

# **IDENTITY HEARING LITIGATION PACKAGE**

A Comprehensive Analytical and Strategic Litigation Tool for  
Challenging the Government's Failure to Establish Identity as a  
Foundational Element of Tax Liability

Prepared for Use by Attorneys, Pro Se Litigants, and Tax Practitioners

April 2026

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## **NOTICE**

This document is an analytical and strategic litigation tool. It is not legal advice. The arguments, authorities, and templates contained herein are presented for educational and litigation-preparation purposes. Users should consult with qualified legal counsel before filing any document in any court or administrative proceeding. All bracketed placeholders [like this] must be replaced with case-specific information before use.

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# PART I

## MEMORANDUM OF LAW: IDENTITY AS A JURISDICTIONAL PREREQUISITE TO THE VALID IMPOSITION OF TAX LIABILITY

### I. INTRODUCTION AND STATEMENT OF THE ISSUE

1. This Memorandum of Law addresses a question that is as elemental as it is neglected: **Before the government may lawfully impose tax liability, collect revenue, or enforce penalties against any person, must it first establish — through competent, admissible evidence — that the individual before it is, in fact, the person upon whom the law imposes that liability?**

2. The answer, upon examination of the relevant statutory, regulatory, and constitutional authorities, is unambiguously yes. Identity is not a ministerial detail to be assumed, inferred, or waived. It is the jurisdictional sine qua non of every tax assessment, every notice of deficiency, every lien, every levy, and every penalty imposed under the Internal Revenue Code ("IRC" or "Code"). Without an affirmative, evidence-based determination that the person against whom the government acts *is* the person upon whom the law imposes liability, the entire edifice of the assessment collapses. The assessment is void *ab initio*.

3. Yet in practice, the government routinely treats identity as a given — a background assumption embedded in database records and Social Security number matching algorithms. No hearing is held. No evidence is produced. No witness testifies, under oath and subject to cross-examination, that the person before the court is the person who earned the income, filed the return, or owes the tax. The government simply asserts identity by fiat and proceeds to the merits.

4. This Memorandum demonstrates that this practice violates the express requirements of the Internal Revenue Code, the regulations promulgated thereunder, the IRS's own Internal Revenue Manual, and the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution. It further demonstrates that the government bears the burden of proving identity before any other issue in the case may be adjudicated.

## **II. STATUTORY AUTHORITIES REQUIRING IDENTITY DETERMINATION**

### **A. 26 U.S.C. § 6201 — Assessment Authority**

5. **26 U.S.C. § 6201(a)** provides that "[t]he Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title." This is the foundational grant of assessment authority under the Code.

6. The operative phrase is "taxes *imposed by this title*." A tax is not imposed upon a nameless abstraction or a Social Security number. A tax is imposed upon a "**person**" as defined by **26 U.S.C. § 7701(a)(1)** — an individual, trust, estate, partnership, association, company, or corporation. The Secretary's authority to assess extends only to the person upon whom the tax is imposed. The statute presupposes — indeed, it logically requires — that the Secretary has first identified that person.

7. Assessment authority under § 6201 is not a blank check. It is a delegated power, circumscribed by the requirement that it be exercised against the correct person. An assessment directed at the wrong person is not an exercise of lawful authority; it is an ultra vires act — an act beyond the Secretary's jurisdiction. See *Bull v. United States*, 295 U.S. 247, 261 (1935) (characterizing wrongful exaction of taxes as "immoral" and a "fraud on the taxpayer's rights").

## **B. 26 U.S.C. § 6203 — Method of Assessment**

**8. 26 U.S.C. § 6203** prescribes the method by which assessments are recorded. The assessment is made "by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary." The implementing regulation, **26 C.F.R. § 301.6203-1**, requires that the assessment officer sign the summary record of assessment, which must "provide identification of the taxpayer" through supporting records.

**9.** The phrase "identification of the taxpayer" is not surplusage. It is a mandatory procedural requirement. The regulation does not say "identification of a Social Security number" or "identification of a name in a database." It says identification of **the taxpayer** — the actual person upon whom the tax is imposed. This requires affirmative determination, not passive assumption.

**10.** The consequences of failing to comply with these procedural requirements are well established. In *Brafman v. United States*, 384 F.2d 863 (5th Cir. 1967), the Fifth Circuit reversed a judgment because the assessment officer had failed to properly execute the assessment certificate. The court held that procedural defects in the assessment process render the assessment invalid. If a defective signature can invalidate an assessment, *a fortiori*, the complete absence of identity verification — a far more fundamental defect — must produce the same result.

## **C. 26 U.S.C. § 6212 — Notice of Deficiency**

**11. 26 U.S.C. § 6212(a)** authorizes the Secretary to send a notice of deficiency to "**the taxpayer**" if the Secretary determines that there is a deficiency in respect of any tax. The use of the definite article "the" is constitutionally and statutorily significant. The statute does not authorize the Secretary to send a notice to "a" taxpayer, or to "any" person, or to the occupant of a particular address. It requires that the notice be sent to **the taxpayer** — the specific, identified person against whom the deficiency has been determined.

**12.** A notice of deficiency is often described as the "ticket to the Tax Court." See *Scar v. Commissioner*, 814 F.2d 1363, 1367 (9th Cir. 1987). If that ticket is issued to the wrong person — or if the government cannot prove it was issued to the right person — the entire deficiency proceeding lacks a jurisdictional foundation. The Tax Court's jurisdiction under **26 U.S.C. § 6213(a)** is predicated upon the issuance of a valid notice of deficiency to the correct taxpayer.

#### **D. 26 U.S.C. § 6213 — Restrictions Applicable to Deficiencies**

**13.** **26 U.S.C. § 6213(a)** provides that, within 90 days after the notice of deficiency is mailed (150 days if addressed to a person outside the United States), "the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency." The taxpayer's right to petition the Tax Court — and the Tax Court's jurisdiction to hear the case — is triggered by the receipt of a notice of deficiency by the correct person.

**14.** If the wrong person receives the notice — or if the government cannot prove through competent evidence that the right person received it — the entire deficiency procedure collapses. The assessment restrictions of § 6213(a) are not engaged, and neither is the Tax Court's jurisdiction. The government cannot simultaneously claim jurisdiction to assess and collect while refusing to prove the identity of the person it claims owes the tax.

#### **E. 26 U.S.C. § 7701(a)(1) — Definition of "Person"**

**15.** **26 U.S.C. § 7701(a)(1)** defines "person" to include "an individual, a trust, estate, partnership, association, company, or corporation." This definition serves as a classification tool — it identifies the categories of entities upon which the Code may impose liability. Critically, it requires the government to determine *which specific person* it is dealing with before imposing liability.

**16.** The definition of "person" is not a waiver of the identity requirement. To the contrary, it reinforces it. The Code imposes different obligations on different categories of persons — individuals are subject to the income tax

under Subtitle A, employers are subject to employment taxes under Subtitle C, and so forth. The government cannot apply the correct provisions of the Code unless it has first identified the specific person against whom those provisions operate.

## **F. 26 U.S.C. § 6065 — Verification of Returns**

**17. 26 U.S.C. § 6065** provides that, except as otherwise provided, "any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury." This verification requirement applies to every return filed under the Code.

**18.** The perjury verification is a statement by a specific, identified person that the information contained in the return is true and correct. It is an act of personal attestation — it binds the person who signs it, and only that person, to the representations contained in the document. A verification is meaningless — indeed, it is legally void — if the government cannot establish *who made it*. The verification requirement thus implicitly presupposes that the government can and must determine the identity of the person who signed the return before relying on that return as the basis for an assessment.

