



Pioneer Bank & Trust

Trust & Investments

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Taking the Fifth with the IRS

Filing an income tax return is not the act of being a witness against oneself within the meaning of the Fifth Amendment to the U.S. Constitution. Those who file blank tax returns and attempt to invoke the Fifth Amendment as a defense have routinely been penalized for filing frivolous returns.

However, recently a taxpayer filed a numerically accurate return but redacted some information on the Schedule B. He omitted the names of certain financial institutions, but he accurately reported (and paid the tax) on the income received from those institutions. Apparently the taxpayer was concerned about running afoul of the requirements for reporting foreign bank accounts, which can involve severe criminal penalties for mistakes.

The IRS took the position that there is no Fifth Amendment privilege for any tax return questions, offered no rationale for requiring the omitted information, and imposed the penalty for frivolous returns. The Tax Court refused to enforce the penalty, because the tax return was substantially accurate and because the taxpayer had a legitimate, narrow fear of self-incrimination.

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