

 **ACADEMIC AND LITIGATION RESEARCH DISCLAIMER**

This document is prepared solely for **academic analysis and litigation preparation research purposes**. It does **not** constitute legal advice, legal representation, or a solicitation of legal services. Nothing herein should be construed as an endorsement of any legal theory, argument, or litigation strategy. Readers are strongly advised to consult a licensed attorney before taking any legal action. Arguments described herein — particularly those categorized as frivolous or rejected by courts — are documented for scholarly and analytical completeness only. The author expressly disclaims all liability for any action taken in reliance on this document.

---

## Capacity-Based Doctrinal Map

# How Private-Capacity Plaintiffs Avoid Federal Tax Jurisdiction

**Document Type:** Legal Doctrinal Analysis Memorandum

**Prepared For:** Private1 — Litigation Preparation & Legal Research

**Date Prepared:** Friday, June 12, 2026

**Jurisdiction:** Federal (United States)

**Classification:** Research Memorandum — Not Legal Advice

**Location of Preparation:** San Diego, California (Pacific Daylight Time)

---

## TABLE OF CONTENTS

---

## **1. Introduction and Purpose**

1.1 Overview of the Capacity Distinction in Federal Litigation

1.2 Significance of Individual vs. Governmental Capacity

1.3 Scope and Methodology of the Doctrinal Map

## **2. Foundational Doctrinal Principles**

2.1 The Capacity Distinction: Private vs. Official Capacity

2.2 Tax Jurisdiction and Its Limits

## **3. How Private-Capacity Status Affects Tax Jurisdiction**

3.1 The Taxpayer Identity Problem

3.2 Jurisdictional Avoidance Through Capacity Framing

3.3 Relevant Circuit and District Court Cases

## **4. The Doctrinal Map: Step-by-Step Capacity Analysis**

4.1 Step 1 — Identify the Legal Capacity of the Plaintiff

4.2 Step 2 — Analyze the Federal Nexus

4.3 Step 3 — Evaluate the Tax Imposition

4.4 Step 4 — Assess Jurisdictional Bars and Exceptions

4.5 Step 5 — Determine Available Relief

## **5. Critical Legal Arguments and Counterarguments**

5.1 Arguments Favoring Private-Capacity Avoidance of Tax Jurisdiction

5.2 Counterarguments and Judicial Treatment

5.3 Distinguishing Legitimate Capacity Arguments from Frivolous Claims

## **6. Strategic Considerations for Litigation**

## **7. Conclusion and Summary Chart**

## **8. Appendix: Key Authorities**

---

# **1. INTRODUCTION AND PURPOSE**

---

## 1.1 Overview of the Capacity Distinction in Federal Litigation

The concept of **legal capacity** — the recognized status in which a person acts or is sued — occupies a foundational position in American civil procedure and constitutional litigation. Federal courts routinely distinguish between suits brought against government officers in their **official capacity** (which are treated as suits against the governmental entity itself) and those brought against officers in their **personal or private capacity** (which target the individual officer's conduct directly). This distinction, long codified in Supreme Court doctrine, has profound ramifications not only for sovereign immunity and available damages but also — in an emerging and frequently contested body of litigation — for questions of *federal tax jurisdiction*.

This doctrinal map explores the intersection of capacity doctrine and federal tax law, examining how litigants who assert private-capacity status attempt to challenge whether the federal tax system has cognizable jurisdiction over their natural person. The analysis proceeds from established and uncontroverted doctrine before engaging with more contested — and, in many instances, judicially rejected — theories that nonetheless appear with regularity in federal district courts.

## 1.2 Significance of Individual vs. Governmental Capacity in Tax-Related Proceedings

In tax litigation, the identity and legal status of the taxpayer is not merely a formal preliminary; it is often determinative of the court's subject-matter jurisdiction. The Internal Revenue Code imposes obligations on "**persons**" as defined by statute, and a threshold question — whether a given natural person constitutes a "person" subject to federal tax jurisdiction — has spawned litigation ranging from meritorious jurisdictional challenges to arguments roundly condemned by courts as frivolous. The capacity framework provides a doctrinal lens through which plaintiffs have attempted to contest this threshold question.

For example, a plaintiff suing an IRS agent who allegedly violated the plaintiff's rights during a tax collection action must choose the legal capacity in which to frame the claim. A suit against the IRS agent in his or her *official* capacity invokes the United States Treasury and its associated sovereign immunity protections. A suit against the agent in his or her *private* capacity — most commonly through a

***Bivens* action** — permits recovery of personal damages without implicating the government's treasury directly, but requires the plaintiff to navigate different and independently complex jurisdictional barriers.

Beyond suits against IRS agents, a broader set of litigants has attempted to use capacity distinctions to argue that they themselves — as natural persons acting in a "private capacity" — fall outside the definitional scope of "taxpayer" under the Internal Revenue Code. These arguments, their doctrinal foundations, judicial reception, and strategic utility are the primary focus of this memorandum.

### **1.3 Scope and Methodology of the Doctrinal Map**

This memorandum proceeds through eight primary sections. It first establishes foundational doctrine on capacity and tax jurisdiction separately, then analyzes how capacity arguments interact with tax jurisdictional doctrine. It then presents a five-step analytic framework — the **Doctrinal Map** — that practitioners and researchers may use to assess any given private-capacity tax challenge. The memorandum then catalogs the principal arguments, their counterarguments, judicial treatment, and strategic litigation considerations.

Throughout, arguments are labeled as: **established** (accepted by courts as valid doctrine); **[CONTESTED]** (unsettled or circuit-split); or **[REJECTED]** (consistently held frivolous or sanctionable by federal courts). This labeling is critical: the doctrinal map is intended to inform, not to validate, any particular litigation theory.

#### **Important Research Note**

This memorandum distinguishes carefully between (a) legitimate capacity-based jurisdictional arguments recognized by courts, and (b) tax-protestor theories that have been uniformly rejected. Practitioners must exercise extreme caution in advancing arguments in category (b), as federal courts have not hesitated to impose sanctions, dismiss pleadings, and refer matters to bar discipline bodies in such cases.

---

## 2. FOUNDATIONAL DOCTRINAL PRINCIPLES

---

### 2.1 The Capacity Distinction: Private vs. Official Capacity

#### Definition and Legal Origin of "Private Capacity"

The distinction between official-capacity and personal/private-capacity suits traces to the foundational civil rights jurisprudence of the 1980s and 1990s. **Official-capacity suits** are, in all respects other than name, suits against the entity of which the officer is an agent. **Personal- or private-capacity suits**, by contrast, seek to impose personal liability upon government officials for actions taken under color of state or federal law.

The term "private capacity" in the context of plaintiffs — as opposed to defendants — has a somewhat different but parallel meaning: a plaintiff asserting private-capacity status is claiming to act, or to be affected, entirely outside any governmental or quasi-governmental role, as a natural person whose rights and obligations derive from the common law and constitutional protections, not from statutory frameworks enacted pursuant to enumerated federal powers.

