

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

Number: **201725026**

Release Date: 6/23/2017

CC:PA:02:MABond

POSTN-139584-16

UILC: 6201.01-06

date: March 21, 2017

to: Linda Yow  
(Reviewer, Technical Services, Criminal Restitution Coordinator)

from: Pamela W. Fuller  
(Senior Technician Reviewer, Branch 2, (Procedure & Administration))

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subject: Request That Underpayment Interest Under Section 6601 Assessed On Restitution  
Paid Pursuant To Court Order Under 18 U.S.C. § 3663A Be Abated

**Legend**

X	=
Court	=
Acts	=
Year 1	=
Restitution Amount	=
Amount 1	=
Amount 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Date 10	=

**Issues**

- (1) Whether the court-ordered restitution amount is subject to section 6201(a)(4).
- (2) Whether, and if so when, underpayment interest under section 6601 began to accrue.
- (3) Whether assessment in this case is barred by the prohibition on overcompensation of the government.

**Summary Conclusions**

- (1) The court-ordered restitution amount is subject to section 6201(a)(4).
- (2) Underpayment interest under section 6601 began to accrue from the last date or dates prescribed for payment of the liability that is the subject of the restitution order.
- (3) Assessment in this case is not barred by the prohibition on overcompensation of the government.

**Facts**

On Date 1, the United States  
 filed in the Court.  
 of Title 18 of the United States Code, with

”

Also on Date 1, X  
 . The provided, pursuant to  
 section of Title 18 of the United States Code, for the payment of the Restitution  
 Amount, by X to the Internal Revenue Service (“Service”) within

X . The acts  
 include-----:

On Date 2, the Court in its Restitution Order ordered X to pay the Restitution Amount, within \_\_\_\_\_, to the Service. The Court noted that “

\_\_\_\_\_” It stated that X “

”

On Date 3, X paid the Restitution Amount to the Service.

On Date 4, the Service issued to X a notice (“Notice”) assessing Amount 1 for the tax period ending Date 5, with a due date for payment of Date 6. The Service informed X that the assessment amount reflected a failure to pay penalty, and interest calculated under section 6601 on both the Restitution Amount and the penalty. This Notice reflected an \_\_\_\_\_ and incorrect taxable period. The Service and X subsequently agreed on the \_\_\_\_\_ and the correct taxable period (ending Date 7) for assessment purposes. The Service informed X that the assessment reflected in the Notice would be abated in full, the penalty would not be reassessed, and the interest on the Restitution Amount would be recomputed under section 6601.

The Service recomputed interest on the Restitution Amount under section 6601, and assessed interest on the \_\_\_\_\_ and taxable period in the amount of Amount 2.

In a letter dated Date 8, X argues that the Service may not assess interest on the Restitution Amount \_\_\_\_\_. X first argues that section 6201(a)(4) does not apply to cause the Restitution Amount to be subject to

interest under section 6601,

next argues that even if the Restitution Amount is subject to section 6201(a)(4), interest under section 6601 is not appropriate because the Restitution Amount “was not paid late under that provision.” Finally, X argues that were the Service to assess and collect interest, it “likely would violate the prohibition on the IRS collecting interest more than once.”

You ask for our views on whether the Service’s assessment of interest, calculated from Date 9, to the date the restitution amount was paid, is correct.

### **Law and Analysis**

*(1) Whether the court-ordered restitution amount is subject to section 6201(a)(4).*

Section 6201(a)(4)(A) provides that the “Secretary shall assess and collect the amount of restitution under an order pursuant to section 3556 of Title 18, United States Code, for failure to pay any tax imposed under this title [Title 26] in the same manner as if such amount were such tax.”

Section 3556 of Title 18, United States Code, provides that a “court, in imposing a sentence on a defendant who has been found guilty of an offense shall order restitution in accordance with section 3663A [of Title 18], and may order restitution in accordance with section 3663 [of Title 18].”

X argues that the Service should not have made a restitution-based assessment in this case. X, however, agreed in the

If restitution is ordered to compensate the Service as a victim for the failure to pay a tax imposed by Title 26, then generally the restitution may be assessed as a tax.

but the

makes clear that

X argues that the restitution in this case should not be assessed because

Such an argument reads section 6201(a)(4)(A) much too narrowly. Section 6201(a)(4)(A) does not provide that the restitution must be

ordered

In other words, the statute does not specify that the tax loss compensated by the restitution

In this case, X was ordered to pay restitution for

, which – – resulted in a tax loss to the Service.

