

THE DAILY CALLER

10 ways the Income Tax harms civil liberties

By Chris Edwards

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The Internal Revenue Service scandal over the targeting of conservative groups has highlighted the agency's power to obstruct our political freedoms. Filing taxes every April also drives home how the government reduces our freedom.

Chief Justice John Marshall famously observed in 1819 that “the power to tax involves the power to destroy.” That’s true of any tax, but the massive federal income tax harms civil liberties much more than is necessary to raise the needed funds.

Some members of Congress have been talking about tax reform. But their efforts so far have been accounting-driven exercises that simply tweak the monstrous code. Instead, Congress should pursue major tax reforms that not only unshackle the economy but also expand our civil liberties.

Here are 10 freedom-crushing aspects of the income tax that policymakers should tackle:

1. Complexity and Ambiguity. Certainty in the law is a bulwark against arbitrary and abusive government. But there is no certainty under the income tax because it has an inherently complex base that is shot full of loopholes. Many studies have found that citizens, tax professionals, and the IRS all commit a large number of errors on their tax calculations. Looking at these studies, Professor David Vance of Rutgers University recently concluded that “the tax code is so complex that it is unconstitutionally vague,” likely violating due process under the Fifth Amendment.

2. Huge Size and Instability. Citizens are required to know the laws and comply with them. Yet federal tax rules are massive in scope and constantly changing. Tax laws, regulations, and related rules span 74,608 pages, according to CCH Inc. The number of pages has more than tripled since President Jimmy Carter called the tax system “a disgrace to the human race.” CCH estimates that there have been almost 5,000 changes to the federal tax code over the last decade.

3. Vertical Inequality. Although equality under the law is a bedrock American principle, the income tax treats citizens very unequally. Vertical inequality means different tax burdens on citizens of different incomes. For example, households earning between \$100,000 and \$500,000 pay an average income tax rate two and a half times higher than those earning between \$50,000 and \$100,000. Such inequities violate the spirit of equal protection under the Constitution.

4. Horizontal Inequality. Even people with similar incomes are treated unequally by the many exemptions, deductions, credits of the income tax. For example, the tax differences between homeowners and renters with the same incomes can be thousands of dollars because of the mortgage interest deduction.

5. Lack of Privacy. The income tax generates a large invasion of our privacy. The IRS gains access to mortgage records, credit card data, bank records, college tuition data, medical expenses, and much else. The broad IRS authority to obtain records without court supervision was referred to by the Supreme Court in 1964 as “a power of inquisition.” A huge and growing problem with the IRS amassing all this data is identity theft. The IRS has had to assign more than 3,000 agents to deal with this crime.

6. Denial of Due Process. In addition to the tax code’s complexity, the Fifth Amendment right to due process is ignored in other respects under the income tax. Due process requires that government provide accused citizens a clear notice of a claim against them and allow them a hearing before executing enforcement action. But the IRS engages in many summary judgments, and enforces them prior to any judicial determinations.

7. Shifting the Burden of Proof. For non-criminal tax cases — the vast majority of cases — the tax code reverses the age-old common law principle that the burden of proof rests with the accuser. Except in some narrow circumstances, the IRS does not have to prove the correctness of its determinations. When the IRS makes erroneous assessments — as it often does — citizens carry the burden to prove that they are wrong.

8. No Trial by Jury in Tax Court. Despite Sixth and Seventh Amendment guarantees of trial by jury, the federal tax system sidesteps such protections. To contest an IRS tax calculation prior to assessment, one must file a petition in the U.S. Tax Court. But since this is an administrative court, not an Article III court, no jury trial is required. To obtain a jury trial and related rights for civil tax cases, one must file suit in a U.S. District Court. But before that can happen, the alleged tax, penalties, and interest must be paid in full.

9. Unreasonable Searches and Seizures. In most situations, the Fourth Amendment guarantees that, before the government can search private property and seize records, it must demonstrate to a court that there is probable cause to believe that lawless conduct exists. However, the IRS’s

summons authority under tax code section 7602 allows it to obtain records of every description from any person without showing probable cause and without a court order. In recent years, there has also been a big expansion in information reporting required by the IRS and in its computer searching for personal records.

10. Forced Self-Incrimination. The requirement to file tax returns under penalty of perjury operates to invalidate the Fifth Amendment protection against self-incrimination. Citizens face a legal dilemma. On the one hand, refusing to file a return would expose a citizen to prosecution for failure to file. On the other hand, disclosing information sought in tax returns constitutes a waiver of Fifth Amendment protections. The IRS can and does release that information to federal, state, and local agencies for both tax and non-tax law enforcement purposes.

What should Congress do about all this? The first thing should be to greatly cut the government's size to reduce its rapacious demand for our money. The next thing should be to proceed with a pro-growth and pro-freedom tax overhaul, which optimally means scrapping the income tax altogether in favor of a low-rate, consumption-based tax system.

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