return claiming a business loss of $3,551, calculated by reducing amount of gross receipts by "cost of labor" in amount equal to the amounts of wages and other compensation shown on Forms W-2 and by costs of "materials and supplies," clearly filed return which on its face indicated that self-assessment was substantially incorrect and which was based on a frivolous position, warranting imposition of $500 penalty for filing a frivolous return. Davis v. U.S. Government, C.A.5 (Tex.) 1984, 742 F.2d 171. Internal Revenue 5217.40; Internal Revenue 5220

Income tax return facially indicated that taxpayer's self-assessment was incorrect and that his position was frivolous;
thus, taxpayer, who had claimed that he was a natural individual and unenfranchised freeman who neither requested, obtained nor exercised any privilege from any agency of the government, could be assessed a penalty for filing a frivolous tax return. *Holker v. U.S.*, C.A.8 (Minn.) 1984, 737 F.2d 751. Internal Revenue ☞ 5217.35

Returns on which taxpayers used incorrect calculations to determine, report, and pay their income taxes and to which they attached explanations as to why they were not paying the proper amount of their tax according to internal revenue regulations facially demonstrated the substantial incorrectness of the returns so that penalty for frivolous return could be imposed. *Clark v. U.S.*, D.Md.1986, 630 F.Supp. 101. Internal Revenue ☞ 5217.35

18. Lack of information for judgment of correctness

Taxpayer's income tax return was invalid and could not be processed by Internal Revenue Service where taxpayer crossed out jurat, thus refusing to certify that entries on form were correct so as to preclude IRS from assessing substantial correctness of taxpayer's self-assessment and, therefore, $500 frivolous return penalty was authorized. *Mosher v. I.R.S.*, C.A.5 (Tex.) 1985, 775 F.2d 1292, certiorari denied 106 S.Ct. 1645, 475 U.S. 1123, 90 L.Ed.2d 189. Internal Revenue ☞ 4478; Internal Revenue ☞ 5217.45

Where taxpayers filed tax returns without adequate financial information on basis of blanket Fifth Amendment claims, they engaged in clearly prohibited conduct and did not have standing to contend that use of term "frivolous" in section governing civil penalties for filing frivolous returns is unconstitutionally vague. *Boday v. U.S.*, C.A.9 (Ariz.) 1985, 759 F.2d 1472. Constitutional Law ☞ 42.2(1)

Taxpayer's zero tax returns with attachments that challenged authority of Internal Revenue Service (IRS) to collect income tax constituted frivolous tax returns, requiring assessment of civil penalties, since taxpayer did not provide information upon which IRS could have judged correctness of returns. *Le Doux v. U.S.*, D.N.M.2005, 375 F.Supp.2d 1242. Internal Revenue ☞ 5217.25

Purported tax return on which taxpayer crossed out the phrase "under penalties of perjury" in printed jurat above his signature was frivolous within meaning of this section, since a return not signed under penalties of perjury does not contain sufficient information by which to calculate a taxpayer's tax liability or by which to judge substantial correctness of his self-assessment of tax. *Green v. U.S.*, N.D.Ind.1984, 593 F.Supp. 1341. Internal Revenue ☞ 5217.45

Taxpayers' income tax return which failed to provide any information with respect to income, deductions, or tax due to taxpayers' assertion of their rights under 26 U.S.C.A. § 6702 was frivolous as a matter of law because the return did not contain information on which substantial correctness of the self-assessment could be judged, taxpayers' failure to provide any financial information amounted to failure to file a tax return, and their claim was purely hypothetical and, therefore, not a valid claim under 26 U.S.C.A. § 6702 at all. *House v. U.S.*, I.R.S., W.D.Mich.1984, 593 F.Supp. 139, affirmed 787 F.2d 590. Internal Revenue ☞ 5237

Taxpayers, who claimed "war tax" credits or deductions against their federal income tax, could be assessed a penalty for filing frivolous return where returns unequivocally claimed incorrect tax due because of clearly unallowable deduction based on their adoption of clearly impermissible position and although one taxpayer's return provided two sets of figures for tax due, one reflecting impermissible war tax deduction and the other not, because taxpayer failed to specify which of two figures on a return represented her self-assessment, return did not contain information on which substantial correctness of self-assessment could be judged. *Franklet v. U.S.*, N.D.Cal.1984, 578 F.Supp. 1552, affirmed 761 F.2d 529. Internal Revenue ☞ 5217.40

Tax returns which contained plaintiffs' names and addresses, but were almost wholly devoid of financial informa-
tion, with entries in most lines of standard forms 1040 reading “object,” were subject to $500 penalty assessed if tax return is filed which does not contain information on which substantial correctness of self assessment may be judged. Milazzo v. U.S., S.D.Cal.1984, 578 F.Supp. 248. Internal Revenue 

19. Good faith


A good-faith belief in one's position cannot serve as his defense to a penalty for filing a frivolous income tax return. Vaughn v. U.S., W.D.La.1984, 589 F.Supp. 1528. Internal Revenue 

