

PUB/PRI Taxation Argument Suite

*Elective Civil Capacities as Proprietary-Mode Taxation:
A Five-Part Doctrinal Package for Strategic Litigation*

Prepared for Doctrinal Advocacy & Constitutional Litigation

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NOTICE — FOR STRATEGIC LITIGATION USE

This document constitutes a doctrinal analysis package organized under the PUB/PRI analytical framework. It is intended for use by legal practitioners engaged in constitutional litigation and doctrinal advocacy. The arguments herein are structured for court-safe presentation, doctrinal coherence, and analytical rigor. Nothing in this package constitutes tax advice or a recommendation to refuse lawful obligations.

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Elective Civil Capacities as Proprietary-Mode Taxation: A Doctrinal Summary

Core Proposition. When tax liability arises not from the inherent sovereign command of the state but exclusively from a citizen's voluntary assumption of a state-created civil capacity — such as obtaining a professional license, incorporating a business entity, or entering a regulated employment classification — the state has ceased to exercise its sovereign taxing power and has instead entered into a proprietary-mode relationship with the citizen. This shift carries legal consequences that American courts have systematically refused to confront.

The Governmental/Proprietary Distinction. The distinction between governmental and proprietary functions is among the most durable in American public law. In sovereign immunity doctrine, it is settled that when a state or municipality engages in a proprietary function — operating a water utility, managing a commercial enterprise, running a transit system — the shield of sovereign immunity falls away. The state, having descended from its sovereign station into the marketplace, is held to the same obligations as any private actor. *See Indian Towing Co. v. United States*, 350 U.S. 61 (1955); *Turturro v. City of New York*, 27 N.Y.3d 474 (2016); *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427 (Tex. 2016). The Supreme Court in *South Carolina v. United States*, 199 U.S. 437 (1905), held directly that when a state engages in "ordinary private business," it is not exempt from federal taxing power "by the mere fact that it is being conducted by a state." The principle is clear: **modal shift strips sovereign prerogative.**

Application to Taxation. Now apply this logic to the citizen's side of the ledger. When the state creates optional civil capacities — professional licenses, corporate

charters, regulated employment classifications — and conditions specific tax obligations on participation in those capacities, it has constructed a proprietary mechanism of taxation. The citizen does not owe the tax by virtue of citizenship or residence (sovereign command, PUB mode). The citizen owes the tax because, and only because, she elected to enter a state-defined civil capacity. This is the mirror image of the *South Carolina* principle: the state, having structured its taxing power through voluntary civil mechanisms, has shifted from PUB to PRI mode.

The Consent Principle. Proprietary-mode relationships are consent-dependent. The state implicitly acknowledges this when it requires affirmative acts of participation — applications, registrations, filings — as prerequisites for the civil capacity. If consent is a structural prerequisite for entry, then withdrawal of consent must logically terminate the obligation. A system that demands consent for entry but denies the efficacy of withdrawal is not a consent-based system at all; it is sovereign compulsion wearing a contractual mask. *Cf. New York v. United States*, 505 U.S. 144, 175–76 (1992) (holding that the federal government may not "commandeer" state governments into service, because accountability requires that governmental choices be traceable to consent).

The Doctrinal Gap. Courts apply the governmental/proprietary distinction with considerable vigor in tort immunity, contract disputes, and Commerce Clause analysis. *See Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985) (abandoning the "traditional governmental functions" test precisely because the governmental/proprietary line proved unworkable — yet never questioning the line's legitimacy in immunity law). But when litigants attempt to extend the same distinction to taxation — to argue that capacity-conditioned taxation operates in proprietary mode — courts decline to engage. They invoke deference to legislative authority, the plenary nature of the taxing power, or the political question doctrine. They never explain why the structural logic that strips immunity from a state-run water utility does not also strip unilateral taxing authority from a state that taxes through elective civil capacities.

Conclusion. This asymmetry is not legally defensible. The governmental/proprietary distinction is either a legitimate structural principle or it is not. If it is, it must apply wherever the state shifts from sovereign command to consensual mechanism — including in taxation. The PUB/PRI framework demands doctrinal consistency: *if the mode shifts, the rules must shift with it.*

Sovereign Source → Elective Capacity → Consent → Liability → Withdrawal

The following structured flowchart traces the logical progression from sovereign taxing authority through the creation of elective civil capacities to the central doctrinal question: does the state acknowledge the consent framework it has implicitly adopted?

STEP 1: SOVEREIGN SOURCE

MODE: PUB (SOVEREIGN)

Description: The state possesses inherent taxing authority as an incident of sovereignty. Under Article I, § 8 of the U.S. Constitution and parallel state constitutional provisions, the power to tax is a sovereign prerogative. In PUB mode, taxation operates by direct command — it attaches to persons, property, or transactions by virtue of the state's sovereign jurisdiction, not by the taxpayer's choice.