## **G. 26 U.S.C. § 7491 — Burden of Proof**

**19. 26 U.S.C. § 7491(a)(1)** provides that, in any court proceeding, if a taxpayer introduces **credible evidence** with respect to any factual issue relevant to ascertaining the liability of the taxpayer, "the Secretary shall have the burden of proof with respect to such issue." This provision, enacted as part of the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA 1998"), Pub. L. No. 105-206, § 3001, 112 Stat. 685, 726, was intended to level the playing field between the government and the taxpayer.

**20.** Identity is the most fundamental "factual issue relevant to ascertaining the liability of the taxpayer." If the government cannot prove that it is pursuing the right person, no other factual issue matters — not the amount of

income, not the validity of deductions, not the applicability of penalties. Identity is the threshold question upon which every other element of the case depends.

**21.** Under § 7491(c), the Secretary bears the burden of production with respect to any penalty, addition to tax, or additional amount imposed under the Code. Argue that the burden of production necessarily includes production of evidence that the penalty is being imposed on the correct person. A penalty imposed on the wrong person is not a penalty "imposed under this title" — it is an error.

## **H. 26 U.S.C. §§ 6320 and 6330 — Collection Due Process (CDP) Hearings**

**22.** 26 U.S.C. § 6320 (notice of lien) and § 6330 (notice before levy) provide taxpayers with the right to a hearing before the IRS Office of Appeals (now the Independent Office of Appeals) before collection actions may proceed. These provisions were enacted as part of RRA 1998 to ensure that taxpayers have a meaningful opportunity to challenge the government's collection activities.

**23.** Under § 6330(c)(1), the Appeals officer conducting a CDP hearing must "obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met." This verification requirement is mandatory and non-delegable. It requires the Appeals officer to independently confirm that the government has complied with all legal prerequisites before proceeding with collection.

**24.** The "requirements of applicable law" necessarily include the requirement that the person whose property is being seized is, in fact, the person who owes the tax. A levy on the property of Person A to collect the tax debt of Person B is not merely an administrative error — it is a violation of the Fourth and Fifth Amendments. The CDP hearing framework provides the procedural vehicle for raising identity challenges, and the Appeals officer's obligation to obtain verification encompasses verification of identity.

### **III. REGULATORY AUTHORITIES**

#### **A. 26 C.F.R. § 301.6203-1 — Assessment Requirements**

**25. 26 C.F.R. § 301.6203-1** implements the assessment requirements of **26 U.S.C. § 6203**. The regulation provides that the assessment shall be made by an assessment officer signing the summary record of assessment. The summary record "shall provide, through supporting records, identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment."

**26.** The regulation's use of the phrase "identification of the taxpayer" is a mandate for affirmative identification. The regulation does not permit identification by assumption, inference, or probabilistic matching. It requires that the supporting records *identify* the taxpayer — that is, establish, through competent documentary evidence, who the taxpayer is. Database records reflecting a Social Security number, standing alone, do not satisfy this requirement. A Social Security number is a numerical identifier — it is not the person.

#### **B. IRS Internal Revenue Manual (IRM)**

**27.** The IRS's own Internal Revenue Manual ("IRM") contains extensive provisions requiring verification of taxpayer identity in examination and collection contexts. These provisions demonstrate that the IRS itself recognizes identity verification as essential to the lawful exercise of its powers — even as the agency routinely fails to produce evidence of such verification when challenged in litigation.

**28. IRM 4.10.2** (Initial Contact and Interview) establishes procedures for the initial contact with a taxpayer during an examination. The IRM requires examining agents to verify the identity of the taxpayer at the outset of the examination process. This requirement reflects the common-sense recognition that an examination is meaningless if the examiner is not examining the correct person.

**29. IRM 5.1.2** (Securing Taxpayer Information) addresses the collection process and requires revenue officers to verify taxpayer information, including identity, before initiating collection actions. The IRM recognizes that collection from the wrong person is not merely inefficient — it is unlawful.

**30. IRM 25.23.2** (Identity Theft) contains the IRS's procedures for handling cases involving identity theft. These procedures implicitly acknowledge the central argument of this Memorandum: that the IRS's standard processes do not reliably identify the correct person. If they did, identity theft would not be a problem. The very existence of IRM 25.23.2 is an admission that SSN/TIN matching is an insufficient basis for identity determination.

## **IV. CONSTITUTIONAL AUTHORITIES**

### **A. Fifth Amendment Due Process Clause**

**31.** The Fifth Amendment to the United States Constitution provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. This is the most fundamental constraint on government power — the requirement that the government afford procedural protections before depriving any person of a protected interest.

**32.** Seizing property or imposing liability on a person without first establishing that person's identity is the most fundamental violation of due process imaginable. It is not merely a procedural defect — it is a categorical failure to satisfy the threshold requirement of any legitimate legal proceeding: that the government knows who it is proceeding against.

**33.** The Supreme Court's three-factor balancing test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), confirms that due process requires identity verification before the imposition of tax liability:

**34. Factor 1 — The Private Interest Affected.** The private interest at stake in tax collection proceedings is enormous. The government's collection

powers extend to wages (**26 U.S.C. § 6331**), bank accounts (**26 U.S.C. § 6332**), real property (**26 U.S.C. § 6334**), and virtually every other form of property a person may possess. In cases involving willful failure to pay, the government may seek criminal penalties including imprisonment (**26 U.S.C. § 7201**). The private interest is not merely financial — it encompasses liberty itself.

**35. Factor 2 — The Risk of Erroneous Deprivation and the Value of Additional Safeguards.** Without identity verification, the risk of erroneous deprivation is at its absolute maximum. The government's current reliance on SSN/TIN matching is demonstrably unreliable. Identity theft is a well-documented and pervasive problem — the IRS itself has acknowledged receiving millions of fraudulent returns annually. IRS database errors, duplicate Social Security numbers, and name mismatches compound the problem. The value of an additional safeguard — a mandatory identity verification step — is incalculable. It is the single most effective measure the government could take to reduce erroneous deprivations to near zero.

**36. Factor 3 — The Government's Interest and the Fiscal and Administrative Burdens.** The government's interest in efficient tax collection is legitimate and substantial. But efficiency does not justify dispensing with the most basic factual predicate of liability. Identity verification is not burdensome — the government already possesses the tools, the technology, and the internal procedures to accomplish it. The IRM already requires it in multiple contexts. What is lacking is not capacity but accountability — the government has no mechanism for proving, in a contested proceeding, that it verified the identity of the person it is pursuing.

## **B. Fourteenth Amendment Equal Protection and Due Process**

**37.** The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law" nor "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. State revenue agencies are bound by the same due process requirements as the federal government. A state tax assessment is

equally void if the state cannot establish, through competent evidence, the identity of the person assessed.

**38.** The equal protection dimension is also significant. If the government systematically fails to verify identity, the burden of that failure falls disproportionately on persons who are victims of identity theft, persons with common names, and persons who share identifying information with others. This creates a structural inequality that offends the Equal Protection Clause.

### **C. Fourth Amendment**

**39.** The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. Collection actions — including levies under **26 U.S.C. § 6331**, liens under **26 U.S.C. § 6321**, and seizures under **26 U.S.C. § 6331(b)** — constitute seizures of property within the meaning of the Fourth Amendment.

**40.** A seizure without establishing that the property belongs to the person who owes the debt violates the Fourth Amendment's requirement of particularity. The government cannot seize property in satisfaction of a tax debt without first establishing, with particularity, that the property owner is the person who owes the tax. This is the same principle that requires a search warrant to particularly describe the place to be searched and the things to be seized — the government must know whose property it is taking and why.

## **V. CASE LAW SUPPORTING THE IDENTITY REQUIREMENT**

**41. *Bull v. United States***, 295 U.S. 247 (1935). The Supreme Court declared that "[r]etention by the Government of money wrongfully exacted as taxes is immoral, and amounts in law to a fraud on the taxpayer's rights." *Id.* at 261. While *Bull* addressed the government's retention of overpaid taxes, its principle applies with even greater force to the collection of taxes from the wrong person. If retention of an overpayment from the *correct* person is

"immoral" and a "fraud," then collection from the *wrong* person is an even more egregious violation — it is the ultimate wrongful exaction.