The Restitution Amount is subject to section 6201(a)(4) and the Service properly assessed that amount as tax under Title 26.

*(2) Whether, and if so when, underpayment interest under section 6601 began to accrue.*

Section 6601(a) provides that if any amount of tax imposed by Title 26 is not paid on or before the last date prescribed for payment, interest on such amount at the underpayment rate established under section 6621 shall be paid for the period from such last date to the date paid.

Section 6601(b) provides that for purposes of section 6601 the last date prescribed for payment of the tax shall be determined under chapter 62 (Time and Place for Paying Tax), subject to particular rules. Section 6601(b)(1) provides that the last date prescribed for payment shall be determined without regard to any extension of time for payment.

Section 6151(a) provides the general rule that when a return of tax is required, the person required to make the return shall pay such tax at the time fixed for filing the return (without regard to any extension of time for filing the return).

Because a restitution-based assessment under section 6201(a)(4) is an assessment made under Title 26, underpayment interest under section 6601(a) accrues on a restitution-based assessment as it would on any other Title 26 assessment. Accordingly, underpayment interest generally will accrue from the last date prescribed for payment (as determined under section 6601(b)) of the liability that is the subject of the restitution order giving rise to the restitution-based assessment to the date of payment.

Here, the liability that is the subject of the Restitution Order is

Year 1. The harm is that

The appropriate due date of this liability is, \_\_\_\_\_, the  
last date \_\_\_\_\_ prescribed for payment of the federal income tax liability

Ultimately, the determination of the correct taxable year or years with respect to which \_\_\_\_\_ is one for  
your office to make. Your office has taken a conservative approach and has assessed  
interest using \_\_\_\_\_. Your office calculated interest from Date 9, the

. We note, however, that

\_\_\_\_\_ due Date 10.<sup>1</sup> Therefore, the applicable last date prescribed for payment,  
from which interest began to accrue, is Date 10. Subject to this modification, your  
approach is legally sufficient.

X argues that even if the Restitution Amount is subject to section 6201(a)(4), it was not  
paid late within the meaning of section 6601. X makes this argument by citing to  
provisions of the Internal Revenue Code applicable to cases \_\_\_\_\_  
and by asserting that

the Restitution Amount is best analogized to a tax  
\_\_\_\_\_. The Restitution Amount is

\_\_\_\_\_ Accordingly, even if viewed as a  
tax, the Restitution Amount would be a tax that is payable when the liability arose  
to pay it, that is, only after enforcement action by the U.S. government led to  
\_\_\_\_\_ ordered to pay the Restitution Amount to the IRS.

X thus argues that any section 6601 underpayment interest would not have begun to  
accrue until 10 business days after the Restitution Order was entered by the Court;  
because it paid the Restitution Amount within 10 business days, \_\_\_\_\_ argues that payment  
was timely for purposes of section 6601.

The provisions of the Code applicable to situations \_\_\_\_\_  
\_\_\_\_\_ are inapplicable here. The \_\_\_\_\_ is unambiguous  
that the liability that is the subject of the Restitution Order is

\_\_\_\_\_. And, as discussed above, the Code does

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<sup>1</sup> This memorandum assumes that  
\_\_\_\_\_ made.

If this is not the case, appropriate adjustments should be

prescribe the last date for payment of . X is  
 incorrect that the Restitution Amount is “best analogized to a tax  
 .”

<sup>2</sup> The liability here is not one

That the Restitution Amount is  
 does not change this result. The liability that is the subject of the  
 Restitution Order is the and the last date  
 or dates prescribed for payment of this tax liability was  
 . Any factual ambiguity  
 of  
 underpayment does not change the applicable legal framework.

X argues in the alternative that the Restitution Amount should be viewed  
 . This alternative argument fails as well  
 because the Restitution Amount is

Finally, X argues generally that the provisions under sections 6201(a)(4) and 6601 as  
 applied by Chief Counsel Notice 2011-018, and related provisions, should not apply to  
 X, asserting that case is “ ” under which section  
 6601 underpayment interest on a restitution-based assessment would accrue.<sup>3</sup>  
 This argument is based on assertions that: first, the civil liability here  
 ;  
 second, the “payment  
 ” in dispute; and third (and related to the first), X is unaware of any basis on  
 which

Regarding the first assertion, as explained above section 6201(a)(4) does not specify  
 that the tax loss at issue  
 . In this case, X

<sup>2</sup> X cites to these cases in footnote 16 of letter dated Date 8, asserting that they are factually  
 distinguishable from this case. We do not agree that any factual dissimilarity is dispositive.

