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Subject: Restitution

Attached is a brief summary (outline) of the restitution legislation I used for my presentation. Let me know if you have any questions.

Attachment:

RESTITUTION

The **Firearms Excise Tax Improvement Act of 2010** was signed into law on August 16, 2010, and became effective immediately.

The Act amends **IRC § 6201** (Assessment Authority) to allow the IRS to assess and collect restitution ordered by the court for failure to pay any tax imposed under Title 26 in the same manner as if such amount were such tax.

Our interpretation is that the assessed amount is **limited to losses attributable to Title 26 violations** and does not include Title 18, tax-related charges.

- The IRS may now assess and collect the amount of court ordered restitution without going through the civil assessment process.
- Further, the Act restricts the defendant from challenging the assessment related to the order of restitution.
- Since the assessment is limited to the amount ordered as restitution, the amount of restitution calculated becomes more important and should identify each tax year and the specific sum that applies to each tax year.
- It would appear that the Act does not prevent the IRS from assessing a civil tax in excess of the restitution amount under the normal assessment procedures.
- The general **10-year statute of limitations** for collection applies to any tax liability assessed under IRC § 6201(a)(4)(A). The IRS may also file suit under IRC § 6502(a), to reduce the assessment to judgment before the end of the 10-year period to avail itself of **20-year judgment lien**.

- SB/SE Technical Services will be tasked with making the assessments.
- A **cross functional team** has been formed to develop new procedures after a restitution assessment is made. One of the issues to be addressed is what government agency will have primary responsibility to insure that restitution is collected.

WORKING GROUP

The issue of restitution in criminal tax cases was addressed by an **IRS-DOJ working group in 2004**. The group was tasked with addressing the concern that many defendants, despite being convicted of tax crimes, were escaping all responsibility for the payment of taxes associated with their offenses of conviction. One of the most significant problems identified by the group was the **Service's lack of a unified process regarding the collection, monitoring, and processing of a restitution payment to a taxpayer's account**. This was caused by the Service's inability to treat the restitution amount as an assessed tax.

Federal Courts lack the power to impose restitution as an independent part of a sentence without a statutory grant of authority. Two statutes confer on courts the power to order restitution as an independent element of the sentence. (18 USC §§ 3663 & 3663A). **Offenses under Title 26 are not explicitly covered by 18 USC §§ 3663 & 3663A.**

Even if an offense is not covered by 18 USC §§ 3663 & 3663A, a court may order restitution as **a condition of probation or as a condition of supervised release.**

Another option for restitution is pursuant to a plea agreement. A court may order restitution beyond the loss suffered from the offense of conviction if the parties agree.

[REDACTED]

[REDACTED]

[REDACTED]

The **USAM** contains restitution plea language that all AUSA's should be familiar with.

Points to Consider:

1. **Important to consider restitution in plea agreements.**
2. **With assessment on books, much easier to track – will not result in improper refunds like sometimes happened in the past.**
3. **Restitution limited to Title 26 taxes.**
4. **Tax amounts should be calculated with better accuracy (amount/year).**