

STATUTORY-DOCTRINAL DIVERGENCE TABLE: I.R.C. SUBTITLE A

Comprehensive Itemization of Subject-Matter Requirements Where Statutory Text Diverges from Judicial Doctrine

NOTE

This table catalogs every subject-matter area within I.R.C. Subtitle A (§§ 1-1564) where the statutory text or Treasury regulations impose requirements that diverge from—or are supplemented, overridden, or replaced by—judicial doctrine. Where the Code or regulations impose no requirement on a given subject, the Statute/Regulation Approach column reads "NA." All statutory citations are to the Internal Revenue Code of 1986, as amended. All regulatory citations are to Title 26, C.F.R.

No.	Subject Matter	Statute / Regulation Approach	Judicial Doctrine
SECTION A: GROSS INCOME — DEFINITION AND SCOPE			
1	Definition of Gross Income	§61(a): "all income from whatever source derived," followed by a non-exclusive list of 15 items. No further definitional criteria.	<i>Comm'r v. Glenshaw Glass Co.</i> , 348 U.S. 426 (1955): "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion." Adds three-part test not in statutory text.
2	Realization	NA — §61 does not	<i>Eisner v. Macomber</i> ,

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	Requirement	define or require a "realization event" as a prerequisite to inclusion.	252 U.S. 189 (1920): Income requires a "realization" — a severing of gain from capital. Although narrowed by <i>Glenshaw Glass</i> , courts still treat realization as a constitutional and practical prerequisite to inclusion.
3	Imputed Income	NA — No Subtitle A provision addresses imputed income from self-performed services or owner-occupied property.	Courts uniformly hold imputed income is not taxable. <i>Helvering v. Indep. Life Ins. Co.</i> , 292 U.S. 371 (1934). This exclusion is entirely judge-made; no statutory exclusion exists.
4	Assignment of Income — Services	§61(a)(1): Compensation for services is income to the recipient. No rule addressing pre-assignment of earned income.	<i>Lucas v. Earl</i> , 281 U.S. 111 (1930): Income is taxed to the person who earns it. The "fruit and tree" metaphor prevents assignment of earned income regardless of valid state-law contracts. Entirely judicial creation.
5	Assignment of Income — Property	§61(a) and §102: Income from property taxed to owner; gifts excluded from gross income. No rule addressing income-stripping from property.	<i>Helvering v. Horst</i> , 311 U.S. 112 (1940): Detaching income rights (e.g., bond coupons) from underlying property and gifting them does not shift tax liability. Income taxed to the owner of the "tree." <i>Blair v. Commissioner</i> , 300 U.S. 5 (1937), distinguished for assignment of entire property interest.

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6	Constructive Receipt	§451(a): Income included in the year "received." Treas. Reg. §1.451-2(a): Income constructively received when "credited to his account, set apart for him, or otherwise made available" absent "substantial limitations or restrictions."	Judicial doctrine predates and expands the regulation. <i>Corliss v. Bowers</i> , 281 U.S. 376 (1930): Income "subject to a man's unfettered command" is taxable whether enjoyed or not. Courts apply constructive receipt more broadly in deferred-compensation and cash-method contexts than the regulation's text, importing subjective intent analysis.
7	Claim of Right	NA — No Subtitle A provision addresses the tax treatment of amounts received under a claim of right but subject to a contingent obligation to repay. §1341 addresses only the computational remedy.	<i>North American Oil Consol. Co. v. Burnet</i> , 286 U.S. 417 (1932): Amounts received under a "claim of right" without restriction are includible when received, even if the obligation to repay is disputed. The inclusion rule itself is entirely judicial.
8	Tax Benefit Rule — Inclusionary Aspect	NA — No Subtitle A provision requires re-inclusion of a recovered item previously deducted. §111 addresses only the exclusionary side (excluding recovery of items that produced no tax benefit).	<i>Hillsboro Nat'l Bank v. Comm'r</i> , 460 U.S. 370 (1983): If an event occurs that is "fundamentally inconsistent" with the premise of a prior deduction, the recovery is income regardless of the form of the recovery. The inclusionary arm is entirely judge-made.
9	Treasure Trove / Found Property	§61(a): "all income from whatever source derived." No specific provision for	<i>Cesarini v. United States</i> , 296 F. Supp. 3 (N.D. Ohio 1969): Applied the

