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Paying the Piper Twice? Criminal Tax Restitution from the Sentencing Table to the Last Dollar

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In our experience, a client who pleads guilty to a tax crime believes the money part of the case ends when the judge signs the restitution order. It does not. That one number becomes a criminal judgment that the Justice Department enforces for twenty years or more when the restitution is part of the sentence rather than only a condition of supervision, *a tax assessment that the IRS collects with liens and levies, and the starting point for a civil audit that can add a 75 percent fraud penalty and interest. Practitioners who wait until the criminal case is over to think about the civil consequences lose the best chance they will have to control them.*

THE ISSUE: One Tax Loss, Three Ledgers

A federal court orders restitution for unpaid tax. The IRS must assess that amount as if it were a tax, and it may also audit the same years and assess the real tax, penalties, and interest. The law lets the government collect the tax once. When the same tax loss sits on a criminal judgment, a restitution-based assessment, and a civil assessment at the same time, who keeps the three ledgers honest, and when must the taxpayer act to protect the credit?

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PRACTICE POINTER: What to Do First

1. Identify whether each count of conviction is a Title 18 or a Title 26 offense.
2. Compute the tax yourself, year by year, before you accept anyone's restitution figure.
3. Ask for a restitution order that breaks the amount down by year and type of tax and says whether interest and penalties are included.
4. Order IRS account transcripts for both the restitution account and the regular income tax account for every year.
5. Calendar every collection due process deadline, and raise every issue at the hearing.
6. If the client cannot pay, propose a partial payment agreement on the civil tax. No one can compromise the restitution.

I. Restitution Outlives the Prison Term, the Probation Officer, and Sometimes the Defendant

Walt Pruitt runs a small contracting business in New Jersey.[2] For two years he ran cash jobs through a side account and left them off the joint returns he filed with his wife, Dana. The IRS caught it. Walt pleaded guilty to two counts of filing false returns under section 7206(1), was sentenced to a year and a day, and agreed in his plea agreement to pay $142,600 in restitution. He paid every dollar within a year, and the court entered a satisfaction of judgment.

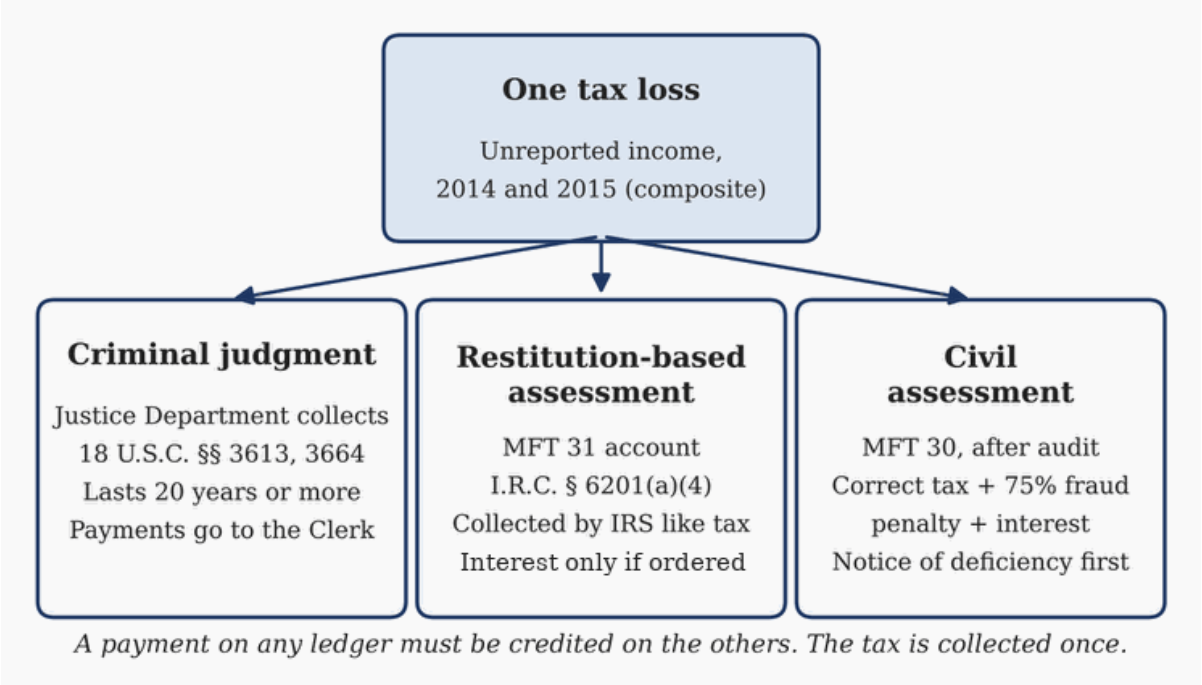
Almost four years later, Walt and Dana received a notice of deficiency for the same two years. It asked for roughly the same tax and added a civil fraud penalty of 75 percent against Walt. Dana, who had never been charged with anything, was named on the notice because she signed the joint returns.