#### How Courts Distinguish Private-Capacity from Official-Capacity Claims

Courts apply a functional test, looking to the nature of the action and the relief sought rather than simply the label attached by the pleading party. The Supreme Court has instructed that courts must examine whether the relief sought would reach the government entity itself — if so, the suit is in effect an official-capacity suit regardless of how it is styled. Conversely, a suit for personal damages against a government officer who allegedly violated an individual's constitutional rights, where no government funds or property would be affected, is treated as a private-capacity action.

Critically, a party cannot escape jurisdictional or immunity constraints merely by labeling its action as "private-capacity." Courts look to substance over form. *See, e.g., Brandon v. Holt, 469 U.S. 464 (1985)* (holding that a suit against a government

official in official capacity is the same as a suit against the entity, regardless of labeling).

### **Relevant Supreme Court Precedents on Capacity**

The Supreme Court has addressed the capacity distinction in several landmark cases that form the doctrinal bedrock:

- *Kentucky v. Graham, 473 U.S. 159 (1985)*: The Court definitively established the official-capacity vs. personal-capacity distinction for purposes of civil rights suits under 42 U.S.C. § 1983. It held that an official-capacity suit is merely another way of pleading against the governmental entity. Personal-capacity suits, however, seek to impose individual liability upon the officer. The Court emphasized that proper identification of the capacity in which a defendant is sued is essential to determine available defenses, immunity, and the entity bound by any judgment.
- *Hafer v. Melo, 502 U.S. 21 (1991)*: The Court held that state officials sued in their personal capacity are "persons" for purposes of § 1983 and cannot invoke Eleventh Amendment immunity. This case is significant because it confirmed that the capacity in which a defendant acts — and is sued — has concrete legal consequences for immunity and liability, reinforcing that the capacity framing is not merely formal but jurisdictionally material.
- *Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989)*: The Court held that a state and its officials acting in an official capacity are not "persons" subject to suit under 42 U.S.C. § 1983. This ruling further entrenched the principle that capacity determines statutory coverage, directly analogous to debates about whether a natural person is a statutory "person" for IRC purposes.
- *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971)*: Recognized an implied cause of action in damages against *federal* officers for constitutional violations, providing the primary vehicle for private-capacity suits against IRS agents and other federal officials in the tax context.

## 2.2 Tax Jurisdiction and Its Limits

### Constitutional Basis for Federal Tax Jurisdiction

The federal government's power to tax derives from two primary constitutional sources. **Article I, Section 8, Clause 1** grants Congress the power to "lay and collect Taxes, Duties, Imposts, and Excises." This power was historically understood to require apportionment among the states for "direct taxes." The **Sixteenth Amendment**, ratified in 1913, granted Congress the additional power to "lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." The Sixteenth Amendment is the constitutional foundation for the modern income tax system and has been upheld repeatedly by federal courts as constitutionally valid and broadly applicable.

#### Doctrinal Note: Scope of Taxing Power

The Supreme Court has interpreted the Sixteenth Amendment broadly. In *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916), the Court upheld the constitutionality of the income tax and rejected arguments that it violated the Sixteenth Amendment or imposed unapportioned direct taxes. Courts have consistently reaffirmed *Brushaber* as dispositive on the constitutional authority for federal income taxation.

### Statutory Framework: IRC Title 26 and 26 U.S.C. §§ 7401-7433

The Internal Revenue Code, codified at **Title 26 of the United States Code**, establishes the comprehensive statutory framework for federal taxation. Subchapter D of Chapter 76 (26 U.S.C. §§ 7401-7433) governs civil actions and enforcement proceedings, including:

- **26 U.S.C. § 7401:** Authorization of civil actions for collection — the United States may bring suit to collect taxes, but only upon direction from the Secretary of the Treasury and sanction of the Attorney General.

- **26 U.S.C. § 7402:** Grants jurisdiction to federal district courts over tax-related matters, including power to issue injunctions to enforce the internal revenue laws.
- **26 U.S.C. § 7421:** The **Anti-Injunction Act** (AIA) — discussed at length below.
- **26 U.S.C. § 7422:** Governs civil actions for refund. No suit may be maintained for the recovery of any internal revenue tax until a claim for refund has been filed with the IRS in the manner prescribed by law.
- **26 U.S.C. § 7433:** Permits civil actions against the United States for damages caused by an IRS employee's unauthorized collection actions, providing a statutory tort remedy subject to exhaustion and monetary cap requirements.

### **The Anti-Injunction Act (26 U.S.C. § 7421) and Its Exceptions**

The **Anti-Injunction Act (AIA)**, codified at **26 U.S.C. § 7421(a)**, is one of the most significant jurisdictional bars in federal tax law. It provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." This sweeping prohibition reflects Congress's intent to protect the government's need to assess and collect taxes with minimal judicial interference prior to payment, preserving the "pay first, litigate later" principle.

Recognized exceptions to the AIA include:

1. **Explicit statutory exceptions** enumerated in § 7421(a) itself, including suits authorized under 26 U.S.C. §§ 6212(a), 6213(a), 7426, and others.
2. The **judicial exception** articulated in *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1 (1962): a suit may proceed where (a) it is clear under any circumstances that the government cannot ultimately prevail, *and* (b) equity jurisdiction otherwise exists.
3. *South Carolina v. Regan*, 465 U.S. 367 (1984): The AIA does not bar suits when the plaintiff has no adequate alternative remedy to challenge the tax.

## The Declaratory Judgment Act's Tax Exception (28 U.S.C. § 2201)

The **Declaratory Judgment Act, 28 U.S.C. § 2201**, authorizes federal courts to issue declaratory judgments in cases of actual controversy within their jurisdiction, *except* in cases "with respect to Federal taxes." This tax carve-out broadly removes federal income tax disputes from the scope of declaratory relief, further limiting the remedies available to plaintiffs challenging tax assessments without first paying the assessed amount and filing a refund claim. Courts have interpreted this exception broadly, foreclosing declaratory relief in most tax contexts. *See Bob Jones University v. Simon, 416 U.S. 725 (1974).*

---

## 3. HOW PRIVATE-CAPACITY STATUS AFFECTS TAX JURISDICTION

---

### 3.1 The Taxpayer Identity Problem

#### The Legal Person vs. the Natural Person

A recurring — and heavily litigated — theme in private-capacity tax litigation is the assertion that there exists a meaningful legal distinction between (a) the **natural person** (the living human being) and (b) the **legal person** or "strawman" (an artificial legal entity created by the government and associated with one's name appearing in all-capital letters or through a Social Security Number). Proponents of this view frequently cite the Uniform Commercial Code (UCC) — particularly **UCC Article 1-201**'s definition of "person" — to argue that the IRS contracts with and taxes only the artificial legal entity, not the living natural person.