Doctrinal Implication: PUB-mode taxation requires no individual consent. It is justified by the social contract in its most elemental form — the obligation of the citizen to contribute to the commonwealth. No withdrawal mechanism exists because the obligation is inherent in the relationship of citizen to sovereign. *See McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 428 (1819) ("The power to tax involves the power to destroy.").



STEP 2: ELECTIVE CAPACITY CREATION

MODE: PUB → TRANSITIONAL

Description: The state exercises its legislative power to create civil capacities — professional licenses, corporate charters, registered employment classifications, regulatory permits — and conditions specific tax obligations on a citizen's voluntary entry into these capacities. The tax does not arise from citizenship or residence alone; it arises from the citizen's affirmative act of assuming a state-defined status.

Doctrinal Implication: The state has introduced a volitional element into the tax relationship. By requiring an affirmative act of entry, the state has departed from the direct-command model of PUB-mode taxation. The question becomes: does this departure constitute a modal shift?



STEP 3: MODAL SHIFT (PUB → PRI)

MODE: CRITICAL TRANSITION

Description: By conditioning tax liability on elective participation rather than sovereign command, the state has shifted from PUB to PRI mode. The relationship between state and citizen now mirrors a proprietary relationship: the state has offered a capacity, the citizen has elected to assume it, and obligations flow from that election — not from sovereignty. This is structurally identical to the modal shift that courts recognize in sovereign immunity doctrine when the state enters the marketplace.

Doctrinal Implication: The *South Carolina v. United States*, 199 U.S. 437 (1905), principle applies in reverse. Just as the state cannot claim sovereign immunity when it engages in commercial activity, it should not be able to claim sovereign taxing authority when it taxes through commercial-style elective mechanisms. The modal shift is symmetrical.



STEP 4: CONSENT AS STRUCTURAL PREREQUISITE

MODE: PRI (PROPRIETARY)

Description: In PRI mode, the citizen's entry into the civil capacity constitutes an act of consent. The state has structured the relationship to require this consent — applications must be filed, fees paid, examinations passed, registrations maintained. Consent is not incidental; it is a structural prerequisite for the capacity and its attendant obligations.

Doctrinal Implication: Consent implies the right to withdraw. This is a foundational principle of contract law, consent theory, and constitutional governance. *See New York v. United States*, 505 U.S. 144 (1992) (recognizing that governmental structures must preserve accountability through traceable consent). If the state's proprietary-mode obligations depend on consent for their legitimacy, then the withdrawal of consent must have legal effect.



STEP 5: LIABILITY ATTACHES

MODE: PRI (PROPRIETARY)

Description: Tax liability arises as an incident of the elective capacity, not as a direct exercise of sovereignty. The professional licensee pays the licensing fee and associated taxes because she holds the license. The corporate entity pays franchise taxes because it maintains its charter. The employee has FICA withheld because he occupies a regulated employment classification. In each case, the tax is functionally a condition of the capacity.

Doctrinal Implication: If liability is an incident of the capacity — not of sovereignty — then it should terminate when the capacity terminates. The tax follows the capacity, not the person. This is the logical structure of PRI-mode

taxation, and it is the structure the state itself has chosen by conditioning liability on elective participation.



STEP 6: WITHDRAWAL

MODE: PRI (PROPRIETARY)

Description: The citizen withdraws from the elective capacity: surrenders the professional license, dissolves the corporation, exits the regulated employment classification, relinquishes the permit. The affirmative act that created the consent relationship is reversed.

Doctrinal Implication: If the PRI-mode framework is consent-consistent, liability terminates upon withdrawal. The citizen returns to PUB-mode status — a citizen subject only to direct sovereign taxation (income tax, property tax, sales tax), not to capacity-conditioned obligations. The question is whether the system honors this logic.



STEP 7: THE DOCTRINAL QUESTION

MODE: SYSTEM TEST

Description: Does the state acknowledge termination of capacity-specific liability upon withdrawal from the elective capacity?

Outcome

Implication

System Status

YES

— Liability terminates upon withdrawal

The system is consent-consistent. PRI-mode taxation operates as a genuine proprietary relationship. Entry and exit are symmetrical.

Consent-Consistent

NO

— Liability persists despite withdrawal

The state is exercising sovereign authority through proprietary mechanisms. It demands consent for entry but applies sovereign compulsion to prevent meaningful exit. The "consent" is illusory.

Structural Contradiction

Doctrinal Implication: If the answer is NO, the system exhibits the central pathology identified by the PUB/PRI framework: the state is *using proprietary mechanisms to achieve sovereign ends while avoiding proprietary constraints*. This is the doctrinal contradiction that courts must eventually address.

PART III — LITIGATION-READY MEMORANDUM OF LAW

Memorandum of Law: Elective Civil Capacities and the Proprietary-Mode Taxation Doctrine

IN THE [COURT NAME]

Case No. [CASE NUMBER]

[PLAINTIFF NAME],

Plaintiff/Petitioner,

v.

