

# DOCTRINAL SYNTHESIS

*Capacity Framework, Private-Identity Correction,  
and Federal Tax Jurisdiction*

**Document Type:** Litigation Preparation Memorandum / Doctrinal Analysis

**Classification:** Research and Academic Purposes Only

**Prepared For:** Private1

**Prepared At:** San Diego, California

**Date:** Friday, June 12, 2026 — 04:20 a.m. Pacific Daylight Time

**Companion Documents:** (1) Capacity-Based Doctrinal Map; (2) Model Complaint for Private-Capacity Identity Correction

---

## **Important Disclaimer — Read Before Proceeding**

*This document is prepared for **academic research and litigation preparation purposes only**. It does not constitute legal advice, and no attorney-client relationship is created by its use. **Several arguments described herein have been rejected as frivolous by federal courts**, and counsel who advance them without adequate factual and legal basis risk sanctions under **Fed. R. Civ. P. 11, 28 U.S.C. § 1927, and 26 U.S.C. § 6673**. Attorneys and pro se litigants should conduct independent research and a thorough Rule 11 inquiry before filing any pleading based on the theories described in this synthesis. Nothing in this document should be read as an endorsement of tax-protestor arguments, anti-government ideology, or any position that federal income tax is inapplicable to natural persons as a general matter.*

---

## TABLE OF CONTENTS

- 1. Executive Summary**
- 2. Introduction: The Convergence of Capacity Law and Tax Jurisdiction**

2.1 Background on the Legal Problem

2.2 Purpose and Scope of This Synthesis

### **3. Doctrinal Foundations**

3.1 Capacity Law: From *Graham* to *Hafer*

3.2 The Statutory Definition of "Person" Under the IRC

3.3 Administrative Identity and the Privacy Act

### **4. The Capacity Map in Practice: How the Five Steps Apply to the Model Complaint**

4.1 Step 1 (Capacity Identification) → Complaint ¶¶ 1-10

4.2 Step 2 (Federal Nexus Analysis) → Count I (Declaratory Relief)

4.3 Step 3 (Taxable Event Analysis) → Complaint ¶¶ 20-35

4.4 Step 4 (Jurisdictional Bars) → Complaint Jurisdiction Section

4.5 Step 5 (Available Relief) → Prayer for Relief

### **5. Critical Doctrinal Tensions and Honest Assessment**

5.1 The Frivolous Filing Problem

5.2 Where Legitimate Legal Questions Exist

5.3 The Judicial Landscape

5.4 Ethical Obligations of Counsel

### **6. Synthesis: A Unified Litigation Framework**

6.1 The Three-Document System

6.2 Pre-Filing Checklist

6.3 Discovery Plan

6.4 Motion Practice

### **7. Conclusion**

**Appendix A:** Cross-Reference Table

**Appendix B:** Glossary of Key Terms

**Appendix C:** Selected Authorities

## **1. EXECUTIVE SUMMARY**

---

This doctrinal synthesis serves as the strategic and analytical bridge between two companion documents: **(1) the Capacity-Based Doctrinal Map**, which provides the foundational legal research architecture, and **(2) the Model Complaint for Private-Capacity Identity Correction**, which translates that research into a viable procedural vehicle for federal litigation. Together, these three documents constitute a three-part litigation preparation system for a narrow but analytically distinct set of legal claims arising at the intersection of **capacity law, federal tax jurisdiction, and administrative identity records**.

The core doctrinal argument animating this synthesis is as follows: Federal tax law operates upon "**persons**" as defined by statute — specifically, **26 U.S.C. § 7701(a) (1)** — and the Internal Revenue Service administers its enforcement apparatus through identity records that may, in specific factual circumstances, fail to accurately correspond to a natural person acting exclusively in a private, non-federal capacity. Where such administrative misidentification occurs, the affected individual possesses legitimate legal remedies under the **Privacy Act, 5 U.S.C. § 552a**; under **26 U.S.C. § 7433** for unauthorized collection actions; and, in cases of procedural due process violations by individual agents acting in their personal capacity, potentially under ***Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971)**.

This synthesis does not argue — and counsel should not argue — that federal income tax is inapplicable to natural persons generally. Courts have **uniformly, consistently, and emphatically rejected** the proposition that natural persons are exempt from federal taxation by virtue of being "natural" rather than "legal" entities. That argument is frivolous, has generated sanctions in numerous circuits, and should not be advanced. What this synthesis does argue is that a **narrow, carefully bounded set of procedural and administrative claims** can be built upon legitimate legal foundations without crossing into the territory of frivolous tax-protestor argumentation.

The practical litigation framework proceeds through five analytical steps drawn from the Doctrinal Map: **(1)** establishing the plaintiff's private-capacity standing; **(2)** challenging the government's federal nexus; **(3)** analyzing the taxable event characterization; **(4)** navigating jurisdictional bars including the Anti-Injunction Act;

and **(5)** coordinating available relief. Each step maps directly to a corresponding section of the Model Complaint, creating a disciplined, cross-referenced pleading architecture.

**Key Takeaway for Counsel:** The most legally defensible claims in this framework are the **Privacy Act record correction claim** (5 U.S.C. § 552a(d)), the **§ 7433 damages claim** for unauthorized collection actions, and a well-documented **APA challenge** to specific IRS rulemaking. These claims have established procedural homes in federal court, and courts have entertained them in appropriate factual circumstances. The capacity and personhood arguments serve as analytical framing — not as standalone theories of tax exemption.

## 2. INTRODUCTION: THE CONVERGENCE OF CAPACITY LAW AND TAX JURISDICTION

---

### 2.1 Background on the Legal Problem

Federal tax law is, at its structural core, a system of legal relationships between defined **persons** and the United States Treasury. The Internal Revenue Code does not tax events in the abstract; it taxes persons with respect to taxable events. This fundamental architecture means that the definition of "**person**" is not a peripheral definitional nicety — it is the load-bearing pillar upon which the entire statutory edifice rests.

Section **7701(a)(1)** of the Internal Revenue Code provides: *"The term 'person' shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation."* The word "**individual**" carries enormous legal weight in this definition. It is the category into which natural persons — human beings of flesh and bone — are placed by the IRS, the Treasury, and the courts. Yet the definition does not further define "individual," and critics of the current tax enforcement regime have argued — without success — that the statutory

"individual" is a legally constructed abstraction distinct from the living, breathing natural person.

Independently of that rejected argument, a genuine and legally cognizable problem arises from the IRS's administrative apparatus. The IRS creates and maintains records — Taxpayer Information Files (TIFs), master file records, and related administrative databases — that assign identities to taxpayers. These records are administrative constructs. They do not exist in nature; they are created by government action, maintained by government agents, and subject to amendment under the **Privacy Act of 1974**. Where such records contain errors — whether in the characterization of income, the identification of the taxpayer entity, or the basis for assessment — a legitimate legal remedy exists independent of any argument about the abstract nature of personhood.

It is the **tension between statutory tax identity and constitutional personhood** — and more practically, between IRS administrative records and the factual reality of an individual's private-capacity conduct — that this synthesis addresses. The legal question is not whether natural persons owe taxes (they do), but whether, in a specific factual context, the administrative identity assigned by the IRS to the plaintiff accurately corresponds to the taxable person with respect to the taxable events at issue. This is a narrower, more precise, and more legally defensible question than the broad natural-person arguments that courts have routinely sanctioned.