Taxpayer's state of mind when filing tax return is not part of the test as to whether the return is frivolous so as to warrant assessment of $500 civil penalty, and thus taxpayer's good faith in filing return does not preclude the penalty. Knottnerus v. U.S., N.D.Ill.1984, 582 F.Supp. 1572. Internal Revenue 

20. Self-assessment

Term, "self-assessment," as used in 26 U.S.C.A. § 6702, which provides for penalty of $500 when individual files return for frivolous or dilatory purposes and when the return does not show that its "self-assessment" is substantially accurate, included tax returns on which individuals refused to furnish numerical responses to questions concerning taxes owed. Fuller v. U.S., C.A.9 (Cal.) 1986, 786 F.2d 1437. Internal Revenue 

Phrase self-assessment as used in statute providing for assessment of civil penalty for filing of frivolous tax returns is descriptive, not technical, and refers to our honest system of taxation whereby individual taxpayer answers applicable questions on his or her return, calculates tax on adjusted gross income, files return and pays amount owed, or, receives refund of amounts previously paid through withholding or other means. Kahn v. U.S., C.A.3 (Pa.) 1985, 753 F.2d 1208. Internal Revenue 

The term "self-assessment" in statute providing for penalties for filing frivolous tax returns included taxpayers' representations on their tax return as to tax due or refund claimed, in addition to amount of total tax due. Snyder v. U.S., D.Md.1989, 714 F.Supp. 761. Internal Revenue 

21. Frivolousness of position--Generally

Ambiguities which lurk in word "frivolous" or any other word in marginal cases do not prevent imposition of penalties for filing of "frivolous" tax return. Coleman v. C.I.R., C.A.7 (Ind.) 1986, 791 F.2d 68. Internal Revenue 

Underlying income tax liability was not required to satisfy requirements of statute that governed civil liability for frivolous income tax returns. Le Doux v. U.S., D.N.M.2005, 375 F.Supp.2d 1242. Internal Revenue 

Taxpayer's position with regard to information reported on his income tax return meets objective test for frivolousness, and thus is subject to penalty, when it has no basis in fact or law. Turner v. U.S., S.D.Ohio 2005, 372 F.Supp.2d 1053. Internal Revenue 

No approval of the assessment by an immediate supervisor is required for filing frivolous tax returns because it is an automatic penalty for a fixed amount. Borchardt v. C.I.R., D.Minn.2004, 338 F.Supp.2d 1040. Internal Revenue 

Hearing officer properly verified that requirements of any applicable law and administrative procedures had been
met, as required to impose lien to collect frivolous return penalty; tax returns showing zero income despite receipt of wages were clearly frivolous, taxpayers had been notified of penalty assessment, and their requested due process hearing had been held. *Lemieux v. U.S., D.Nev.2002, 230 F.Supp.2d 1143.* Internal Revenue $\Rightarrow$ 5200

Assessment of frivolous filing penalty was not abuse of discretion; there was no procedural defect in assessment and taxpayer failed to raise valid challenge to proposed levy at collection due process hearing. *Carroll v. U.S., W.D.Tenn.2002, 217 F.Supp.2d 852,* reconsideration denied *249 F.Supp.2d 937.* Internal Revenue $\Rightarrow$ 5217.15

A deduction is based on a position that is "frivolous" within meaning of this section if it is clearly unallowable, having no basis in law or fact. *Drefchinski v. Regan, W.D.La.1984, 589 F.Supp. 1516.* Internal Revenue $\Rightarrow$ 5217.40

Taxpayers’ claim that Internal Revenue Service (IRS) improperly asserted, rather than assessed, penalties for filing frivolous tax returns was irrelevant; the statute stating that penalties and liabilities would be assessed and collected in the same manner as taxes did not restrict semantics used by IRS, and the actions of the individual taxpayer were policed, not the grammar of the Secretary of the Treasury or IRS agents when requesting certain payments or otherwise policing, informing, or notifying the taxpayer. *Lorenzen v. U.S., D.Wyo.2006, 2006 WL 848427.* Internal Revenue $\Rightarrow$ 5225

22. ---- Alteration of return, frivolousness of position

The statutory $500 penalty for filing frivolous income tax return was properly applied to taxpayer who altered form 1040 to claim a foreign war tax credit and altered line specifying amount of refund to be applied the following year’s estimated tax to provide that the war tax credit be spent on social services, or taxpayer who took a credit for amount which she alleged would be deposited into escrow account for world peace tax, notwithstanding that holding of sincere religious beliefs nor expression of antiwar sentiment is not a frivolous action; however, to take a position which indicates desire to impede the administration of tax laws is a legally frivolous one and it was such a position for which penalty was assessed. *McKee v. U.S., C.A.4 (N.C.) 1986, 781 F.2d 1043,* certiorari denied *106 S.Ct. 3274,* 477 U.S. 905, 91 L.Ed.2d 564. Internal Revenue $\Rightarrow$ 5217.40

Tax return in which taxpayers placed asterisk in all lines but lines with their names and addresses, referencing a note in which they stated various constitutional objections was "frivolous." *Miller v. U.S., E.D.Mo.1985, 604 F.Supp. 804.* Internal Revenue $\Rightarrow$ 5217.25