[DEFENDANT — STATE TAXING AUTHORITY],

Defendant/Respondent.

**MEMORANDUM OF LAW IN SUPPORT OF
[MOTION/PETITION]**

INTRODUCTION

This Memorandum addresses a question that American courts have long avoided: whether tax obligations that arise solely from a citizen's voluntary assumption of a state-created civil capacity — such as a professional license, corporate charter, or regulated employment classification — constitute an exercise of the state's sovereign taxing power or, instead, a proprietary-mode obligation subject to the structural principles of consent, consideration, and withdrawal.

The distinction between governmental and proprietary functions is among the most established in American public law. When a state or municipality descends from its sovereign station to engage in commercial or proprietary activity, courts consistently hold that sovereign immunity falls away and the state is held to the obligations of a private actor. *See, e.g., South Carolina v. United States*, 199 U.S. 437 (1905); *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427 (Tex. 2016). This Court is now asked to apply the same structural logic to taxation: when the state conditions tax liability on a citizen's elective participation in a state-defined civil capacity, the state has shifted from sovereign (PUB) mode to proprietary (PRI) mode, and the resulting obligations are subject to consent principles — including the right of withdrawal.

The state's refusal to acknowledge this modal shift — its insistence on treating elective-capacity taxation as an exercise of sovereign command while simultaneously structuring the obligation as a condition of voluntary participation — creates a doctrinal incoherence that this Court should not permit to stand.

STATEMENT OF THE ISSUE

Question Presented: Whether tax obligations that arise exclusively from a citizen's voluntary assumption of a state-created civil capacity — and not from the inherent sovereign command applicable to all citizens — constitute proprietary-mode obligations subject to the structural principles of consent and withdrawal, consistent with the governmental/proprietary distinction applied in sovereign immunity and other areas of public law.

ARGUMENT

I. The Governmental/Proprietary Distinction Is a Settled Principle of American Law

The distinction between governmental and proprietary functions is not novel. It has deep roots in American jurisprudence, spanning sovereign immunity, municipal tort liability, Commerce Clause analysis, and intergovernmental tax immunity.

In the sovereign immunity context, courts have long held that when a government entity performs a "proprietary function" — one that could be performed by a private entity, or one undertaken primarily for the benefit of the municipality rather than the public at large — sovereign immunity does not apply. *Indian Towing Co. v. United States*, 350 U.S. 61, 64-65 (1955) (characterizing the governmental/proprietary line as a "quagmire" while nonetheless applying it); *Turturro v. City of New York*, 27 N.Y.3d 474 (2016) (municipality's roadway design decisions constitute proprietary function, subjecting city to ordinary negligence standards).

The Texas Supreme Court has extended this principle to the contract-claims context, holding that "this governmental/proprietary dichotomy applies in the contract-claims context just as it does in the tort-claims context," because "a city is cloaked in the state's immunity only when it acts as a branch of the state, not when it is exercising a proprietary function." *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 439 (Tex. 2016).

The Supreme Court of the United States has applied this distinction directly in the taxation context — but only when the state is the taxpayer, not the taxing authority. In *South Carolina v. United States*, 199 U.S. 437 (1905), the Court held that when a

state engages in "ordinary private business" (operating a liquor dispensary), it is not immune from federal taxation "by the mere fact that it is being conducted by a state." *Id.* at 463. The principle is unambiguous: **when the state operates in proprietary mode, sovereign prerogatives yield.**

The governmental/proprietary distinction thus operates as a structural principle across multiple doctrinal domains. Its logic is consistent: when the sovereign descends from command to commerce, from imperium to dominium, different rules apply.

II. Taxation Conditioned on Elective Civil Capacities Operates in Proprietary Mode

The Petitioner does not challenge the state's inherent sovereign authority to levy taxes. The power to tax is a necessary incident of sovereignty. U.S. Const. art. I, § 8, cl. 1; *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 428 (1819). In PUB mode — direct taxation imposed on all citizens or residents by virtue of their relationship to the sovereign — taxation operates as sovereign command. No individual consent is required. No withdrawal mechanism is applicable.

But PUB-mode taxation is not what is at issue here. The tax obligations at issue arise not from the Petitioner's status as a citizen or resident, but from the Petitioner's voluntary assumption of a state-created civil capacity. The Petitioner's liability exists because, and only because, the Petitioner elected to [obtain a professional license / incorporate a business entity / enter a regulated employment classification]. Had the Petitioner not made this election, the specific tax obligation would not exist.

This structure — voluntary entry into a state-defined status as a prerequisite for tax liability — is the hallmark of a proprietary relationship, not a sovereign one. The state has created an optional capacity, offered it to the citizen, required an affirmative act of acceptance, and attached tax obligations to that acceptance. This is not materially different from a state-run enterprise offering a service and charging a fee. The modal shift from PUB to PRI has occurred.

