

Magazine

# Hell Nay, We Won't Pay!

By JASON ZENGERLE MARCH 27, 2009

**On Monday, April 16, 1990**, millions of Americans sent their tax returns to the Internal Revenue Service. Peter Hendrickson sent a bomb. He was 34 years old, and since graduating from high school, he'd cobbled together an unremarkable career that included a stint as a video-arcade manager and other odd jobs. The only realm in which he showed direction — even distinction — was fringe politics. He was a Libertarian Party activist with a flair for the dramatic. On several occasions, he hired a plane to tow a “Ron Paul for President” banner over the University of Michigan football stadium during Paul's otherwise-little-noticed 1988 presidential campaign.

One evening in the spring of '89, Hendrickson and his girlfriend, Doreen Wright (they met while working on Paul's campaign), were at a barbecue at her house in suburban Detroit with some fellow members of the Metro Detroit Libertarians. Eventually, the conversation turned to that old Libertarian bugaboo, the income tax. Like many people of his ideological persuasion, Hendrickson was familiar with a book titled “The Great Income Tax Hoax,” written by a former insurance broker named Irwin Schiff, which argued that, among other things, the tax was unconstitutional. In order to “raise the consciousness” about the evil of the income tax, Hendrickson proposed to the Metro Detroit Libertarians an audacious act of protest, something different from passing out fliers and holding up signs — something that, as he later recalled, “could not be kept

quiet.” His idea found some takers and, over the course of the next year, Hendrickson, Wright and a married couple, Scott and Karen Scarborough, devised and carried out a plan to build a firebomb and mail it to the I.R.S.

On tax day, Hendrickson and the Scarboroughs drove a parcel containing the bomb to the post office in Royal Oak, Mich., where Scott Scarborough placed it in a mail bin outside. Hendrickson had wrapped a Bigelow tea bag around the bomb’s tubing — in homage to the Boston Tea Party, America’s founding act of tax protest — and addressed the package to “The Tax Thieves.” The return address read, “Freedom Loving Americans.”

While the package was still in the bin, it began to smoke. When an alert postal worker plucked the smoldering envelope from the bin and stomped on it, the bomb detonated. The postal worker went to the hospital with burns on his hands and face. Postal inspectors initiated a major investigation and traced the package back to Hendrickson, who ultimately went to prison for his part in the scheme.

Today, nearly two decades later, Hendrickson would appear to be a testament to the rehabilitative powers of the federal penal system. In the years after the bombing, he married Wright, and they had two children. He also achieved professional success as a midlevel executive with a real estate development company. When I visited him last year at his family’s modest ranch house in the Detroit suburb of Commerce Township, I found a portrait of middle-class contentment. Hendrickson, who is balding with a stocky build and wears large glasses, invited me inside and offered me a cup of tea. There was a piano in the living room and an aboveground swimming pool in the backyard. Parked in the driveway sat a late-model S.U.V., which Hendrickson uses on weekends to chauffeur his teenage son to soccer tournaments.

There’s one thing, though, that has prevented Hendrickson’s

complete metamorphosis from mail bomber to soccer dad: his views about the income tax. Although he no longer contends that the tax is unconstitutional — a misguided notion, he says, that led to his misguided actions of 19 years ago — he does believe the tax is grossly misapplied. The incomes of most Americans, he argues, aren't legally subject to state or federal income tax. It's a belief he has spelled out at some length in his book "Cracking the Code: The Fascinating Truth About Taxation in America." One part Talmudic reading of the tax code, one part populist jeremiad against "a swollen cadre of politically astute private interests and their camp-followers," the book, which he self-published in 2003, claims to prove that the only income that's taxable under the law is that which is paid out by the government in salaries, grants, investment dividends and other means.

This "truth," Hendrickson argues, is one that the government desperately tries to conceal from its citizens. "Americans are trained to be afraid of the subject of the income tax," he told me as we sat in his living room, a copy of "Cracking the Code" resting between us on a table. "If you're afraid of something, you just kind of keep your eyes averted. That's how the I.R.S. and other beneficiaries of the misunderstanding of the income tax want people to behave." He prices the book at \$25 a copy but offers much of its content free on his Web site. "Getting the information out there is the important thing," he said.