Where taxpayers filed federal income tax form in which they deleted the word "income" and substituted the word "receipts" on the printed form, altered a line of return to read "non-taxable receipts," and treated amount entered on that line, which represented over 90 percent of their income, as a deduction from "receipts," their return was frivolous, subjecting them to a $500 penalty under this section. *Podhola v. U.S., D.C.Mich.1984, 585 F.Supp. 1305.* Internal Revenue $\Rightarrow$ 5217.50

23. ---- Assertion of self-incrimination, frivolousness of position

Income tax return was frivolous, warranting assessment of $500 penalty, where taxpayers supplied only their names and those of their dependent children, address, signatures, and amount of federal tax withheld, but failed to provide any information about their income and expenses; instead, they inserted phrase "Object - 5th Amend" on each line of Form 1040 that called for specific financial information. *Sochia v. C.I.R., C.A.5 (Tex.) 1994, 23 F.3d 941,* rehearing denied *32 F.3d 568,* certiorari denied *115 S.Ct. 1107,* 513 U.S. 1153, 130 L.Ed.2d 1073. Internal Revenue $\Rightarrow$ 5217.25

Taxpayer's reason for striking jurat clause from his income tax return form was frivolous where taxpayer claimed that jurat violated Fifth Amendment privilege against self-incrimination and, therefore, taxpayer was properly as-

Federal income tax return which contained only taxpayer's signature and date and invoked Fifth Amendment privilege against self-incrimination with respect to other relevant questions was a "frivolous return" within meaning of 26 U.S.C.A. § 6702, providing for $500 penalty if such a return is filed. Ricket v. U.S., C.A.11 (Fla.) 1985, 773 F.2d 1214. Internal Revenue 5217.30

Taxpayer was not entitled to a refund of frivolous return penalty imposed when taxpayer filed return which contained the word "refused" on all lines which called for his occupation, items of income, adjustments, credits, payments, other taxes, tax computation, and tax owed or refund due and he explained the refusals as based on the Fifth Amendment. Peeples v. C.I.R., C.A.4 (S.C.) 1985, 771 F.2d 77. Internal Revenue 5241

Arguments by taxpayer, who sought refund of frivolous-return penalty imposed after taxpayer filed income tax return providing simply name and address, providing no information regarding income, deductions, or tax owed, and containing statements regarding taxpayer's Fifth Amendment rights and other constitutional rights, that words "frivolous return" in penalty statute were unconstitutionally vague, that a claim based on Fifth Amendment privilege is not frivolous, that First Amendment protected him from being penalized for asserting Fifth Amendment privilege, and that he was entitled to hearing, were clearly frivolous, warranting imposition of sanctions in form of $500 in damages and double costs. Boomer v. U.S., C.A.8 (S.D.) 1985, 755 F.2d 696. Internal Revenue 5225; Internal Revenue 5337

Fifth Amendment general objection is not valid claim of constitutional privilege so as to preclude imposition of income tax penalty for filing federal income tax return without providing any information from which liability could be computed. Betz v. U.S., C.A.10 (Wyo.) 1985, 753 F.2d 834. Internal Revenue 5217.30

Tax return on which taxpayer responded to every question with blanket assertion of his privilege against self-incrimination under U.S.C.A. Const.Amend. 5 was properly labeled frivolous, and taxpayer was subject to $500 penalty, where setting offered no clue as to how answers would be incriminatory and taxpayer, in in camera discussion, declined to offer any basis for his fear of incrimination. Baskin v. U.S., C.A.8 (Minn.) 1984, 738 F.2d 975. Internal Revenue 5217.30

Taxpayers' good-faith reliance on advice of counsel when they refused to sign their tax return and instead wrote "Fifth Amendment" in signature block of tax returns was irrelevant in determining liability for $500 frivolous return penalty. Buck v. U.S., S.D.Tex.1991, 756 F.Supp. 1014, appeal dismissed 967 F.2d 1060, rehearing denied 974 F.2d 1337, certiorari denied 113 S.Ct. 1052, 506 U.S. 1082, 122 L.Ed.2d 360. Internal Revenue 5228
Taxpayer’s assertion of Fifth Amendment privilege to virtually every question on his personal income tax form, for which he offered no basis or evidence indicating his reasons for doing so, constituted submission of frivolous tax return, and thus, was subject to statutory penalty. Miller v. U.S., N.D. Ind. 1987, 669 F.Supp. 906, affirmed 868 F.2d 236. Internal Revenue 5217.30

Taxpayer’s income tax returns fell within parameters of 26 U.S.C.A. § 6702, providing $500 penalty for frivolous return, where the return contained no information and taxpayer claimed Fifth Amendment privilege as to most items on the return and made no attempt to demonstrate illegitimacy of invocation of the Fifth Amendment. Schoffner v. U.S., S.D. Ohio 1985, 627 F.Supp. 167, affirmed 812 F.2d 292. Internal Revenue 5217.30