Cf. Collector v. Day, 78 U.S. (11 Wall.) 113 (1871) (recognizing that the structural relationship between sovereign and functionary affects the permissibility of taxation — a principle subsequently narrowed by *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466 (1939), but never repudiated in its structural logic).

III. Proprietary-Mode Obligations Are Subject to Consent Principles, Including Withdrawal

If elective-capacity taxation operates in PRI mode, then the principles that govern proprietary relationships must apply — chief among them, the principle of consent.

Consent is not merely a philosophical abstraction; it is a structural feature of the elective-capacity system. The state *requires* consent for entry. Applications must be filed. Examinations must be passed. Fees must be paid. Registrations must be maintained. The state has constructed the entire system on the premise that participation is voluntary and consent-dependent.

But consent, to be meaningful, must include the right to withdraw. This is a foundational principle of both contract law and constitutional governance. *See New York v. United States*, 505 U.S. 144, 168 (1992) ("Where the Federal Government directs the States to regulate, it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain combatives insulated from the electoral ramifications of their decision.") (O'Connor, J.) (recognizing that accountability — and hence legitimacy — depends on the traceability of consent).

If the state denies the efficacy of withdrawal — if it insists that the tax obligations attached to an elective capacity persist even after the citizen has surrendered the capacity — then the "consent" required for entry is revealed as illusory. The state has used the form of consent without the substance. It has employed a proprietary mechanism to achieve sovereign ends while refusing to accept proprietary constraints. This is precisely the structural incoherence that the governmental/proprietary distinction was designed to prevent.

IV. The Court's Refusal to Apply the Governmental/Proprietary Distinction to Taxation Creates an Indefensible Doctrinal Asymmetry

The governmental/proprietary distinction is applied with considerable rigor in tort immunity, contract disputes, Commerce Clause analysis, and intergovernmental tax immunity. Yet when litigants have attempted to extend the same distinction to the structure of taxation itself — to argue that the state's choice to tax through elective civil capacities constitutes a modal shift requiring consent-based principles — courts have consistently declined to engage.

The avoidance mechanisms are familiar:

- **Deference to legislative authority:** Courts invoke the plenary nature of the taxing power and decline to scrutinize the structural mechanisms through which it is exercised. But plenary power does not mean structurally unconstrained power. The Commerce Clause is also a plenary power, yet courts scrutinize the mechanisms of its exercise.
- **Political question doctrine:** Courts characterize the structure of taxation as a political question unsuitable for judicial resolution. But the governmental/proprietary distinction in tort immunity is no less a structural question, and courts resolve it routinely.
- **Rational basis review:** Courts apply minimal scrutiny to tax classifications. But rational basis review addresses whether a tax classification is rationally related to a legitimate purpose — not whether the structural mode of taxation triggers consent-based principles.
- **Taxation as sui generis:** Courts treat the taxing power as categorically different from all other state powers, insulated from structural analysis. But the Supreme Court itself rejected this categorical insulation in *South Carolina v. United States*, holding that the state's engagement in proprietary activity subjects it to taxation. If proprietary activity strips sovereign tax immunity, proprietary taxation should strip sovereign taxing authority.

None of these avoidance mechanisms addresses the structural argument. The governmental/proprietary distinction is either a legitimate analytical framework or it is not. If it is — and decades of jurisprudence across multiple doctrinal domains confirm that it is — then it must be applied consistently, including when the state chooses to tax through proprietary-mode mechanisms.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court:

1. **Recognize** that tax obligations arising exclusively from a citizen's voluntary assumption of a state-created civil capacity operate in proprietary mode, not

sovereign mode, under the governmental/proprietary distinction established in American public law;

2. **Hold** that proprietary-mode tax obligations are subject to the structural principles of consent, including the right of withdrawal from the elective capacity and the consequent termination of capacity-specific tax liability;
3. **Apply** the governmental/proprietary distinction to the tax obligations at issue in this case with the same analytical rigor that courts apply in sovereign immunity, municipal liability, and Commerce Clause jurisprudence; and
4. **Grant** such further relief as this Court deems just and proper.

Respectfully submitted,

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Attorney for Plaintiff/Petitioner

Dated: _____

PART IV — PHILOSOPHICAL JUSTIFICATION

The Moral Tension Between Sovereignty and Ownership: A PUB/PRI Analysis

I. The Two Modes of State Authority

The state operates in two fundamentally different modes, and the distinction between them is not merely analytical — it is moral. In the first mode, **sovereignty**, the state commands. It exercises authority that precedes consent, that does not

depend on individual agreement, and that cannot be refused by the individual citizen without renouncing citizenship itself. Taxation in sovereign mode is the paradigmatic example: the citizen owes tribute to the commonwealth because she is a citizen, full stop. The obligation is prior to contract, prior to election, prior to any affirmative act.