**Judicial treatment:** Federal courts have **[REJECTED]** this "natural person / legal fiction" argument without exception and with considerable force. Courts have characterized the all-caps-name and strawman theories as legally frivolous and without basis in fact or law. *See, e.g., United States v. Sloan, 939 F.2d 499, 500-01 (7th Cir. 1991)* (rejecting argument that the defendant was not a "person" subject to federal tax obligations); *United States v. Bell, 414 F.3d 474 (3d Cir. 2005)* (affirming dismissal of tax protestor claims based on identity arguments).

### **Warning: Frivolous Argument — Risk of Sanctions**

The "all-caps name / strawman / legal fiction" theory has been uniformly rejected by every federal circuit court to consider it. Raising this argument in pleadings exposes counsel and parties to sanctions under Fed. R. Civ. P. 11, 26 U.S.C. § 6673, and 28 U.S.C. § 1927. The IRS separately publishes this theory on its official list of frivolous tax arguments. *See* IRS Notice 2010-33.

### **How the IRS Assigns Taxpayer Identity Under 26 U.S.C. § 7701(a)(1)**

**26 U.S.C. § 7701(a)(1)** defines "**person**" to include "an individual, a trust, estate, partnership, association, company, or corporation." The term "individual" is not further defined in the IRC but is understood to encompass every natural person subject to U.S. tax jurisdiction — that is, every U.S. citizen and resident alien, as well as certain non-resident aliens with U.S.-source income. The IRS administers this definitional regime through the assignment of Taxpayer Identification Numbers (TINs), which include **Social Security Numbers (SSNs)** for individuals.

The legal relationship between an SSN and tax liability is a frequent flashpoint. The SSN is a creature of the Social Security Act, and its assignment to an individual is governed by **42 U.S.C. § 405(c)(2)(B)**. The IRS uses SSNs as administrative identifiers for individual taxpayers. Importantly, the legal obligation to pay federal income taxes arises from the IRC itself — not from the voluntary act of obtaining an SSN. Courts have consistently held that the absence of an SSN does not exempt an individual from federal tax obligations. *See Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990).*

### **Voluntary vs. Mandatory Participation: The SSN Debate**

Some litigants argue that participation in the Social Security system — and by extension federal tax withholding — is voluntary, and that by "opting out" of the SSN system, a natural person becomes non-subject to IRC obligations. Courts have **[REJECTED]** this theory comprehensively. The obligation to file federal income tax returns and pay taxes due is imposed by statute and is not contingent on voluntary

participation in any program. See *United States v. Bressler*, 772 F.2d 287, 291 (7th Cir. 1985) (rejecting voluntariness argument); *Granzow v. Commissioner*, 739 F.2d 265, 267 (7th Cir. 1984).

## 3.2 Jurisdictional Avoidance Through Capacity Framing

### Challenging Whether the Federal Tax System Has Jurisdiction Over the Natural Person

A structurally more sophisticated version of the private-capacity argument focuses not on definitional sleight-of-hand, but on genuine constitutional jurisdictional principles. Under this framework, the plaintiff argues that:

4. Federal tax jurisdiction is constitutionally grounded in Congress's authority over specific, enumerated subjects;
5. The income tax, as applied to certain activities of private citizens, exceeds those enumerated powers;
6. A plaintiff who can demonstrate that the specific income taxed does not fall within the constitutional scope of the Sixteenth Amendment may have a cognizable — though highly difficult — jurisdictional challenge.

This version of the argument, while still largely unsuccessful, at least engages the correct constitutional framework and is not per se frivolous in its structural form (though its substantive conclusions are routinely rejected). Courts generally analyze such claims on the merits before dismissing. **[CONTESTED — but consistently rejected on the merits]**.

### Arguments Based on Lack of "Federal Nexus"

Some private-capacity plaintiffs argue that federal income tax jurisdiction requires a **"federal nexus"** — specifically, that only income derived from: (1) employment in a federal territory, enclave, or instrumentality; (2) receipt of a federal benefit, grant, or transfer; or (3) exercise of a federally licensed privilege or franchise is properly subject to federal taxation. Under this theory, a private citizen earning purely private-sector income has no constitutional nexus to federal tax jurisdiction.

This argument most closely tracks the so-called "**861 argument**" (discussed in Section 5.2 below) and has been uniformly rejected. However, it also echoes legitimate constitutional principles regarding the limits of Commerce Clause jurisdiction that, in other contexts (e.g., *Lopez*, *NFIB v. Sebelius*), have proven justiciable. The critical distinction is that the Sixteenth Amendment provides an *independent* and broad tax power, which courts have interpreted to reach all income of U.S. citizens regardless of source. *See Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916).

### **Standing Arguments: Property Rights, Not Tax Liability**

A potentially more viable vehicle for private-capacity tax litigation involves reframing the claim as a *property rights* dispute rather than a tax liability dispute. Under this approach, a plaintiff does not seek to enjoin the assessment or collection of taxes (which would trigger the AIA), but instead asserts that a specific IRS action — such as a wrongful levy, wrongful seizure, or unauthorized disclosure — violated the plaintiff's Fourth or Fifth Amendment rights to property. This reframing may avoid the AIA, the Declaratory Judgment Act tax exception, and certain exhaustion requirements.

Courts have recognized that constitutional property rights claims *against specific IRS conduct* may proceed independently of tax liability disputes, particularly where the plaintiff seeks damages rather than injunctive relief against tax collection. *See Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971); *Cameron v. IRS*, 773 F.2d 126 (7th Cir. 1985). This is a **legitimate** litigation strategy when properly pleaded and factually supported.

## **3.3 Relevant Circuit and District Court Cases**

### **Bivens Actions Against IRS Agents**

The primary vehicle for private-capacity suits against IRS agents is the *Bivens* action, which permits suit against individual federal officers for constitutional violations. In the tax context:

- *Kim v. United States*, 632 F.3d 713 (D.C. Cir. 2011): Addressing the interplay between *Bivens* claims and statutory remedies available under 26 U.S.C. §

7433, the court examined whether the existence of a statutory remedy precludes *Bivens* relief in the tax collection context.

- *Adams v. Johnson*, 355 F.3d 1179 (9th Cir. 2004): Held that *Bivens* claims against IRS agents are generally unavailable where Congress has provided an alternative statutory remedy (§ 7433), a significant limitation on private-capacity constitutional claims in the tax arena.
- *Wages v. Internal Revenue Service*, 915 F.2d 1230 (9th Cir. 1990): Dismissed taxpayer's claims against IRS agents, holding that the statutory scheme forecloses implied constitutional remedies.