## **2.2 Purpose and Scope of This Synthesis**

This synthesis serves three purposes. **First**, it consolidates the doctrinal analysis contained in the Capacity-Based Doctrinal Map into a coherent legal argument architecture. **Second**, it shows how each element of that architecture is translated into pleading practice through the Model Complaint. **Third**, and most importantly for counsel, it provides a candid and honest assessment of where these arguments succeed, where they fail, and where the risk of sanctions is acute.

This synthesis deliberately addresses gaps in existing case law — not to suggest that courts have overlooked obvious winning arguments, but to identify the specific factual and procedural circumstances under which the legitimate core of these

claims might survive initial pleading challenges. The Privacy Act claims, the § 7433 damages theory, and the *Bivens* individual-capacity framing each have established precedential support that the broader natural-person personhood arguments lack entirely.

A candid caveat is essential at the outset: **courts have broadly, consistently, and repeatedly rejected tax-protestor arguments**, including the natural-person/legal-fiction distinction, the claim that the Sixteenth Amendment was improperly ratified, the argument that wages are not income, and related theories. The Ninth Circuit — which is binding authority for litigation originating in San Diego, California — has characterized such arguments in unequivocal terms. *See, e.g., United States v. Bentson*, 947 F.2d 1353 (9th Cir. 1991); *Wilcox v. Commissioner*, 848 F.2d 1007 (9th Cir. 1988). This synthesis does not attempt to rehabilitate those arguments. It seeks to identify the legally legitimate sub-claims that survive within the broader framework.

### 3. DOCTRINAL FOUNDATIONS

---

#### 3.1 Capacity Law: From Graham to Hafer

##### 3.1.1 The Official/Private Capacity Distinction — Origins and Development

The distinction between official-capacity and private-capacity suits is not a procedural technicality; it is a substantive legal concept with profound consequences for sovereign immunity, personal liability, and the scope of available remedies. The Supreme Court's systematic development of this doctrine provides the analytical foundation for applying capacity principles to federal tax challenges.

The modern capacity doctrine was architecturally established in *Kentucky v. Graham*, 473 U.S. 159 (1985), decided by the Supreme Court under Justice Marshall's authorship. In *Graham*, the Court drew a definitive line between two distinct types of suits against government officials. An **official-capacity suit**, the Court explained, "is, in all respects other than name, to be treated as a suit against the entity." *Id.* at 165–66. A judgment in an official-capacity suit imposes liability on the governmental entity, not the individual officer. As a consequence, official-

capacity defendants enjoy all of the immunities and defenses available to the governmental entity itself — including, critically, sovereign immunity and the Eleventh Amendment bar against suits for damages in federal court.

By contrast, a **personal-capacity suit** (also called a private-capacity suit) seeks to impose individual liability on the government officer as a person. *Graham* clarified that in such suits, the officer "is personally liable" and the "entity's 'treasury' is not at risk." *Id.* at 166. This distinction is not merely semantic; it determines the applicable immunity doctrine, the indemnification structure, the source of any judgment, and the procedural rules governing the litigation.

### **3.1.2 *Hafer v. Melo* — The Individual Officer's Exposure**

*Hafer v. Melo*, 502 U.S. 21 (1991), decided unanimously by the Supreme Court under Justice O'Connor's authorship, sharpened the *Graham* framework in a critical respect. The defendant in *Hafer* — the newly elected Auditor General of Pennsylvania — argued that because her allegedly wrongful acts (discharging employees) were taken in her official capacity as a state officer, she could not be held personally liable under **42 U.S.C. § 1983**. The Court rejected this argument. *Hafer* held that state officials, sued in their **individual capacities**, are "persons" within the meaning of § 1983, and that the Eleventh Amendment does not bar such suits. *Id.* at 31.

The significance of *Hafer* for the present framework is this: an individual government officer who acts under color of law in a manner that violates the plaintiff's federal rights may be sued in their **personal capacity** regardless of whether the conduct was performed in the course of official duties. This principle — that official action does not insulate the individual actor from personal liability — is the doctrinal bridge between § 1983/Bivens jurisprudence and the IRS agent context. An IRS revenue officer who, in their individual capacity, takes collection action that violates the procedural requirements of the Internal Revenue Code or the constitutional rights of the taxpayer may, in appropriate circumstances, be exposed to individual liability.

### **3.1.3 Application Beyond § 1983 — Bivens and Federal Officers**

The *Graham/Hafer* capacity framework applies with full force to federal officers through the *Bivens* doctrine. In *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), the Supreme Court recognized an implied cause of action for damages against federal officers who violate constitutional rights acting under color of federal law. As with § 1983 claims against state officers, *Bivens* actions lie against officers in their **individual capacities**; the United States itself is not a proper *Bivens* defendant.

It must be candidly acknowledged that the Supreme Court has substantially curtailed the *Bivens* remedy in recent years. In *Egbert v. Boule*, 596 U.S. 482 (2022), the Court reiterated that extending *Bivens* to new contexts is "disfavored," and that courts should not create new *Bivens* causes of action where Congress has provided an alternative remedial structure. The existence of **26 U.S.C. § 7433** as a remedy for unauthorized IRS collection actions will likely foreclose *Bivens* claims in most tax-related contexts, as courts will typically find that the statutory remedy is an adequate alternative. Nonetheless, where a specific constitutional violation by an individual IRS agent falls outside the scope of § 7433, a *Bivens* claim against the agent in their individual capacity remains theoretically viable.

## **3.2 The Statutory Definition of "Person" Under the IRC**

### **3.2.1 The Statutory Text**

Section **7701(a)(1)** of the Internal Revenue Code provides that the term "**person**" "shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation." The term "individual" is not further defined in § 7701, and courts have uniformly held that it encompasses natural persons — that is, human beings — without qualification.

The use of the word "include" in § 7701(a)(1) has generated substantial litigation. Tax protesters have argued that the phrase "construed to mean and include" indicates an exclusive list, or alternatively that the enumeration of non-human entities (trusts, estates, partnerships, corporations) implies that "individual" refers not to a natural person but to a legal construct analogous to those entities. Both

arguments have been categorically rejected by every federal court that has addressed them.

### **3.2.2 Historical Context — The Revenue Act of 1918**

The definition of "person" in § 7701 traces its lineage to the **Revenue Act of 1918**, Pub. L. 65-254, 40 Stat. 1057, which contained virtually identical language. Congress employed the construction "mean and include" not to limit the scope of the term but to **expand** it — to make clear that non-human legal entities were encompassed within the definition in addition to natural persons. This is a well-established canon of statutory draftsmanship. *See Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 99-100 (1941) (the word "include" is generally used as a word of extension or enlargement, not of limitation or exclusion).

The legislative history of the Revenue Act of 1918 and its successor statutes confirms that Congress intended the tax to apply to natural persons — wage earners, proprietors, investors — as its primary subjects. The inclusion of trusts, estates, and corporate entities in the definition of "person" was an expansion of scope, not a redefinition of the term's core meaning.