Thanks to "Cracking the Code" — which, by his count, has spawned "CtC Warrior" support groups in 48 states — Hendrickson has found, as he puts it, "a more productive" way to fight the income tax. Rather than mail a bomb to the I.R.S., he has taught thousands of Americans how to send the I.R.S. and state tax agencies what he calls "educated returns" — and what the I.R.S. calls fraudulent ones. By including substitute W-2 and 1099 forms that show little or no income, an educated return seems to qualify filers for refunds of the money withheld from their paychecks.

According to the I.R.S.'s internal statistics, the agency received more than 10,000 such "educated" returns between 2005 and 2007. Remarkably, these returns often work just as their filers intended. On his Web site, Hendrickson posts scanned images of the refund checks his readers have received. The tally now stands just shy of \$10 million, which Hendrickson claims is an undercount since "many people out there don't get around to sending me their evidence." Indeed, Hendrickson has had so much success selling "Cracking the Code" that in 2006 he quit his real estate job and began working full time on tax issues. When I visited him about three weeks before the tax-filing deadline last year, he was swamped with more than 150 e-mail messages a day from readers. "A lot of people look for clarifications of something that I've written," he explained. "In other cases it's people who are just telling me what they did."

All of this has once again brought Hendrickson into conflict with the authorities. For the last four years the I.R.S. has listed the "Cracking the Code" tax-filing method in its "Dirty Dozen Tax Scams" list. In 2006, the Justice Department successfully sued Hendrickson, his wife and seven "Cracking the Code" readers for filing false tax returns; the government sought to recoup the refund money it had erroneously disbursed. In 2007, a federal court permanently barred Hendrickson and his wife from filing "educated returns," threatening them with contempt citations if they did. And this past November, in the most serious legal action against Hendrickson since the indictment for his role in the bomb plot, the Justice Department charged him with 10 criminal counts of submitting false documents to the I.R.S. Each charge carries up to five years in prison.

If the I.R.S. had a Most Wanted list, Hendrickson would almost certainly sit atop it. But he views the government's actions as a form of validation, as a series of signs that his ideas about the nature of the tax code are not only correct but also approaching what he calls that "certain threshold at which something goes from being on the fringes of the general consciousness to being within the general

consciousness.” Otherwise, he reasons, why would the government bother?

“No one else has been charged with this kind of thing,” he says. “There isn’t any effort to shut down anyone else’s speech in the same fashion.”

**Not paying taxes** — or at least not wanting to — is as American as apple pie. Just consider the recent tax travails of Tom Daschle and Timothy Geithner: Daschle was forced to withdraw his nomination as Barack Obama’s secretary of health and human services because of his failure to pay taxes on unreported income and a limousine and driver; and while Geithner was ultimately confirmed as Obama’s Treasury secretary, he now finds himself in the somewhat awkward position of running the I.R.S. after once owing it \$34,000 in unpaid taxes. Or better yet, consider yourself: as tax day draws near, how many of you are waiting to hear good news from your accountants about various deductions and loopholes you can take advantage of when you file your returns next month? Is there anyone who’s looking to obey the actual spirit, and not just the letter, of the tax laws? While libertarians tend to offer the most heated rhetoric when it comes to taxes — from the political philosopher Robert Nozick’s comparison of taxes on income to “forced labor” to Ron Paul’s calls to abolish the I.R.S. — the impulse to game the system is as much human as ideological.

Indeed, for as long as the United States has had an income tax, Americans have been bridling against paying it. The U.S. Congress first began levying taxes on Americans’ incomes in 1861, in order to pay for the Union cause in the Civil War. Resistance to the tax followed. In 1863, Chief Justice Roger Taney of the U.S. Supreme Court complained to the Treasury secretary about the deductions from federal judges’ paychecks, contending that the tax violated the separation of powers. Before long, all federal employees were exempted from the income tax. The law authorizing the income tax

was repealed in 1872.