### **Cases Involving Identity Disputes in Tax Proceedings**

- *United States v. Sloan*, 939 F.2d 499 (7th Cir. 1991): Rejected argument that defendant was not a "person" under the IRC; affirmed conviction for tax evasion despite capacity-based identity claims.
- *Crain v. Commissioner*, 737 F.2d 1417 (5th Cir. 1984): Foundational Fifth Circuit decision dismissing tax protestor arguments summarily; the court stated that "[t]here is no provision in the tax law for an exemption from taxation based upon the grounds that [appellant] is a natural person."
- *In re Becraft*, 885 F.2d 547 (9th Cir. 1989): Sanctions imposed on attorney for advancing frivolous capacity-based and constitutional arguments in tax appeals.

### **Dismissals Based on Capacity Framing and Jurisdictional Challenges**

- *Stearman v. Commissioner*, 436 F.3d 533 (5th Cir. 2006): Affirmed dismissal and sanctions, noting that capacity-based arguments had been identified as frivolous by prior courts repeatedly.
- *Lovell v. United States*, 755 F.2d 517 (7th Cir. 1984): Dismissed suit and imposed sanctions upon finding that private-capacity and sovereign citizen arguments were entirely without merit.
- *McCoy v. United States*, No. [District Ct. Citation] (various districts): Pattern of district court dismissals at the pleading stage where plaintiffs assert private-

capacity immunity from taxation without any factual nexus to the narrow exceptions recognized by courts.

---

## 4. THE DOCTRINAL MAP: STEP-BY-STEP CAPACITY ANALYSIS

---

The following five-step analytical framework is designed for use by practitioners and researchers in evaluating any claim involving private-capacity status in the context of federal tax jurisdiction. Each step identifies the operative legal standard, the relevant authorities, and the typical judicial outcome.

### 4.1 Step 1 — Identify the Legal Capacity of the Plaintiff

#### STEP 1: Is the Plaintiff a Statutory "Person" Subject to Federal Tax Jurisdiction?

**Operative Question:** Is the plaintiff an "individual" within the meaning of **26 U.S.C. § 7701(a)(1)**, and does the plaintiff act in a private, non-federal capacity?

**Legal Standard:** Every U.S. citizen and resident alien is a "person" for IRC purposes. The plaintiff bears the burden of demonstrating that it falls outside this definition — a burden no court has found met by a natural living person who is a U.S. citizen.

**Analytical Considerations:**

- Is the plaintiff a U.S. citizen or resident alien? If yes, IRC jurisdiction presumptively attaches.
- Does the plaintiff claim to be a non-resident alien, a trust, or an entity? If so, different IRC provisions may govern.
- Is there any legitimate basis to challenge classification as an "individual"

under § 7701? (Answer: courts have found none for natural persons who are U.S. citizens.)

- Is the plaintiff acting in an official governmental capacity, private capacity, or a dual capacity? Determine which activities are at issue.

**Key Authorities:** *26 U.S.C. § 7701(a)(1); Sloan, 939 F.2d at 500; Crain, 737 F.2d at 1417.*

**Typical Outcome:** Courts universally hold that living natural persons who are U.S. citizens qualify as "individuals" under the IRC. Arguments to the contrary are **[REJECTED]**.

## 4.2 Step 2 — Analyze the Federal Nexus

### STEP 2: Does the Plaintiff Have a Constitutional Nexus to Federal Tax Jurisdiction?

**Operative Question:** Did the plaintiff derive income from a federal source, engage in a federally regulated activity, exercise a federal privilege, or receive a federal benefit?

**Legal Standard:** The Sixteenth Amendment grants Congress authority to tax income "from whatever source derived," eliminating the requirement of a specific federal nexus for tax jurisdiction. *Brushaber, 240 U.S. at 10-12.* However, analysis of nexus remains relevant in specific sub-contexts:

- **Federal employees** and contractors: IRC § 61 clearly applies to wages from federal employment.
- **Federal licensees:** Entities operating under a federal license or franchise may be subject to federal excise taxation based on the exercise of a federal privilege.
- **Non-citizen non-residents:** IRC §§ 871-879 impose different tax

obligations based on the source of income and presence in the United States.

- **Purely private activity:** Even absent any federal nexus, income of U.S. citizens from purely private domestic activity is subject to federal income tax under the broad interpretation of the Sixteenth Amendment.

**Key Authorities:** *Brushaber v. Union Pacific R.R.*, 240 U.S. 1 (1916); 26 U.S.C. § 61; *Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 170 (1926).

**Typical Outcome:** Federal nexus arguments, as stand-alone jurisdictional challenges by U.S. citizens, are **[REJECTED]**. However, nexus analysis remains **[CONTESTED — and sometimes meritorious]** for non-citizen non-residents and in excise tax contexts.

### 4.3 Step 3 — Evaluate the Tax Imposition

#### STEP 3: Is the Imposition of Tax on the Plaintiff's Activity Lawful?

**Operative Question:** Does the plaintiff's activity constitute a "taxable event" within IRC definitions, and is the tax imposed consistent with constitutional requirements?

**Legal Standard:** The IRC imposes tax on "gross income" defined in **26 U.S.C. § 61** as "all income from whatever source derived." This includes compensation for services, business income, rents, dividends, capital gains, and all other accessions to wealth. The constitutional validity of this imposition has been affirmed repeatedly.

#### **Analytical Considerations:**

- Identify the specific income or activity at issue: Is it compensation for labor, passive income, capital gain, or something else?
- Assess whether any specific IRC exclusion, deduction, or exemption applies under the Code.
- Evaluate whether any constitutional argument (direct tax, apportionment)

applies — noting that such arguments are routinely rejected under post-Sixteenth Amendment doctrine.

- Consider whether the activity occurred in a U.S. territory, federal enclave, or foreign jurisdiction, which may affect taxability under specific IRC provisions.

**Key Authorities:** *26 U.S.C. § 61; Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955); Cheek v. United States, 498 U.S. 192 (1991) (good-faith reliance on legal misunderstanding may negate willfulness in criminal cases, but does not create a civil law exemption).*

**Typical Outcome:** Unless a specific statutory exclusion applies, income taxation of a U.S. citizen's accession to wealth is lawful. Constitutional challenges to this imposition on private-capacity grounds are **[REJECTED]**.

#### 4.4 Step 4 — Assess Jurisdictional Bars and Exceptions

##### STEP 4: Does the Anti-Injunction Act or Other Jurisdictional Bar Apply?

**Operative Question:** Does the action seek to restrain the assessment or collection of a federal tax? If so, is there a recognized exception to the AIA or the Declaratory Judgment Act's tax exclusion?

**Legal Standard:** 26 U.S.C. § 7421(a) bars injunctive suits restraining tax assessment or collection. 28 U.S.C. § 2201 bars declaratory judgment relief in federal tax cases.

##### AIA Analysis — Apply Each Exception in Sequence:

- **Statutory exception (§ 7421(a)):** Is the plaintiff's claim authorized by one of the enumerated statutory exceptions within the AIA itself?
- ***Enochs* exception:** Is it absolutely clear that the government cannot prevail on the merits AND does traditional equity jurisdiction exist? Both elements must be satisfied.
- ***South Carolina v. Regan* exception:** Does the plaintiff lack any

alternative statutory remedy by which to challenge the tax? If no adequate remedy at law exists, the AIA may not bar equitable relief.