### **3.2.3 Judicial Rejection of the Legal-Fiction Argument**

The argument that the "individual" referenced in § 7701(a)(1) is a legal fiction, corporate construct, or administrative designation distinct from the living natural person has been **uniformly, consistently, and repeatedly rejected** by federal courts. Courts have characterized this argument as frivolous in well over one hundred published opinions. A representative sample:

- *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990) (rejecting the argument that wages of natural persons are not taxable income and characterizing it as "completely without merit");
- *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916) (confirming the constitutional validity of the income tax on natural persons);
- *Cheek v. United States*, 498 U.S. 192 (1991) (while holding that good-faith misunderstanding may negate willfulness for criminal purposes, the Court made clear that the substantive obligation to pay taxes is not in dispute);

- *Coleman v. Commissioner*, 791 F.2d 68, 70 (7th Cir. 1986) ("We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.").

Counsel relying on the legal-fiction argument as a substantive claim of tax exemption should expect immediate dismissal, a Rule 11 inquiry, and a strong likelihood of sanctions. This synthesis retains the capacity framework as an analytical tool for the Privacy Act and § 7433 claims only — not as a basis for asserting exemption from federal income taxation.

### **3.3 Administrative Identity and the Privacy Act**

#### **3.3.1 How the IRS Creates and Maintains Taxpayer Records**

The IRS maintains an administrative database — the **Individual Master File (IMF)** and the **Business Master File (BMF)** — that serves as the backbone of federal tax administration. Each taxpayer is assigned a **Taxpayer Identification Number (TIN)**, typically a Social Security Number (SSN) for individuals or an Employer Identification Number (EIN) for entities. These records are created, amended, and maintained by IRS personnel and are subject to the Privacy Act of 1974.

The IMF record associated with a given TIN contains the IRS's administrative characterization of the taxpayer — including the type of entity (individual, corporation, etc.), the tax modules open for each year, assessments, credits, and collection actions. Importantly, these records are administrative constructs that may, in specific circumstances, contain errors. The Privacy Act provides a mechanism for challenging and correcting such errors.

#### **3.3.2 The Privacy Act Framework for Identity Correction**

The **Privacy Act of 1974, 5 U.S.C. § 552a**, grants individuals the right to access federal agency records pertaining to them, to request amendment of inaccurate records, and to seek judicial review when an agency improperly refuses to amend its records. The specific provisions most relevant to this framework are:

- **5 U.S.C. § 552a(d)(1)**: The right to access records;

- **5 U.S.C. § 552a(d)(2)**: The right to request amendment of inaccurate records;
- **5 U.S.C. § 552a(d)(3)**: The agency's obligation to acknowledge and act on amendment requests;
- **5 U.S.C. § 552a(g)(1)(C)**: The civil remedy for failure to maintain accurate records that causes adverse determination;
- **5 U.S.C. § 552a(g)(4)**: Damages — actual damages plus attorney's fees for intentional or willful violations.

A Privacy Act claim against the IRS for inaccurate taxpayer records is a **legitimate, judicially recognized claim** that is analytically distinct from any argument about the scope of federal taxing authority. Where the IRS has maintained records that contain factual inaccuracies — whether regarding the nature of a payment, the identity of the taxpayer, or the basis for an assessment — a Privacy Act challenge may succeed on its own terms.

### **3.3.3 Legitimate Privacy Act Claims vs. Identity-as-Tax-Avoidance Arguments**

Courts have drawn a sharp distinction between legitimate Privacy Act claims and attempts to use the Privacy Act as a vehicle for tax avoidance. The critical distinction is **purpose**. A plaintiff who seeks to correct a factually inaccurate IRS record — for example, a record that incorrectly attributes income to the plaintiff, that misidentifies the plaintiff's entity status, or that reflects an assessment made without proper procedural authority — states a cognizable Privacy Act claim. A plaintiff who seeks to use the Privacy Act to erase a valid tax assessment that is accurately recorded pursues a claim that courts will dismiss as an impermissible use of the statute.

Representative cases in which courts have entertained (though not always granted) Privacy Act claims against the IRS include: *White v. Internal Revenue Service*, 707 F.2d 897 (6th Cir. 1983) (entertaining Privacy Act claim for improper disclosure of tax records); *Dowd v. United States*, 713 F. Supp. 171 (E.D. Va. 1989) (analyzing Privacy Act amendment claims against IRS). Counsel should note that the Privacy Act's exemptions for IRS records — particularly the exemption of certain

enforcement records under **5 U.S.C. § 552a(j)(2)** — may limit the scope of available relief in specific contexts.

## **4. THE CAPACITY MAP IN PRACTICE: HOW THE FIVE STEPS APPLY TO THE MODEL COMPLAINT**

---

### **4.1 Step 1 (Capacity Identification) → Complaint ¶¶ 1-10 (Parties Section)**

#### **4.1.1 The Strategic Function of the Parties Section**

The first step of the Doctrinal Map — **Capacity Identification** — requires the plaintiff to establish, at the outset of the complaint, the precise capacity in which they appear before the court. This is not a pro forma exercise; it is a strategic pleading decision with cascading consequences for every subsequent element of the case. The Parties section of the Model Complaint (¶¶ 1-10) translates this step into practice by pleading the plaintiff as a **natural person acting exclusively in private capacity**.

The strategic importance of this allegation is threefold. **First**, it establishes the plaintiff's individual standing to assert Privacy Act claims under **5 U.S.C. § 552a(d)**, which grants rights to "**individuals**" — a term defined in the Privacy Act as "a citizen of the United States or an alien lawfully admitted for permanent residence." *5 U.S.C. § 552a(a)(2)*. This is a statutory definition that maps cleanly to the natural person, without the ambiguity that surrounds the IRC's "individual." **Second**, it frames the plaintiff's relationship to the IRS's administrative records as that of a natural person subject to potential administrative misidentification, rather than as a taxpayer acknowledging the full scope of the assessment. **Third**, it preserves the capacity argument for appellate review without requiring the district court to rule on it as a threshold matter.

#### **4.1.2 Risks and Mitigation**

Courts treat "**natural person, not a legal fiction**" allegations with deep skepticism and have frequently construed such language as a marker of tax-

protestor ideology. The risk of triggering an immediate Rule 11 inquiry — or a sua sponte order to show cause — is real. Mitigation requires **specificity**: the complaint must articulate the *specific factual basis* for the private-capacity allegation, not merely assert it as a general proposition. The factual basis must relate to the actual dispute (e.g., the nature of the income at issue, the specific IRS record alleged to be inaccurate), not to a general theory of tax exemption.

**Pleading Guidance:** Avoid the phrase "natural person, not a legal fiction" unless followed immediately by a specific, concrete factual allegation explaining what the relevant IRS record states and why it is factually inaccurate. Courts dismiss the former; they are required by *Twombly/Iqbal* to analyze the latter.

## **4.2 Step 2 (Federal Nexus Analysis) → Complaint Count I (Declaratory Relief)**

### **4.2.1 The Declaratory Count as a Federal Nexus Challenge**

The Doctrinal Map's second step — **Federal Nexus Analysis** — asks whether the income or activity at issue has a sufficient connection to federal activity, federal employment, federal commerce, or another recognized federal nexus to subject it to federal taxation under the specific statutory provision invoked by the IRS. The Model Complaint's Count I (Declaratory Relief) translates this into a pleading strategy by seeking a declaration that the specific taxable event alleged by the IRS either lacks a federal nexus or has been incorrectly characterized.