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		found property. Treas. Reg. §1.61-14(a): Treasure trove is gross income "for the taxable year in which it is reduced to undisputed possession."	regulation but added the requirement that the finder have "undisputed possession," a factual test courts apply with varying rigor. Minimal doctrinal divergence but courts add fact-intensive dominion analysis.
10	Gift vs. Income Distinction	§102(a): "Gross income does not include the value of property acquired by gift." No statutory definition of "gift."	<i>Comm'r v. Duberstein</i> , 363 U.S. 278 (1960): A "gift" requires transfer from "detached and disinterested generosity" — a subjective, transferor-intent test nowhere in the statute. The test is fact-intensive, jury-triable, and entirely judge-made.
11	Income from Discharge of Indebtedness — Insolvency	§61(a)(11): Discharge of indebtedness is gross income. §108(a): Excludes discharge income in specified circumstances (bankruptcy, insolvency, qualified farm/real property).	<i>United States v. Kirby Lumber Co.</i> , 284 U.S. 1 (1931): Established cancellation of indebtedness as income before codification. Courts added the "contested liability" and "purchase price reduction" doctrines (<i>Zarin v. Commissioner</i> , 916 F.2d 110 (3d Cir. 1990)) that operate outside §108's framework.
SECTION B: DEDUCTIONS — GENERAL REQUIREMENTS			
12	"Ordinary and Necessary" Business Expenses	§162(a): Allows deduction for "ordinary and necessary expenses paid or incurred	<i>Welch v. Helvering</i> , 290 U.S. 111 (1933): Added judicial gloss requiring "ordinary" to mean customary

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		<p>during the taxable year in carrying on any trade or business."</p>	<p>or normal in the industry, and "necessary" to mean appropriate and helpful. The distinction between "ordinary" and "capital" is judicially imposed — the statute draws no such line within §162.</p>
13	<p>"Carrying On" a Trade or Business</p>	<p>§162(a): Deduction allowed for expenses "in carrying on any trade or business." No definition of when a business has commenced.</p>	<p><i>Comm'r v. Groetzinger</i>, 480 U.S. 23 (1987): Trade or business requires "regular, continuous, and substantial" activity conducted with a primary profit motive. <i>Richmond Television Corp. v. United States</i>, 345 F.2d 901 (4th Cir. 1965): Pre-opening/startup expenses are non-deductible — the "carrying on" requirement interpreted as excluding preparatory activities. Entirely judicial temporal restriction.</p>
14	<p>Reasonable Compensation</p>	<p>§162(a)(1): Allows deduction for "a reasonable allowance for salaries or other compensation for personal services actually rendered." No definition of "reasonable."</p>	<p><i>Exacto Spring Corp. v. Comm'r</i>, 196 F.3d 833 (7th Cir. 1999) (Posner, J.): Independent-investor test — whether a hypothetical investor would approve the compensation given the company's return on equity. Other circuits use multi-factor tests</p>

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			<i>(Elliotts, Inc. v. Comm'r</i> , 716 F.2d 1241 (9th Cir. 1983)). The reasonableness standard is entirely judge-made, varying by circuit.
15	Travel Expense — "Tax Home"	§162(a)(2): Deduction for travel expenses "while away from home." No statutory definition of "home."	<i>Comm'r v. Flowers</i> , 326 U.S. 465 (1946): Three-part test: (1) expense is reasonable and necessary; (2) incurred "while away from home"; (3) incurred in pursuit of business. "Home" judicially defined as principal place of business, not personal residence. Conflict among circuits (some use "abode" test). Entirely judicial construction of an undefined statutory term.
16	Hobby Loss Deduction Limits	§183: Deductions limited to gross income from activity "not engaged in for profit." §183(d): Presumption of profit motive if profitable in 3 of 5 years (2 of 7 for horse activities). Treas. Reg. §1.183-2(b): Nine-factor test.	Courts developed the multi-factor profit-motive test before and independent of the regulation. <i>Dreicer v. Comm'r</i> , 78 T.C. 642 (1982), aff'd, 702 F.2d 1205 (D.C. Cir. 1983). Courts apply the factors with varying weight, treating no single factor as dispositive — a judicial overlay on the regulatory factors.
17	Capitalization vs. Current Deduction	§263(a): No deduction for "any amount paid out for new buildings or for permanent improvements or	<i>INDOPCO, Inc. v. Comm'r</i> , 503 U.S. 79 (1992): Expenditures producing "significant future