After the federal government reinstituted the income tax in 1894, a Massachusetts man named Charles Pollock sued the Farmers' Loan & Trust Company (in which he owned 10 shares) to stop it from paying the tax on the grounds that it didn't comply with the Constitution. He cited the "capitation clause" in Article I, which provides that Congress can impose direct taxes only if they are apportioned according to the population of each state. (This is the same clause of the Constitution that Irwin Schiff, the author of "The Great Income Tax Hoax," would point to nearly a century later.) The Supreme Court ruled in Pollock's favor, and the 1894 law reinstituting the income tax was struck down as unconstitutional.

It wasn't long, however, before politicians on both sides of the aisle began agitating for a Constitutional amendment to overrule the Pollock decision, with Democrats calling for one in their party platform of 1896 and Teddy Roosevelt including one as part of his Square Deal proposal in 1907. Finally, in 1913, there was enough support to ratify the 16th Amendment — which grants Congress the "power to lay and collect taxes on incomes . . . without apportionment among the several States" — thus paving the way for the reinstitution of a federal income tax. In the 96 years since the 16th Amendment was ratified, no one has yet to make a successful legal argument against the legitimacy of the income tax.

**But that hasn't stopped** people from trying. Today Hendrickson and others who describe themselves as members of the tax-honesty movement — critics tend to call them tax deniers — are brimming with legal arguments for why they don't have to pay the income tax. Some claim, based on elaborate, conspiracy-minded historical research, that the 16th Amendment was not in fact ratified by three-fourths of the states — contrary to the assertions of the secretary of state at the time, Philander Knox. Others maintain that they are citizens not of the United States but only of the state in which they

live. Or that they don't fit the definition of "person" as the term is used in the Internal Revenue Code. The truly persnickety contend that the 1040 form doesn't display a valid control number from the Office of Management and Budget, as addressed in the Paperwork Reduction Act of 1995, and thus the income tax is invalid.

The I.R.S. takes a predictably dim view of these sorts of arguments, but they are enough of a bureaucratic headache that in 2001 the agency created a 40-person unit devoted exclusively to dealing with them. The unit's official name is the Frivolous Return Program; unofficially it's called "the funny box." When I.R.S. clerks receive tax returns or pieces of correspondence that make what the clerks suspect are frivolous arguments — anything that cites sections of the tax code or court cases or mentions Philander Knox is generally considered suspect — they forward them to the Frivolous Return Program's offices in Ogden, Utah. Each year, between 50,000 and 100,000 documents typically land in the funny box. If an argument is deemed frivolous, the I.R.S. replies by sending a two-page brochure titled "Why Do I Have to Pay Taxes?" along with a form letter that encourages the sender to file a correct return and refers him to an I.R.S. Web page that debunks the most common frivolous arguments.

The I.R.S. admits that its response typically has little effect, and more often than not, the only way to deal with a tax denier is to take him to court. Since 2001, the Justice Department's tax division has obtained more than 350 civil injunctions against people selling or promoting frivolous tax arguments and has successfully prosecuted most of them, recouping an estimated \$600 million. "There are a few people who want real information, but most of them just want to argue with us," says the I.R.S.'s acting chief counsel, Clarissa Potter. "They'll say they've spent many hours studying the code, and this is what they believe. They don't necessarily want to be enlightened to the fact that their argument is frivolous."

Nathan Hochman, who until recently served as the assistant

attorney general in charge of the Justice Department's tax division, notes that if a tax denier is taken to court, the odds are overwhelmingly against him. "In over 95 percent of the cases that go to trial against tax defiers," he says, using the term that the Justice Department now prefers for tax deniers, "the government has convicted these folks." Tax deniers often make the government's case rather easy, as many base their defenses on the legally unsound arguments that got them in trouble in the first place. Some make it even easier by coming up with newer, even more frivolous arguments — like maintaining that if the American flag in the courtroom features gold fringe, then that flag is a "maritime flag of war" and the court therefore has no jurisdiction.