**42. *Brafman v. United States***, 384 F.2d 863 (5th Cir. 1967). The Fifth Circuit invalidated an assessment because the assessment officer failed to properly execute the assessment certificate. The court held that strict compliance with the procedural requirements of assessment is mandatory, not optional. *Id.* at 868. If a defective signature — a relatively minor procedural irregularity — can invalidate an assessment, then the complete absence of identity verification — a far more fundamental defect — must produce the same result, *a fortiori*.

**43. *Welch v. Helvering***, 290 U.S. 111 (1933). Although *Welch* is primarily known for its discussion of the burden of proof in tax cases (predating the enactment of § 7491), the case implicitly supports the identity argument. The presumption of correctness that attaches to the Commissioner's determination — the so-called *Welch* presumption — presupposes that the determination was directed at the correct person. A presumption of correctness cannot cure a defect in identity. The government's determination is "presumed correct" only when the government has correctly identified the person against whom the determination is made. If the government is pursuing the wrong person, there is no "determination" to which a presumption of correctness can attach.

**44. *Commissioner v. Shapiro***, 424 U.S. 614 (1976). The Supreme Court held that the government must demonstrate probable cause for jeopardy assessments under **26 U.S.C. § 6861**. *Id.* at 629. While *Shapiro* addressed the sufficiency of the factual basis for a jeopardy assessment, its reasoning extends to the identity issue by analogy. If the government must demonstrate a factual basis for concluding that tax collection is in jeopardy, it must, *a fortiori*, demonstrate a factual basis for concluding that the person it is assessing is the person who owes the tax. Identity is a more basic prerequisite than jeopardy — it is the factual predicate that must be established before any assessment, jeopardy or otherwise, can be valid.

**45. CDP Cases Raising Identity Challenges.** The Collection Due Process framework established by **26 U.S.C. §§ 6320** and **6330** provides a procedural vehicle for raising identity challenges. Under **§ 6330(c)(1)**, the Appeals officer must obtain "verification from the Secretary that the requirements of any applicable law or administrative procedure have been met." Several taxpayers have raised identity-related challenges in CDP hearings, arguing that the Appeals officer's verification obligation includes verifying the identity of the person assessed. While reported decisions addressing this specific argument are limited, the statutory text of § 6330(c) (1) plainly encompasses it. The "requirements of applicable law" include the requirement that the assessment be directed at the correct person — a requirement rooted in the Due Process Clause itself.

## **VI. THE STRUCTURAL ASYMMETRY: WHY THE CURRENT SYSTEM FAILS**

**46. The current system treats identity as a clerical assumption, not a legal determination.** At no point in the assessment, examination, or collection process does the IRS make a formal, reviewable determination that the person it is pursuing is the person upon whom the law imposes liability. Identity is assumed based on database matching — a Social Security number is linked to a name, and the name is linked to an address. The government then proceeds as though identity has been established, when in fact it has merely been assumed.

**47. SSN/TIN matching is a probabilistic tool, not proof of identity.** A Social Security number is a nine-digit numerical identifier issued by the Social Security Administration. It is not a biometric marker. It is not unique in the way that a fingerprint or DNA sample is unique. Social Security numbers are stolen, shared, fabricated, and misassigned with alarming regularity. The IRS's own data reflects millions of instances in which multiple returns are filed using the same Social Security number, or in which the Social Security number on a return does not match the name or date of birth associated with that number in Social Security Administration records. Reliance on SSN

matching as the sole basis for identity determination is the equivalent of relying on a zip code to identify a specific house — it narrows the field but does not answer the question.

**48. The government has no procedure for independently verifying identity before assessment.** The IRM requires identity verification in certain contexts — at initial contact during examinations, in collection proceedings, and in identity theft cases. But these procedures are designed to facilitate the government's administrative operations, not to protect the rights of the person assessed. There is no procedure requiring the government to produce evidence of identity verification in response to a challenge, and no procedure requiring an independent determination of identity before an assessment is recorded.

**49. This structural gap creates a due process void.** The government possesses virtually unlimited power to impose liability, seize property, and destroy livelihoods. The person against whom this power is directed has virtually no mechanism for challenging the most basic factual predicate of the government's case — that it has the right person. The courts have not yet adequately addressed this gap, in part because identity challenges are often conflated with frivolous "tax protester" arguments. But the identity argument is not a denial of the obligation to pay taxes. It is a demand that the government satisfy the most elementary requirement of any legal proceeding: that it prove it is proceeding against the right person.

**50. Identity theft cases expose the absurdity of the current framework.** The IRS regularly assesses liability against victims of identity theft — persons whose Social Security numbers have been used by others to file fraudulent returns, claim fraudulent refunds, or report income that the victim never earned. These cases demonstrate, beyond any reasonable dispute, that the IRS's standard processes do not reliably identify the correct person. If the system cannot distinguish between the victim and the thief, it cannot be trusted to distinguish between any two persons who share identifying information. The existence of a pervasive identity theft problem is the most

powerful evidence that the current system lacks the procedural safeguards necessary to satisfy the Due Process Clause.

## **VII. CONCLUSION**

**51.** Identity is not an afterthought. It is not a ministerial detail. It is not a box to be checked or a field to be auto-populated. **It is the first and most fundamental element of tax liability.** Without an affirmative, evidence-based determination that the person against whom the government is proceeding is, in fact, the person upon whom the law imposes liability, no assessment is valid, no notice of deficiency is proper, no lien is enforceable, no levy is lawful, and no penalty is justified.

**52.** The statutory, regulatory, and constitutional authorities examined in this Memorandum compel a single conclusion: the government bears the burden of proving identity before any other issue in a tax case may be adjudicated. The current system's failure to require such proof is a structural deficiency of constitutional magnitude — one that the courts are obligated to address when properly raised.

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## **PART II**

### **MODEL MOTION TO COMPEL IDENTITY HEARING AND FOR ORDER REQUIRING THE GOVERNMENT TO PRODUCE EVIDENCE OF IDENTITY DETERMINATION**

**IN THE [UNITED STATES TAX COURT / UNITED STATES DISTRICT  
COURT**

**FOR THE [DISTRICT], [STATE] / UNITED STATES COURT OF  
FEDERAL CLAIMS]**

**[PETITIONER/PLAINTIFF**

**NAME],**  
Petitioner/Plaintiff,

v.

**COMMISSIONER OF INTERNAL REVENUE /  
UNITED STATES OF AMERICA,**

Respondent/Defendant.

Docket/Case No. [\_\_\_\_\_]

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**MOTION TO COMPEL IDENTITY HEARING AND  
FOR ORDER REQUIRING THE GOVERNMENT TO  
PRODUCE EVIDENCE OF IDENTITY  
DETERMINATION**

**MOTION**

**1.** [Petitioner/Plaintiff] [NAME] ("Movant"), by and through [undersigned counsel / pro se], respectfully moves this Court for an Order:

(a) **Compelling the Government** to produce, within thirty (30) days of the date of the Order, all evidence upon which it relies to establish that [Petitioner/Plaintiff] is the person upon whom the tax liability at issue in this proceeding was imposed, including but not limited to: documents establishing identity verification procedures followed, records of identity determinations made, authentication of Social Security number assignment, and any other evidence linking [Petitioner/Plaintiff] to the liability assessed;

(b) **Ordering an evidentiary hearing** on the question of identity as a jurisdictional prerequisite to the valid imposition of tax liability, at which the Government shall be required to present competent, admissible evidence — through live testimony subject to cross-examination — establishing that

[Petitioner/Plaintiff] is, in fact, the person upon whom the tax liability was imposed; and

(c) **Placing the burden of proof** on the Government with respect to the identity issue, consistent with the requirements of **26 U.S.C. § 7491, 5 U.S.C. § 556(d)**, and the Due Process Clause of the Fifth Amendment to the United States Constitution.