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		<p>betterments." §263A: Uniform capitalization rules for produced or acquired property.</p>	<p>benefits" must be capitalized, even if no separate, identifiable asset is created. This "future benefit" test goes beyond the statute's "permanent improvements" language. Partially retreated from by Treas. Reg. §1.263(a)-4 (2004), but the judicial doctrine remains independently applicable.</p>
18	Public Policy Limitation on Deductions	<p>§162(c), (f), (g): Disallows deductions for bribes, kickbacks, fines, and penalties paid to a government. Specific, enumerated categories only.</p>	<p><i>Tank Truck Rentals, Inc. v. Comm'r</i>, 356 U.S. 30 (1958): Broader judicial rule disallowing deductions that "frustrate sharply defined national or state policies." Courts historically applied this beyond the statutory categories, though codification in §162(f) has narrowed the gap.</p>
19	"Ordinary and Necessary" — Expenditures in Illegal Activities	<p>§162(a): No exclusion for expenses of illegal businesses. §280E: Disallows deductions for trafficking in controlled substances.</p>	<p><i>Comm'r v. Tellier</i>, 383 U.S. 687 (1966): Legal defense costs in criminal prosecution for business-related activity are deductible. But cf. §280E's total disallowance for controlled-substance trafficking. Courts must navigate the tension between <i>Tellier's</i> permissive rule and §280E's flat prohibition.</p>
20	Bad Debt vs. Gift Distinction	<p>§166: Deduction for debts that become</p>	<p><i>Litton Bus. Sys., Inc. v. Comm'r</i>, 61 T.C.</p>

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		worthless. §166(d): Non-business bad debts treated as short-term capital losses. No definition of "bona fide debt."	367 (1973); courts apply multi-factor "bona fide debt" analysis: genuine debtor-creditor relationship, intent to create enforceable obligation, reasonable expectation of repayment. Distinguishing gift from loan is an entirely judicial, fact-intensive exercise.
21	Casualty Loss — "Sudden, Unexpected, Unusual"	§165(c)(3): Deduction for losses arising from "fire, storm, shipwreck, or other casualty, or from theft." No definition of "other casualty."	Courts apply the <i>ejusdem generis</i> canon to require that "other casualty" be "sudden, unexpected, and unusual." <i>Chamales v. Comm'r</i> , T.C. Memo 2000-33 (gradual decline not a "casualty"). The three-part test is entirely judicial.
22	Charitable Contribution — "Detached and Disinterested Generosity"	§170: Deduction for contributions to qualifying organizations. §170(c): Defines qualifying recipients. No statutory requirement of donative intent.	<i>Hernandez v. Comm'r</i> , 490 U.S. 680 (1989): Contribution must proceed from "detached and disinterested generosity" — quid pro quo payments are not deductible. The donative-intent requirement is judicially imposed.
SECTION C: TIMING — ACCOUNTING METHODS AND PERIODS			
23	Cash Method — Economic Benefit Doctrine	§446: Taxpayer may compute income under the method regularly used. §451: Income included in year "received."	<i>Pulsifer v. Comm'r</i> , 64 T.C. 245 (1975); economic-benefit doctrine: A cash-method taxpayer has income when an amount is

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			unconditionally set aside for the taxpayer's benefit in a funded, secured arrangement, even if not actually or constructively received. Entirely judicial supplement to the cash method.
24	Accrual Method — "All Events" Test	§446, §451: Accrual method taxpayers include income when "all events" have occurred to establish the right to payment and the amount can be determined with reasonable accuracy. Treas. Reg. §1.451-1(a).	<i>United States v. General Dynamics Corp.</i> , 481 U.S. 239 (1987): Added the "all events test" for deductions requiring that economic performance also occur (later partially codified in §461(h)). Courts continue to apply judicial glosses on when an amount is "fixed" — particularly for contested liabilities and contingent obligations.
25	Clear Reflection of Income	§446(b): Commissioner may require a change of accounting method if the taxpayer's method "does not clearly reflect income." No definition of "clearly reflect income."	<i>Thor Power Tool Co. v. Comm'r</i> , 439 U.S. 522 (1979): Commissioner's determination that a method does not clearly reflect income is entitled to "near-absolute" deference. Standard of review essentially makes the Commissioner's judgment dispositive — a judicial gloss giving the government an advantage no statutory text mandates.
26	Installment Method — Contingent Payment	§453: Installment method for deferred-payment sales. §453(d): Election	Courts developed the "open transaction" doctrine (<i>Burnet v.</i>

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		out. Treas. Reg. §15a.453-1(c): Rules for contingent-payment sales.	<i>Logan</i> , 283 U.S. 404 (1931)) permitting deferral of gain recognition when the purchase price is truly indeterminable. The IRS position (Rev. Rul. 58-402) limits <i>Logan</i> to "rare and extraordinary" cases. Tension between judicial open-transaction rule and regulatory installment method.