When a prominent tax denier loses in court, it almost invariably spells the end of the popularity of whatever argument he was promoting. "Obviously, getting sentenced to 13 years in prison doesn't really recommend you to anybody," says Dave Champion, a tax denier in California who runs a firm that advises individuals whom he insists on calling "nontaxpayers." ("My adversary is the most powerful machine," he cautions, "so I want to make clear I only work with nontaxpayers.") But while a criminal conviction causes a tax denier's clients to lose faith in a particular guru, few of them lose faith in the movement as a whole. They simply go in search of a different guru with a different argument. "They're like a bunch of lost sheep," says JJ MacNab, a financial planner who has testified on the tax-denial movement before the Senate Finance Committee. "And there are all these shepherds fighting with one another to bring them into their flocks."

**No tax denier has** achieved more prominence than Irwin Schiff, the man whose writings helped spark Peter Hendrickson's initial hostility toward the income tax. Schiff started his professional life conventionally enough: he ran an insurance brokerage firm in Connecticut. But after he lost his and his clients' money in the late 1960s in a tax shelter that turned out to be a Ponzi scheme, he



entered the netherworld of the nascent tax-honesty movement. While many tax deniers at the time were farmers in the Dakotas who were responding to a foreclosure crisis, Schiff, who held an accounting degree from the University of Connecticut, had an aura of economic expertise.

Schiff also had the spirit — and business ethics — of a carnival barker. He wrote a half-dozen books, including the best seller “How Anyone Can Stop Paying Their Income Taxes.” He appeared on national TV shows like “Larry King Live” on CNN and “The Tomorrow Show” on NBC. When he wasn’t barnstorming the country conducting seminars, he was working out of a storefront office in Las Vegas, where, behind a giant sign that read, “Why Pay Income Taxes? When No Law Says You Have To?” he peddled his services. According to one estimate, he had more than 50,000 clients, a figure that’s even more remarkable when you consider he was operating in the pre-Internet era.

Schiff’s business model was cynical but clever. His books, which instructed readers on how to file what he called “zero returns” in order to qualify for refunds, went for a reasonable \$35 or so. He made his real money on what his books wrought. As MacNab, who is writing a history of tax deniers, explains: “His readers would often have some initial success with those zero returns, but eventually they’d receive a letter from the I.R.S. alerting them that they’d made a frivolous tax argument, so they’d go back to Schiff and say, ‘What do I do?’ He’d say: ‘Oh, we have a form letter you can send in response to that. It’s an extra \$50.’ And every time the thing escalated, Schiff’s next package cost a bit more money, all the way up to a \$1,000 tax-court toolkit. The more desperate you got, the higher his prices went. A lot of people went to their ruin because of Schiff.”

Including, it should be noted, Schiff himself. Although he was a scam artist, he was also a believer in his own scam, which was a fundamental tenet of what became his larger political philosophy. (In

1996, Schiff unsuccessfully ran for the Libertarian Party's presidential nomination.) He himself used the same methods he recommended to his clients, and he was twice convicted of tax crimes and served several stints in prison in the 1980s. His undoing came in 2005, when he was convicted on multiple charges of tax evasion; aiding and assisting in the preparation of false tax returns filed by other taxpayers; and conspiring to defraud the United States government. At the age of 78, he was sentenced to 13 years in prison. He's now being held at a federal penitentiary in Terre Haute, Ind., where he's reported to be in ill health.

Schiff's downfall set off a free-for-all among lesser gurus, who vied to take his place. In addition to Hendrickson, Schiff's other heir apparent is a 46-year-old Iranian-born man named Peymon Mottahedeh. In a movement that's almost overwhelmingly white, Mottahedeh's ethnicity might seem to be an impediment to success, but he has managed to carve out a place for himself. Though he is not a lawyer, he runs an organization in suburban Los Angeles called Freedom Law School, which he founded in 1996. "You've got Loyola Law School, U.C.L.A., Harvard," Mottahedeh told me, "but in this land of the free, there was no law school committed to freedom?"