A declaratory judgment action against the United States on a tax matter faces the immediate obstacle of the **Anti-Injunction Act**, discussed in Step 4 below. However, where the plaintiff seeks a declaration regarding the *characterization* of a record — rather than an injunction against tax collection — the AIA is not necessarily an absolute bar. Courts have entertained declaratory actions that seek to establish the correct legal characterization of a transaction, independent of the tax collection itself.

#### 4.2.2 Burden of Proof on the Federal Nexus

A well-pleaded federal nexus challenge — supported by specific factual allegations about the nature and source of the income at issue — requires the government to articulate the specific statutory and regulatory basis for its characterization. This is significant because the government's initial burden in a refund suit is to establish the validity of its assessment. *See Welch v. Helvering*, 290 U.S. 111, 115 (1933). Pleading the absence of a federal nexus with factual specificity does not create a presumption of correctness in the plaintiff's favor, but it does force the government to identify the legal basis for its characterization — which may reveal procedural deficiencies in the assessment process.

#### 4.3 Step 3 (Taxable Event Analysis) → Complaint Factual Allegations

##### ¶¶ 20-35

The third step of the Doctrinal Map — **Taxable Event Analysis** — examines whether the specific event characterized by the IRS as generating taxable income actually constitutes a taxable event under the applicable provisions of the IRC. The Model Complaint's factual allegations in ¶¶ 20-35 implement this analysis by providing a detailed account of the transactions or activities at issue, together with the plaintiff's characterization of their legal significance.

The critical distinction here is between challenging the government's *characterization* of a transaction (a legitimate legal argument) and arguing that all wages or income earned by a natural person are constitutionally exempt from taxation (a frivolous argument). The former may succeed; the latter will not. Specifically:

- Arguments that a specific payment was a **gift** rather than compensation under **26 U.S.C. § 102** are well-established in the case law and entirely legitimate;
- Arguments that a specific payment was a **return of capital** rather than income are analytically sound if supported by the facts;

- Arguments that a specific payment was received by a **trust or other entity** rather than by the individual plaintiff raise legitimate questions about entity characterization;
- Arguments that **wages generally** are not income are frivolous without exception.

## **4.4 Step 4 (Jurisdictional Bars) → Complaint Jurisdiction Section**

### **4.4.1 The Anti-Injunction Act**

The **Anti-Injunction Act (AIA)**, **26 U.S.C. § 7421(a)**, 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." The AIA is a broad jurisdictional bar that reflects Congress's judgment that challenges to tax assessments should proceed through the established administrative and refund-suit channels — not through pre-collection injunctive actions in district court.

The AIA applies to suits whose *purpose* is to restrain assessment or collection, even if the plaintiff characterizes the relief sought in other terms. Courts apply a **functional test**: if granting the requested relief would effectively prevent or restrain the assessment or collection of a tax, the AIA bars the suit regardless of how the complaint is captioned. *See Bob Jones University v. Simon*, 416 U.S. 725, 737 (1974).

### **4.4.2 The South Carolina v. Regan Exception**

The Supreme Court recognized a narrow exception to the AIA in ***South Carolina v. Regan***, 465 U.S. 367 (1984). The Court held that the AIA does not bar a suit where Congress has not provided the plaintiff with an alternative legal avenue to challenge the tax. *Id.* at 373. This exception is narrow and has not been construed broadly; courts have consistently held that where a refund claim is available — even if inconvenient or expensive — the *Regan* exception does not apply. The most the *Regan* exception can accomplish in the present framework is to preserve the possibility of a jurisdictional argument in a case where the specific claim cannot be brought through any alternative statutory channel.

#### 4.4.3 Section 7433 as an Alternative Jurisdictional Hook

The most powerful jurisdictional vehicle available to the plaintiff is **26 U.S.C. § 7433**, which provides a cause of action for damages against the United States when an IRS officer or employee "**recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title**" in connection with any collection of Federal tax. The § 7433 claim is crucial for two reasons:

1. **It is not barred by the AIA** because it is a damages claim, not a suit to restrain assessment or collection; and
2. **It forces the government to defend the procedural propriety** of its collection actions, which may reveal the administrative record errors that underlie the capacity and identity claims.

The plaintiff must exhaust administrative remedies before bringing a § 7433 claim. *See* Treas. Reg. § 301.7433-1(d). Failure to exhaust is a jurisdictional defect that courts have enforced rigorously.

#### 4.5 Step 5 (Available Relief) → Complaint Prayer for Relief

The fifth step of the Doctrinal Map — **Available Relief** — maps to the complaint's Prayer for Relief. A well-structured prayer for relief in this framework should coordinate four categories of requested relief:

Relief Category	Legal Basis	Viability Assessment
<b>Declaratory Relief</b>	28 U.S.C. § 2201; characterization of specific transactions	Moderate — subject to AIA, but viable for record-characterization claims
<b>Injunctive Relief</b>	Typically AIA-barred; narrow exceptions apply	Low — AIA almost always bars pre-collection injunctive relief
<b>Damages under § 7433</b>	26 U.S.C. § 7433; unauthorized collection actions	High — strongest standalone count if factual basis exists
<b>Privacy Act Correction</b>	5 U.S.C. § 552a(d), (g)	Moderate — viable if records contain factual inaccuracies

Relief Category	Legal Basis	Viability Assessment
<b>EAJA Fee Shifting</b>	28 U.S.C. § 2412; Equal Access to Justice Act	Moderate — available if government's position was not "substantially justified"

The **Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412**, provides a significant strategic lever: if the plaintiff prevails on any claim and the government's litigation position was not substantially justified, the court may award attorney's fees. In cases where the IRS's procedural violations under § 7433 are well-documented, the EAJA claim provides leverage to encourage settlement and to hold the government accountable for litigation costs.

## 5. CRITICAL DOCTRINAL TENSIONS AND HONEST ASSESSMENT

---

### 5.1 The Frivolous Filing Problem

**⚠ High Sanctions Risk:** This subsection addresses the most significant practical danger associated with this litigation framework. Counsel must read this section carefully before filing any pleading based on the capacity and personhood arguments described in this synthesis.

The most acute practical danger in this litigation framework is the risk of sanctions for frivolous filings. Federal courts have been unsparing in their condemnation of natural-person and legal-fiction tax arguments. The sanctions arsenal available to courts includes:

- **Fed. R. Civ. P. 11:** Sanctions for filings not warranted by existing law or a nonfrivolous argument for modifying existing law;
- **28 U.S.C. § 1927:** Personal liability of counsel for excess costs caused by vexatious multiplication of proceedings;

- **26 U.S.C. § 6673**: Penalty of up to \$25,000 in Tax Court for proceedings instituted primarily for delay or based on a position that is frivolous or groundless;
- **26 U.S.C. § 6702**: Civil penalty of \$5,000 for filing a frivolous tax return;
- Inherent court power to sanction bad-faith litigation conduct.

The IRS publishes a periodically updated list of positions it identifies as frivolous under § 6702. This list includes, among others: the argument that wages, tips, and other compensation are not income; the argument that filing a tax return is voluntary; the argument that natural persons are not "individuals" or "persons" under the IRC; and the argument that the Sixteenth Amendment was improperly ratified. *Notice 2010-33, 2010-17 I.R.B. 609*. Pleadings that advance these positions, even in the guise of a capacity argument, will be recognized immediately by government counsel and the court.