Where citizen did not provide any basis for his objections when he mailed his income tax return forms on which he simply typed in name and address and left all other line items blank or marked them with asterisk, Secretary of the Treasury, absent detailed explanation of why the privilege under U.S.C.A. Const. Amend. 5 was asserted, properly determined that return was frivolous, and insofar as plaintiff delineated several uses to which information called for on the return might be put, they were hypothetical in nature and plaintiff failed to demonstrate that his refusal to provide information was justified. Liljenfeldt v. U.S., E.D. Wis. 1984, 588 F.Supp. 966, affirmed 753 F.2d 1077. Internal Revenue 5217.30

Taxpayer’s refusal to provide any information on income tax return was bottomed on patently frivolous position, where taxpayer stated only in generalized manner that he might be prosecuted for fraud, purported return contained only blanket assertion of privilege under U.S.C.A. Const. Amends. 4 and 5 and, in effect, did not constitute return at all, and record was devoid of any evidence to suggest that taxpayer’s response to routine tax questions would be least bit incriminating; thus imposition of civil penalty for filing frivolous return was proper. Rowe v. U.S., D.C. Del. 1984, 583 F.Supp. 1516, affirmed 749 F.2d 27. Internal Revenue 5217.30

Grounds asserted by taxpayer for fear of self-incrimination, reciting an extensive list of offenses as to which tax information could provide a lead and reciting that the crime for which taxpayer feared prosecution was within the list, did not constitute a colorable showing that taxpayer was involved in some activity for which he could be criminally prosecuted, and thus did not preclude assessment of $500 civil penalty for filing of frivolous tax return, which did not provide any of the information required. Knottnerus v. U.S., N.D. Ill. 1984, 582 F.Supp. 1572. Internal Revenue 5235

Taxpayers’ indication of protection of constitutional privilege against self-incrimination as a reason for not providing certain information on tax return was frivolous where none of complaints alleged that taxpayers were the subject of criminal investigation or had been formally accused of crime, types of information required were neutral and did not of themselves suggest that response would be incriminating, and tax protest nature of materials appended to returns suggested that refusal to complete forms was motivated by a desire to protest taxes. Aune v. U.S., D.C. Ariz. 1984, 582 F.Supp. 1132, affirmed in part, appeal dismissed in part 765 F.2d 148. Internal Revenue 5217.30

Return which failed to state specific facts showing real and appreciable danger of self-incrimination and which failed to provide any information on which plaintiff’s tax liability could be determined or checked was frivolous on its face. Ueckert v. U.S., D.C. N.D. 1984, 581 F.Supp. 1262, reconsideration denied. Internal Revenue 5217.30

Taxpayer’s conduct in both filing a return and in pursuing an action seeking a refund of $75 which he paid as a partial penalty for filing a frivolous tax return were based on a position which was frivolous since taxpayer, who claimed protection of USCA Const. Amend. 5 in his return and in his refund action, made no effort to disclose any facts which would make a possible claim for the privilege. Reed v. U.S., D.C. Colo. 1984, 581 F.Supp. 718. Internal Revenue 5337

Taxpayer failed to make a colorable showing that he was involved in some activity for which he could have been criminally prosecuted and therefore his purported tax return, in which he refused to furnish any financial data on basis of a claim of constitutional privilege against self-incrimination, was "frivolous" within meaning of this section authorizing imposition of a penalty for filing a frivolous income tax return. Matz v. U.S., N.D.Ill.1984, 581 F.Supp. 714. Internal Revenue Code 5217.30

U.S.C.A. Const. Amend. 5 cannot justify filing of a purported tax return that does not disclose sufficient information from which tax liability can be calculated unless the taxpayer makes a colorable showing that he is involved in some activity for which he could be criminally prosecuted. Stamp v. C.I.R., N.D.Ill.1984, 579 F.Supp. 168. Criminal Law Code 393(1)

Taxpayer's blanket assertion of constitutional privilege to decline to disclose any information requested on income tax form was ineffective and, absent any specification of legitimate reasons for the particular objections, return was of "frivolous" nature so as to warrant imposition of penalty. Kloes v. U.S., W.D.Wis.1984, 578 F.Supp. 270. Internal Revenue Code 5217.30

Purported tax return containing only a blanket assertion of privilege against self-incrimination under U.S.C.A. Const. Amend. 5 was "frivolous" for purposes of this section. Miller v. U.S., N.D.Ind.1984, 577 F.Supp. 980. Internal Revenue Code 5217.30

Otherwise frivolous federal income tax return could not be considered nonfrivolous, for purpose of civil penalty, on ground that taxpayer was exercising his U.S.C.A. Const. Amend. 5 right against compulsory self-incrimination, as taxpayer failed to respond to virtually every line on his Form 1040 and every line on that form but one, that being inquiry as to filer's occupation, seeks information concerning amount of income, deductions or credits and not the source thereof. Bearden v. C.I.R., D.C.Utah 1983, 575 F.Supp. 1459. Internal Revenue Code 5217.30