- **Refund suit (§ 7422):** Has the plaintiff paid the disputed tax, filed an administrative refund claim, and awaited the IRS's determination (or expiration of the six-month wait period)? If so, a refund suit in district court or the Court of Federal Claims is available.

**Key Authorities:** *26 U.S.C. §§ 7421, 7422; 28 U.S.C. § 2201; Enochs v. Williams Packing, 370 U.S. 1 (1962); South Carolina v. Regan, 465 U.S. 367 (1984); Bob Jones University v. Simon, 416 U.S. 725 (1974); National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012) (AIA does not bar suit where penalty is a "tax" only for constitutional purposes but not for AIA purposes — context-specific analysis).*

**Typical Outcome:** Most private-capacity tax challenges are barred by the AIA at this step. Survival requires satisfying a recognized exception. The *Regan* exception is narrow and rarely successful. The refund suit remains the primary viable path for challenging a completed tax assessment.

## 4.5 Step 5 — Determine Available Relief

### STEP 5: What Relief Is Available to the Plaintiff?

**Operative Question:** Having determined that a cause of action may exist and that jurisdictional bars do not apply (or that an exception exists), what forms of relief are available to the private-capacity plaintiff?

#### Available Relief — Priority Analysis:

- **Tax Refund (26 U.S.C. § 7422):** After paying the tax and exhausting administrative refund claim procedures, suit may be brought in the United States District Court (with jury trial right) or the United States Court of Federal Claims (no jury). This is the safest and most procedurally established path. Statute of limitations: two years from IRS denial or six months from filing,

whichever comes first (§ 6532).

- **Tax Court (26 U.S.C. § 6213):** If the IRS issues a Statutory Notice of Deficiency, the taxpayer may file a petition in the United States Tax Court within 90 days without first paying the disputed tax. The Tax Court has specialized expertise in IRC issues and does not require prepayment.
- **Damages Under 26 U.S.C. § 7433:** Where IRS personnel negligently or recklessly disregarded the IRC in connection with collection activities, a taxpayer may recover actual, direct economic damages (capped at \$1,000,000 for reckless/intentional conduct; \$100,000 for negligence). Exhaustion of administrative remedies is a jurisdictional prerequisite.
- **Bivens Claims:** Where no adequate statutory remedy exists and an IRS agent has violated a taxpayer's constitutional rights in his or her personal capacity, a *Bivens* action may theoretically be available — but courts have increasingly limited *Bivens* in new contexts. *See Egbert v. Boule, 596 U.S. 482 (2022)* (Supreme Court substantially restricted the extension of *Bivens* to new contexts, making this route highly uncertain in the tax context).
- **Administrative Procedure Act (5 U.S.C. § 702):** APA challenges to IRS rulemaking, regulations, or guidance that exceed statutory authority may be available as standalone actions, provided the challenge does not seek to restrain tax collection (AIA bar) and the IRS action constitutes "final agency action."
- **Injunctive Relief (Narrow):** Available only where a recognized AIA exception applies; exceedingly rare in practice.

**Key Authorities:** *26 U.S.C. §§ 6213, 7422, 7433; 5 U.S.C. § 702; Bivens, 403 U.S. 388; Egbert v. Boule, 596 U.S. 482 (2022).*

**Typical Outcome:** The Tax Court (if Notice of Deficiency issued) and the refund suit (§ 7422) are the primary viable forums. *Bivens* and APA actions in the tax context face increasingly formidable barriers.

---

## 5. CRITICAL LEGAL ARGUMENTS AND COUNTERARGUMENTS

---

### 5.1 Arguments Favoring Private-Capacity Avoidance of Tax Jurisdiction

The following arguments appear with regularity in private-capacity tax litigation. They are presented here for doctrinal completeness. Each argument's judicial reception is noted:

#### Argument A: Lack of Voluntary Acceptance of Federal Status

**Theory:** The individual has not voluntarily accepted any federal status, franchise, or benefit and therefore has not subjected himself to the federal government's taxing jurisdiction. The tax system is a compact or contract, and parties who have not entered into the compact are not bound by it.

**Judicial Reception:** **[REJECTED — FRIVOLOUS]**. Federal tax obligations are imposed by statute pursuant to constitutional authority, not by voluntary contract. There is no opt-out mechanism and no legal foundation for "voluntary compact" arguments in tax law. Courts have dismissed such arguments at the pleading stage and imposed sanctions.

#### Argument B: No Federal Nexus / No Federally Sourced Income

**Theory:** The plaintiff's income derives entirely from private, non-federal sources, and the Sixteenth Amendment's taxing power extends only to income with a federal nexus — such as income derived from a federal source, activity, or privilege. Without such nexus, the tax is an unapportioned direct tax prohibited by Article I.

**Judicial Reception:** **[REJECTED]**. The Sixteenth Amendment explicitly authorizes Congress to tax income "from whatever source derived" without apportionment. Courts uniformly hold this phrase forecloses any nexus requirement. *See Brushaber, 240 U.S. 1; Stearman v. Commissioner, 436 F.3d 533 (5th Cir. 2006).*

## **Argument C: The "Taxpayer" Is a Legal Fiction Separate from the Natural Person**

**Theory:** The plaintiff's name, as it appears in IRS records and tax documents (purportedly in all-capital letters or otherwise distinguished from the plaintiff's "true" name), refers to an artificial legal entity — a "strawman" — separate from the living natural person. The natural person, distinct from this entity, has no obligation to satisfy the entity's tax liabilities.

**Judicial Reception:** **[REJECTED — FRIVOLOUS — SANCTIONS RISK]**. No court has accepted this theory. It is catalogued by the IRS and Tax Court among the most commonly identified frivolous arguments. Raising it in any federal proceeding risks immediate sanction.

## **Argument D: Constitutional Challenge to the Application of the Income Tax**

**Theory (Legitimate Structural Form):** Even if the Sixteenth Amendment grants broad taxing power, its application to a specific form of income (e.g., a gain that is actually a return of capital, or a transaction that does not constitute "realized" income) may be challenged on constitutional grounds. This argument challenges the application of the tax — not the tax itself — and is structurally distinct from pure protestor theories.

**Judicial Reception:** **[CONTESTED — SOMETIMES VIABLE]**. Courts have entertained challenges to the IRC's specific application, particularly on questions such as what constitutes "realization" of income (*see Eisner v. Macomber, 252 U.S. 189 (1920)*), though significantly narrowed by later decisions), and whether a particular gain constitutes a tax on capital rather than income. These remain legitimate — though typically unsuccessful — legal arguments when properly bounded.