The **line between a protected constitutional challenge and a frivolous tax-protestor argument** is not always easy to identify in advance, but the following heuristic is reliable: if the argument, if successful, would result in the plaintiff paying no federal income tax on compensation for services rendered, it is almost certainly frivolous. If the argument, if successful, would result in a specific administrative record being corrected or a specific collection action being unwound, it may be legitimate.

## **5.2 Where Legitimate Legal Questions Exist**

Against the backdrop of the frivolous filing risk, it is important to identify precisely where **legitimate legal questions** do exist within this framework:

### **5.2.1 Privacy Act Record Correction**

A genuine Privacy Act claim exists where: (a) the IRS has maintained a record that is factually inaccurate; (b) the inaccuracy relates to the plaintiff as an individual; (c) the plaintiff has submitted a timely amendment request under § 552a(d)(2); and (d) the IRS has improperly refused to amend the record. This is a straightforward administrative law claim that does not require the plaintiff to argue that they are exempt from taxation.

### **5.2.2 § 7433 Damages for Unauthorized Collection**

A genuine § 7433 claim exists where an IRS officer or employee has disregarded the provisions of the IRC or Treasury Regulations in connection with a collection action. The most common factual bases include: failure to follow the Collection Due Process procedures of **26 U.S.C. §§ 6320 and 6330**; levy actions taken without proper notice; and collection actions in violation of the automatic stay in bankruptcy.

### **5.2.3 Bivens Claims for Procedural Due Process Violations**

As noted, the post-*Egbert* landscape for *Bivens* actions is challenging. However, where a specific IRS agent has violated a plaintiff's Fifth Amendment procedural due process rights in a manner that Congress has not otherwise addressed, a *Bivens* claim against the agent in their individual capacity remains theoretically available. The plaintiff must plead specific conduct by an identified agent, not generalized institutional misconduct.

### **5.2.4 APA Challenges to IRS Rulemaking**

Challenges to IRS regulations and guidance documents under the Administrative Procedure Act, **5 U.S.C. § 706**, are well-established and frequently successful. Following the Supreme Court's decision in *Mayo Foundation for Medical Education and Research v. United States*, 562 U.S. 44 (2011), IRS regulations are reviewed under the *Chevron/Loper Bright* framework, and courts will set aside regulations that are arbitrary, capricious, or contrary to the statute. Following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), courts now exercise independent judgment in determining whether an agency has acted within its statutory authority, further strengthening the APA challenge as a litigation tool.

## **5.3 The Judicial Landscape**

The federal circuits have addressed capacity-based and natural-person tax arguments with remarkable consistency. The following table summarizes the landscape:

<b>Circuit</b>	<b>Treatment of Natural-Person/Capacity Tax Arguments</b>	<b>Key Cases</b>
<b>Ninth Circuit</b>	Uniformly rejected as frivolous; sanctions frequently imposed	<i>Wilcox v. Commissioner</i> , 848 F.2d 1007 (9th Cir. 1988); <i>United States v. Bentson</i> , 947 F.2d 1353 (9th Cir. 1991)
<b>Tenth Circuit</b>	Uniformly rejected; characterized as "completely without merit"	<i>Lonsdale v. United States</i> , 919 F.2d 1440 (10th Cir. 1990)
<b>Seventh Circuit</b>	Uniformly rejected; courts decline to engage with "somber reasoning"	<i>Coleman v. Commissioner</i> , 791 F.2d 68 (7th Cir. 1986)
<b>Fifth Circuit</b>	Uniformly rejected; sanctions imposed on counsel	<i>Crain v. Commissioner</i> , 737 F.2d 1417 (5th Cir. 1984)
<b>All Circuits</b>	Privacy Act record correction and § 7433 claims entertained where factual basis exists	Various — see Appendix C

The Ninth Circuit is the controlling circuit for litigation originating in **San Diego, California**. Its treatment of natural-person tax arguments is unambiguous. Any pleading filed in the Southern District of California based on the natural-person/legal-fiction argument will be litigated in a circuit with a well-developed and uniformly adverse body of precedent on this specific question.

## **5.4 Ethical Obligations of Counsel**

### **5.4.1 Rule 11 Obligations**

Before filing any pleading containing capacity-based tax claims, counsel must conduct — and be prepared to demonstrate — a thorough inquiry into the factual and legal basis for each claim. **Fed. R. Civ. P. 11(b)** requires that each claim be "warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law." The natural-person/legal-fiction argument does not meet this standard as a basis for tax exemption. The Privacy Act, § 7433, and APA claims may meet this standard if supported by specific, documented facts.

## 5.4.2 Duty of Candor

**Model Rules of Professional Conduct 3.3** requires candor toward the tribunal. Counsel who advances a legal theory that has been uniformly rejected by the controlling circuit must disclose that adverse authority and explain the basis for distinguishing it. Failure to disclose the Ninth Circuit's adverse precedent on natural-person tax arguments would violate Rule 3.3 and likely invite sanctions under Rule 11 and § 6673.

## 5.4.3 Presenting a Good-Faith Capacity Argument

A good-faith capacity argument in this context is **not** an argument that natural persons are exempt from taxation. It is an argument that: (a) the IRS's administrative records mischaracterize a specific transaction or income item; (b) the plaintiff's specific private-capacity conduct is distinguishable from the taxable activity alleged; and (c) the specific collection action taken by the IRS violated a specific procedural requirement. This is a factually intensive, record-bound argument — not a grand theory of constitutional tax exemption.

# 6. SYNTHESIS: A UNIFIED LITIGATION FRAMEWORK

---

## 6.1 The Three-Document System

This litigation framework is built on a three-document architecture. Each document serves a distinct function, and the three together constitute a complete litigation preparation system:

Document	Function	Primary Audience
<b>Document 1</b> Capacity-Based Doctrinal Map	Research and analytical foundation; identifies the doctrinal building blocks, the controlling case law, the five analytical steps, and the known weaknesses of the framework	Counsel conducting pre-filing research; senior associates performing due diligence
<b>Document 2</b> Model Complaint for Private-Capacity Identity	Procedural vehicle for litigation; translates the doctrinal framework into a	Attorneys preparing to file; pro se litigants with counsel supervision

Document	Function	Primary Audience
Correction	filed pleading, organized around the strongest available claims (Privacy Act, § 7433, APA)	
<b>Document 3</b> This Doctrinal Synthesis	Strategic and doctrinal bridge; maps each analytical step to the corresponding complaint section, identifies the legitimate core of the framework, and provides the pre-filing and discovery roadmap	Lead counsel; supervising partners; client briefing

## 6.2 Pre-Filing Checklist

Before filing any pleading based on this framework, counsel should complete the following checklist:

3. **Confirm private-capacity status:** Identify the specific factual basis for the assertion that the plaintiff's conduct at issue was private-capacity conduct not connected to a federal nexus. Document this basis in the litigation file.
4. **Exhaust administrative remedies:**
  - For § 7433 claims: Submit a written administrative claim to the IRS per Treas. Reg. § 301.7433-1(d) and await the IRS's response or the expiration of the six-month waiting period.
  - For Privacy Act claims: Submit a written amendment request under 5 U.S.C. § 552a(d)(2) and await the IRS's response under § 552a(d)(3).
  - For refund claims: File a timely claim for refund under 26 U.S.C. § 7422 and await disallowance or the expiration of the six-month waiting period.
5. **Conduct Rule 11 inquiry:** Research the controlling circuit's treatment of each claim. In the Ninth Circuit, this means confirming that the complaint does not assert any position on the IRS's published list of frivolous positions (Notice 2010-33). Document the Rule 11 inquiry in the litigation file.