24. ---- Conscientious objections, frivolousness of position

Taxpayer's refusal to pay tax because of his antiwar sentiments was frivolous, notwithstanding fact that taxpayer was legally justified in not filing or paying tax because he earned less than minimum filing amount for purposes of provision imposing penalty for filing frivolous tax return. Bradley v. U.S., C.A.9 (Cal.) 1987, 817 F.2d 1400. Internal Revenue Code 5217.15


Taxpayers' return, which indicated it was based on unallowable deduction for percentage of the federal budget dedicated to military use, was "frivolous," for purposes of 26 U.S.C.A. § 6702(a)(2)(A), which mandates imposition of civil penalty upon taxpayer whose purported return takes a position which is "frivolous." Collett v. U.S., C.A.6 (Ohio) 1985, 781 F.2d 516. Internal Revenue Code 5217.40

Taxpayer claiming conscience deduction for conscientious objection to war cannot avoid penalty for filing frivolous return by reporting correct self-assessment of tax in exhibit, letter or attachment; taxpayer can only avoid penalty by reporting correct tax due on tax form. Jenney v. U.S., C.A.9 (Cal.) 1985, 755 F.2d 1384. Internal Revenue Code 5217.40

Taxpayers who claimed deductions and tax credits based on their opposition to United States military policy in
Central America filed a frivolous return despite their assertion that they were not claiming a deduction or a credit as a "war tax" and did not oppose all military spending. Clark v. U.S., D.Md.1986, 630 F.Supp. 101. Internal Revenue 5217.40

Penalty for filing frivolous return was properly assessed against taxpayer, who claimed a "conscientious objection to war" deduction in the amount which taxpayer claimed was necessary not to pay 35% of his taxes that would pay for war. Carey v. U.S., E.D.Va.1985, 601 F.Supp. 150. Internal Revenue 5217.40

25. ---- Criminal activity by government, frivolousness of position

Amended tax return, which changed amount of total tax liability from $2,206.90 to zero, demanded refund of previously paid taxes, and included attached statement citing "crimes" allegedly committed by government and claiming right not to become accomplice in those crimes by paying taxes, was frivolous and incorrect, thus warranting assessment of civil penalty against taxpayer. Colton v. Gibbs, C.A.9 (Nev.) 1990, 902 F.2d 1462. Internal Revenue 5217.40

26. ---- Deductions for war tax, frivolousness of position

Taxpayers' assertion that they could claim a war tax deduction was frivolous; thus, civil penalty for filing frivolous return could be imposed. Jenney v. U.S., C.A.9 (Cal.) 1985, 755 F.2d 1384. Internal Revenue 5217.40

Imposition of a $500 penalty against taxpayer for filing a frivolous income tax return was proper, where the self-assessment was substantially incorrect as taxpayer took a patently unallowable war tax deduction and incorrectness of taxpayer's return resulted from her adoption of a frivolous position. Aschenbach v. U.S., D.C.Conn.1984, 599 F.Supp. 588. Internal Revenue 5217.40

Penalty provision for filing frivolous return applied to return of taxpayer, who claimed amount of tax due as a "foreign war tax credit" and whose refusal to pay the tax due was based on his conscientious religious objections to war and war preparations. Harper v. U.S., E.D.Pa.1984, 587 F.Supp. 1056, affirmed 760 F.2d 257. Internal Revenue 5217.40

27. ---- Signature and verification, frivolousness of position

Husband and wife who refused to sign income tax return because doing so violated their First, Fourth and Fifth Amendment rights violated statute prohibiting submission of what purports to be a return not containing information on which substantial correctness of self-assessment may be judged and asserting position which is frivolous. Buck v. U.S., C.A.5 (Tex.) 1992, 967 F.2d 1060, rehearing denied 974 F.2d 1337, certiorari denied 113 S.Ct. 1052, 506 U.S. 1082, 122 L.Ed.2d 360. Internal Revenue 5217.15

Internal Revenue Service properly rejected income tax return as frivolous and imposed $500 penalty against taxpayer under 26 U.S.C.A. § 6702(a) governing frivolous returns, where it was uncontroversed that jurat was altered and any alteration impeded administration of federal income tax laws. Parkinson v. U.S., S.D.Ohio 1985, 614 F.Supp. 105. Internal Revenue 5217.45; Internal Revenue 5220

Even though taxpayers submitted sufficient factual information from which their taxes could be calculated, their willful refusal to verify information contained in return by signing return violated this section and constituted the filing of a frivolous return for which $500 penalty could be imposed. Schneider v. U.S., E.D.Mich.1984, 594 F.Supp. 611. Internal Revenue 5217.45

28. ---- Wages and income, frivolousness of position
Frivolous return penalty of $500 was properly assessed against taxpayers who filed amended return claiming refund on ground that wages had been erroneously reported as income but were now considered by taxpayers exempt as having been received in equal exchange for services, pursuant to statute providing for imposition of civil penalty for filing of frivolous income tax return, where courts which had considered that position had uniformly rejected it as patently without merit. 

_Sisemore v. U.S._, C.A.6 (Tenn.) 1986, 797 F.2d 268. Internal Revenue 5220

Taxpayers' contentions that wages may not be taxed because they come from taxpayer's person, which is depreciating asset, and because Sixteenth Amendment authorizes only excise taxes, were objectively frivolous, so that tax court and Internal Revenue Service were entitled to impose sanctions. 