## **MEMORANDUM IN SUPPORT**

### **1. Factual Background**

**2.** [INSERT CASE-SPECIFIC FACTS. Include: (a) the nature of the tax liability at issue (income tax, employment tax, penalty, etc.); (b) the tax year(s) involved; (c) the date and manner of assessment; (d) the notice(s) received by Movant (notice of deficiency, CDP notice, etc.); (e) any facts bearing on the identity issue (identity theft history, IRS errors, multiple taxpayers with same name/SSN, etc.); (f) any prior communications with the IRS regarding identity.]

**3.** To date, the Government has produced no competent evidence establishing that Movant is the person upon whom the tax liability at issue was imposed. The Government's case rests entirely upon the presumption that database records linking a Social Security number to a name constitute proof of identity. They do not.

### **2. Legal Standard**

**4. Due Process.** The Fifth Amendment prohibits the government from depriving any person of property without due process of law. U.S. Const. amend. V. Under the three-factor test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), due process requires, at minimum, an opportunity to be heard on the foundational question of identity before the government may impose liability or seize property.

**5. Statutory Requirements.** The Internal Revenue Code requires the government to identify the taxpayer in the assessment (**26 U.S.C. § 6203; 26**

**C.F.R. § 301.6203-1**), to direct the notice of deficiency to "the taxpayer" (**26 U.S.C. § 6212**), and to verify compliance with applicable law before proceeding with collection (**26 U.S.C. § 6330(c)(1)**).

**6. Burden of Proof.** Under **26 U.S.C. § 7491(a)**, the burden of proof shifts to the Secretary when the taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining liability. Identity is such a factual issue. Under **5 U.S.C. § 556(d)** (the Administrative Procedure Act), the proponent of an order has the burden of proof. The government, as the proponent of the assessment, bears the burden of proving its validity — including the foundational element of identity.

### **3. Argument**

#### **a. Identity Is a Jurisdictional Prerequisite**

7. Identity is not a collateral issue to be resolved after the merits have been adjudicated. It is a jurisdictional prerequisite that must be established before any other issue may be addressed. An assessment directed at the wrong person is void *ab initio* — it is not merely voidable but void, because the government lacked authority to make it. See *Bull v. United States*, 295 U.S. 247, 261 (1935); *Brafman v. United States*, 384 F.2d 863 (5th Cir. 1967).

#### **b. The Government Bears the Burden of Proving Identity**

8. The government bears the burden of proving identity under three independent sources of law. First, under **5 U.S.C. § 556(d)**, the proponent of an order bears the burden of proof. Second, under **26 U.S.C. § 7491(a)**, the burden shifts to the Secretary when the taxpayer introduces credible evidence on a factual issue relevant to liability. Movant's challenge to identity constitutes credible evidence that the government's identity determination is disputed. Third, under the Due Process Clause, the government may not deprive a person of property without first proving a lawful basis for doing so. Identity is the most basic element of that lawful basis.

**c. The Current Record Contains No Competent Evidence of Identity**

9. The current record in this proceeding contains no competent, admissible evidence that Movant is the person upon whom the tax liability at issue was imposed. The Government has produced no testimony, no authenticated documents, and no independent verification establishing identity. The Government's reliance on database records and SSN matching is insufficient as a matter of law — these records are hearsay, are not self-authenticating, and are demonstrably unreliable.

**d. An Evidentiary Hearing Is Required**

10. Under the *Mathews v. Eldridge* framework, the magnitude of the private interest (property and liberty), the high risk of erroneous deprivation (SSN matching is unreliable), and the minimal burden on the government (identity verification tools already exist) compel the conclusion that an evidentiary hearing on identity is constitutionally required. The hearing must provide Movant with the opportunity to cross-examine the government's witnesses on the factual basis for the identity determination.

**PROPOSED ORDER**

[COURT NAME]

[CASE CAPTION]

Docket/Case No. [\_\_\_\_\_]

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**ORDER GRANTING MOTION TO COMPEL IDENTITY HEARING**

Upon consideration of [Petitioner/Plaintiff]'s Motion to Compel Identity Hearing and for Order Requiring the Government to Produce Evidence of Identity Determination, and for good cause shown, it is hereby:

**ORDERED** that:

1. Within **thirty (30) days** of the date of this Order, the Government shall produce all evidence upon which it relies to establish that [Petitioner/Plaintiff] is the person upon whom the tax liability at issue in this

proceeding was imposed, including but not limited to: all records of identity verification procedures followed; all documents reflecting identity determinations made; all records authenticating the assignment of Social Security number [XXX-XX-XXXX] to [Petitioner/Plaintiff]; and any other evidence linking [Petitioner/Plaintiff] to the liability assessed.

**2. An evidentiary hearing** on the question of identity as a jurisdictional prerequisite to the valid imposition of tax liability shall be held on [DATE], at [TIME], at [LOCATION], or at such other time and place as the Court may direct.

**3. At the evidentiary hearing, the Government shall bear the burden of proof** on the issue of identity, and shall be required to present competent, admissible evidence — through live testimony subject to cross-examination — establishing that [Petitioner/Plaintiff] is, in fact, the person upon whom the tax liability was imposed.

**4. All collection activity** against [Petitioner/Plaintiff] with respect to the tax liability at issue — including but not limited to levies, liens, seizures, and offsets — is hereby **STAYED** pending resolution of the identity issue.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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**[JUDGE'S NAME]**

[Title — e.g., Judge, United States Tax Court]

## **CERTIFICATE OF SERVICE**

I hereby certify that on [DATE], a true and correct copy of the foregoing Motion to Compel Identity Hearing and for Order Requiring the Government to Produce Evidence of Identity Determination, together with the Memorandum in Support and Proposed Order, was served upon all parties of record by [first-class mail, postage prepaid / electronic filing / hand delivery] as follows:

[NAME OF OPPOSING COUNSEL / GOVERNMENT ATTORNEY]  
[TITLE]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
[CITY, STATE ZIP]

---

**[ATTORNEY NAME / PRO SE LITIGANT NAME]**

[BAR NUMBER, if applicable]

[ADDRESS]

[TELEPHONE]

[EMAIL]

---

## **PART III**

### **CROSS-EXAMINATION SCRIPT: CHALLENGING THE GOVERNMENT'S IDENTITY DETERMINATION**

#### **INTRODUCTION**

This cross-examination script is designed as a practical litigation tool. Its purpose is to systematically expose that the government's witness — typically an IRS Revenue Agent, Revenue Officer, Appeals Officer, or technical advisor — cannot establish, through personal knowledge or competent documentation, that the person before the court is the person upon whom the tax liability was imposed. The script proceeds from foundational questions (establishing the witness's role) through core identity questions (exposing the lack of independent verification) to closing questions (sealing the record for appeal).

### **Practice Note**

Each question includes: (1) the exact question text; (2) the expected answer; (3) a follow-up or impeachment strategy for evasive answers; and (4) a brief note on evidentiary purpose. Counsel should adapt these questions to the specific facts of the case and the specific witness on the stand. Questions should be delivered in a calm, methodical, professional tone — the goal is to build a record, not to antagonize the witness.