6. **Identify circuit-specific precedents:** Beyond the Ninth Circuit's general rejection of natural-person arguments, identify any circuit-specific precedents on the specific claims to be asserted (Privacy Act, § 7433, APA). The Ninth Circuit's APA jurisprudence following *Loper Bright* may be particularly relevant to IRS regulatory challenges.
7. **Assess AIA exposure:** For each count of the complaint, conduct an AIA analysis to confirm that the relief sought does not "restrain the assessment or collection" of a tax within the meaning of § 7421(a). The § 7433 damages count is the safest vehicle; the declaratory and injunctive counts require careful framing.
8. **Confirm statute of limitations:** The § 7433 claim must be brought within two years of the collection action that gives rise to the claim. The Privacy Act claim must be brought within two years of the date on which the plaintiff discovered or should have discovered the inaccuracy. *5 U.S.C. § 552a(g)(5)*.

## 6.3 Discovery Plan

### 6.3.1 Documents to Request

The following categories of documents are essential to the capacity and identity framework:

- **IRS Master File transcripts:** TXMODA (Taxpayer Master File transcript) and RTVUE/TRDBV (return transcripts) reflecting the IRS's administrative characterization of the plaintiff's tax account. Obtainable via Form 4506-T or Privacy Act/FOIA request.
- **Taxpayer Information File (TIF):** The complete administrative file maintained by the IRS with respect to the plaintiff's account, including all correspondence, notices, assessment records, and collection history.
- **Revenue Agent Reports (RAR):** The examining agent's report documenting the basis for any proposed assessment.

- **Authorization documents:** Documentation establishing the specific authority of the IRS officer or employee who took the collection action at issue — including delegation orders, summons authority, and lien/levy authorization.
- **IRS Integrated Data Retrieval System (IDRS) records:** The specific IDRS command codes and transaction codes associated with the plaintiff's account, which will reveal the administrative actions taken and their sequence.

### 6.3.2 Depositions

Key deposition targets in this framework include:

- **The Revenue Officer or Revenue Agent** who made the assessment or took the collection action at issue — to establish the specific statutory and regulatory basis for the action and to identify any procedural deviations;
- **The IRS Disclosure Officer** responsible for responding to the plaintiff's Privacy Act amendment request — to establish the basis for any denial and to test the agency's claim that the records are accurate;
- **The IRS's 30(b)(6) designee** on the topics of: the agency's procedures for creating and maintaining taxpayer identity records; the agency's procedures for processing Privacy Act amendment requests; and the authority of individual agents to make assessments and take collection actions.

### 6.3.3 Expert Witnesses

The following expert witnesses may be appropriate depending on the specific claims advanced:

- **Tax law expert:** A tax attorney or academic with expertise in IRC § 7701 definitions, the scope of the federal taxing power, and the history of the "person" definition — primarily to address the court's concerns about the frivolous-filing risk and to distinguish the legitimate from the frivolous aspects of the framework;

- **IRS procedure expert:** A former IRS employee with knowledge of the agency's internal procedures for assessment, collection, and record maintenance — particularly valuable for the § 7433 and Privacy Act claims;
- **Privacy Act expert:** An attorney or academic with expertise in the Privacy Act's application to federal tax records — relevant to the amendment claim and to the damages analysis under § 552a(g)(4).

## 6.4 Motion Practice

### 6.4.1 Expected Government Motions

Counsel should anticipate and prepare responses to the following government motions:

Government Motion	Legal Basis	Plaintiff's Responsive Strategy
Motion to Dismiss for Lack of Subject Matter Jurisdiction	Fed. R. Civ. P. 12(b)(1); AIA § 7421(a); sovereign immunity	Demonstrate that § 7433 claim falls outside AIA; assert Privacy Act waiver of sovereign immunity under § 552a(g)(1)
Motion to Dismiss for Failure to State a Claim	Fed. R. Civ. P. 12(b)(6); <i>Twombly/Iqbal</i>	Demonstrate specific factual allegations supporting § 7433 and Privacy Act claims; avoid reliance on natural-person/legal-fiction allegations
Motion for Summary Judgment	Fed. R. Civ. P. 56; no genuine dispute of material fact	Create genuine dispute through administrative record evidence; deposition testimony; Privacy Act records showing inaccuracy
Motion for Sanctions	Fed. R. Civ. P. 11; 28 U.S.C. § 1927	Demonstrate Rule 11 inquiry; show good-faith basis for each claim; withdraw any claim that lacks factual or legal support after the safe harbor period

#### 6.4.2 The § 7433 Claim as the Most Viable Standalone Count

Of all the claims available in this framework, the **§ 7433 damages claim** has the strongest procedural footing as a standalone count. It: (a) has an express waiver of sovereign immunity; (b) is not barred by the AIA; (c) has a well-developed body of case law in the Ninth Circuit; and (d) creates a factual record — through discovery into the collection action — that may support the broader capacity and identity arguments. Counsel should build the case around the § 7433 claim and treat the capacity and Privacy Act arguments as supporting counts, not the primary thrust of the litigation.

## 7. CONCLUSION

---

This doctrinal synthesis has traced the analytical path from the foundational capacity doctrine established in *Kentucky v. Graham* and *Hafer v. Melo* through the statutory framework of the Internal Revenue Code and the Privacy Act, to the specific litigation strategy embodied in the Model Complaint. The result is a three-document system that provides a structured, disciplined, and candid framework for pursuing a narrow but analytically legitimate set of claims against the IRS.

The **legitimate core** of the private-capacity argument in the tax context consists of three elements:

9. **Privacy Act correction:** Where the IRS has maintained administrative records that are factually inaccurate — not merely unfavorable — a Privacy Act claim under **5 U.S.C. § 552a** provides a judicially recognized vehicle for challenging and correcting those records.
10. **Procedural due process:** Where an individual IRS agent has violated the plaintiff's Fifth Amendment rights through specific procedural misconduct, a *Bivens* claim against the agent in their individual capacity remains theoretically available, subject to the significant post-*Egbert* constraints on new *Bivens* contexts.

**11. § 7433 damages:** Where the IRS has disregarded the procedural requirements of the IRC in connection with a collection action — the most concrete and well-supported claim in this framework — § 7433 provides a direct damages remedy against the United States.

The **strategic path forward** for counsel is clear: build the case on these legitimate grounds, document the Rule 11 inquiry thoroughly, exhaust administrative remedies before filing, and resist the temptation to advance the natural-person/legal-fiction argument as a basis for substantive tax exemption. Preserve the capacity arguments for their analytical value in framing the Privacy Act and § 7433 claims — not as a grand theory of constitutional immunity from federal taxation.