Walt's question to his lawyer was simple: "I paid. How can I owe it again?" The answer takes the rest of this article. One tax loss can live on three ledgers at once: the criminal judgment, a restitution-based assessment the IRS makes from that judgment, and the civil assessment that follows an audit. The government may collect the tax only once. Making sure it does is the practitioner's job, and the work starts before the plea agreement is signed.

This article is written for the defense lawyer negotiating the plea, the enrolled agent or CPA who inherits the client after sentencing, the clinic volunteer looking at a levy notice, and the IRS and court employees who see these files from the other side. It follows the dollar from the sentencing table through the probation office, the district court, the restitution-based assessment, the civil examination, Appeals, the Tax Court, and collection due process, explains why no one can compromise restitution and how a partial payment installment agreement can carry a client who cannot pay, and ends with the rules on double counting, interest, the application of payments, and the five limitations periods that run on the same money.

[2]Walt and Dana Pruitt are composites. They combine and change facts from several matters, and no composite reproduces any single matter. The Part VIII illustration is adapted from a Tax Court memorandum opinion in which one of the authors represented the taxpayer; see note 123. Nothing else in this article states any client's position or uses any client's confidential information.

Figure 1. One tax loss, three ledgers



Source: 18 U.S.C. §§ 3613, 3664; I.R.C. § 6201(a)(4); IRM 25.26.1.2(1), (3), (6)–(7) (Aug. 25, 2021).

II. The Statute of Conviction Decides When Restitution Is Due and How Long It Lasts

The first question in every case is which statute the client is pleading to. The answer controls when restitution is payable, what the IRS can do with it, and how long anyone can collect it.

A. A Title 18 Count Carries Restitution as Part of the Sentence

Congress wrote the federal restitution statutes for Title 18 crimes. The mandatory statute covers Title 18 offenses against property, including offenses committed by fraud or deceit, when there is an identifiable victim who suffered a money loss.[3] The Justice Department reads that to reach a conspiracy to defraud the United States under 18 U.S.C. § 371, the classic "Klein conspiracy" charged in tax cases.[4] On a Title 18 count, restitution is part of the sentence itself and is payable immediately unless the court sets a date or an installment schedule.[5] The difference shapes

[3] 18 U.S.C. § 3663A(c)(1)(A)(ii), (c)(1)(B).

[4] U.S. Dep't of Justice, Tax Div., Criminal Tax Manual § 44.02[3] (rev. Oct. 2020), https://www.justice.gov/tax/page/file/1329356/dl ("Although the MVRA does not apply to Title 26 offenses, it does apply to Title 18 criminal tax offenses that are offenses against property and committed by fraud or deceit."). The Tax Division's functions were transferred to the Civil and Criminal Divisions effective December 9, 2025, and criminal tax cases moved to the new National Fraud Enforcement Division effective August 24, 2026. Att'y Gen. Order No. 6508-2025, 90 Fed. Reg. 57,139 (Dec. 10, 2025); Att'y Gen. Order No. 7108-2026, 91 Fed. Reg. 53,357 (Aug. 18, 2026) (codified at 28 C.F.R. § 0.70(b)). We cite the manual as the Tax Division last published it; we found no later revision of chapter 44.