## **SECTION A: PRELIMINARY QUESTIONS — ESTABLISHING THE WITNESS'S ROLE**

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
P-1	Please state your name and current title with the Internal Revenue Service.	Witness states name and title (e.g., Revenue Agent, Revenue Officer, Appeals Officer).	If evasive: "You are employed by the IRS, correct? What is your job title?"	Establishes the witness's identity and role — foundational for all subsequent questions.
P-2	How long have you held this position?	Witness states tenure.	If vague: "Approximately how many years?"	Establishes experience level and credibility baseline.
P-3	What are your primary responsibilities in this position?	Witness describes duties (examining returns, collecting taxes, conducting	If overly broad: "Do your responsibilities include making determinations about who	Narrows the witness's role to functions relevant to identity determination.

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
		hearings, etc.).	owes taxes?"	
P-4	Were you personally involved in the examination, assessment, or collection activity at issue in this case?	Yes or No.	If No: "Then on what basis are you testifying today?" If Yes: "At what point did you become involved?"	Establishes personal knowledge (or lack thereof) — foundation for Fed. R. Evid. 602.
P-5	Did you personally make the assessment at issue in this case?	Likely No — assessments are typically made by assessment officers, not examining agents.	"So you cannot testify from personal knowledge about the procedures followed in making the assessment, correct?"	Begins to establish that the witness lacks personal knowledge of the assessment process, including identity verification.
P-6	Have you reviewed the administrative file for this case?	Yes.	"Is the entire file here today? Can you identify every document in the file?"	Establishes the scope of the witness's knowledge and the completeness of the record.
P-7	Does the administrative file contain any document reflecting a determination of the identity of	Likely uncertain or No.	"You've reviewed the file. Can you point to a specific document that establishes identity?"	Core question — forces the witness to confront the absence of identity documentation.

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
	the person assessed?			
P-8	Are you aware of any IRS policy or procedure that requires identity verification before an assessment is recorded?	May reference IRM provisions generally or may be uncertain.	"Can you cite the specific IRM section? Was that procedure followed in this case?"	Tests the witness's knowledge of IRS procedures and sets up later questions about compliance.
P-9	Have you ever been trained on identity verification procedures?	Possibly yes, in general terms.	"What did that training consist of? When was it? Does it require independent verification before assessment?"	Explores whether training supports or undermines the government's position.
P-10	In your experience, has the IRS ever assessed a tax liability against the wrong person?	May attempt to deny or minimize.	"Are you aware that the IRS has an entire division — the Identity Protection Specialized Unit — devoted to identity theft cases? Would those cases not involve assessments against the wrong person?"	Establishes that misidentification is a known problem, undermining any claim that identity is inherently established.

## SECTION B: IDENTITY DETERMINATION QUESTIONS — THE CORE SCRIPT

No.	Question	Expected Answer	Follow-Up / Impeachment	Evidentiary Purpose
ID-1	Do you personally know [Petitioner/Defendant]?	No.	N/A — expected answer is favorable.	Establishes lack of personal knowledge of identity — the witness cannot identify Petitioner from personal acquaintance.
ID-2	Prior to today, had you ever met [Petitioner/Defendant] in person?	Likely No, or only in the context of the examination/hearing.	If Yes: "Under what circumstances? Did you verify identity at that time? How?"	Reinforces that the witness has no independent basis for identifying Petitioner.
ID-3	On what basis do you believe that the person sitting in this courtroom is the person upon whom the tax liability at issue was imposed?	Likely references the case file, the name on the petition, or the Social Security number.	"So your belief is based on documents and database records, not personal knowledge, correct?"	Forces the witness to admit reliance on documents rather than personal knowledge — sets up hearsay and authentication challenges.
ID-4	Did you	No —	"Is there	Establishes

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
	independently verify the identity of [Petitioner/Defendant] before the assessment was recorded?	assessment officers typically do not perform independent identity verification.	anyone at the IRS who independently verified identity before the assessment was recorded?"	that no independent verification occurred — the core factual gap.
ID-5	What specific steps, if any, did you or anyone at the IRS take to confirm that the Social Security number [XXX-XX-XXXX] belongs to [Petitioner/Defendant]?	Likely none beyond database matching.	"Did anyone contact the Social Security Administration to confirm the assignment? Did anyone compare a photo ID? Did anyone take a fingerprint?"	Exposes the absence of any meaningful identity verification procedure.
ID-6	Are you aware that Social Security numbers can be stolen, fabricated, or assigned to more than one person due to administrative errors?	Should acknowledge — this is well-documented.	If denied: Impeach with IRS publications on identity theft, GAO reports, and IRM 25.23.2.	Establishes the unreliability of SSN matching as a sole basis for identity.
ID-7	Is it possible that the Social Security	Must acknowledge the possibility.	"And if someone else used that number,	Forces admission that the government'

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
	number used on the return at issue was used by someone other than [Petitioner/Defendant]?		the assessment could be directed at the wrong person, correct?"	s identity determination method is fallible.
ID-8	Can you produce any document in the administrative file that constitutes an affirmative determination that [Petitioner/Defendant] is the person who earned the income reported on the return for [TAX YEAR]?	No.	"So the IRS assumed that the person who filed the return earned the income, without independently verifying that fact?"	Distinguishes between the person who filed the return and the person who earned the income — these may not be the same person.
ID-9	Can you produce any document in the administrative file that constitutes an affirmative determination that [Petitioner/Defendant] is the person who filed the	May reference the return itself.	"The return bears a name and Social Security number — but that does not prove who filed it, does it? Anyone could type a name on a return."	Challenges the assumption that a name on a return proves identity of the filer.

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
	return for [TAX YEAR]?			
ID-10	Did the IRS compare a government-issued photo identification of [Petitioner/Defendant] to the information on the return before making the assessment?	No.	N/A — expected answer is favorable.	Establishes absence of the most basic form of identity verification.
ID-11	Did the IRS obtain a sworn affidavit or declaration from any person attesting that [Petitioner/Defendant] is the person who earned the income, filed the return, or owes the tax?	No.	N/A — expected answer is favorable.	Establishes absence of sworn testimony supporting identity.
ID-12	Is the summary record of assessment for this case present in the administrative	Should be Yes.	"May I see it?" [Review for compliance with 26 C.F.R. § 301.6203-1.]	Lays foundation for examining the assessment record for identity-

No.	Question	Expected Answer	Follow-Up / Impeachment	Evidentiary Purpose
	e file?			related defects.
ID-13	Does the summary record of assessment "provide identification of the taxpayer" as required by 26 C.F.R. § 301.6203-1?	May claim it does — by reference to name and SSN.	"The regulation says 'identification of the taxpayer' — not 'identification of a Social Security number.' A number is not a person. How does this record identify the <i>person</i> ?"	Challenges the sufficiency of database identifiers as "identification" under the regulation.
ID-14	What "supporting records" does the summary record of assessment reference to provide identification of the taxpayer?	Likely the return, W-2s, or 1099s.	"Those documents bear a name and SSN — but they do not independently prove that [Petitioner/Defendant] is that person, do they?"	Exposes the circular nature of the government's identity reasoning: the assessment identifies the taxpayer by reference to documents that themselves assume identity.
ID-15	Are you familiar with IRM 4.10.2, which addresses initial contact and	Should be Yes if the witness is a Revenue Agent.	If No: "You're not familiar with the IRS's own procedures for	Tests the witness's knowledge of the IRS's own procedures.

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
	interview procedures in examinations ?		conducting examinations ?"	
ID-16	Does IRM 4.10.2 require identity verification at the initial contact with the taxpayer?	Should acknowledge — the IRM does require this.	"Was that procedure followed in this case? Can you point to a record documenting that identity was verified?"	Establishes that the IRS's own procedures require identity verification — and that those procedures were not followed or documented.
ID-17	If the IRS's own procedures require identity verification, why is there no record in the administrative file documenting that verification?	Likely unable to answer satisfactorily .	"Is it possible that identity verification was never performed?"	Drives home the gap between IRS procedure and IRS practice.
ID-18	Are you familiar with IRM 25.23.2, which addresses identity theft procedures?	May or may not be familiar.	"The IRS has an entire section of the IRM devoted to identity theft — are you aware of that?"	Establishes the IRS's acknowledgment that identity theft is a systemic problem.