In the second mode, **ownership** (or proprietary authority), the state transacts. It creates institutions, offers capacities, provides services, and enters relationships that depend — structurally and morally — on the voluntary participation of individuals. When the state operates a commercial enterprise, issues a professional license, or charters a corporation, it steps out of the command posture and into a transactional one. It offers something; the citizen accepts; obligations flow from the acceptance.

These two modes are not merely different in degree. They are different in kind. And the state *cannot occupy both simultaneously without contradiction*. It cannot say, in the same breath: "Your participation is voluntary — you chose to obtain this license" and "Your obligations are sovereign — you cannot escape them by surrendering the license." The first claim operates in PRI mode; the second in PUB mode. They are mutually exclusive.

II. The Lockean Foundation

John Locke's *Second Treatise of Government* (1689) established the principle that has animated Western constitutional governance for three centuries: government derives its just powers from the consent of the governed. Locke was careful to distinguish between *tacit* consent — the passive acceptance of sovereign authority by those who reside within a polity — and *express* consent — the affirmative act of joining a political community or assuming a specific civic obligation.

The PUB/PRI framework maps directly onto this distinction. PUB-mode taxation operates on tacit consent: by residing within the jurisdiction and accepting the benefits of organized society, the citizen consents to bear her share of the public burden. This is the Lockean social contract at its most elemental. But when the state creates optional civil capacities and conditions obligations on entry into those capacities, it moves from tacit to express consent. It demands an affirmative act — an application, a filing, a registration. In doing so, it implicitly acknowledges the consent framework. It has structured the relationship around choice.

Having acknowledged the consent framework, the state cannot then claim sovereign immunity from the consequences of that framework. If entry requires express consent, then exit — the withdrawal of that consent — must be legally effective. A system that demands express consent for entry but denies the efficacy of withdrawal has abandoned the consent principle while retaining its vocabulary. This is not governance; it is linguistic capture.

III. The Proprietary Paradox

The state's motivation for creating elective civil capacities is understandable. By structuring obligations around voluntary participation, the state expands its regulatory reach without bearing the political cost of direct sovereign compulsion. It is easier, politically, to require a professional license and attach a tax to it than to impose a direct tax on professional activity. The elective-capacity model allows the state to say: "We are not taxing you. You chose to participate."

But this structural choice creates a paradox. The state wants the *benefits* of proprietary mechanisms — expanded reach, reduced political friction, the legitimizing gloss of consent — without the *constraints* of proprietary relationships — accountability, reciprocity, and the right of exit. It wants to be an entrepreneur when it creates the capacity and a sovereign when it enforces the obligation. This is morally incoherent. Rousseau's *Social Contract* (1762) warned against precisely this duality: a sovereign that "treats its subjects as a shepherd treats his flock, namely with a view to eating them," has ceased to be a legitimate government and has become something else entirely.

IV. The Ownership Trap

The moral problem compounds when the formally elective capacity becomes substantively coerced. Consider professional licensing. In theory, obtaining a professional license is voluntary — no one is compelled to become a licensed attorney, physician, or engineer. In practice, professional licensing is a prerequisite for economic participation in entire sectors of the economy. The citizen who declines to obtain a license is not merely forgoing a state benefit; she is forgoing her livelihood.

When the state creates a civil capacity and then makes it practically necessary for economic survival, it has transformed a formally elective choice into a substantively coerced one. The "consent" required for entry is no longer meaningful — it is

extracted under conditions of economic duress. Yet the state continues to treat the capacity as voluntary and to justify its attached obligations on consent grounds. This is the Ownership Trap: the state uses proprietary mechanisms with sovereign coercive effect, compounding the moral incoherence of the PUB/PRI confusion.

V. The Consent Asymmetry

The deepest moral problem in the current system is not that the state taxes through elective capacities. It is the *asymmetry* in how it treats consent. Citizens who enter elective capacities are treated, for all purposes, as having consented to every obligation attached to that capacity. Their consent is presumed, enforced, and irrevocable as to obligations. But they are denied the reciprocal right to withdraw that consent — or, more precisely, they are permitted to withdraw from the capacity in name while remaining subject to its obligations in fact (through retroactive liability, transition penalties, continuing compliance requirements, and administrative inertia).

This asymmetry reveals the true nature of elective-capacity taxation: it is not consent-based and not sovereignty-based. It is **extractive**. It uses the language of consent to legitimize entry and the machinery of sovereignty to prevent exit. It borrows the moral authority of the social contract without honoring the social contract's most basic requirement: that the governed retain the right to withdraw their consent from specific obligations they have voluntarily assumed.