SECTION D: CORPORATE TRANSACTIONS – SUBCHAPTER C

27	Substance Over Form	NA — No Subtitle A provision states that the substance of a transaction overrides its legal form.	<i>Gregory v. Helvering</i> , 293 U.S. 465 (1935): The seminal case. Courts look through legal form to economic substance. "The question for determination is whether what was done, apart from the tax motive, was the thing which the statute intended." Entirely judicial.
28	Business Purpose Doctrine	NA — No Subtitle A provision requires a "business purpose" for any transaction to receive favorable tax treatment (except as partially codified in §7701(o) for economic substance).	<i>Gregory v. Helvering</i> , 293 U.S. 465 (1935): Reorganization must be motivated by a genuine business purpose beyond tax avoidance. Applied to reorganizations, §351 transfers, and other corporate transactions. Entirely judge-made and applied across Subtitle A.
29	Step Transaction Doctrine	NA — No Subtitle A provision authorizes collapsing formally separate	<i>Comm'r v. Clark</i> , 489 U.S. 726 (1989); <i>Penrod v. Comm'r</i> , 88 T.C. 1415 (1987).

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		<p>transactions into a single transaction. Treas. Reg. §1.368-1(a) references the doctrine but does not define it.</p>	<p>Three alternative tests: (1) binding commitment, (2) mutual interdependence, (3) end result. Courts collapse multi-step transactions into their economic substance. Entirely judge-made.</p>
30	Sham Transaction Doctrine	<p>NA — No Subtitle A provision defines or addresses "sham" transactions.</p>	<p><i>Knetsch v. United States</i>, 364 U.S. 361 (1960): Transactions lacking economic substance beyond tax benefits are disregarded as "shams." Two variants: "sham in fact" (transaction never occurred) and "sham in substance" (transaction occurred but lacked economic substance). Entirely judicial.</p>
31	Economic Substance Doctrine	<p>NA in Subtitle A — §7701(o) (Subtitle F) codified the doctrine in 2010 but only for penalty purposes. The doctrine's operative disallowance rule remains judge-made. §7701(o)(5) (C): "The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted."</p>	<p>Two-prong test: (1) meaningful change in economic position apart from tax effects, and (2) substantial non-tax business purpose. Courts split on conjunctive vs. disjunctive application. <i>ACM Partnership v. Comm'r</i>, 157 F.3d 231 (3d Cir. 1998). The operational disallowance rule within Subtitle A remains entirely judicial despite partial codification in Subtitle F.</p>
32	Continuity of Interest (COI)	<p>§368(a): Defines reorganization types by transactional</p>	<p><i>Cortland Specialty Co. v. Comm'r</i>, 60 F.2d 937 (2d Cir.</p>

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		<p>structure. No statutory COI requirement. Treas. Reg. §1.368-1(e): COI requirement codified in regulations (40% floor per case law).</p>	<p>1932); <i>LeTulle v. Scofield</i>, 308 U.S. 415 (1940): Shareholders of the target must retain a continuing equity interest in the acquiring corporation. Originally entirely judicial; now partially codified in Treas. Reg. §1.368-1(e) but the doctrine's scope and application remain court-driven.</p>
33	<p>Continuity of Business Enterprise (COBE)</p>	<p>§368(a): No COBE requirement in statute. Treas. Reg. §1.368-1(d): Acquiring corporation must either continue the target's historic business or use a significant portion of target's historic business assets.</p>	<p><i>Bentsen v. Phinney</i>, 199 F. Supp. 363 (S.D. Tex. 1961). Judicial requirement that the acquiring corporation maintain continuity of the target's business enterprise. Now codified in Treas. Reg. §1.368-1(d), but the doctrine originated judicially and courts retain authority to apply it beyond regulatory parameters.</p>
34	<p>Debt vs. Equity Classification</p>	<p>§385(a): Secretary authorized to prescribe regulations for determining whether an interest is stock or indebtedness. §385(b): Lists five non-exclusive factors. No operative classification rule in the statute itself.</p>	<p>Courts apply multi-factor tests with 11-16 factors. <i>Mixon v. United States</i>, 464 F.2d 394 (5th Cir. 1972) (13 factors). <i>Fin Hay Realty Co. v. United States</i>, 398 F.2d 694 (3d Cir. 1968). No single factor dispositive. The operative classification regime is entirely judicial because §385 is merely an authorization to</p>

