STATE TAX PROTESTERS: THE NEW YORK STATE EXPERIENCE

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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

  – 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.
• 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?