<sup>3</sup> X, in footnote 15 of letter dated Date 8, assumes for purposes of that letter “that, in appropriate  
 circumstances, the IRS may assess interest under section 6601 on restitution payments covered by  
 section 6201(a)(4). See IRS Chief Counsel Notice 2011-018.” asserts that this “assumption, however,  
 may be subject to question.”

. Indeed, it is inherent to

one court has found that underpayment interest

.<sup>4</sup> Further, at least

Second, that the \_\_\_\_\_ on which that civil tax liability should have been paid are in dispute is simply a potential factual ambiguity that does not alter the legal framework which must be applied to the facts.

The third assertion, regarding any basis for \_\_\_\_\_, is mostly a question of whether the government will be overcompensated and is addressed below. Insofar as X mentions “interest charged thereon” (that is, on the Restitution Amount), we note that no amount of Title 26 interest was included in the Restitution Amount, and, to the best of our knowledge no Title 18 interest accrued or has been paid on the Restitution Amount.

*(3) Whether assessment in this case is barred by the prohibition on overcompensation of the government.*

We are not aware of any order or agreement from the \_\_\_\_\_ that provides any direct link to \_\_\_\_\_

. At the time that X entered into \_\_\_\_\_ in which agreed to the amount of restitution, \_\_\_\_\_ was fully represented by counsel and had the opportunity to identify any factors which would affect the amount of restitution to which

agreed. This overcompensation argument raised after the restitution was agreed upon is either an attempt to re-litigate the amount of restitution X already agreed on in the



, or attempt to somehow shirk obligation to make full restitution payments by stating that the Service can

. In other words, X's overcompensation argument is: the Service cannot assess and collect the restitution have been ordered to pay because the restitution

. Such an argument is based on a faulty assumption; the Service is

does the Restitution Order in this case <sup>5</sup> Nor

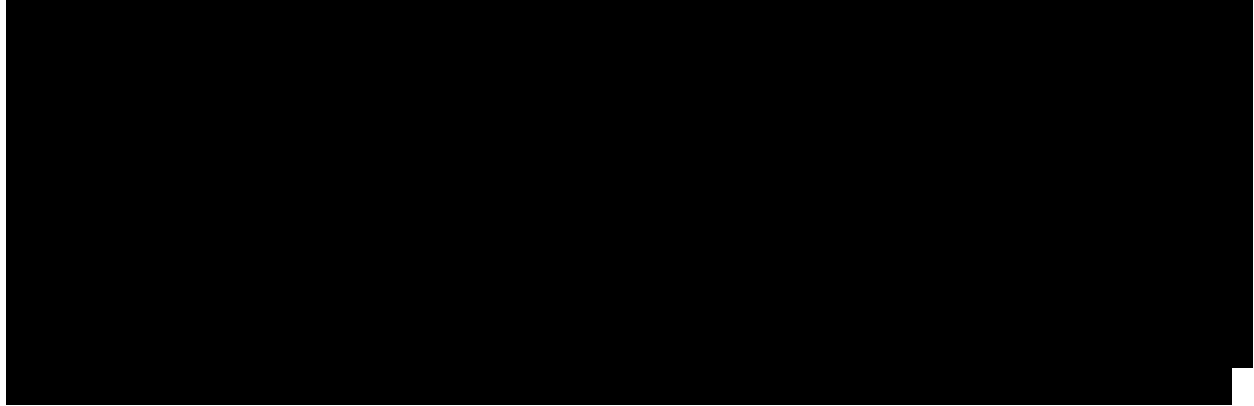
, the Service cannot be knowingly overcompensated by assessing and collecting the amount ordered by the sentencing court as restitution.

**Case Development, Hazards and Other Considerations**



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<sup>5</sup> The Internal Revenue Code of



We are also available to further discuss any case development, hazards, or other considerations you may wish to discuss. If you have any questions, contact our office at (202) 317-6844.