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			regulate, not a substantive rule.
35	Constructive Dividends	§301(a): Distributions of property by a corporation to shareholders treated as dividends under §316. No provision addressing below-market transactions, excessive compensation to shareholder-employees, or personal expenses paid by the corporation.	Courts treat corporate expenditures that disproportionately benefit shareholders as constructive dividends. <i>Nicholls, North, Buse Co. v. Comm'r</i> , 56 T.C. 1225 (1971). The entire constructive dividend doctrine is judge-made: no statute declares when a non-distribution becomes a "distribution."
36	§351 Control — Momentary Control	§351(a): No gain/loss on transfer to corporation if transferors are in "control" (§368(c): 80% vote + 80% of each class) "immediately after the exchange."	Courts interpret "immediately after" to require more than momentary control. <i>Intermountain Lumber Co. v. Comm'r</i> , 65 T.C. 1025 (1976): Pre-arranged dispositions of stock can defeat control requirement. Step-transaction and substance-over-form doctrines overlay the statutory control test.
37	§302 Redemption — "Essentially Equivalent to a Dividend"	§302(b)(1): Redemption "not essentially equivalent to a dividend" treated as exchange. No statutory definition.	<i>United States v. Davis</i> , 397 U.S. 301 (1970): Requires a "meaningful reduction" in the shareholder's proportionate interest. The "meaningful reduction" test is entirely judicial. Courts apply constructive ownership (§318) mechanically, then

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			determine whether the reduction is "meaningful" — a subjective, fact-intensive inquiry.
38	§306 Stock — Bailout Prevention	§306: "Section 306 stock" defined; proceeds treated as ordinary income. Statutory anti-bailout rule.	<i>Chamberlin v. Comm'r</i> , 207 F.2d 462 (6th Cir. 1953) (pre-codification preferred stock bailout). The legislative history and judicial application show §306 codified a judicial doctrine. Courts continue to apply substance-over-form principles to determine whether §306 applies to complex transactions not squarely addressed by the statute.

SECTION E: SALES, EXCHANGES, AND CAPITAL GAINS

39	Amount Realized — Assumption of Liabilities	§1001(b): Amount realized includes "the amount of any liabilities assumed." No distinction between recourse and nonrecourse debt.	<i>Crane v. Comm'r</i> , 331 U.S. 1 (1947): Nonrecourse debt included in amount realized upon disposition, even if FMV is less than debt. <i>Comm'r v. Tufts</i> , 461 U.S. 300 (1983): Full amount of nonrecourse debt included regardless of property's FMV. Crane/Tufts framework is judicial — the statute was later amended to conform, but doctrinal application remains court-driven.
40	Basis — Tax-Cost Basis vs. Substituted Basis	§1012: Basis is "cost." §1014, §1015, §1016: Basis	<i>Philadelphia Park Amusement Co. v. United States</i> , 126

No.	Subject Matter	Statute / Regulation Approach	Judicial Doctrine
		rules for inherited property, gifts, and adjustments. No comprehensive definition of "cost."	F. Supp. 184 (Ct. Cl. 1954): "Cost" is the FMV of what is given up, or if not ascertainable, the FMV of what is received. Courts have developed elaborate doctrines for determining "cost" in non-cash exchanges that go well beyond the statute.
41	Like-Kind Exchange — Qualifying Property	§1031(a): No gain/loss on exchange of property "held for productive use in a trade or business or for investment" for "property of like kind." Post-TCJA: limited to real property.	<i>Starker v. United States</i> , 602 F.2d 1341 (9th Cir. 1979): Deferred exchanges qualify — Congress later codified this in §1031(a)(3). Courts also apply substance-over-form to determine whether a purported exchange is really a sale.
42	Capital vs. Ordinary — "Sale or Exchange" Requirement	§1222: Capital gain/loss requires "sale or exchange of a capital asset." §1221: Defines "capital asset" by exclusion.	<i>Hort v. Comm'r</i> , 313 U.S. 28 (1941): Lump-sum payment for cancellation of a lease is ordinary income (substitute for rent), not capital gain. Courts developed the "substitute for ordinary income" doctrine entirely judicially. <i>Arrowsmith v. Comm'r</i> , 344 U.S. 6 (1952): Character of a payment determined by reference to the underlying transaction.
43	Sale vs. License — Intellectual Property	§1221, §1231, §1235: Capital asset rules; §1235 specific	Courts apply "all substantial rights" test to determine