VI. Conclusion: The Demand for Resolution

A system that demands consent for entry but denies it for exit is neither sovereign nor proprietary — it is structurally incoherent. The PUB/PRI framework does not resolve this incoherence; it *exposes* it. It forces the question that courts have avoided: if the state has chosen to tax through proprietary mechanisms, must it accept proprietary constraints? The philosophical tradition — from Locke through Rousseau through contemporary critiques of the administrative state — answers unequivocally: **yes**. Modal choice carries modal consequences. A state that descends from sovereignty into commerce cannot simultaneously claim the prerogatives of both. The PUB/PRI framework demands that the state choose — and that courts hold it to the consequences of its choice.

Judicial Avoidance Matrix: Where Courts Refuse to Address Elective-Capacity Taxation

The following matrix identifies eight doctrinal areas in which courts apply the governmental/proprietary distinction outside the taxation context but refuse to extend the same structural logic to taxation conditioned on elective civil capacities. For each area, the matrix identifies the court's position in both contexts, the resulting contradiction, representative cases, and the avoidance mechanism by which courts dodge the issue.

Doctrinal Area	Court's Position in Non-Tax Context	Court's Position in Tax Context	The Contradiction	Representative Cases	Avoidance Mechanism
1. Sovereign Immunity / Tort — Proprietary Function Exception	When a government entity performs a proprietary function (e.g., operating a utility, maintaining infrastructure for commercial purposes), sovereign immunity is waived. The state is held to the same standard as a private actor.	When the state creates elective civil capacities and taxes through them — a structurally identical proprietary mechanism — courts refuse to apply the proprietary function analysis. The taxing power is treated as categorically sovereign regardless of the	The modal shift from governmental to proprietary strips immunity in tort but does not alter the character of the taxing power. The same structural logic (descent from command to transaction) produces opposite legal consequenc	<i>Indian Towing Co. v. United States</i> , 350 U.S. 61 (1955); <i>Turturro v. City of New York</i> , 27 N.Y.3d 474 (2016); state-level proprietary function immunity cases	Courts treat sovereign immunity and taxing power as doctrinally separate domains, declining to apply cross-domain structural analysis. The governmental/proprietary distinction is treated as domain-specific rather than as a general

Doctrinal Area	Court's Position in Non-Tax Context	Court's Position in Tax Context	The Contradiction	Representative Cases	Avoidance Mechanism
		mechanism.	es depending on the doctrinal domain.		structural principle.
2. Municipal Liability – Governmental vs. Proprietary Functions	Municipalities are liable for tortious conduct in proprietary functions but immune for governmental functions. Courts routinely analyze whether a specific municipal activity is governmental or proprietary. <i>Wasson Interests, Ltd. v. City of Jacksonville</i> , 489 S.W.3d 427 (Tex. 2016), extended this to contract claims.	When municipalities impose taxes, fees, or assessments conditioned on elective participation in municipal programs, courts do not analyze whether the taxing mechanism is governmental or proprietary. The municipality's taxing authority is treated as inherently governmental.	Courts subject every other municipal activity to governmental/proprietary classification — except the one activity (taxation) where the classification would most directly constrain state power. The omission is systematic and unexplained.	<i>Wasson Interests</i> , 489 S.W.3d 427 (Tex. 2016); <i>Owen v. City of Independence</i> , 445 U.S. 622 (1980); <i>Monell v. Dep't of Social Services</i> , 436 U.S. 658 (1978)	Courts invoke the legislative authority of municipalities to set tax rates and classifications, treating this as a political question immune from structural analysis. The governmental/proprietary test is applied everywhere except where it would limit fiscal power.
3. State Commercial Activity – <i>South Carolina v. United</i>	When a state engages in commercial or proprietary	When the state structures its own taxing power	The <i>South Carolina</i> principle is applied asymmetrically:	<i>South Carolina v. United States</i> , 199 U.S. 437 (1905);	Courts distinguish between the state-as-market-participant

Doctrinal Area	Court's Position in Non-Tax Context	Court's Position in Tax Context	The Contradiction	Representative Cases	Avoidance Mechanism
States Line	activity, it loses its sovereign tax immunity against the federal government. The state "engaging in ordinary private business" cannot claim immunity from federal excise taxes.	through commercial-style mechanisms (elective capacities, fee-for-service models, licensing), courts do not apply the reciprocal principle. The state's use of proprietary mechanisms to tax does not alter the sovereign character of the tax.	proprietary activity strips the state's tax immunity but never strips the state's taxing authority. The same modal shift produces opposite consequences depending on whether the state is taxpayer or taxer.	<i>New York v. United States</i> , 326 U.S. 572 (1946) (mineral water tax); <i>Massachusetts v. United States</i> , 435 U.S. 444 (1978)	(subject to taxation) and the state-as-taxing-authority (exercising sovereignty), without explaining why the structural logic of modal shift applies to the former but not the latter.
4. Intergovernmental Tax Immunity — McCulloch Doctrine	Neither the federal government nor the states may tax the instrumentalities of the other sovereign in a manner that impairs the other's sovereign functions. <i>McCulloch v. Maryland</i> , 17 U.S. (4 Wheat.)	When the state taxes citizens through elective civil capacities, the citizen is not afforded any comparable "immunity" analysis. There is no inquiry into whether the taxing mechanism is governmental or	Intergovernmental tax immunity protects sovereigns from being taxed on their governmental functions but provides no analogous protection for citizens taxed through the state's proprietary mechanisms. The	<i>McCulloch v. Maryland</i> , 17 U.S. (4 Wheat.) 316 (1819); <i>Collector v. Day</i> , 78 U.S. (11 Wall.) 113 (1871) (overruled in part); <i>Graves v. New York ex rel. O'Keefe</i> , 306 U.S. 466 (1939)	Courts frame intergovernmental tax immunity as a federalism principle — a structural protection for sovereign entities — rather than as an application of the governmental/proprietary distinction. This allows