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
ID-19	Approximately how many identity theft cases does the IRS handle annually?	Likely does not know the exact number.	"According to the IRS's own reports, the number is in the hundreds of thousands. Does that suggest that the IRS's identification processes are reliable?"	Quantifies the unreliability of the system — if hundreds of thousands of cases involve identity errors, the system cannot be presumed accurate.
ID-20	In an identity theft case, the IRS assesses liability against a person who did not earn the income and did not file the return — is that correct?	Should acknowledge .	"And that means the IRS's standard assessment process — the same process used in this case — produced an assessment against the wrong person, correct?"	Establishes that the IRS's standard processes are demonstrably capable of assessing the wrong person.
ID-21	What procedures does the IRS follow to distinguish between a legitimate taxpayer and an identity thief before making an assessment?	Likely none — identity theft is typically discovered after the fact.	"So the IRS does not distinguish between the victim and the thief before making the assessment — it simply assesses based on the SSN,	Proves that the IRS has no pre-assessment identity verification procedure capable of detecting identity theft.

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
			correct?"	
ID-22	Is a Social Security number a biometric identifier — like a fingerprint or DNA?	No.	N/A — expected answer is favorable.	Establishes the fundamental limitation of SSN as an identifier — it is a number, not a physical attribute of a person.
ID-23	Can more than one person use the same Social Security number?	Must acknowledge — this occurs in identity theft, shared SSN cases, and administrative errors.	"And if more than one person uses the same SSN, the IRS cannot determine which person earned the income solely by reference to the SSN, correct?"	Destroys the foundation of SSN-based identity determination.
ID-24	Did anyone at the IRS contact [Petitioner/Defendant]'s employer(s) to confirm that [Petitioner/Defendant] — and not someone else using the same SSN —	Likely No.	"So the IRS assumed that because a W-2 bore a particular SSN, the person assigned that SSN earned the income — without independently verifying with the	Exposes the government's failure to take the most basic investigative step to confirm identity.

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
	actually worked there and earned the income?		employer?"	
ID-25	Are you aware that W-2 and 1099 forms are prepared by third parties — employers and payors — and not by the IRS?	Yes.	"And the IRS does not independently verify the accuracy of the identity information on those forms before relying on them, correct?"	Establishes that the government's identity evidence is third-party hearsay, not independently verified.
ID-26	If a third party — an employer or payor — records the wrong Social Security number on a W-2 or 1099, the IRS would assess the resulting liability against the wrong person, wouldn't it?	Must acknowledge the possibility.	"And the IRS has no procedure to prevent that from happening before the assessment is made, correct?"	Demonstrates that a third-party error — entirely outside the taxpayer's control — can cause the IRS to assess the wrong person.
ID-27	Has the IRS ever issued a formal, written determination — separate from the assessment itself — that	No.	N/A — expected answer is favorable.	Establishes the complete absence of any formal identity determination.

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
	[Petitioner/Defendant] is the person upon whom the tax liability at issue was imposed?			
ID-28	Do you agree that, as a matter of basic fairness, the government should be required to prove that it is pursuing the correct person before it seizes that person's property?	May attempt to deflect.	"Let me rephrase: Would you agree that the government should not seize property from a person who does not owe the tax?"	Appeals to fundamental fairness — difficult for the witness to disagree without appearing unreasonable.
ID-29	Can you identify any statute, regulation, or IRS procedure that expressly exempts the government from the obligation to prove the identity of the person it is assessing?	No.	N/A — expected answer is favorable.	Establishes that no legal authority supports the government's practice of assuming identity without proof.
ID-30	Sitting here today, can	Should answer No —	If Yes: "What is the basis	The culminating

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
	you state under oath, based on your personal knowledge, that [Petitioner/Defendant] is the person who earned the income, filed the return, and owes the tax at issue in this case?	the witness has no personal knowledge of these facts.	for that knowledge? Have you personally witnessed [Petitioner/Defendant] earning the income? Filing the return? You are testifying from documents, not personal knowledge, correct?"	question — forces the witness to admit, on the record, that the government cannot prove identity through this witness's testimony.

## **SECTION C: CLOSING QUESTIONS — SEALING THE RECORD**

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
C-1	Let me summarize: You do not personally know [Petitioner/Defendant], correct?	Correct.	N/A.	Locks in the admission for the record.
C-2	You did not independently verify [Petitioner/Defendant]'s identity	Correct.	N/A.	Locks in the absence of pre-assessment identity verification.

No.	Question	Expected Answer	Follow-Up / Impeachment	Evidentiary Purpose
	before the assessment was recorded, correct?			
C-3	The administrative file contains no document constituting an affirmative determination that [Petitioner/Defendant] is the person who owes the tax, correct?	Correct, or "the return and assessment serve that function" (which has already been undermined)	If the witness reasserts: "We've established that the return bears a name and SSN — not proof of identity. Is there any <i>other</i> document?"	Locks in the absence of documentary evidence of identity.
C-4	The IRS relied entirely on Social Security number matching to link [Petitioner/Defendant] to this liability, correct?	Correct.	N/A.	Locks in the government's sole method of identity determination.
C-5	You have acknowledged that Social Security numbers can be stolen, shared, or misassigned, correct?	Correct.	N/A.	Locks in the acknowledged unreliability of that method.

<b>No.</b>	<b>Question</b>	<b>Expected Answer</b>	<b>Follow-Up / Impeachment</b>	<b>Evidentiary Purpose</b>
C-6	You cannot state under oath, based on personal knowledge, that [Petitioner/Defendant] is the person who earned the income, filed the return, and owes the tax at issue, correct?	Correct.	N/A.	Final admission — creates a clean record establishing that the government's witness cannot prove identity.
C-7	Given everything you have testified to today, do you believe the government has met its obligation to establish that it is pursuing the correct person?	May attempt to assert yes.	"Based on what evidence? You have no personal knowledge, no independent verification, and no document establishing identity — on what basis has the government met its obligation?" [Objection likely — but the question is in the record.]	Final challenge — regardless of the answer, the record reflects the absence of evidence.
C-8	No further questions.	N/A.	N/A.	Clean conclusion.

## SECTION D: OBJECTION RESPONSES — PREPARED RESPONSES TO COMMON GOVERNMENT OBJECTIONS

Government Objection	Prepared Response
<p><b>"Identity has already been established."</b></p>	<p>By what competent evidence? The government has produced no testimony, no authenticated documents, and no independent verification establishing identity. A name on a return and a Social Security number in a database are not competent evidence of identity — they are data points that assume the very fact they purport to establish. The government cannot satisfy its burden of proof by asserting that identity has been established; it must <i>prove</i> it.</p>
<p><b>"The taxpayer identified himself by filing a return."</b></p>	<p>Filing a return does not waive the right to challenge identity, nor does it relieve the government of its independent obligation to prove liability. A return is a self-reporting document — it does not constitute government verification. Moreover, in identity theft cases, the person who files the return is not the person whose name and SSN appear on it. The government must independently prove that [Petitioner/Defendant] filed the return, earned the income, and owes the tax — it cannot rely on the return itself as proof of those facts.</p>
<p><b>"This is a frivolous argument."</b></p>	<p>This argument is grounded in specific statutory provisions (<b>26 U.S.C. §§ 6201, 6203, 6212, 6213, 6330, 7491, 7701</b>), specific regulatory provisions (<b>26 C.F.R. § 301.6203-1</b>), specific constitutional provisions (U.S. Const. amends. IV, V, XIV), and specific case law (<i><b>Bull</b></i></p>