[5] 18 U.S.C. § 3572(d)(1) ("A person sentenced to pay a fine or other monetary penalty, including restitution, shall make such payment immediately, unless, . . . the court provides for payment on a date certain or in installments.").

charging decisions. In refund fraud schemes, one reason prosecutors charge false claims counts under Title 18 is that restitution comes with them.[6]

B. A Title 26 Count Carries Restitution Only by Agreement or as a Condition of Supervision

Tax evasion, false returns, and willful failure to file are Title 26 crimes, and neither restitution statute lists them.[7] A judge can order restitution on a Title 26 count in only two ways.

1. **By agreement.** The court may order restitution in any criminal case to the extent the parties agreed to it in a plea agreement.[8]
2. **As a condition of probation or supervised release.**[9] The Sentencing Guidelines direct the court to use this route when the offense is not one for which restitution is otherwise authorized.[10]

The second route has a timing consequence that catches people. Restitution imposed only as a condition of supervised release is not due until supervision begins. The Second and Seventh Circuits have refused to let a court make it payable while the defendant is still in prison, and a Fifth Circuit panel agreed in an opinion later vacated on other grounds, and the Fifth Circuit has since reached the same result.[11] The Ninth Circuit agrees that supervised release can carry a restitution condition for a Title 26 offense, but it limits the amount to the loss caused by the offense of conviction.[12]

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[6]John A. Townsend, Federal Tax Procedure 220 (2024 Student ed.) ("one reason that false claims and false claims conspiracy is generally used is because restitution is available in Title 18 crimes but not for Code crimes (unless agreed to by the defendant in a plea agreement or imposed as a condition of supervised release)").

[7]18 U.S.C. § 3663(a)(1)(A) ("The court, when sentencing a defendant convicted of an offense under this title, . . . may order . . . that the defendant make restitution to any victim of such offense"); *see also id.* § 3663A(c)(1) (listing offenses covered by mandatory restitution).

[8]18 U.S.C. § 3663(a)(3) ("The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.").

[9]18 U.S.C. §§ 3563(b)(2), 3583(d) ("The court may provide, as further conditions of a sentence of probation, . . . that the defendant[:] . . . make restitution to a victim of the offense . . . (but not subject to the limitation of section 3663(a) . . .)").

[10]U.S. Sent'g Guidelines Manual § 5E1.1(a)(2) (U.S. Sent'g Comm'n 2025) ("the court shall[:] . . . impose a term of probation or supervised release with a condition requiring restitution . . . , if the offense is not an offense for which restitution is authorized under 18 U.S.C. § 3663(a)(1)"). The Guidelines are advisory. *United States v. Booker*, 543 U.S. 220, 246, 259–60 (2005).

[11]*United States v. Adams*, 955 F.3d 238 (2d Cir. 2020) (modifying judgment so restitution is not due until supervised release begins); *United States v. Westbrooks*, 858 F.3d 317, 328 (5th Cir. 2017), *vacated on other grounds*, 138 S. Ct. 1323 (2018) (mem.); *United States v. Bolton*, 908 F.3d 75, 98 (5th Cir. 2018), *cert. denied*, 140 S. Ct. 47 (2019); *United States v. Hassebrock*, 663 F.3d 906, 923–25 (7th Cir. 2011), *cert. denied*, 132 S. Ct. 2377 (2012) ("Because a district court can only impose restitution as a condition of supervised release, a defendant cannot be required to pay restitution until his period of supervised release begins.").

[12]*United States v. Batson*, 608 F.3d 630, 632, 635–37 (9th Cir. 2010) ("restitution so ordered must be limited to the offense of conviction when, as here, that offense does not involve an element of a 'scheme, conspiracy, or pattern of criminal activity.'").

C. Tax Loss, Restitution, and Civil Liability Are Three Different Numbers

Three figures get confused at sentencing. They measure different things.

Number	What it measures	Interest and penalties included?
Tax loss	Drives the Guidelines offense level	No, except in willful evasion-of-payment and willful failure-to-pay cases[13]
Restitution	The government's actual loss from the offense of conviction, or more if the defendant agrees	Interest if the court includes it or the defendant agrees; civil penalties generally not, unless the defendant agrees[14]
Civil liability	The correct tax for each year, plus penalties and interest	Yes

Without an agreement, restitution generally stops at the loss caused by the specific conduct underlying the offense of conviction.[15] The statutory exception is an offense that has as an element a scheme, conspiracy, or pattern of criminal activity; for that kind of offense, restitution may reach losses directly caused by the defendant's criminal conduct in the course of that scheme, conspiracy, or pattern.[16] A plea agreement can also reach further, which is why the government asks for one that does.