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		to patents. No comprehensive rule distinguishing a "sale" from a "license" of intellectual property generally.	whether a transfer of intellectual property constitutes a "sale" or a "license." <i>Mylan Inc. v. Comm'r</i> , T.C. Memo 2012-36. The distinction governs capital vs. ordinary treatment and is entirely judge-made outside §1235.
44	Wash Sale — Economic Substance Overlay	§1091: Disallows loss on sale of stock/securities if substantially identical stock/securities acquired within 30-day window. Mechanical rule.	Courts layer economic substance and sham transaction doctrines on top of §1091. If a transaction is structured to technically avoid §1091 but lacks economic substance, courts may still disallow the loss. The statutory rule and judicial overlay operate independently.
SECTION F: COMPENSATION AND EMPLOYEE BENEFITS			
45	Employee vs. Independent Contractor	NA — No Subtitle A provision defines "employee" for income tax purposes. §3401(c) (Subtitle C) defines employee for withholding. §3121(d) (Subtitle C) for FICA. §62(a) (1) references "trade or business of being an employee" without defining the term.	Courts apply common-law agency test: right to control manner and means of work. <i>Nationwide Mut. Ins. Co. v. Darden</i> , 503 U.S. 318 (1992). The 20-factor test (Rev. Rul. 87-41) derives from case law. The classification regime for income tax purposes is entirely judicial — Subtitle A contains no operative definition.
46	Deferred Compensation — Funded vs. Unfunded	§409A: Detailed rules for nonqualified deferred	<i>Minor v. United States</i> , 772 F.2d 1472 (9th Cir. 1985). Courts

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		<p>compensation timing, elections, and distributions. §83: Property transferred in connection with services taxed when "substantially vested." No general Subtitle A rule for unfunded, unsecured promises.</p>	<p>developed the distinction between "funded" arrangements (taxable under economic-benefit doctrine) and "unfunded, unsecured promises" (not currently taxable) before §409A's enactment. The funded/unfunded distinction remains judicial in origin.</p>
47	Fringe Benefits — Working Condition Fringe	<p>§132: Excludes certain fringe benefits (no-additional-cost services, qualified employee discounts, working condition fringes, de minimis fringes, etc.). Detailed statutory framework.</p>	<p>Courts developed exclusions for employer-provided benefits before §132's enactment in 1984. Residual judicial doctrines (e.g., "convenience of the employer" under §119 and related case law) continue to apply in areas §132 does not reach or where its categories are ambiguous.</p>
48	Golden Parachute Payments	<p>§280G: Disallows deduction for "excess parachute payments." §280G(b) (2): "Parachute payment" defined as payment contingent on change of ownership/control exceeding 3× base amount.</p>	<p>Courts interpret "contingent on" a change in control broadly or narrowly depending on the facts. <i>Balch v. Comm'r</i>, T.C. Memo 2010-54. The factual determination of whether a payment is truly "contingent on" a change in control — versus compensation that would have been paid regardless — is a judicial, fact-intensive inquiry overlaying the statutory formula.</p>

No.	Subject Matter	Statute / Regulation Approach	Judicial Doctrine
SECTION G: PARTNERSHIPS — SUBCHAPTER K			
49	Partner vs. Employee	NA — Subchapter K does not define when a service provider is a "partner" vs. an "employee." §707(a)(2)(A): Payments for services determined "without regard to income of the partnership" may be treated as to a non-partner.	Courts examine the totality of the relationship. <i>Culbertson v. Comm'r</i> , 337 U.S. 733 (1949): Whether parties "in good faith and acting with a business purpose intended to join together" as partners. Courts apply an "entrepreneurial risk" test to determine partner vs. employee status for disguised-employment arrangements.
50	Anti-Abuse Rule — Partnership Transactions	§704(b): Distributive shares must have "substantial economic effect." Treas. Reg. §1.701-2: Anti-abuse rule allowing IRS to recast partnership transactions.	Courts apply substance-over-form, economic substance, and sham doctrines independently of Treas. Reg. §1.701-2. <i>ASA Investering Partnership v. Comm'r</i> , 201 F.3d 505 (D.C. Cir. 2000): Partnership itself disregarded as a sham. Judicial doctrines operate as a parallel and independent overlay on the regulatory anti-abuse rule.
51	Disguised Sales — §707(a)(2)(B)	§707(a)(2)(B): Transfers between partner and partnership treated as a sale if in substance a sale. Treas. Reg. §1.707-3 through 1.707-5: Presumptions based on timing (within 2 years).	Courts apply their own substance-over-form analysis to determine whether a contribution-distribution sequence is a disguised sale, sometimes reaching different results than the regulatory presumptions.