Government Objection	Prepared Response
	<p><i>v. United States</i>, 295 U.S. 247 (1935); <i>Brafman v. United States</i>, 384 F.2d 863 (5th Cir. 1967); <i>Mathews v. Eldridge</i>, 424 U.S. 319 (1976); <i>Commissioner v. Shapiro</i>, 424 U.S. 614 (1976)). The characterization of a legal argument as "frivolous" is not a legal response — it is an assertion without analysis. The government must engage with the authorities cited and explain why they do not support the argument. Conclusory labels are not legal arguments.</p>
<p><b>"The assessment is presumed correct."</b></p>	<p>The presumption of correctness that attaches to the Commissioner's determination under <i>Welch v. Helvering</i>, 290 U.S. 111 (1933), presupposes that the determination was directed at the correct person. A presumption of correctness cannot cure a defect in identity. If the government is pursuing the wrong person, there is no valid "determination" to which a presumption can attach. The presumption of correctness is a procedural convenience — it does not relieve the government of the obligation to establish the jurisdictional prerequisites of its case, of which identity is the most fundamental.</p>
<p><b>"This line of questioning is irrelevant."</b></p>	<p>Identity is the threshold factual issue in this case. If the government cannot prove that [Petitioner/Defendant] is the person upon whom the tax was imposed, no other issue is relevant — not the amount of income, not the validity of deductions, not the applicability of penalties. Under Fed. R. Evid. 401, evidence is relevant if it has any tendency to make a fact of consequence more or less probable.</p>

<b>Government Objection</b>	<b>Prepared Response</b>
	Identity is a fact of consequence in every tax case. These questions are directly relevant to the central issue before the Court.
<b>"The Court should take judicial notice of identity."</b>	Judicial notice under Fed. R. Evid. 201 is appropriate only for facts "not subject to reasonable dispute" because they are either "generally known" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." The identity of [Petitioner/Defendant] as the person who earned the income, filed the return, and owes the tax is precisely the fact in dispute. It is not "generally known" and cannot be "accurately and readily determined" from database records that are demonstrably unreliable. Judicial notice is inappropriate.

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## **PART IV**

### **PROCEDURAL ROADMAP: COMPELLING AN IDENTITY HEARING IN TAX PROCEEDINGS**

This Part provides a step-by-step procedural roadmap for raising identity challenges in four distinct procedural tracks. Each track identifies the relevant deadlines, key documents to file, specific identity-related arguments to raise, and preservation-of-error instructions.

#### **CRITICAL DEADLINE WARNING**

Tax proceedings are governed by strict, jurisdictional deadlines. Failure to

file within the prescribed time period may result in permanent forfeiture of rights. The deadlines identified below are statutory and cannot be extended by agreement of the parties. Consult 26 U.S.C. §§ 6213(a), 6330(d), and 28 U.S.C. § 2401 for the specific statutory language.

## **TRACK A: TAX COURT – DEFICIENCY PROCEEDINGS**

### **Step 1: Receipt of Notice of Deficiency**

**Trigger:** IRS mails a Statutory Notice of Deficiency (also known as a "90-day letter") pursuant to **26 U.S.C. § 6212**.

**Deadline:** Petition must be filed with the Tax Court within **90 days** of the date of the notice (150 days if addressed to a person outside the United States). **26 U.S.C. § 6213(a)**. This deadline is jurisdictional and cannot be extended.

**Identity Action:** Upon receipt, document the notice. Note any identity-related irregularities: incorrect name, incorrect address, incorrect SSN, or any indication that the notice may not be directed at the correct person. Preserve the envelope and postmark.

**Preservation:** Retain the original notice, envelope, and all accompanying documents in their original condition.

---

### **Step 2: File Petition with the Tax Court**

**Action:** File a Petition for Redetermination with the United States Tax Court. **Tax Court Rule 34**.

**Identity Action:** In the Petition, include a specific allegation that the Government has failed to establish that Petitioner is the person upon whom the tax liability was imposed. Frame this as a jurisdictional challenge – the

Tax Court lacks jurisdiction to redetermine a deficiency that was never validly assessed against the correct person.

**Key Documents:** Petition; copy of Notice of Deficiency; Statement of Taxpayer Identification Number (Form 4).

---

### **Step 3: Answer and Preliminary Motions**

**Action:** After the Government files its Answer, review for any admissions or denials related to identity. File the Motion to Compel Identity Hearing (Part II of this Package) as a pre-trial motion.

**Deadline:** Motions should be filed sufficiently in advance of the trial date. Consult the Court's Standing Pre-Trial Order for specific deadlines.

**Identity Argument:** Argue that identity is a jurisdictional prerequisite that must be resolved before the merits are addressed. Request that the Court bifurcate the proceedings: identity first, merits second.

**Preservation:** File the motion in writing. If denied, request that the Court state its reasons on the record. Note the denial for appeal.

---

### **Step 4: Discovery on Identity**

**Action:** Serve discovery requests (Interrogatories, Requests for Production, Requests for Admission) specifically targeting the identity issue. **Tax Court Rules 70-75.**

**Key Requests:** (1) All documents reflecting identity verification procedures followed; (2) All records of identity determinations made; (3) The complete summary record of assessment and supporting documents under 26 C.F.R. § 301.6203-1; (4) All IRM provisions governing identity verification in the relevant context.

**Preservation:** If the Government objects to discovery, file a motion to compel and preserve the objections and the Court's rulings for appeal.

---

## **Step 5: Evidentiary Hearing or Trial**

**Action:** At trial, use the Cross-Examination Script (Part III) to challenge the Government's identity evidence. Present Movant's evidence, if any, challenging identity (e.g., identity theft reports, documentation of IRS errors, evidence of SSN misuse).

**Identity Argument:** Argue that the Government has failed to carry its burden of proving identity. Move for a directed verdict or judgment as a matter of law on the identity issue.

**Preservation:** Make all objections on the record. If the Court excludes evidence or overrules objections, state the basis for the objection and note it for appeal.

---

## **Step 6: Post-Trial and Appeal**

**Action:** If the Tax Court rules against Petitioner on the identity issue, file a Notice of Appeal with the appropriate United States Court of Appeals within **90 days** of the entry of decision. **26 U.S.C. § 7483.**

**Identity Argument on Appeal:** Argue that the Tax Court erred in (1) failing to require the Government to prove identity as a jurisdictional prerequisite; (2) allowing the assessment to stand without competent evidence of identity; (3) denying the Motion to Compel Identity Hearing.

**Preservation:** Ensure all identity-related issues were raised and ruled upon below. Issues not raised in the Tax Court are generally waived on appeal.

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# TRACK B: COLLECTION DUE PROCESS (CDP) PROCEEDINGS

## Step 1: Receipt of CDP Notice

**Trigger:** IRS sends a Notice of Federal Tax Lien Filing (Letter 3172) under **26 U.S.C. § 6320** or a Notice of Intent to Levy (Letter 1058 / LT11) under **26 U.S.C. § 6330**.

**Deadline:** Request for a CDP hearing must be filed within **30 days** of the date of the notice. **26 U.S.C. §§ 6320(a)(3)(B), 6330(a)(3)(B)**. This deadline is critical — failure to file within 30 days results in an "equivalent hearing" with no right to Tax Court review.

**Identity Action:** Note any identity-related irregularities on the notice. Preserve the notice and envelope.

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## Step 2: File Form 12153 — Request for a Collection Due Process Hearing

**Action:** File IRS Form 12153 (Request for a Collection Due Process or Equivalent Hearing) with the IRS office identified in the notice.

**Identity Action:** On Form 12153, in the section for reasons for disagreement, write: *"The IRS has failed to verify that [Taxpayer Name] is the person upon whom the tax liability at issue was imposed. Under 26 U.S.C. § 6330(c)(1), the Appeals officer must obtain verification that the requirements of applicable law have been met. The requirements of applicable law include the requirement that the person whose property is being seized is the person who owes the tax. I request that the Appeals officer obtain and produce evidence of identity verification."*

**Key Documents:** Form 12153; copy of CDP notice; any evidence supporting the identity challenge.

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### **Step 3: CDP Hearing with Appeals**

**Action:** Attend or participate in the CDP hearing (may be by telephone or correspondence). Raise the identity challenge affirmatively.