D. The Plea Agreement Is Where the Civil Case Is Won or Lost

Justice Department prosecutors work from form plea language. It asks the defendant to agree to restitution for relevant conduct beyond the counts of conviction, to Title 26 interest, to immediate enforcement, and to the IRS assessment of the restitution as a tax.[17] Each of those terms is negotiable, and each has a civil price explained in the Parts that follow. The defense lawyer who signs the form without a tax controversy lawyer at the table is making civil tax decisions without knowing it.

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[13]U.S. Sent'g Guidelines Manual § 2T1.1 cmt. n.1 (U.S. Sent'g Comm'n 2025) ("The tax loss does not include interest or penalties, except in willful evasion of payment cases under 26 U.S.C. § 7201 and willful failure to pay cases under 26 U.S.C. § 7203."). Amendments effective November 1, 2026, revise the Tax Table in § 2T4.1 but leave this note unchanged.

[14]Criminal Tax Manual, *supra* note 4, §§ 44.03[3], [4] ("As a general rule, the amount of the loss does not include penalties. . . . An exception applies, however, if the defendant agrees to pay penalties as part of a plea agreement.").

[15]*Hughey v. United States*, 495 U.S. 411, 413 (1990) ("the language and structure of the Act make plain Congress' intent to authorize an award of restitution only for the loss caused by the specific conduct that is the basis of the offense of conviction").

[16]18 U.S.C. § 3663(a)(2) ("victim" includes, "in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern"); *id.* § 3663A(a)(2) (same); *Batson*, 608 F.3d at 636–37; *United States v. Kones*, 77 F.3d 66, 70 (3d Cir. 1996) ("we interpret 'direct' to require that the harm to the victim be closely related to the scheme, rather than tangentially linked") (construing the Victim and Witness Protection Act provision that the Mandatory Victims Restitution Act repeats).

[17]Criminal Tax Manual, *supra* note 4, §§ 44.02[2], 44.03[8], 44.10[1] ¶¶ 3–4 ("Defendant agrees to pay Title 26 interest on the restitution amount . . . . Defendant agrees that restitution is due and payable immediately after the judgment is entered and is subject to immediate enforcement").

III. The Probation Office Writes the First Draft of the Restitution Order

A. The Presentence Report Deserves the Objections a Notice of Deficiency Would Get

When the law permits restitution, the probation officer must investigate and report enough information for the court to enter an order.[18] In our experience the officer's figures in a tax case come from the special agent's and revenue agent's computations. Read them line by line. Object in writing to any year, any item, and any type of tax that is wrong. Once the judgment is final, the Internal Revenue Code forbids the client from challenging the amount again in any tax proceeding.[19]

B. The Government Proves the Loss; the Defendant Proves His Finances

The government must prove the loss by a preponderance of the evidence, and the defendant carries the burden on his own resources and his dependents' needs.[20] Once restitution is ordered, the court sets the full loss without regard to ability to pay.[21] Under the discretionary statute, the defendant's finances may bear on whether restitution is ordered at all; otherwise ability to pay matters only to the payment schedule.[22]

C. Six Terms Belong in Every Tax Restitution Order

A well-drafted order prevents most of the fights described later in this article. Ask the court for each of these.

1. **A breakdown by year and type of tax.** The IRS posts restitution period by period. A lump sum leaves the allocation to the government.
2. **A statement of whether interest and penalties are included.** If the figure is tax only, the order should say so.
3. **The statutory basis.** The order should state whether restitution is part of the sentence or only a condition of supervision.
4. **The payment terms.** Whether the full amount is "due immediately" mattered in one Tax Court case, though the Seventh Circuit has since held that the IRS is not bound by the court's schedule either way (Part X).