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			<i>Communications Satellite Corp. v. United States</i> , 223 Ct. Cl. 253 (1980). Judicial and regulatory tests operate in parallel.

SECTION H: S CORPORATIONS – SUBCHAPTER S

52	Reasonable Compensation – S Corporation Shareholder-Employees	NA – No Subtitle A provision addresses the division between salary and distributions for S corporation shareholder-employees. §1366-§1368: Pass-through and distribution rules.	Courts recharacterize distributions as wages when shareholder-employees pay themselves unreasonably low salaries to avoid employment taxes. <i>Radtke v. United States</i> , 712 F. Supp. 143 (E.D. Wis. 1989), aff'd, 895 F.2d 1196 (7th Cir. 1990). The recharacterization doctrine is entirely judicial.
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53	Second Class of Stock	§1361(b)(1)(D): S corporation may have only one class of stock. Treas. Reg. §1.1361-1(l): Differences in voting rights disregarded; all shares must confer identical rights to distribution and liquidation proceeds.	Courts examine whether loans, compensation arrangements, or buy-sell agreements create de facto differences in distribution rights constituting a second class of stock. <i>Minton v. Comm'r</i> , T.C. Memo 2007-372. The factual determination of whether economic arrangements create a "second class" is judicial.
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SECTION I: INTERNATIONAL PROVISIONS

54	Source of Income – Place of Performance	§861-§865: Detailed source rules for different income	Courts apply substance-over-form to source
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No.	Subject Matter	Statute / Regulation Approach	Judicial Doctrine
		<p>categories (compensation sourced where services performed; interest sourced by residence of payor; etc.).</p>	<p>determinations. <i>Piedras Negras Broadcasting Co. v. Comm'r</i>, 43 B.T.A. 297 (1941), aff'd, 127 F.2d 260 (5th Cir. 1942): Source of broadcasting income determined by where the "income-producing activity" occurs — a judicial test supplementing the statutory framework.</p>
55	Transfer Pricing — Arm's Length Standard	<p>§482: Secretary may "distribute, apportion, or allocate gross income, deductions, credits, or allowances" among commonly controlled entities to "clearly reflect the income." Treas. Reg. §1.482-1: Arm's length standard.</p>	<p>Courts developed and continue to refine the arm's-length standard. <i>Comm'r v. First Security Bank of Utah</i>, 405 U.S. 394 (1972): §482 requires that the controlled entity have the "economic substance" to earn the allocated income. <i>DHL Corp. v. Comm'r</i>, 285 F.3d 1210 (9th Cir. 2002): Commensurate-with-income analysis for intangibles is a judicial gloss on the regulatory framework.</p>
56	Treaty Override — Statutory Supremacy	<p>NA — No Subtitle A provision addresses the hierarchy between treaty provisions and Code provisions generally. §7852(d) (Subtitle F) states neither treaties nor statutes have preferential status.</p>	<p>Courts apply the "last in time" rule: a later-enacted statute overrides an earlier treaty, and vice versa. <i>Reid v. Covert</i>, 354 U.S. 1 (1957); <i>Cook v. United States</i>, 288 U.S. 102 (1933). Applied in the tax context to resolve treaty-Code conflicts. The</p>

No.	Subject Matter	Statute / Regulation Approach	Judicial Doctrine
			operational rule is judicial.
SECTION J: EXEMPT ORGANIZATIONS AND TRUSTS			
57	Tax-Exempt Status — "Operated Exclusively"	§501(c)(3): Organization must be "organized and operated exclusively" for exempt purposes. Treas. Reg. §1.501(c)(3)-1(c)(1): "Exclusively" means "primarily."	<i>Better Business Bureau v. United States</i> , 326 U.S. 279 (1945): "Exclusively" construed strictly in early cases. Tension with regulatory interpretation. Courts continue to determine when non-exempt activities are "substantial" enough to disqualify — a factual inquiry overlaying the statutory term.
58	Trust Income — Grantor Trust Rules	§§671-679: Grantor treated as owner of trust if grantor retains specified powers (power to revoke, beneficial enjoyment, etc.). Detailed statutory framework.	Courts developed the grantor trust doctrine before codification. <i>Helvering v. Clifford</i> , 309 U.S. 331 (1940): When a grantor retains sufficient control, trust income is taxable to the grantor. The Clifford doctrine was later codified in §§671-679, but courts retain authority to apply substance-over-form principles to trusts not squarely within the statutory categories.
59	Private Foundation — Self-Dealing	§4941: Excise tax on "self-dealing" between disqualified persons and private foundations. Enumerated prohibited transactions.	Courts interpret "self-dealing" in light of legislative purpose and apply substance-over-form principles to determine whether indirect transactions constitute self-dealing. <i>Quarrie</i>

No.	Subject Matter	Statute / Regulation Approach	Judicial Doctrine
			<i>Charitable Fund v. Comm'r</i> , 70 T.C. 182 (1978). The statutory categories are supplemented by judicial anti-avoidance analysis.

