

Fact Sheet #5 for War Tax Resistance Counselors

The Hobby Lobby Case and WTRs Going to Court

Out of the thousands of people who have refused to pay taxes because of war since World War II, only about 56 people have been summonsed to federal district court by the Treasury Department with civil or criminal cases. Some have noncooperated with the whole process, while others argued for their right to conscience. Some of these refusers and resisters have been able to argue their case against paying for war before a judge or jury. They have used arguments based on Nuremberg principles and international law; on the First, Fifth, and Ninth Amendments; on the similarity to recognized conscientious objector status to serving in the military; and on the Religious Freedom Restoration Act (“RFRA”).

Of these arguments, only the Fifth Amendment protection of self-incrimination has offered some limited success in court for war tax resisters. In response to IRS demands to turn over personal financial documents and then taken a war tax resister to court after their refusal, courts have accepted the Fifth Amendment protection for the resister. Thus far the IRS has not pursued the legal case in this situation.

Many more individual resisters have tried to get into court and make a stand for conscientious objection to and/or refusal to pay war taxes. It seems obvious: If there is an allowance not to kill, why isn’t there an allowance not to pay for killing? It is a question that is asked frequently of the NWTRCC office. There is an ongoing legislative campaign to establish a “peace tax fund” to collect taxes from those who refuse to pay for killing and use them only for nonviolent purposes. A legal recognition of this right by an individual in court could force Congress to establish such a fund.

However, getting to court and being heard in court is not easy:

- An individual cannot sue the IRS over broad practices and regulations. Arguing a case related to conscience and war taxes against the IRS has to be used defensively. For example, a person who has refused to pay taxes because of war is taken to court by the IRS, and the court rules in the IRS’s favor. On appeal an argument could be made that the refuser would have complied if a Peace Tax Fund was in place.
- Because various courts have ruled on arguments of conscience mentioned above on numerous occasions, there are legal precedents the courts have used to turn back or summarily dismiss many attempts in the last 15-20 years.
- United States Tax Court or other federal courts have

consistently ruled in favor of the IRS regarding about 44 arguments, listed on the IRS website as “frivolous” positions. As a legal term, “frivolous” positions have no basis for validity in existing law. One of these involves “refusal to pay income taxes on religious or moral grounds by invoking the First Amendment.”

- Individuals can take cases to Tax Court, but if your arguments are deemed frivolous you risk a \$5,000 fine for bringing the case to court. If you are heard in Tax Court and lose, you can appeal to a higher court, but once again high penalties apply for bringing “frivolous” arguments or those that have been decided in court and are seen as precedents for the argument involved. The fine for lawyers bringing such cases is even higher. (Any taxpayer can take a case to Tax Court based on technical or procedural issues where the IRS may not have followed their own rules.)

Religious Freedom and the Hobby Lobby Opening

The Religious Freedom Restoration Act (RFRA) went into effect in 1994 to establish that an individual objection, based on religion or conscience, to compliance with any law has to be accommodated if it is possible to do so. The RFRA ruling is framed in these terms: the religious objection has to be honored unless (a) the law serves a compelling governmental interest, and (b) the infringement on conscience is the least restrictive alternative for dealing with the problem of objection—the least restrictive of individual liberty that is feasible.

War tax resisters citing RFRA have not succeeded in court appeals up to this point (see resource box). However, the Hobby Lobby case decided by the Supreme Court in 2014 seems to support a peace tax case or a peace tax fund idea as an accommodation to war tax resisters.

When the Affordable Care Act (ACA) was passed in 2013, the legislation included a provision making churches exempt from the birth-control coverage aspect of the law if they object on religious grounds. Further, nonprofit religiously affiliated organizations are provided an opportunity to say they are conscientious objectors, that they have a religious belief against some or all forms of birth control, and cannot in conscience provide these forms of birth control to their employees. And then, in that instance, there’s a side-stepping mechanism, and the insurance company has to provide those employees—the women, mostly—of those religiously

affiliated nonprofits with the coverage directly.

After that allowance was made, two for-profit corporations owned by religious families, Hobby Lobby and Conestoga Wood Specialties, argued in court that they should get the same exemption that is given to religious nonprofits. They lost in one federal appeals circuit because, the court said, corporations don't have a right to free exercise of religion under RFRA. However, in another region of the country, Hobby Lobby won in the circuit court. Because of the opposing decisions this went to the Supreme Court, which decided in favor of the corporations in June 2014.