Doctrinal Area	Court's Position in Non-Tax Context	Court's Position in Tax Context	The Contradiction	Representative Cases	Avoidance Mechanism
	316 (1819). But this immunity applies only to <i>governmental</i> functions; proprietary activities of one sovereign are taxable by the other.	proprietary from the citizen's perspective — only from the inter-sovereign perspective .	governmental/proprietary analysis protects states but not individuals.		courts to avoid extending the same structural protection to individuals.
5. Professional Licensing — Elective Capacity with Mandatory Tax Incident	Professional licensing is treated as a regulatory mechanism, not a sovereign command. Licensure is voluntary (in form); the state creates the capacity and the individual elects to enter it. Courts analyze licensing regimes under due process and equal protection frameworks that presuppose volitional participatio	Taxes attached to professional licenses (license fees, occupational taxes, continuing education surcharges) are treated as sovereign impositions, not as incidents of a voluntary capacity. Courts do not analyze whether the mandatory tax character of the fee contradicts the voluntary character of the	The license is treated as voluntary for purposes of entry (no due process violation — the citizen chose to participate) but as sovereign for purposes of the attached tax (no consent analysis applies). The same capacity is simultaneously voluntary and compulsory, depending on which	<i>Dent v. West Virginia</i> , 129 U.S. 114 (1889); <i>Schwartz v. Board of Bar Examiners</i> , 353 U.S. 232 (1957); state occupational licensing tax cases	Courts characterize the licensing tax as an exercise of the state's "police power" or "regulatory authority," collapsing the PUB/PRI distinction by treating all state-imposed obligations as inherently governmental. The voluntariness of the license is acknowledged; the voluntariness of its tax incidents is not examined.

Doctrinal Area	Court's Position in Non-Tax Context	Court's Position in Tax Context	The Contradiction	Representative Cases	Avoidance Mechanism
	n.	license.	legal question is at issue.		
6. Corporate Formation — State-Created Entity with State-Imposed Tax Obligations	<p>Courts recognize that a corporation is a creature of state law — an artificial entity that exists only by virtue of state charter. The corporate form is elective; no one is compelled to incorporate. Courts routinely analyze the state-corporation relationship as one of privilege, not sovereignty.</p>	<p>Franchise taxes, corporate income taxes, and filing fees attached to the corporate form are treated as sovereign impositions. Courts do not analyze whether the state's creation of the corporate form and its conditioning of tax obligations on that form constitutes a proprietary relationship subject to consent principles.</p>	<p>The state creates an optional civil capacity (the corporate form), conditions significant tax obligations on entry, and treats those obligations as sovereign rather than proprietary. If the corporation is a "privilege" granted by the state, the obligations attached to it should be analyzed as incidents of that privilege — not as sovereign commands.</p>	<p><i>Hale v. Henkel</i>, 201 U.S. 43 (1906); <i>CTS Corp. v. Dynamics Corp. of America</i>, 481 U.S. 69 (1987); <i>Trustees of Dartmouth College v. Woodward</i>, 17 U.S. (4 Wheat.) 518 (1819)</p>	<p>Courts invoke the "privilege" theory of incorporation (the corporate charter is a state-granted privilege) to justify taxation, without acknowledging that the privilege framework is itself a consent-based, proprietary-mode analysis. The privilege theory is used to justify the tax but never to constrain it through consent principles.</p>
7. Employment Regulation — FICA/With	<p>Employment is understood as a voluntary relationship</p>	<p>FICA contributions, income tax withholding, and</p>	<p>The employment relationship is treated as</p>	<p><i>Garcia v. San Antonio Metropolitan Transit Authority</i>,</p>	<p>Courts treat employment-related taxes as exercises of</p>