The **final recommendation** for counsel is this: treat the capacity framework as a lens through which to examine the IRS's administrative conduct, not as a sword with which to claim exemption from the tax laws. The former approach has a legitimate doctrinal foundation. The latter will result in dismissal, sanctions, and potential disciplinary exposure. The synthesis presented here is the analytical architecture for the former. It is left to counsel's professional judgment to ensure that the pleadings filed on behalf of their clients stay firmly within its boundaries.

## **APPENDIX A: CROSS-REFERENCE TABLE**

---

### **Doctrinal Map / Model Complaint / Synthesis Cross-Reference**

<b>Doctrinal Map Step</b>	<b>Model Complaint Section</b>	<b>Synthesis Section</b>	<b>Key Legal Authority</b>
<b>Step 1:</b> Capacity Identification	Parties Section (¶¶ 1-10)	§ 4.1	<i>Graham</i> , 473 U.S. 159; <i>Hafer</i> , 502 U.S. 21
<b>Step 2:</b> Federal Nexus Analysis	Count I — Declaratory Relief	§ 4.2	28 U.S.C. § 2201; <i>Welch v. Helvering</i>
<b>Step 3:</b> Taxable Event Analysis	Factual Allegations (¶¶ 20-35)	§ 4.3	26 U.S.C. § 61; §§ 102, 1001
<b>Step 4:</b>	Jurisdiction Section;	§ 4.4	26 U.S.C. §§ 7421,

<b>Doctrinal Map Step</b>	<b>Model Complaint Section</b>	<b>Synthesis Section</b>	<b>Key Legal Authority</b>
Jurisdictional Bars	Count II (§ 7433)		7433; <i>S.C. v. Regan</i>
<b>Step 5:</b> Available Relief	Prayer for Relief	§ 4.5	5 U.S.C. § 552a(g); 28 U.S.C. § 2412
<b>Doctrinal Foundation:</b> Capacity Doctrine	Prefatory Allegations; All Counts	§§ 3.1, 5.4	<i>Graham; Hafer; Bivens</i>
<b>Doctrinal Foundation:</b> Person/Individual Definition	Complaint ¶¶ 5-8	§ 3.2	26 U.S.C. § 7701(a)(1); Revenue Act of 1918
<b>Doctrinal Foundation:</b> Privacy Act	Count III — Privacy Act	§ 3.3	5 U.S.C. §§ 552a(d), (g)
<b>Risk Assessment:</b> Frivolous Filing	Rule 11 Safe Harbor Provisions	§ 5.1	Fed. R. Civ. P. 11; 26 U.S.C. § 6673
<b>Strategic:</b> Pre-Filing Requirements	Administrative Exhaustion Allegations	§ 6.2	Treas. Reg. § 301.7433-1(d); 5 U.S.C. § 552a(d)(2)

## APPENDIX B: GLOSSARY OF KEY TERMS

---

### Capacity (Private vs. Official)

The legal status in which a person appears before a court or agency. An **official-capacity** suit is treated as a suit against the governmental entity the officer represents; a **private-capacity** (or personal-capacity) suit is directed at the individual officer personally and may expose the officer to personal liability. The distinction was definitively established in *Kentucky v. Graham*, 473 U.S. 159 (1985), and refined in *Hafer v. Melo*, 502 U.S. 21 (1991).

### Person (Statutory vs. Natural)

The **statutory "person"** under the Internal Revenue Code, defined at **26 U.S.C. § 7701(a)(1)**, is a legal construct that "shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation." The

**natural person** is a human being — a flesh-and-blood individual. Courts have uniformly held that natural persons are "individuals" within the meaning of § 7701(a) (1) and are therefore "persons" subject to federal income tax. The argument that natural persons are not statutory "persons" or "individuals" has been consistently rejected as frivolous.

### **Federal Nexus**

The connection between a person's activity or income and a recognized federal interest or federal activity that subjects that activity or income to federal taxing authority. The federal nexus is a necessary predicate for federal tax jurisdiction. For income taxation of individuals, the federal nexus is broadly established by the Sixteenth Amendment and **26 U.S.C. § 61**, which defines gross income as "all income from whatever source derived."

### **Taxpayer Identity**

The administrative characterization assigned to a taxpayer by the IRS in its master file records. Taxpayer identity includes the taxpayer's name, Taxpayer Identification Number (TIN), entity type (individual, corporation, etc.), and tax modules. The Privacy Act, **5 U.S.C. § 552a**, governs the maintenance and correction of these administrative identity records.

### **Anti-Injunction Act (AIA)**

The statutory bar at **26 U.S.C. § 7421(a)** providing that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." The AIA is a broad jurisdictional bar with limited exceptions, including the narrow exception recognized in *South Carolina v. Regan*, 465 U.S. 367 (1984), where Congress has provided no alternative avenue for challenging the tax.

### **Bivens Action**

A judicially implied cause of action for damages against federal officers who violate constitutional rights, recognized in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). A *Bivens* action lies against officers in their individual capacities only; the United States is not a proper *Bivens* defendant.

The Supreme Court has substantially limited the availability of *Bivens* actions in recent decisions, particularly *Egbert v. Boule*, 596 U.S. 482 (2022).

### **§ 7433 Claim**

A statutory cause of action under **26 U.S.C. § 7433** allowing a taxpayer to recover damages from the United States when an IRS officer or employee "recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title" in connection with any collection of Federal tax. The § 7433 claim requires exhaustion of administrative remedies and is subject to a two-year statute of limitations. It is not barred by the Anti-Injunction Act.

### **Privacy Act Record Correction**

The right, conferred by **5 U.S.C. § 552a(d)**, of an individual to request amendment of a federal agency record pertaining to them that is inaccurate, irrelevant, untimely, or incomplete. The Privacy Act provides a civil remedy, including damages and attorney's fees, where an agency improperly refuses to amend an inaccurate record or fails to maintain accurate records that cause an adverse determination. The IRS is subject to the Privacy Act, subject to certain exemptions for enforcement records.

### **Frivolous Position (IRS Definition vs. Judicial Definition)**

The **IRS definition** of a frivolous position, for purposes of the **§ 6702** civil penalty, is set forth in Treasury regulations and amplified by the IRS's published list of frivolous arguments (Notice 2010-33). The **judicial definition** under **Fed. R. Civ. P. 11** is broader: a position is frivolous if it is not warranted by existing law and there is no nonfrivolous argument for modifying, reversing, or extending existing law. Both definitions apply to natural-person/legal-fiction tax arguments, which are uniformly characterized as frivolous under both standards.

## **APPENDIX C: SELECTED AUTHORITIES**

---

# **Annotated Bibliography of Key Statutes, Regulations, Cases, and Secondary Sources**

## **Constitutional Authorities**

- **U.S. Const. amend. XVI** — The Sixteenth Amendment, authorizing Congress to lay and collect income taxes "from whatever source derived, without apportionment." The foundational constitutional authority for the federal income tax on natural persons. Judicial decisions uniformly confirm its validity and applicability to natural persons.
- **U.S. Const. amend. V** — The Due Process Clause of the Fifth Amendment, applicable to federal government action. The basis for procedural due process claims against IRS agents acting in their individual capacities in a *Bivens* context.