_Coleman v. C.I.R._, C.A.7 (Ind.) 1986, 791 F.2d 68. Internal Revenue 5217.40

Taxpayer's attempt to escape taxation by deducting as "cost of labor" expense an amount virtually equal to wages had no basis in Internal Revenue Code and was frivolous; therefore, taxpayer failed to state claim for refund of partial payment of civil penalty assessed for filing of frivolous tax return. 


Tax return in which taxpayer attempted to deduct his wages as "cost of labor" and in which he claimed that he had obtained no privilege from a governmental agency was frivolous, warranting imposition of penalty. 


Taxpayer's income tax return was frivolous and subject to penalty, despite taxpayer's contention that wages did not constitute income, where taxpayer filed his income tax return with zeroes on all lines of Form 1040 related to wages and income for tax year, even though income documents provided to Internal Revenue Service (IRS) by other parties showed that he earned $34,903 in wages and $77 in interest. 


Taxpayer's challenge to imposition of frivolous return penalties, on ground that no statute imposed liability for payment of income taxes, had no basis in law, and thus would be dismissed as frivolous; wages were income upon which taxpayer owed tax. 


Internal Revenue Service (IRS) satisfied its burden of proving that taxpayer was liable for monetary penalties for filing frivolous zero-income amended tax returns, where taxpayer amended his returns by placing zeroes on all lines reflecting income earned or taxes due on grounds that "[d]ue to ignorance, I reported as 'Income' sources of Income as being 'Income' itself, when in fact I had no statutory income tax to report." 


Taxpayer's statement on his income tax returns that "no part of Internal Revenue Code establishes an income tax liability" for wages was substantially incorrect and frivolous, thus making him liable for frivolous return penalty when he reported no income. 


Taxpayer's tax returns were substantially incorrect and frivolous, when he filed returns with zeroes on nearly every line, and thus assessments of frivolous return penalties were valid. 


Imposition of civil penalty for filing of frivolous return was proper where taxpayer filed tax form stating he had no income but attached W-2 forms showed payment of wages, tips, and other compensation, taxpayer received notice and opportunity for hearing prior to the levy, and requested and received a collection due process hearing, at which he did not challenge the appropriateness of the intended method of collection, offer an alternative means of collec-

Taxpayer's position that distribution from pension plan was not taxable income was untenable and directly contrary to law, as would support IRS imposition of frivolous return penalty. *Myrick v. U.S.*, D.Ariz.2002, 217 F.Supp.2d 979, affirmed 70 Fed.Appx. 956, 2003 WL 21771922. Internal Revenue § 3587; Internal Revenue § 5217.35

Imposition of frivolous filing penalty was supported by evidence; taxpayer's return contained zeroes or was blank except for identifying information and claim of refund due, and document attached to return claimed that income tax was invalid. *Hoffman v. U.S.*, W.D.Wash.2002, 209 F.Supp.2d 1089, reconsideration denied. Internal Revenue § 5217.15; Internal Revenue § 5217.25


IRS did not abuse its discretion by assessing a frivolous return penalty against taxpayer, since there was an abundance of authority regarding the taxability of wages earned in the United States by citizens of the United States. *Loofbourrow v. C.I.R.*, S.D.Tex.2002, 208 F.Supp.2d 698. Internal Revenue § 5217.40

Amended income tax return claiming that wages were not income was frivolous and subject to penalty due to information on its face indicating self-assessment was substantially incorrect contention that an individual receives no taxable gain from exchange of labor for money is meritless. *Beard v. U.S.*, E.D.Tenn.1986, 630 F.Supp. 92. Internal Revenue § 5217.40

IRS was fully justified in imposing penalty for filing "frivolous" income tax return, where taxpayer reduced amount of taxable income shown on his return by subtracting from amount shown as wages an identical amount as "business losses," but "business losses" claimed on schedule C filed with return did not constitute a return of information related to any business or profession of taxpayer; moreover, asserted and apparent theory behind return, that wages are not taxable income, was patently frivolous. *Frost v. C.I.R.*, S.D.Miss.1985, 624 F.Supp. 316. Internal Revenue § 5217.40

Government was entitled to recover, as part of its costs, a reasonable attorney fee and related expenses for filing of frivolous action challenging $500 civil penalty assessed against taxpayers for filing "frivolous" tax return based on long-defunct argument that wages or salaries did not constitute income. *Beckelhimer v. U.S.*, M.D.Tenn.1995, 623 F.Supp. 115. Internal Revenue § 5246

Tax return of taxpayer, who reported his wages as "gross receipt in exchange for labor" and who claimed the same amount as a deduction for "cost of labor" thereby wiping out his taxable income and tax liability and who then demanded a refund of all taxes withheld, was based on a frivolous position warranting imposition of a penalty pursuant to 26 U.S.C.A. § 6702. *Myers v. U.S.*, Government, S.D.Tex.1985, 618 F.Supp. 353. Internal Revenue § 5217.40