In the Supreme Court's *Hobby Lobby* decision, RFRA is given a broad definition of "exercise of religion," broader than had ever been articulated by the Supreme Court in a First Amendment case. Specifically, it defines "exercise of religion" as "any action which is impelled by the person's religious belief, whether or not compelled by or central to that belief." The decision points out, for example, that the business practices of a religious person can be an exercise of that person's religion—obviously not the center of that person's religious life, but an expression, perhaps, of the person's religious life. That exact point is essential to the holding in *Hobby Lobby*.

In turn, given the broad interpretation of RFRA and the accommodation that has been made for religious nonprofits and corporations, serious arguments can be made for an accommodation such as a Peace Tax Fund for those who don't believe their money should be used for war and war preparation.

However, in the *Hobby Lobby* decision, the Supreme Court went out of their way to say this is not like not paying for war/war tax resistance. The decision quotes directly from the 1982 case *United States v. Lee*, specifically about war taxes: "If, for example, a religious adherent believes war is a sin, and if a certain percentage of the federal budget could be identified by those individuals as being devoted to war-related activities, such individuals would have a similarly valid claim to be exempt. The tax system could not function if denominations were allowed to challenge the tax system because payments were made by the government and spent in a manner that violates their religious beliefs."

This specific reference to and quote from *Lee* in the *Hobby Lobby* case was a clear signal to religious pacifists and others that 1) they know about us (!), and 2) the Supreme Court is putting up roadblock for us to act on the broad definition of RFRA articulated in the *Hobby Lobby* case.

There are legal minds watching the courts and monitoring any tax resistance cases that would allow for a chance to argue in court that a Peace Tax Fund is a manageable accommodation for taxpayers who do not want their money going to war. If the IRS brings a resister/refuser to court arguing that they should pay their taxes, the door opens for this challenge to be tested.

Resources

"Does the Hobby Lobby Decision Matter to War Tax Resisters" (NWTRCC Blog) nwtrcc.org/2015/08/12/does-the-hobby-lobby-decision-matter-to-war-tax-resisters

What Does the Supreme Court's Hobby Lobby Decision Mean for War Tax Resisters? A talk by NWTRCC legal advisor Peter Goldberger (Nov. 2014) nwtrcc.org/war-tax-resistance-resources/readings/hobby-lobby

Follow-up notes from 20016: nwtrcc.org/nwtrcc-business/may2016-ccmeeting/wtr-102/

Going to Tax Court (and other courts) - Information from tax attorney Frederick Daily, who also contributes to nolo.com. taxattorneydaily.com/going-to-tax-court/#tax-court-facts

Documents from WTR related court cases on the Conscience and Peace Tax International website, including U.S. cases: cpti.ws/court_docs/court_list.html

Frivolous Arguments: the IRS perspective (which usually wins in court): irs.gov/tax-professionals/the-truth-about-frivolous-tax-arguments-section-i-d-to-e

Tax blogger Peter Reilly on WTR related cases:

Bill Ruhaak - forbes.com/sites/peterjreilly/2011/09/04/war-tax-resister-claims-irs-regulation-violates-human-rights-treaty/#3807a4fe68f4

Elizabeth Boardman (1) - forbes.com/sites/peterjreilly/2013/01/06/war-tax-resisters-dont-call-them-frivolous/#57b31be21a64

Elizabeth Boardman (2) forbes.com/sites/peterjreilly/2015/03/23/ninth-circuit-rules-against-war-tax-protester/#40dfaec4f80

Let's Not Pay Any Taxes That Are Used for War or Prisons, if Hobby Lobby Can Pick and Choose: truth-out.org/buzzflash/commentary/let-s-not-pay-any-taxes-that-are-used-for-war-or-prisons-if-hobby-lobby-can-pick-and-choose

Precedent-setting court cases per IRS: irs.gov/tax-professionals/the-truth-about-frivolous-tax-arguments-section-i-d-to-e

Fact Sheet #5 for War Tax Resistance Counselors

Nov. 2017



**National War Tax Resistance
Coordinating Committee**

PO Box 150553, Brooklyn, NY 11215
(800) 269-7464 • Fax: (718) 768-4388

Email: nwtrcc@nwtrcc.org

Website: www.nwtrcc.org