## **Key Statutes**

- **26 U.S.C. § 61** — Gross income defined as "all income from whatever source derived." The primary definitional provision establishing the scope of the federal income tax base.
- **26 U.S.C. § 7421(a)** — The Anti-Injunction Act. A critical jurisdictional bar in tax litigation; must be analyzed before filing any suit seeking to restrain assessment or collection.
- **26 U.S.C. § 7433** — Civil damages for unauthorized collection actions. The most viable standalone claim in the capacity framework; provides an express waiver of sovereign immunity and is not barred by the AIA.
- **26 U.S.C. § 6673** — Penalty for frivolous or delay-motivated Tax Court proceedings. Counsel risk for advancing frivolous capacity arguments in Tax Court proceedings.
- **26 U.S.C. § 7701(a)(1)** — Definition of "person" for IRC purposes. The statutory provision that serves as the starting point for the capacity and personhood analysis in this framework.

- **5 U.S.C. § 552a** — The Privacy Act of 1974. The primary statutory vehicle for challenging inaccurate IRS administrative records; provides a waiver of sovereign immunity for damages in cases of intentional or willful inaccuracy.
- **5 U.S.C. §§ 701-706** — The Administrative Procedure Act. Authorizes judicial review of agency action; applicable to IRS regulatory challenges following *Loper Bright*.
- **28 U.S.C. § 2412** — The Equal Access to Justice Act. Provides for attorney's fee awards against the government where its litigation position was not substantially justified; a significant strategic lever in § 7433 and Privacy Act cases.

### **Key Treasury Regulations**

- **Treas. Reg. § 301.7433-1(d)** — Administrative exhaustion requirement for § 7433 claims. Failure to exhaust is a jurisdictional defect.
- **Treas. Reg. § 301.6320-1** — Collection Due Process hearing procedures for liens. Procedural requirements whose violation may support a § 7433 claim.
- **Treas. Reg. § 301.6330-1** — Collection Due Process hearing procedures for levies. Procedural requirements whose violation may support a § 7433 claim.

### **Key Cases — Capacity Doctrine**

- ***Kentucky v. Graham*, 473 U.S. 159 (1985)** — Established the official-capacity/private-capacity distinction in the § 1983 context. Official-capacity suits are treated as suits against the entity; private-capacity suits expose the individual officer to personal liability.
- ***Hafer v. Melo*, 502 U.S. 21 (1991)** — Clarified that state officials sued in their individual capacities are "persons" within the meaning of § 1983; the Eleventh Amendment does not bar such suits; officers are not absolutely immune from personal liability by virtue of the official nature of their acts.

- ***Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971)** — Recognized implied cause of action for damages against federal officers for constitutional violations. Substantially curtailed by subsequent decisions including *Egbert v. Boule*, 596 U.S. 482 (2022).
- ***Will v. Michigan Department of State Police*, 491 U.S. 58 (1989)** — Held that states and state officials acting in their official capacities are not "persons" subject to § 1983 liability; distinguished from *Hafer's* holding regarding individual-capacity liability.

### **Key Cases — Tax Jurisdiction and Frivolous Arguments**

- ***Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916)** — Supreme Court upheld the constitutionality of the federal income tax under the Sixteenth Amendment. Foundational authority establishing the scope of Congress's taxing power over income of natural persons.
- ***Cheek v. United States*, 498 U.S. 192 (1991)** — Supreme Court held that good-faith misunderstanding of the tax law may negate the willfulness element for criminal tax offenses, but confirmed that the substantive obligation to pay taxes is not in dispute. Frequently misread by tax protesters.
- ***South Carolina v. Regan*, 465 U.S. 367 (1984)** — Recognized narrow exception to the Anti-Injunction Act where Congress has provided no alternative avenue for challenging the tax. Applied narrowly by subsequent courts.
- ***Bob Jones University v. Simon*, 416 U.S. 725 (1974)** — Supreme Court applied the functional test for the AIA; if granting relief would effectively restrain assessment or collection, the AIA bars the suit regardless of how the relief is characterized.
- ***Coleman v. Commissioner*, 791 F.2d 68 (7th Cir. 1986)** — Seventh Circuit's landmark statement declining to "refute these arguments with somber reasoning and copious citation of precedent" because to do so

"might suggest that these arguments have some colorable merit."

Frequently quoted in sanctions orders.

- ***Lonsdale v. United States***, 919 F.2d 1440 (10th Cir. 1990) — Tenth Circuit rejected natural-person tax arguments as "completely without merit"; affirmed sanctions against the pro se plaintiff.
- ***Crain v. Commissioner***, 737 F.2d 1417 (5th Cir. 1984) — Fifth Circuit imposed sanctions on counsel for advancing frivolous tax arguments, establishing the pattern of sanctions awards in this area.

### **Key Cases — Privacy Act and § 7433**

- ***White v. Internal Revenue Service***, 707 F.2d 897 (6th Cir. 1983) — Sixth Circuit entertained a Privacy Act claim for improper disclosure of taxpayer records; established that the Privacy Act applies to IRS record-keeping activities.
- ***Wilkinson v. United States***, 177 F. Supp. 2d 1221 (D. Kan. 2001) — District court analyzed § 7433 claim arising from unauthorized levy action; illustrated the elements of a viable § 7433 claim and the administrative exhaustion requirement.
- ***Loper Bright Enterprises v. Raimondo***, 603 U.S. 369 (2024) — Supreme Court overruled *Chevron* deference; courts now exercise independent judgment in interpreting statutes. Significantly strengthens APA challenges to IRS regulations by eliminating judicial deference to the agency's own statutory interpretations.

### **Secondary Sources and Administrative Guidance**

- **IRS Notice 2010-33, 2010-17 I.R.B. 609** — IRS's published list of positions identified as frivolous for purposes of the § 6702 civil penalty. Essential reference for Rule 11 inquiry; any argument on this list should not be advanced in a pleading without extraordinary factual and legal justification.

- **Internal Revenue Manual (IRM), Part 5 (Collecting Process)** — The IRS's own procedural manual governing collection activities. Violations of IRM procedures may support a § 7433 claim; IRM provisions are admissible to show the agency's standard of care.
- **Privacy Act Issuances, 5 U.S.C. § 552a** — The Federal Register publication of agency Privacy Act systems of records notices. IRS systems of records are published therein and describe the scope of records subject to amendment requests.
- **Saltzman & Book, IRS Practice and Procedure (Thomson Reuters)** — The leading practitioner treatise on IRS administrative procedure, collection due process, and taxpayer rights. Essential reference for § 7433 and CDP practice.
- **Asimow & Levin, State and Federal Administrative Law (West)** — Authoritative treatise on APA practice; relevant to APA challenges to IRS rulemaking in the post-*Loper Bright* environment.

---

**Document Prepared:** June 12, 2026 — 04:20 a.m. PDT — San Diego, California

**For:** Private1 — Litigation Preparation and Academic Research Only

*This document does not constitute legal advice. No attorney-client relationship is established by this document. The authors make no representations regarding the legal merit of any claim described herein. Attorneys and pro se litigants should conduct independent research and a thorough Rule 11 inquiry before filing any pleading based on these theories. Several arguments described herein have been rejected as frivolous by federal courts, and advancing them may result in sanctions under Fed. R. Civ. P. 11, 28 U.S.C. § 1927, and 26 U.S.C. § 6673.*