Document, which was purported to be an amended tax return, which reflected that taxpayer and his wife had earned wages of $18,646 but had asserted no tax was owed, and which was based on a position that wages were not taxable income, was a frivolous return, so that taxpayer was liable for a civil penalty of $500. *Hill v. U.S.*, M.D.Tenn.1984, 599 F.Supp. 118. Internal Revenue § 5217.40

Taxpayer was properly assessed penalty for filing frivolous income tax return on which he refused to state his wages, contending that wages did not represent taxable income. *Neal v. Regan*, N.D.Ind.1984, 587 F.Supp. 1558. Internal Revenue § 5217.25

Purported agreement whereby taxpayer, as "nominee-agent" for a purported trust created by another entity conveyed
his "personal services property assets" to the purported trust was at best simply an anticipatory assignment of income, not recognized as a valid tax deferral structure, and thus tax return which reported the bulk of taxpayer's wages, salary or tips as nontaxable distributions was frivolous, warranting imposition of $500 penalty since it contained both altered or incorrect descriptions of line items or other provisions and a clearly unallowable deduction. *Karpowycz v. U.S.*, *N.D.Ill.1984*, 586 F.Supp. 48. Internal Revenue $\Rightarrow$ 5217.40; Internal Revenue $\Rightarrow$ 5220

Income tax returns in which taxpayers deducted all of their income as a cost of labor and reported no taxable income were "frivolous" within meaning of this section providing for assessment of penalty against taxpayers for filing frivolous returns. *Scull v. U.S.*, *E.D.Va.1984*, 585 F.Supp. 956. Internal Revenue $\Rightarrow$ 5217.40

Taxpayer's argument that he had a basis in his labor equal to its fair market value would effectively eliminate taxes on wages and was frivolous, and therefore taxpayer was properly assessed a $500 penalty for filing a frivolous income tax return. *Beard v. U.S.*, *E.D.Mich.1984*, 580 F.Supp. 881. Internal Revenue $\Rightarrow$ 5217.40; Internal Revenue $\Rightarrow$ 5220

Taxpayers' income tax returns were frivolous, where, although both taxpayers asserted they received no income from wages, salaries or tips, they both asserted that taxes were withheld from their wages, indicating on face of returns substantial incorrectness of self-assessment, and legal position on which taxpayers depended was that payment of compensation for services is an equal exchange and not taxable. *Lovell v. U.S.*, *W.D.Wis.1984*, 579 F.Supp. 1047, affirmed 753 F.2d 1077, affirmed 755 F.2d 517. Internal Revenue $\Rightarrow$ 5217.35

Taxpayer was liable for penalty for filing frivolous return in which he indicated that he had no taxable income for year in question, even though W-2 forms attached to return indicated income of over $6,000 for the year, and in which taxpayer sought refund of $1,900 when his W-2 forms indicated that only $560 had been withheld by his employer. *Gautz v. U.S.*, *E.D.Mich.1984*, 577 F.Supp. 1015. Internal Revenue $\Rightarrow$ 5217.35

Plaintiff taxpayer's tax return was frivolous and subject to $500 civil penalty, in that schedules completed by taxpayer led to conclusion that taxpayer's purported business loss was nothing more than salary paid to himself for his own services. *Tibbetts v. Secretary of the Treasury*, *W.D.N.C.1984*, 577 F.Supp. 911. Internal Revenue $\Rightarrow$ 5217.40

Self-employed taxpayer's return which deducted his own remuneration from his business as a "cost of labor" from his gross income was substantially incorrect and patently frivolous since it was based on theory that money he received as salary constituted an exchange for value of services performed and that there is no taxable gain when a person exchanges his labor for money. *Googe v. Secretary of the Treasury*, *E.D.Tenn.1983*, 577 F.Supp. 758. Internal Revenue $\Rightarrow$ 3321; Internal Revenue $\Rightarrow$ 4477

Individuals who filed unsigned tax forms listing wages, tips and salary as zero, even though accompanying W-2 forms indicated that both individuals received wages were liable for a civil penalty under this section, where neither individual made any attempt to explain discrepancy beyond writing the word "incorrect" across their W-2 forms. *Nichols v. U.S.*, *D.C.Minn.1983*, 575 F.Supp. 320. Internal Revenue $\Rightarrow$ 5217.35

Amended income returns submitted by taxpayer in which she claimed a deduction for her entire salary were frivolous, warranting penalties; taxpayer's assertion that her employment income was not taxable lacked any valid basis and was "substantially incorrect." *Sumter v. U.S.*, *Fed.Cl.2004*, 61 Fed.Cl. 517. Internal Revenue $\Rightarrow$ 5217.40

Taxpayer acted frivolously in filing amended income tax returns showing reduction of his adjusted gross income from tens of thousands of dollars to zero, and thus, imposition of civil penalties for filing frivolous returns was warranted; amended returns were based on frivolous arguments that "no section of the Internal Revenue Code establishes an income tax 'liability,'" that "no section of the Internal Revenue Code provides that income taxes 'have to be
paid on the basis of a return,", and that the word "income" as defined by the Internal Revenue Code includes only corporate income. Herip v. U.S., C.A.6 (Ohio) 2004, 106 Fed.Appx. 995, 2004 WL 1987302, Unreported. Internal Revenue ☞ 5335