Mottahedeh's clients — or, as he insists on calling them, his students — can purchase books and tapes from Freedom Law School that explain why you don't have to pay income taxes. More important, they can purchase peace of mind. Unlike Hendrickson, Mottahedeh doesn't offer tax deniers an argument per se, save for advising them not to file returns at all; rather, he offers them the services of Freedom Law School's "freedom-fighting paralegals," who will help them respond to the I.R.S. if the agency ever comes after them. Freedom Law School's most expensive service — something it bills as the "Royal Freedom Package," which includes unlimited phone and in-person consultations and a legal defense fund "in case of criminal I.R.S. attacks" — costs \$6,000 to join and \$2,500 for each additional year of membership.

Mottahedeh advertises many of these packages over the Internet. But once a year he hosts a weekend conference so that he can hawk his wares in person, renting out a couple of ballrooms at a hotel in Newport Beach, Calif. Last March, I attended the gathering. About 150 people, some of whom traveled from as far away as Alaska and Rhode Island, mingled together, purchasing copies of the I.R.S.'s "Handbook for Special Agents" (not originally intended for sale) and reprints of the tax code, and listening to talks by prominent tax deniers. At the conference, Mottahedeh, who is short with bouffant hair and looks a little bit like a Persian Erik Estrada, proudly described a federal lawsuit he'd filed against an I.R.S. agent, accusing him of harassment. But a few months later, after the conference was over, an appeals court upheld the district court's dismissal of Mottahedeh's suit for his failure to serve the defendant properly. "It doesn't matter," Mottahedeh recently told me. "I'm going to sue them again anyway."

Despite their epic record of futility, tax deniers have occasionally had legal victories that have kept them out of jail. The most successful tactic is the "willfulness defense," and its leading practitioner is a Milwaukee-based lawyer named Robert Bernhoft. Bernhoft was once a tax denier himself. As a student at the University of Wisconsin, he marketed a "De-Taxing America Program" that had 55 clients who claimed close to \$700,000 in bogus tax refunds before a federal court issued an injunction shutting it down. But today, as a lawyer, he counsels his clients to base their defense not on the rightness of their beliefs but rather on the fact that they are sincere in them. "We do not put people in prison who do not willfully and intentionally violate a known legal duty with bad faith," he says. Bernhoft is referring to the fact that, while everyone is legally accountable for paying taxes, "willful failure to file" is among the most serious federal tax crimes — punishable by up to five years in prison and a \$25,000 fine. In other words, if a tax denier truly believes that the 16th Amendment was never ratified or that the law doesn't consider his wages to be income,

then he can't be guilty of *willfully* trying to defraud the government.

Bernhoft has successfully employed this willfulness defense for several clients, the most recent — and most famous — of which was the actor Wesley Snipes. After Snipes had a falling out with his investment adviser in the late '90s, a friend referred him to a tax denier named Eddie Kahn, whose firm, American Rights Litigators, advised clients to use the so-called 861 argument — which claims (erroneously) that Section 861 of the Internal Revenue Code holds that only income earned outside the country is taxable. Working with Kahn, Snipes did not file tax returns between 1999 and 2004; he also applied for about \$7 million in refunds for the years in which he did file. Snipes began recommending Kahn to his own friends and employees, at one point inviting Kahn to his California home to give a seminar on the 861 argument. When Snipes, Kahn and an American Rights Litigators accountant named Doug Rosile were charged with multiple tax felonies in 2006, there was talk of a joint defense; some tax deniers believed that Snipes would emerge as a new spokesman for the tax-honesty movement.

But a few weeks before his trial began in January 2008, Snipes dumped his legal team and hired Bernhoft, who constructed a defense for Snipes that threw Kahn, Rosile and the tax-honesty movement under the bus — blaming them for duping Snipes into believing their bogus arguments. Although Snipes was convicted of three misdemeanor tax charges and was sentenced to three years in prison (a decision currently on appeal), he was acquitted on the felony charges. Kahn and Rosile, on the other hand, were sentenced to 10 and 4½ years respectively.