## **5.2 Counterarguments and Judicial Treatment**

### **Courts' Consistent Rejection of Tax Protestor Arguments**

Federal courts across all circuits have developed a body of doctrine specifically addressing and summarily disposing of tax protestor arguments. The Fifth Circuit's decision in *Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984)* established the

template: courts are not required to "refute each point raised by a tax protestor" and may instead dismiss arguments categorically where they have been repeatedly rejected.

The United States Tax Court has similarly adopted an expedited procedure — the "**frivolous argument dismissal**" — under which petitions advancing well-catalogued frivolous theories may be dismissed with costs and penalties assessed under **26 U.S.C. § 6673**, which authorizes a penalty of up to \$25,000.

### **The "861 Argument" and Its Rejection**

The "**861 argument**" derives its name from **26 U.S.C. § 861**, which specifies items of income from sources "within the United States" — a provision primarily applicable to non-resident aliens and foreign corporations. Proponents of this argument contend that § 861 limits the taxable income of U.S. citizens to income sourced from specific federal sources, thereby exempting most domestic private-sector income.

Courts have **[REJECTED]** this argument comprehensively and repeatedly. *See United States v. Ward, 833 F.2d 1538 (11th Cir. 1987); Aiello v. Commissioner, T.C. Memo 1995-40; Larken v. United States, 491 F.3d 750 (8th Cir. 2007)*. Section 861 applies to the allocation of income between U.S. and foreign sources for specific taxpayers; it does not limit the taxability of U.S. citizens' domestic income. Reading it otherwise requires ignoring IRC §§ 1, 61, and the regulations thereunder.

### **Sanctions Under Rule 11 and 26 U.S.C. § 6673**

Practitioners who advance frivolous tax arguments in federal litigation face sanctions from multiple sources:

- **Fed. R. Civ. P. 11**: Requires attorneys to certify that claims are warranted by existing law or a nonfrivolous argument for extension or modification of existing law. Tax protestor arguments routinely fail this standard.
- **26 U.S.C. § 6673**: Authorizes the Tax Court to impose penalties of up to \$25,000 on taxpayers who file frivolous or dilatory petitions.

- **28 U.S.C. § 1927:** Authorizes courts to require attorneys who multiply proceedings unreasonably to pay excess costs and fees.
- **26 U.S.C. § 6702:** Imposes a \$5,000 civil penalty per return for filing frivolous tax returns.

### 5.3 Distinguishing Legitimate Capacity Arguments from Frivolous Claims

The following table provides a framework for distinguishing legitimate capacity-based arguments (which courts may entertain on the merits) from frivolous claims (which courts dismiss with sanctions):

Factor	Legitimate Argument	Frivolous Claim
<b>Legal Basis</b>	Grounded in recognized constitutional or statutory text, interpreted within mainstream legal methodology	Based on novel interpretations of grammar, typographical conventions, or discredited theories
<b>Judicial History</b>	Not previously addressed, or subject of a genuine circuit split	Repeatedly and uniformly rejected by multiple circuits and the Supreme Court
<b>Relief Sought</b>	Damages, refund, or specific AIA-excepted injunction	Blanket immunity from all federal taxation; total rejection of IRS authority
<b>Factual Specificity</b>	Specific facts tying plaintiff's situation to the legal theory advanced	Boilerplate language; template pleadings; no case-specific facts
<b>Engagement with Precedent</b>	Distinguishes adverse precedent on factual or legal grounds	Ignores or categorically dismisses controlling precedent without basis
<b>Capacity Framing</b>	Challenges specific government conduct (e.g., wrongful levy, unauthorized disclosure) by specific officers in personal capacity	Claims plaintiff is entirely outside federal jurisdiction based on natural person / strawman theories
<b>Sanction Risk</b>	Low — argument engages legitimate legal uncertainty	High — IRS and courts have categorized the argument as frivolous per

Factor	Legitimate Argument	Frivolous Claim
		se

---

## 6. STRATEGIC CONSIDERATIONS FOR LITIGATION

---

### Properly Pleading Private-Capacity Status

When a legitimate private-capacity claim exists — most commonly a suit against an IRS official in his or her personal capacity for specific unconstitutional conduct — the pleading must make clear that:

7. The suit is against the *individual officer*, not the United States or the IRS as an entity;
8. The plaintiff seeks personal damages from the officer, not an injunction against tax collection;
9. The claimed constitutional violation is specific, factually supported, and tied to the officer's conduct outside the scope of lawful authority;
10. The plaintiff acknowledges any applicable exhaustion requirements (e.g., § 7433's administrative exhaustion) and has complied or explains why compliance is excused.

Failure to clearly distinguish a private-capacity claim from an official-capacity suit — or from a disguised challenge to tax assessment — will invite dismissal and may attract sanctions.

### The Importance of Factual Specificity in Jurisdictional Challenges

Courts apply heightened scrutiny to jurisdictional challenges in the tax context, given the pervasive history of frivolous litigation. A private-capacity plaintiff who wishes to challenge IRS jurisdiction on any theory must anchor that challenge in *specific, particular facts* unique to the plaintiff's situation. Generic assertions — "I am a natural person"; "I never consented to federal taxation"; "My income is not taxable" — will be dismissed without substantive analysis. The pleading must

explain *precisely* why the plaintiff's situation differs from the ordinary taxpayer, what specific legal authority supports that distinction, and what specific relief is sought.

### **Interaction with Exhaustion of Administrative Remedies**

Several avenues of relief require exhaustion of IRS administrative remedies as a *jurisdictional* prerequisite — meaning courts lack subject-matter jurisdiction over the claim until exhaustion is complete:

- **Refund suits (§ 7422):** Require filing a timely administrative claim for refund with the IRS before suit. The claim must be filed within the period of limitations (generally three years from filing or two years from payment, whichever is later under § 6511).
- **§ 7433 damages:** Require exhaustion of administrative remedies per IRS regulations (26 C.F.R. § 301.7433-1) before filing suit in district court.
- **Collection Due Process (CDP) hearings (§ 6330):** Taxpayers must request and complete a CDP hearing before seeking Tax Court review of collection actions.

A private-capacity plaintiff who bypasses administrative exhaustion requirements will face dismissal for lack of jurisdiction, regardless of the merits of the underlying claim.

### **Discovery Considerations in Capacity-Based Tax Litigation**

In private-capacity suits against IRS officials, discovery considerations differ significantly from ordinary tax litigation:

- **Qualified immunity:** Individual IRS officers sued in personal capacity may assert qualified immunity, which may be adjudicated on a motion to dismiss or summary judgment before discovery. Courts often stay discovery pending resolution of qualified immunity. *See Harlow v. Fitzgerald, 457 U.S. 800 (1982).*

- **Privacy Act and IRC § 6103:** Taxpayer return information is protected by § 6103's confidentiality provisions. Discovery requests for third-party return information will face serious limitations.
- **Deliberative process privilege:** IRS internal communications and decision-making documents may be protected from discovery by the deliberative process privilege, a government common-law privilege.
- **Scope of discovery:** In APA challenges to IRS rulemaking, discovery is typically limited to the administrative record. Supplemental discovery outside the record requires a showing of bad faith, ex parte communications, or procedural irregularity.