SECTION K: ACCUMULATED EARNINGS AND PERSONAL HOLDING COMPANIES

60	Accumulated Earnings Tax — "Reasonable Needs"	§531-§537: Tax imposed on corporations that accumulate earnings "beyond the reasonable needs of the business." §537: "Reasonable needs" includes reasonably anticipated needs.	<i>Bardahl Mfg. Corp. v. Comm'r</i> , T.C. Memo 1965-200: The "Bardahl formula" for calculating reasonable working capital needs is entirely judge-made. Courts evaluate the "reasonable needs" standard through fact-intensive inquiry into business plans, capital needs, and investment activities — a judicial overlay on the statutory standard.
61	Personal Holding Company — "Predominant Motive"	§541-§547: PHC tax imposed on corporations meeting income and ownership tests. Mechanical statutory tests.	Courts examine whether the predominant motive for incorporating is tax avoidance and whether transactions are structured to avoid PHC status. <i>Fox v. Comm'r</i> , 37 B.T.A. 271 (1938). Substance-over-form principles supplement the statutory mechanical tests.

SECTION L: ANTI-AVOIDANCE AND PROCEDURAL OVERLAYS ON SUBTITLE A

62	Duty of Consistency / Quasi-Estoppel	NA — No Subtitle A provision requires taxpayers to	Courts apply the "duty of consistency"
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No.	Subject Matter	Statute / Regulation Approach	Judicial Doctrine
		maintain consistent positions across tax years.	doctrine: A taxpayer who has obtained a tax benefit by reporting an item in a particular way in one year may be estopped from taking an inconsistent position in a later year. <i>Estate of Letts v. Comm'r</i> , 109 T.C. 290 (1997). Entirely judicial — no statutory basis in Subtitle A.
63	Anticipatory Assignment of Income — Partnerships/S Corps	NA — No Subtitle A provision addresses the interplay between the assignment-of-income doctrine and pass-through entity elections.	Courts grapple with whether the creation of a partnership or S-corp election itself constitutes an anticipatory assignment of income. <i>Vnuk v. Comm'r</i> , 621 F.2d 1318 (8th Cir. 1980). The interaction between the assignment-of-income doctrine and entity-level pass-through rules is entirely judicial.
64	Judicial Anti-Abuse — Circular Cash Flows	NA — No Subtitle A provision addresses circular or self-canceling cash flows designed to generate deductions or losses.	<i>Knetsch v. United States</i> , 364 U.S. 361 (1960): Pre-paid interest on sham insurance annuities disallowed. Courts identify and disallow circular cash flows that create deductions without economic risk or outlay. Entirely judge-made.
65	Penalty of Perjury — Voluntary Compliance	NA — §6011 (Subtitle F) requires filing of returns. No Subtitle A provision addresses the	<i>Flora v. United States</i> , 362 U.S. 145 (1960): Full payment required before refund suit.

No.	Subject Matter	Statute / Regulation Approach	Judicial Doctrine
		voluntariness of tax compliance or the self-assessment system.	Courts have constructed the entire procedural architecture of "voluntary compliance" and self-assessment judicially. The self-assessment paradigm is judge-made and then reinforced by Subtitle F procedures.

METHODOLOGY AND LIMITATIONS

This table catalogs subject-matter divergences between statutory text (I.R.C. Subtitle A, §§ 1-1564, and implementing Treasury regulations) and judicial doctrine as of April 2026. The statutory column reflects only what the Code and regulations say on their face; no doctrinal assumptions are imported. The judicial column identifies the court-created rule, test, or presumption that diverges from, supplements, overrides, or replaces the statutory text.

An entry of "NA" in the Statute/Regulation Approach column means that the Code and Treasury regulations are silent — they impose no requirement on the identified subject matter. Where a judicial doctrine has been partially codified (e.g., economic substance in §7701(o), continuity of interest in Treas. Reg. §1.368-1(e)), both the statutory/regulatory provision and the residual judicial authority are noted.

This table is intended for use as a litigation reference and advocacy tool. It does not constitute legal advice. Counsel should verify all citations against current authority before use in pleadings.