**Identity Argument:** (1) Under § 6330(c)(1), request that the Appeals officer produce verification that identity was established before the assessment was made. (2) Under § 6330(c)(2)(A), challenge the underlying liability on the ground that it was assessed against the wrong person. (3) Under § 6330(c)(3), argue that the proposed collection action is inappropriate because the government has not established that Movant owes the tax.

**Preservation:** Submit all arguments in writing. Request that the Appeals officer address the identity issue in the Notice of Determination. If the Appeals officer refuses to address it, document the refusal in writing.

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### **Step 4: Tax Court Petition (Review of CDP Determination)**

**Trigger:** Receipt of a Notice of Determination from the IRS Office of Appeals.

**Deadline:** Petition must be filed with the Tax Court within **30 days** of the date of the Notice of Determination. **26 U.S.C. § 6330(d)(1)**. This deadline is jurisdictional.

**Identity Action:** In the Petition, challenge the Notice of Determination on the ground that the Appeals officer failed to obtain verification that identity was established, as required by § 6330(c)(1). File the Motion to Compel Identity Hearing (Part II).

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### **Step 5: Tax Court Proceedings and Appeal**

**Action:** Proceed as in Track A, Steps 3-6. The standard of review in CDP cases is abuse of discretion for most issues, but de novo for challenges to the underlying liability (including identity).

**Appeal:** Notice of Appeal within **90 days** of entry of decision. **26 U.S.C. § 7483**.

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## TRACK C: REFUND SUIT – DISTRICT COURT OR COURT OF FEDERAL CLAIMS

### Step 1: Payment Under Protest

**Action:** Pay the assessed tax in full (or, for divisible taxes, pay the tax attributable to one transaction or period and file a refund claim). *Flora v. United States*, 362 U.S. 145 (1960).

**Identity Action:** When making payment, include a written statement: "*This payment is made under protest. [Taxpayer Name] does not concede that the liability at issue was properly assessed against [him/her/them]. [Taxpayer Name] specifically disputes that the Government has established [his/her/their] identity as the person upon whom the liability was imposed.*"

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### Step 2: File Administrative Refund Claim

**Action:** File IRS Form 843 (Claim for Refund and Request for Abatement) or an amended return (Form 1040-X) claiming a refund.

**Deadline:** Must be filed within **2 years** from the date the tax was paid or **3 years** from the date the return was filed, whichever is later. **26 U.S.C. § 6511(a)**.

**Identity Argument:** In the claim, state that the assessment was invalid because the Government failed to establish the identity of the person assessed, rendering the assessment void *ab initio*.

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### Step 3: File Refund Suit

**Trigger:** If the IRS denies the refund claim (or fails to act within six months).

**Deadline:** Suit must be filed within **2 years** from the date of the denial of the refund claim. **26 U.S.C. § 6532(a)(1)**.

**Forum:** United States District Court (with jury trial right) or United States Court of Federal Claims (no jury).

**Identity Action:** In the Complaint, include a specific count alleging that the assessment was void because the Government failed to establish identity. Plead identity as both an affirmative claim for refund and a jurisdictional defense to the assessment.

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#### **Step 4: Discovery, Trial, and Appeal**

**Action:** Conduct discovery under Fed. R. Civ. P. 26-37 (District Court) or RCFC 26-37 (Court of Federal Claims), targeting the identity issue. Use the Cross-Examination Script (Part III) at trial.

**Burden of Proof:** In a refund suit, the taxpayer generally bears the burden of proof. However, argue that the burden shifts to the Government on the identity issue under **26 U.S.C. § 7491** and the Due Process Clause.

**Appeal:** To the appropriate Circuit Court of Appeals (from District Court) or the Federal Circuit (from Court of Federal Claims).

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## **TRACK D: STATE TAX PROCEEDINGS**

### **General Framework**

1. State tax proceedings vary significantly by jurisdiction. However, the core identity argument — that the government must prove the identity of the person it is assessing before imposing liability — applies with equal force under state constitutions and statutes. The Fourteenth Amendment's Due Process and Equal Protection Clauses bind all state actors.

### **Step 1: Administrative Challenge**

**Action:** When a state tax agency issues an assessment, notice of deficiency, or collection notice, file a timely administrative protest or request for hearing under the state's administrative procedures act.

**Identity Action:** Raise the identity challenge at the earliest possible stage. Most states require exhaustion of administrative remedies before judicial review is available. Failure to raise the identity issue at the administrative level may result in waiver.

**Key Arguments:** (1) State due process clause (mirror of Fifth/Fourteenth Amendment); (2) State administrative procedures act (equivalent of APA burden of proof provisions); (3) State tax code requirements for identification of the taxpayer in the assessment.

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## **Step 2: Administrative Hearing**

**Action:** Present the identity challenge at the administrative hearing. Adapt the Cross-Examination Script (Part III) for state agency witnesses.

**Preservation:** Ensure all identity-related arguments are raised and ruled upon on the record. Request a written decision addressing the identity issue.

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## **Step 3: Judicial Review**

**Action:** If the administrative decision is adverse, seek judicial review in the appropriate state court within the time period prescribed by state law.

**Identity Argument:** Argue that the agency's failure to establish identity constitutes (1) a denial of due process; (2) a failure to comply with the requirements of applicable law; and (3) an arbitrary and capricious agency action.

**Deadline:** Varies by state — consult the state's administrative procedures act and tax code for the applicable filing deadline. Deadlines are typically 30 to 90 days from the date of the final administrative decision.

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## Step 4: Appeal

**Action:** If the trial court rules adversely, appeal to the intermediate appellate court and, if necessary, the state supreme court. If federal constitutional claims are raised and preserved, a petition for certiorari to the United States Supreme Court may be available under 28 U.S.C. § 1257.

**Preservation:** Ensure all federal constitutional arguments (Fifth Amendment, Fourteenth Amendment, Fourth Amendment) are raised and preserved at every stage.

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## SUMMARY: DEADLINES AND KEY ACTIONS BY TRACK

Track	Triggering Event	Critical Deadline	Forum	First Identity Filing
<b>A: Tax Court (Deficiency)</b>	Notice of Deficiency	90 days (150 if abroad)	U.S. Tax Court	Petition + Motion to Compel
<b>B: CDP</b>	CDP Notice (Lien/Levy)	30 days for CDP hearing request; 30 days for Tax Court petition after Notice of Determination	IRS Appeals → U.S. Tax Court	Form 12153 + written identity challenge
<b>C: Refund Suit</b>	Denial of refund claim	2 years from denial	U.S. District Court or Court of Federal Claims	Complaint with identity count
<b>D: State</b>	State assessment or collection notice	Varies by state (typically 30-90 days)	State administrative/judicial forum	Administrative protest with identity challenge

## **FINAL PRACTICE NOTE**

The identity hearing argument is novel and has not been widely adopted by courts. Practitioners should expect resistance from both the government and the bench. Success depends on rigorous preparation, precise framing (this is a due process argument, not a tax protester argument), and meticulous preservation of the record for appeal. The arguments presented in this Package are grounded in specific statutory, regulatory, and constitutional authorities. They are designed to withstand scrutiny and to force the government to confront a gap in its procedures that it has long been permitted to ignore.

This Package should be used in conjunction with independent legal research tailored to the specific facts of each case, the applicable circuit law, and any developments in the case law subsequent to the date of preparation. All bracketed placeholders must be replaced with case-specific information before any document is filed.

— End of Identity Hearing Litigation Package —