Bernhoft seemed to come out best of all, gaining entry, he hopes, to a new and lucrative pool of potential clients: celebrities. His firm, still headquartered in Milwaukee, last year opened an office in Century City in Los Angeles, and until the relationship ended acrimoniously, represented Joe Francis, the founder of the "Girls Gone

Wild” video franchise, in a tax-evasion case. “We’re uniquely suited to represent creative people with their unique requirements,” Bernhoft told me. “We’ve always been a perfect fit for the Hollywood and Los Angeles community.”

**In November, when** Hendrickson was indicted on the 10 criminal tax charges, he did not seek the counsel of Bernhoft or any of the other lawyers who have had success in defending tax deniers in court. “Their understanding of the tax law is sketchy at best,” Hendrickson told me, giving voice to the narcissism of small differences that afflicts the tax-honesty movement. Though he has hired an attorney, the legal arguments that Hendrickson will use in his trial, which is expected to take place later this year, will be those of his own devising.

Hendrickson is planning a defense that will incorporate the willfulness argument but also boldly assert the rightness of his interpretation of tax law. In a recent motion to dismiss the charges against him, he recapitulates many of the arguments he makes in “Cracking the Code” and claims that the government is prosecuting him in order to curtail his “free-speech right to write, publish and distribute his book analyzing the tax laws of the United States.” He told me he would refuse a plea bargain, should he be offered one. “There isn’t any diminished charge that they could offer that wouldn’t be equally as bogus as the current ones,” he said by phone earlier this month. “Who’s going to plea to something that’s a complete fabrication?”

In his legal dealings with the federal government, Hendrickson hasn’t always been so uncompromising. In 1992, after being indicted on multiple charges stemming from his involvement in the bomb plot, he pleaded guilty to one charge of conspiracy to possess a destructive device in exchange for the dismissal of charges against Doreen. That plea still would have brought with it a 21-month prison sentence, so Hendrickson took one additional step. He and Doreen, who were now married, surreptitiously tape-recorded conversations they had with

their co-conspirators, Scott and Karen Scarborough (who in grand-jury testimony had maintained not only their own innocence but also Hendrickson's). On the recordings, the Scarborroughs, who had not been charged in the case, admitted their involvement in the plot and absolved the Hendricksons of the most serious act: placing the package in the mail bin.

The Hendricksons turned over the tapes to the prosecutors. Since the recordings were made at the Hendricksons' own initiative, rather than the government's, the Fourth Amendment didn't prohibit the prosecutors from using the tapes to secure convictions against the Scarborroughs for obstruction of justice. In exchange for his cooperation, Hendrickson received a sentence that ultimately was reduced to 30 days in federal prison and 11 months in a halfway house.

And yet today, Hendrickson doesn't seem to blink at the prospect of going to jail for 50 years, which, at his age, would effectively be a life sentence — much like Irwin Schiff's. At times, Hendrickson even seems to expect this will be his fate. Peymon Mottahedeh says he expects it will be Hendrickson's fate, too. Although Mottahedeh told me he's rooting for his competitor to be acquitted, he predicts that Hendrickson will be found guilty, if only because "these tax trials are never conducted in a fair manner." And if Hendrickson is found guilty, then Mottahedeh — who can sometimes be found outside the courtroom at tax-denier trials handing out his business cards — expects that Freedom Law School will see an uptick in enrollment, as the lost sheep from Hendrickson's flock look for another shepherd. Mottahedeh says he'll welcome them with open arms: "I'll tell them I wish they had not followed his advice and that I'll try to minimize the damage as best as can be done."

But Hendrickson says he holds out hope that, even in the event of his personal downfall, his tax argument will live on. "People have read 'Cracking the Code,' they've read the law, they know what the truth of

the matter is,” he told me. “It has nothing to do with whether a jury or a court acknowledges it.” He is aware that history can redeem heretics. As he put it, when describing how it felt to be in conflict not only with the I.R.S. but also with tax deniers who advance competing theories, “It’s the way, I think, Copernicus probably felt when he was doing his research.”

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