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[18]Fed. R. Crim. P. 32(c)(1)(B) ("If the law permits restitution, the probation officer must conduct an investigation and submit a report that contains sufficient information for the court to order restitution."); 18 U.S.C. § 3664(a).

[19]I.R.C. § 6201(a)(4)(C) ("The amount of such restitution may not be challenged by the person against whom assessed on the basis of the existence or amount of the underlying tax liability in any proceeding authorized under this title").

[20]18 U.S.C. § 3664(e) ("Any dispute as to the proper amount . . . of restitution shall be resolved . . . by the preponderance of the evidence. The burden of demonstrating the . . . loss . . . shall be on the attorney for the Government.").

[21]*Id.* § 3664(f)(1)(A) ("In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses . . . and without consideration of the economic circumstances of the defendant.").

[22]*Id.* § 3664(f)(2) ("the court shall . . . specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid, in consideration of[:] (A) the financial resources . . . of the defendant"); *see also* 18 U.S.C. § 3663(a)(1)(B)(i)(II)..

5. **Joint and several liability or apportionment among co-defendants.**[23]
6. **A waiver or limit on Title 18 interest** if the client cannot pay.[24]

D. Deferral, Appeal, and Later Changes Follow Their Own Rules

If the loss cannot be determined by sentencing, the court may set a final determination date up to 90 days later.[25] Missing that deadline does not strip the court of power to order restitution, at least where the court made clear before the deadline that it would.[26] A defendant who wants to challenge a deferred restitution order must appeal the amended judgment that contains it.[27]

A restitution order is a final judgment even though it may later be corrected, appealed, or adjusted.[28] The court may stay it pending appeal on appropriate terms, and after the appeal it may order a deposit or a bond to secure compliance.[29] The defendant must report a material change in his finances, and the court may then adjust the schedule.[30] Only a court can change the amount, and only on those limited grounds.

IV. The Justice Department Collects the Criminal Judgment for Twenty Years or More

The first collector is the Justice Department: the U.S. Attorney's Financial Litigation Unit enforces the judgment. The defendant pays the Clerk of Court, and the Clerk forwards the money to the IRS.

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[23] 18 U.S.C. § 3664(h) ("If . . . more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants").

[24] 18 U.S.C. § 3612(f)(3) ("If the court determines that the defendant does not have the ability to pay interest . . . , the court may[:] (A) waive the requirement for interest; (B) limit the total of interest payable").

[25] 18 U.S.C. § 3664(d)(5) ("If the victim's losses are not ascertainable . . . , the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing.").

[26] *Dolan v. United States*, 560 U.S. 605, 608 (2010) ("a sentencing court that misses the 90-day deadline nonetheless retains the power to order restitution—at least where, as here, that court made clear prior to the deadline's expiration that it would order restitution").

[27] *Manrique v. United States*, 581 U.S. 116 (2017) ("We hold that a defendant who wishes to appeal an order imposing restitution in a deferred restitution case must file a notice of appeal from that order.").

[28] 18 U.S.C. § 3664(o) ("A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that[:] (1) such a sentence can subsequently be[:] (A) corrected . . . ; (B) appealed and modified . . . ; . . . or (D) adjusted").

[29] Fed. R. Crim. P. 38(e)(1) ("If the defendant appeals, the district court, or the court of appeals under Federal Rule of Appellate Procedure 8, may stay—on any terms considered appropriate—any sentence providing for restitution . . . ."); *id.* 38(e)(2) ("The court may issue any order reasonably necessary to ensure compliance with a restitution order . . . after disposition of an appeal, including: . . . (C) an order requiring the defendant to deposit all or part of any monetary restitution into the district court's registry; or (D) an order requiring the defendant to post a bond.").

[30] 18 U.S.C. § 3664(k) ("A restitution order shall provide that the defendant shall notify the court . . . of any material change in the defendant's economic circumstances . . . . Upon receipt of the notification, the court may . . . adjust the payment schedule").

A. The Government Enforces Restitution Like a Civil Judgment

The United States may enforce restitution by the practices and procedures for enforcing a civil judgment, and by any other reasonable means.[31] That means garnishment, writs of execution, and liens. Only a short list of property, borrowed from the tax levy exemptions, is protected, and the federal wage-garnishment limits apply.[32] The order is also a lien on all of the defendant's property, treated like a federal tax lien, from the day the judgment is entered.[33]

Three more rules surprise clients.