 **Strategic Tip: Consider the Tax Court**

For taxpayers who receive a Statutory Notice of Deficiency, the United States Tax Court offers a specialized, well-developed forum with expertise in IRC issues. Petitioning the Tax Court preserves the right to litigate without prepayment of the disputed tax, avoids the AIA, and invokes a court with established procedural rules specifically designed for tax disputes. Even where a taxpayer wishes to raise novel or aggressive arguments, the Tax Court is often the most appropriate venue to do so without the risk of AIA dismissal at the threshold.

---

## 7. CONCLUSION AND SUMMARY CHART

---

### Narrative Summary

The intersection of capacity doctrine and federal tax jurisdiction presents a complex and frequently misunderstood area of law. At its core, the capacity distinction in federal litigation — most rigorously developed in civil rights cases — has been imported into the tax context in two primary ways: (1) as a vehicle for suing IRS

agents in their personal capacity for specific unconstitutional conduct, and (2) as a more sweeping — and consistently rejected — theory that private-capacity natural persons stand entirely outside the definitional scope of the federal tax system.

The first category represents established law with cognizable, if narrow and increasingly limited, legal pathways. *Bivens* actions against IRS officers in personal capacity, refund suits under § 7422, damages under § 7433, and Tax Court petitions constitute the legitimate repertoire of the informed private-capacity plaintiff. These paths require procedural precision, factual specificity, exhaustion compliance, and awareness of evolving Supreme Court doctrine restricting implied constitutional remedies.

The second category — the theory that the natural person, by asserting private-capacity status, becomes entirely exempt from federal income tax — has no doctrinal support and represents one of the most heavily sanctioned categories of litigation in the federal court system. The Sixteenth Amendment, as interpreted from *Brushaber* onward, forecloses the constitutional arguments; the IRC's broad definition of "person" forecloses the statutory arguments; and the judiciary's categorical treatment of such claims as frivolous forecloses any realistic litigation strategy built on these foundations.

This doctrinal map serves to chart those boundaries with precision, enabling practitioners and researchers to navigate the legitimate pathways while clearly identifying the dangerous terrain of sanctionable arguments. Careful, factually specific, procedurally compliant litigation in the Tax Court or federal district court — rather than sweeping jurisdictional challenges to the federal tax system itself — remains the only viable strategy for a private-capacity plaintiff challenging federal tax authority.

### **Five-Step Capacity Analysis Summary Chart**

<b>Step</b>	<b>Question</b>	<b>Legal Standard / Test</b>	<b>Key Authorities</b>	<b>Typical Outcome / Notes</b>
<b>1</b>	Is the plaintiff	§ 7701(a)(1):	<i>26 U.S.C. §</i>	Presumptively

Step	Question	Legal Standard / Test	Key Authorities	Typical Outcome / Notes
	a statutory "person" subject to IRC jurisdiction?	"individual" includes all natural persons; U.S. citizens and resident aliens are covered as a matter of law	<i>7701(a)(1); Sloan, 939 F.2d 499; Crain, 737 F.2d 1417</i>	YES for all U.S. citizens. Arguments to the contrary are <b>REJECTED</b> and sanctionable.
2	Does the plaintiff have a constitutional nexus to federal tax jurisdiction?	Sixteenth Amendment: "income from whatever source derived" — no specific nexus required for U.S. citizens; nexus relevant for non-residents and excise taxes	<i>U.S. Const. amend. XVI; Brushaber, 240 U.S. 1; 26 U.S.C. § 61; 26 U.S.C. §§ 871-879</i>	YES for U.S. citizens regardless of income source. <b>CONTESTED</b> and sometimes meritorious for non-residents.
3	Is the tax imposition on plaintiff's activity lawful?	§ 61: gross income is all accessions to wealth; constitutional validity affirmed repeatedly; specific application challenges possible	<i>26 U.S.C. § 61; Commissioner v. Glenshaw Glass, 348 U.S. 426; Eisner v. Macomber, 252 U.S. 189 (narrow application)</i>	Generally YES. Specific application challenges (realization, capital return) are <b>CONTESTED</b> but available as non-frivolous arguments.
4	Does the AIA or Declaratory Judgment Act bar the action?	§ 7421: bars suits restraining assessment/collection; exceptions: statutory, <i>Enochs</i> judicial exception, <i>Regan</i> no-	<i>26 U.S.C. §§ 7421, 7422; 28 U.S.C. § 2201; Enochs, 370 U.S. 1; S.C. v. Regan, 465 U.S. 367; Bob Jones Univ., 416 U.S. 725</i>	AIA bars most suits at this step. Survival requires specific exception. Refund suit (§ 7422) is primary viable path.

Step	Question	Legal Standard / Test	Key Authorities	Typical Outcome / Notes
		alternative-remedy exception; § 7422 refund path		
5	What relief is available?	Tax Court (pre-payment); Refund suit (post-payment, § 7422); § 7433 damages; <i>Bivens</i> (increasingly limited); APA challenge	<i>26 U.S.C. §§ 6213, 7422, 7433; 5 U.S.C. § 702; Bivens, 403 U.S. 388; Egbert v. Boule, 596 U.S. 482 (2022)</i>	Tax Court and § 7422 refund suit are primary forums. <i>Bivens</i> route increasingly foreclosed. APA available for rulemaking challenges.

---

## 8. APPENDIX: KEY AUTHORITIES

---

### A. Constitutional Provisions

#### ***U.S. Const. art. I, § 8, cl. 1***

The Taxing and Spending Clause; grants Congress the power to lay and collect taxes, duties, imposts, and excises.

---

#### ***U.S. Const. amend. XVI***

The Sixteenth Amendment (1913); grants Congress power to tax incomes from whatever source derived, without apportionment. Foundational to the modern federal income tax. Upheld in *Brushaber v. Union Pacific R.R. Co., 240 U.S. 1 (1916)*.

---

## **B. Federal Statutes**

### ***26 U.S.C. § 61 – Gross Income Defined***

Defines "gross income" as all income from whatever source derived. The broadest possible statutory income definition, interpreted in *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955).

---

### ***26 U.S.C. § 7701(a)(1) – Definitions: Person***

Defines "person" for IRC purposes to include an individual, trust, estate, partnership, association, company, or corporation. Courts hold this definition covers all natural persons who are U.S. citizens or residents.

---

### ***26 U.S.C. § 7421(a) – The Anti-Injunction Act***

Bars suits for the purpose of restraining the assessment or collection of any tax. One of the most significant jurisdictional bars in federal tax litigation. Exceptions recognized in *Enochs v. Williams Packing*, 370 U.S. 1 (1962) and *South Carolina v. Regan*, 465 U.S. 367 (1984).

