

STATE TAX PROTESTERS: THE NEW YORK STATE EXPERIENCE

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*The views in this paper/presentation are those of the author and do not necessarily represent the views of, and do not constitute any official statement by, the New York State Department of Taxation and Finance.

Introduction

- A History of Tax Protest.
- War Tax Resisters vs. Tax Protesters.
- Reasons for the Paper:
 - Observed a small number of proceedings before New York's independent Division of Tax Appeals (DTA).
 - Hadn't been seen for several years.
 - Should we consider policy and/or administrative options?

Purposes of the Paper

- Understand the Scope and Extent of Tax Protester Proceedings.
- Compare to the Federal Experience.
- Input from Other States.
- Identify Some Potential Policy and Administrative Options.

Taxpayer Appeals in New York State

- Bureau of Conciliation & Mediation (BCMS).
- DTA – Small Claims Setting.
- DTA – Administrative Law Judge (ALJ).
- DTA – Tax Appeals Tribunal (TAT).
- Potential for 18 Months from Notice of Appeal Through TAT Decision.

Data & Methods

- Database of DTA Tax Protester Proceedings from 1987-2004.
 - Does not include BCMS or most Small Claims Proceedings.
 - May not identify all tax protester cases, but will include most persistent cases.
 - Will provide key data on most tax protester proceedings and is public data.

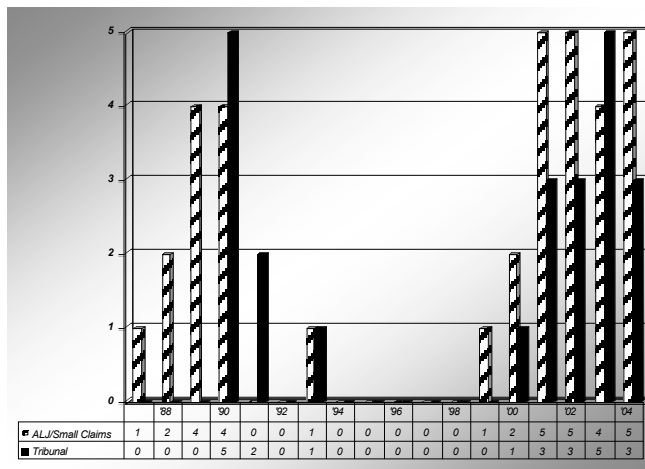
The Federal Experience

- Campaign to Publicize the Issues.
 - Publications, press releases, prosecutions.
- Tax Court IRC §6673 Penalty for “Frivolous Proceedings” (\$25,000 Max).
- Prohibited “Illegal Tax Protester” Designation.
- Employment Tax Cases.

Other States' Experience

- Limited Response.
- Arizona, North Carolina and Vermont Reported a Recent Significant Increase.
- Various Penalties, Court Penalty Similar.

New York Experience: Proceedings By Year & Forum



The New York Experience:

- 57 Proceedings (34 ALJ/Small Claims & 23 Tribunal).
- Two Peaks (Early 1990s & Recent).
- Some Taxpayers With Multiple Proceedings.
- Few Nonfilers, Often Seeking Refunds.

The New York Experience: Arguments Made

- Wages, tips, etc. for Personal Services Not Taxable (25.5 Pct).
- First Amendment Religious Objections (19.1 Pct)
 - Cases appeared in early 1990s.
- Federal Income Tax Not Authorized (10.6 Pct).
- Some New York State Specific Arguments.

The New York Experience:

- Taxpayers Always Appear *Pro Se*.
- Few Cases From Federal Changes.
- Small Amounts of Tax, Penalty & Interest (\$3,000 Avg., But Often WH).
- Penalties Assessed Include Nonfiling, Negligence & Estimated Tax. Fraud Very Difficult to Argue.
- DTA §2018 Penalty Sought & Imposed in Half of Cases.

Potential Policy & Administrative Options:

- Public Education.
- Tracking Known Tax Protesters.
- Following Tax Protester Trends.
- Assessing Penalties & Reviewing Policy.
- Tax Appeals Penalty. Increase Proportionate to IRC §6673?