Doctrinal Area	Court's Position in Non-Tax Context	Court's Position in Tax Context	The Contradiction	Representative Cases	Avoidance Mechanism
holding as Incident of Employment Relationship	. Both employer and employee enter the relationship by choice. Employment regulation (wage and hour laws, workplace safety, anti-discrimination) is justified as an exercise of the state's power to regulate voluntary commercial relationships — a proprietary-mode analysis.	unemployment insurance taxes are imposed as mandatory incidents of the employment relationship. Courts do not analyze whether these tax obligations, which arise solely from the citizen's voluntary entry into a regulated employment classification, should be treated as proprietary-mode obligations subject to consent.	voluntary for purposes of regulation (both parties consented to enter) but as compulsory for purposes of the tax incidents attached to it. The citizen is deemed to have consented to employment but not to have the right to structure that employment in a manner that avoids capacity-conditioned taxation.	469 U.S. 528 (1985); <i>Steward Machine Co. v. Davis</i> , 301 U.S. 548 (1937); <i>United States v. Butler</i> , 297 U.S. 1 (1936)	the taxing power under Art. I, § 8 and the Sixteenth Amendment, declining to analyze the structural relationship between the voluntary employment relationship and the mandatory tax incident. <i>Garcia's</i> abandonment of the "traditional governmental functions" test is invoked to foreclose structural inquiry entirely.
8. Regulatory Fees vs. Taxes — The Fee/Tax Distinction as PUB/PRI Proxy	Courts distinguish between regulatory fees (charged for a specific benefit or privilege) and taxes (imposed for general	When a charge imposed on an elective capacity is classified as a "tax" rather than a "fee," courts apply sovereign-mode	The fee/tax distinction is a functional proxy for the PUB/PRI question: fees are PRI-mode charges (attached to voluntary	<i>NFIB v. Sebelius</i> , 567 U.S. 519 (2012); <i>San Juan Cellular Telephone Co. v. Public Service Commission</i> , 967 F.2d 683 (1st	Courts treat the fee/tax classification as dispositive, creating a binary that obscures the structural continuum between

Doctrinal Area	Court's Position in Non-Tax Context	Court's Position in Tax Context	The Contradiction	Representative Cases	Avoidance Mechanism
	revenue). Regulatory fees require a nexus between the fee and the regulatory benefit — a consent-like analysis. <i>National Federation of Independent Business v. Sebelius</i> , 567 U.S. 519 (2012), turned on this distinction.	analysis and decline to require the nexus, voluntariness, or proportionality standards applicable to fees. The identical economic burden receives different structural treatment based on its classification.	participation, subject to proportionality); taxes are PUB-mode charges (sovereign command, not consent-dependent). Courts use this proxy without acknowledging that it proves the existence of the PUB/PRI modal distinction in taxation.	Cir. 1992); <i>Valero Terrestrial Corp. v. Caffrey</i> , 205 F.3d 130 (4th Cir. 2000)	PUB and PRI modes. By forcing each charge into one of two categories, courts avoid confronting the intermediate cases — elective-capacity taxes — where the charge exhibits characteristics of both modes.

Synthesis: The Pattern of Avoidance

The matrix above reveals a consistent pattern: courts apply the governmental/proprietary distinction with vigor in every doctrinal domain *except* the one where its application would most directly constrain state fiscal power. The avoidance is not random. It is systematic, and it operates through a limited repertoire of mechanisms:

5. **Domain isolation:** Treating the taxing power as a doctrinally separate domain, insulated from the structural principles that govern all other exercises of state authority.
6. **Categorical sovereignty:** Treating all taxation as inherently sovereign, regardless of the mechanism through which it is imposed — thereby defining away the PUB/PRI question rather than answering it.

7. **Selective voluntariness:** Acknowledging the voluntary character of elective capacities for purposes that benefit the state (justifying regulation, defeating due process challenges) while ignoring the same voluntariness for purposes that would constrain the state (requiring consent-based analysis of attached tax obligations).
8. **Proxy avoidance:** Using the fee/tax distinction as a binary that obscures the structural continuum between sovereign command and consensual transaction, preventing courts from confronting the intermediate cases where the PUB/PRI question is most acute.

The PUB/PRI framework does not require courts to abandon the taxing power. It requires them to apply the same structural consistency to taxation that they apply to every other exercise of state authority. If the governmental/proprietary distinction is a legitimate principle of American public law — and a century of jurisprudence confirms that it is — then it must apply to taxation no less than to tort immunity, municipal liability, or Commerce Clause analysis. The current asymmetry is not a principled distinction. It is a doctrinal evasion, and it demands resolution.

Doctrinal Note

The PUB/PRI framework advanced in this package does not argue that all taxation is illegitimate or that citizens may unilaterally refuse tax obligations. It argues that when the state *chooses* to structure its taxing power through proprietary-mode mechanisms — elective civil capacities requiring individual consent for entry — it has made a structural choice with structural consequences. The framework demands that courts acknowledge the modal shift and apply the principles that follow from it: consent, consideration, proportionality, and the right of withdrawal. This is not tax resistance. It is doctrinal consistency.