

**ONE PHRASE OF PROTEST DOES NOT A TAX RETURN
INVALIDATE: *UNITED STATES V. DAVIS*, NO. 08-20844, 2010
WL 1442969 (5TH CIR. APR. 13, 2010)**

Highlight

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Appellee Richard Duane Davis owned and operated a Houston tax preparation business.¹ He prepared the taxes of co-defendant Madison Lee Oden, who owned a several car dealerships in the Houston area, during the 1990's and from 2000-2002.² The IRS audited Oden in 1993, and determined that he had failed to substantiate deductions for losses claimed for several of his businesses.³ Appellee prepared Oden's tax returns from 2000 to 2002, and the returns contained deductions that were similar to those that the IRS had forbidden in 1993.⁴

Appellee and Oden were charged in October 2006 with one count of conspiracy to defraud the United States by obstructing the functions of the IRS in violation of 18 U.S.C. § 371.⁵ Oden was charged with four counts of filing false federal tax returns in violation of 26 U.S.C. § 7206(1), and Appellee was charged with four counts of aiding and assisting in the filing of Oden's false returns in violation of 26 U.S.C. § 7206(2).⁶ Appellee was convicted on three counts for aiding and assisting in the preparation of false tax returns.⁷

Appellee then moved for a new trial, arguing that because Oden added the words "without prejudice" near his signature on the jurats, the returns were invalid and did not qualify as tax returns under the law.⁸ The district court denied the motion, and Appellee appealed to the Fifth Circuit.⁹

The Fifth Circuit first reviewed the applicable law.¹⁰ On IRS

¹ *United States v. Davis*, No. 08-20844, 2010 WL 1442969, at *1 (5th Cir. Apr. 13, 2010).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *See id.*

⁹ *Id.* at *1-*2.

¹⁰ *Id.* at *2.

Form 1040 it states, “[U]nder the penalties of perjury, I declare that I have [the taxpayer] have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.”¹¹ Without the signature of the taxpayer certifying the accuracy of the return, the IRS cannot assess its correctness.¹² In cases where the taxpayer has deleted portions of the jurat, courts have held the tax return invalid.¹³ Additionally, courts have also held tax returns invalid when the taxpayer does not sign the jurat.¹⁴

The Fifth Circuit was faced with a somewhat different question: “whether Oden’s addition of language on the tax return altered the jurat in such a way so as to invalidate the return.”¹⁵ The central issue was whether the additional language “amends the meaning of the jurat or merely reflects the taxpayer’s exercise of free speech.”¹⁶ The court noted that the phrase “without prejudice” written next to Oden’s signature was ambiguous and did not “disclaim Oden’s status as a taxpayer, call the accuracy of the data into question, or make a mockery of the return.”¹⁷ As such, the court took the Seventh Circuit’s approach in holding that the IRS “should be entitled to construe alterations of the jurat against the taxpayer, at least where there is any doubt.”¹⁸ The court thus ruled against Appellee and held the 1040 forms in question were valid tax returns.¹⁹

Prior to *Davis*, the Fifth Circuit has held that certain alterations or omissions did, in fact, invalidate a tax return.²⁰ The issue in this case—whether the addition of the language “without prejudice” to the jurat invalidates a tax return—was a novel one.²¹ The Fifth Circuit adopted the reasoning of the Seventh Circuit in deciding that alterations should be construed against the taxpayer and in favor of the IRS.²² This marks a new trend in the law that is much more favorable to the IRS and unfavorable to the taxpayer.

In conclusion, *United States v. Davis* held that the addition of ambiguous language written adjacent the signature of the taxpayer on

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* (citing *Ledbetter v. Comm’r*, 837 F.2d 708, 709-10 (5th Cir. 1988)).

¹⁴ *Id.* (citing *Buck v. United States*, 967 F.2d 1060, 1060-61 (5th Cir. 1992) (per curiam)).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at *3.

¹⁸ *Id.* (citing *Sloan v. Comm’r*, 53 F.3d 799, 800 (7th Cir. 1995)).

¹⁹ *Id.*

²⁰ *See supra* notes 13-14 and accompanying text.

²¹ *See supra* notes 15-16 and accompanying text.

²² *See supra* note 18 and accompanying text.

the jurat does not invalidate the tax return. The decision is a clear message to tax preparation experts and their attorneys: if you plan to commit tax fraud, find a different method to argue your way out of it.