- **A windfall in prison goes to restitution.** An inheritance, settlement, or judgment received while incarcerated must be applied to the balance.[34]
- **Bankruptcy does not discharge it.**[35]
- **Default is expensive.** A delinquent balance draws a 10 percent penalty, and a default draws another 15 percent.[36]

B. Liability Runs Twenty Years from Judgment or Release, and Survives Death

Liability for restitution ends on the later of 20 years from entry of the judgment or 20 years after release from prison.[37] Walt, sentenced to a year and a day, could have owed for roughly 21 years after judgment had he not paid; the exact end date would depend on when he was released.

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[31] 18 U.S.C. §§ 3613(a), (f), 3664(m)(1)(A) ("An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 . . . ; or . . . by all other available and reasonable means.").

[32] *Id.* § 3613(a) ("a judgment imposing a fine may be enforced against all property . . . of the person fined, except that[:] (1) property exempt from levy for taxes . . . shall be exempt from enforcement of the judgment").

[33] *Id.* § 3613(c) ("an order of restitution . . . is a lien in favor of the United States on all property . . . as if the liability . . . were a liability for a tax assessed . . . . The lien arises on the entry of judgment").

[34] *Id.* § 3664(n) ("If a person obligated to provide restitution . . . receives substantial resources . . . , including inheritance, settlement, . . . during a period of incarceration, such person shall be required to apply the value of such resources to any restitution . . . .").

[35] 11 U.S.C. § 523(a)(13) ("A discharge under section 727, 1141, . . . or 1328(b) of this title does not discharge an individual debtor from any debt[:] . . . for any payment of an order of restitution issued under title 18, United States Code").

[36] 18 U.S.C. § 3612(g) ("If a fine or restitution becomes delinquent, the defendant shall pay . . . an amount equal to 10 percent . . . . If a fine or restitution becomes in default, the defendant shall pay . . . an additional . . . 15 percent").

[37] *Id.* § 3613(b) ("The liability to pay restitution shall terminate on the date that is the later of 20 years from the entry of judgment or 20 years after the release from imprisonment . . . .").

WARNING: Death Does Not End Restitution

Death after the conviction is final ends a criminal fine but not restitution: the estate remains liable for the unpaid balance, and the lien continues until the estate receives a written release. Estate planners and executors should treat a restitution balance as a claim against the estate. If the defendant dies while the direct appeal is pending, the conviction and possibly the restitution may abate; check the circuit. The IRS cannot assess restitution until every appeal of the order is concluded, so an order that abates never supports a restitution-based assessment (RBA), though the IRS may still examine the returns and pursue the estate for the civil tax.[38]

The Supreme Court added a constitutional point in January 2026, but only at the threshold. It held that restitution under the mandatory statute is criminal punishment for purposes of the Ex Post Facto Clause and left the Eighth Circuit to consider the government's separate arguments on remand.[39] On remand, in August 2026, the Eighth Circuit held that applying the mandatory statute retroactively to *Ellingburg* violated the Clause, because it pushed the end of his restitution liability from 2016 to about 2042 and could increase what he actually pays.[40] The Third Circuit, which hears appeals from New Jersey, reached the same result in 2022.[41] Other circuits have gone the other way; the Second Circuit treated the extension as analogous to a longer limitations period that had not yet run, and the Eighth Circuit in *Ellingburg* collected similar decisions from the Seventh, Ninth, Tenth, and Eleventh Circuits.[42] The answer therefore depends on where the client was sentenced. For a client whose offense predates a lengthening of the collection period, the issue is worth preserving.

C. Conditions-Only Restitution Ends with Supervision Under Current Agency Guidance

What happens when restitution was ordered only as a condition of supervised release and supervision ends with a balance due? The Justice Department and the IRS now give the same

[38] I.R.C. § 6201(a)(4)(B) ("An assessment of an amount of restitution . . . shall not be made before all appeals of such order are concluded and the right to make all such appeals has expired."); 18 U.S.C. § 3613(b) (as amended by Pub. L. No. 114-324, 130 Stat. 1948 (2016)).