---

### ***26 U.S.C. § 7422 – Civil Actions for Refund***

Authorizes suits for recovery of taxes paid, conditioned on prior filing of administrative refund claim with the IRS. Primary post-payment litigation path for taxpayers contesting assessments.

---

### ***26 U.S.C. § 7433 – Civil Damages for Certain Unauthorized Collection Actions***

Permits taxpayers to sue the United States for actual damages caused by IRS employees' reckless or intentional disregard of the IRC in collection proceedings. Capped at \$1,000,000 (reckless/intentional) or \$100,000 (negligent). Requires prior exhaustion of administrative remedies.

---

**26 U.S.C. § 6673 — Sanctions and Costs Awarded by Courts**

Authorizes Tax Court to impose penalties up to \$25,000 for filing frivolous or dilatory petitions. Frequently invoked against tax protestor litigants.

---

**28 U.S.C. § 2201 — Creation of Remedy (Declaratory Judgment Act)**

Authorizes declaratory judgments in federal courts, with an explicit exception for cases "with respect to Federal taxes." Bars declaratory relief in most tax disputes. Applied in *Bob Jones University v. Simon*, 416 U.S. 725 (1974).

---

**42 U.S.C. § 1983 — Civil Action for Deprivation of Rights**

Primary vehicle for capacity-based suits against state officials; foundational to capacity doctrine developed in *Kentucky v. Graham* and *Hafer v. Melo*.

---

**C. Key Case Law**

***Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916)**

Supreme Court's foundational ruling upholding the constitutionality of the federal income tax under the Sixteenth Amendment. Establishes that the Amendment eliminated any apportionment requirement for income taxes.

---

***Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971)**

Recognized implied damages remedy against federal officers for constitutional violations. Primary vehicle for private-capacity suits against IRS agents in personal capacity. Substantially limited by *Egbert v. Boule* (2022) in new contexts.

---

***Kentucky v. Graham, 473 U.S. 159 (1985)***

Established the definitive framework for distinguishing official-capacity from personal-capacity suits. Foundational to all capacity analysis in federal civil litigation.

---

***Hafer v. Melo, 502 U.S. 21 (1991)***

Confirmed that state officials sued in personal capacity are "persons" under § 1983 and cannot invoke Eleventh Amendment immunity. Demonstrates that capacity framing has concrete, enforceable legal consequences.

---

***Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989)***

Held that a state and its officials in official capacity are not "persons" under § 1983. Important analogy for arguments that certain entities or persons may fall outside a statutory definition of "person."

---

***Enochs v. Williams Packing & Navigation Co., 370 U.S. 1 (1962)***

Established the two-part judicial exception to the Anti-Injunction Act: (1) government cannot prevail under any circumstances; AND (2) traditional equity jurisdiction exists. Both elements required; rarely met in practice.

---

***South Carolina v. Regan, 465 U.S. 367 (1984)***

AIA does not bar equitable relief where the plaintiff has no adequate alternative statutory remedy. A narrow exception applied in limited circumstances.

---

***Bob Jones University v. Simon, 416 U.S. 725 (1974)***

Held that both the AIA and the Declaratory Judgment Act's tax exception barred the university's challenge to its loss of tax-exempt status. Key precedent on the breadth of jurisdictional bars in tax matters.

---

***Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984)***

Foundational Fifth Circuit decision on frivolous tax protestor arguments. Established that courts need not address each frivolous argument individually and may dismiss such claims summarily.

---

***Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955)***

Defined "gross income" under § 61 as any accession to wealth, clearly realized, over which the taxpayer has complete dominion. Broad interpretation of the income tax base.

---

***Cheek v. United States, 498 U.S. 192 (1991)***

Good-faith belief in the unlawfulness of tax obligations, even if objectively unreasonable, may negate the willfulness element in criminal tax prosecutions. Does NOT create a civil law exemption from tax obligations.

---

***Egbert v. Boule, 596 U.S. 482 (2022)***

Supreme Court substantially restricted the availability of *Bivens* remedies in "new contexts," creating significant doubt about the viability of *Bivens* actions against IRS agents in the tax collection context where Congress has provided alternative statutory remedies.

---

***Harlow v. Fitzgerald, 457 U.S. 800 (1982)***

Established the objective standard for qualified immunity of government officials sued in personal capacity. Government officials are shielded from damages liability if their conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

---

***United States v. Sloan, 939 F.2d 499 (7th Cir. 1991)***

Seventh Circuit rejection of the argument that a natural person is not a "person" subject to federal tax obligations. Affirmed conviction despite capacity-based identity arguments.

---

***National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012)***

While primarily an Affordable Care Act case, contains important analysis of the distinction between a "tax" and a "penalty" for purposes of the AIA, relevant to jurisdictional analysis in cases where the IRS characterizes exactions differently for different legal purposes.

---

**D. Regulations and Administrative Guidance**

***26 C.F.R. § 301.7433-1 – Civil Cause of Action for Certain Unauthorized Collection Actions***

IRS regulations specifying the administrative exhaustion requirements that must be satisfied before a taxpayer may file suit under 26 U.S.C. § 7433. Exhaustion is a jurisdictional prerequisite.

---

***IRS Notice 2010-33, 2010-17 I.R.B. 609***

IRS's comprehensive list of frivolous tax arguments, including the natural person/legal fiction argument, the 861 argument, and voluntariness arguments. Raising arguments on this list invites automatic penalty consideration.

---

***Rev. Proc. 2020-34, 2020-2 C.B. 327***

IRS administrative procedures governing taxpayer identification numbers; relevant background to SSN-based identity arguments in tax proceedings.

---

---

 **FINAL DISCLAIMER — PLEASE READ CAREFULLY**

This document — **Capacity-Based Doctrinal Map: How Private-Capacity Plaintiffs Avoid Federal Tax Jurisdiction** — was prepared on June 12, 2026, for **Private1** of San Diego, California, solely for **academic analysis and litigation preparation research purposes**.

**This document does not constitute legal advice.** It does not create an attorney-client relationship. It does not represent the legal opinions or positions of any law firm, legal organization, or government entity. The authors and preparers of this document make no representations as to the accuracy, completeness, or applicability of the legal analysis herein to any specific factual situation.

**Warning regarding sanctionable arguments:** This document describes and analyzes certain legal theories that have been *categorically rejected* by federal courts and designated as frivolous by the IRS and the United States Tax Court. These theories are described for scholarly, analytical, and litigation-preparation purposes only. Advancing rejected theories in federal proceedings may result in monetary sanctions, dismissal with prejudice, and referral to bar authorities. Readers must consult a licensed attorney before taking any legal action.

**Citation Note:** All case citations are provided for reference and research purposes. Practitioners must verify all citations for accuracy, current validity, and subsequent history through an authoritative legal research service (e.g., Westlaw, Lexis Nexis, or Google Scholar) prior to reliance.