Taxpayer filed frivolous tax returns when he filed tax returns claiming zero income and zero taxes even though he earned wages during pertinent years, notwithstanding taxpayer's contention that he had no income because he was not engaged in corporate activity. Cipolla v. I.R.S., E.D.N.Y.2003, 2003 WL 22952617, Unreported. Internal Revenue ☞ 5217.35

29. Remand

Remand of taxpayer's claim, for further administrative proceedings and for proper due process hearing, on frivolous return assessment, was warranted, since appeals officer erred in not allowing taxpayer to raise issues concerning merits of frivolous return penalty at hearing and appeals officer made no findings whatsoever concerning merits of imposing the frivolous return penalty. Silver v. Smith, W.D.N.Y.2002, 2002 WL 31367926, Unreported, affirmed 70 Fed.Appx. 17, 2003 WL 21510347. Internal Revenue ☞ 5200

30. Review


Taxpayer's Tax Court petition was dismissed for lack of jurisdiction, where the only unpaid tax liability remaining at time notice of intent to levy was issued was frivolous return penalty; taxpayer had submitted return reporting zeros on every line for reporting income earned, but attached two W-2 forms and requested refund of withheld taxes, and withheld taxes satisfied his unreported tax liability. Henderson v. C.I.R., U.S.Tax Ct.2004, 2004 WL 254283, Unreported. Internal Revenue ☞ 5200

In the case of a lien assessed as a result of a frivolous return penalty, the district court is the proper reviewing court. Silver v. Smith, W.D.N.Y.2002, 2002 WL 31367926, Unreported, affirmed 70 Fed.Appx. 17, 2003 WL 21510347. Federal Courts ☞ 1138

31. Persons imposing penalty

Because the identity of employees of the Internal Revenue Service (IRS) who determined a taxpayer's return to be frivolous is not relevant to whether the imposition of the frivolous filing penalty was proper, the government is not required to produce either the employees or their identities. Borchardt v. C.I.R., D.Minn.2004, 338 F.Supp.2d 1040. Internal Revenue ☞ 5217.15

The identity of the Internal Revenue Service (IRS) employees who imposed civil penalty for filing of frivolous return was not relevant to whether the penalty was proper. Gillett v. U.S., W.D.Mich.2002, 233 F.Supp.2d 874. Internal Revenue ☞ 5217.15

Hearing officer was not required to prove who determined and authorized imposition of penalties against taxpayer for filing frivolous tax returns, which was irrelevant to issue of whether penalties were proper. Cipolla v. I.R.S., E.D.N.Y.2003, 2003 WL 22952617, Unreported. Internal Revenue ☞ 5237

26 U.S.C.A. § 6702, 26 USCA § 6702

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6. ---- Equal protection, constitutionality


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21. Frivolousness of position--Generally

22. ---- Alteration of return, frivolousness of position


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24. ---- Conscientious objections, frivolousness of position


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25. ---- Criminal activity by government, frivolousness of position


26. ---- Deductions for war tax, frivolousness of position


27. ---- Signature and verification, frivolousness of position


28. ---- Wages and income, frivolousness of position

29. Remand


30. Review


### 31. Persons imposing penalty


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**Appellate Briefs**


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I.R.C. § 6702

Proposed Legislation


10. 2005 CONG US S 2020, 109th CONGRESS, 1st Session, To provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006. (Nov 16, 2005), Placed on Calendar Senate, PROPOSED ACTION: Amended.


12. 2005 CONG US HR 2625, 109th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to curb tax abuses by disallowing tax benefits claimed to arise from transactions without substantial economic substance, and for other purposes. (May 25, 2005), Introduced in House, PROPOSED ACTION: Amended.


Public Print, PROPOSED ACTION: Amended.

15 2005 CONG US S 25, 109th CONGRESS, 1st Session, To promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax to be administered primarily by the Sta (Jan 24, 2005), Introduced in Senate, PROPOSED ACTION: Repealed.

16 2005 CONG US HR 25, 109th CONGRESS, 1st Session, To promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax to be administered primarily by the (Jan 04, 2005), Introduced in House, PROPOSED ACTION: Repealed.


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Reports


§ 6702. Frivolous tax submissions

CREDIT(S)


HISTORICAL AND STATUTORY NOTES
§ 6702. Frivolous income tax return

(a) Civil penalty.--If--

(1) any individual files what purports to be a return of the tax imposed by subtitle A 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) is due to--

(A) a position which is frivolous, or

(B) a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws,

then such individual shall pay a penalty of $500.

(b) Penalty in addition to other penalties.--The penalty imposed by subsection (a) shall be in addition to any other penalty provided by law.

Effective and Applicability Provisions


1982 Acts. Section 326(c) of Pub.L. 97-248, provided that: “The amendments made by this section [enacting this section] shall apply with respect to documents filed after the date of the enactment of this Act [Sept. 3, 1982].”