[39] *Ellingburg v. United States*, 607 U.S. 163, 166 (2026) ("Restitution under the MVRA is plainly criminal punishment for purposes of the Ex Post Facto Clause.").

[40] *United States v. Ellingburg*, 188 F.4th 1084, 1090 (8th Cir. 2026) ("applying the MVRA amendments extends that date by almost 28 years. This constitutes an impermissible increase in Ellingburg's punishment that violates the Ex Post Facto Clause."). The court rejected the view of other circuits that the extension is like lengthening a limitations period that has not yet run, *id.* at 1090–91, and it did not decide whether the statute's mandatory interest provision separately violates the Clause. *Id.* at 1091 n.2. The dates in the text are the ones the opinion recites; "almost 28 years" is the court's own figure.

[41] *United States v. Norwood*, 49 F.4th 189, 196 (3d Cir. 2022) ("In this appeal, we must decide whether retroactively applying the MVRA to extend the duration of Norwood's restitutionary liability violates the Ex Post Facto Clause . . . . For the reasons that follow, we conclude that it does"); *see id.* at 218.

[42] *United States v. Weinlein*, 109 F.4th 91, 99–104 (2d Cir. 2024) ("the effect on Weinlein of applying the MVRA to extend the enforcement period is analogous to the effect on a criminal defendant of retroactively extending the statute of limitations for a crime that is not yet time-barred"), *cert. denied*, No. 24-458 (U.S. Mar. 24, 2025); see *Ellingburg*, 188 F.4th at 1090–91 (collecting decisions from the Seventh, Ninth, Tenth, and Eleventh Circuits, three of the four unpublished). *Weinlein* assumed without deciding that MVRA restitution is criminal punishment, 109 F.4th at 98, and the Eighth Circuit expressly disagreed with its reasoning. *Ellingburg*, 188 F.4th at 1090–91.

answer. The current Criminal Tax Manual says that restitution ordered as a condition of supervised release or probation is enforceable only during supervision and ceases to be collectible when it ends; restitution ordered as an independent part of the sentence remains enforceable for the 20-year period.[43] IRS Chief Counsel agrees. Such restitution may be assessed only once supervision begins, may be collected only during supervision, cannot be extended by reducing the assessment to judgment, and must be released from lien when it becomes unenforceable.[44] The IRS has conceded a Tax Court case on that ground: it abated assessments made while the taxpayer was still in prison and his restitution was payable only on release.[45]

One Eighth Circuit appellate decision points the other way. In 2010 the Eighth Circuit upheld a garnishment about fourteen years after supervision ended, on a 1990 restitution order, in a short opinion that did not identify the offense as a Title 26 crime.[46] In the Eighth Circuit, that decision remains a jurisdiction-specific obstacle unless it is distinguished or overruled; the current Criminal Tax Manual, PMTA, and IRM position is favorable guidance, but it does not bind a court. A client whose order rests only on supervision should insist on the current guidance, get the IRS lien released, and confirm in writing that the U.S. Attorney's office has closed its file.

V. The Restitution-Based Assessment Turns the Judgment into a Tax Bill

Before 2010 the IRS received restitution checks but could not collect restitution itself. Congress changed that in the Firearms Excise Tax Improvement Act of 2010.[47] For restitution ordered after August 16, 2010, for failure to pay any tax imposed by the Code, the IRS must assess and collect the amount ordered "in the same manner as if such amount were such tax."[48] Practitioners call the result a restitution-based assessment, or RBA. The IRS's working rules began in Chief Counsel Notice CC-2011-018. For the civil-examination and double-credit points in this article, Chief Counsel Notice CC-2013-012 is the operative later guidance where it clarifies or revises the earlier notice. For interest and failure-to-pay additions on the RBA, Chief Counsel Notice CC-2019-004 supplies the later *Klein* correction: the IRS may not add section 6601 interest

[43]Criminal Tax Manual, *supra* note 4, §§ 44.02[2], [4] ("Restitution ordered as condition of supervised release or probation ceases to be collectible when the period of supervision or probation ends, but restitution ordered as an independent part of the sentence gives . . . 20 years . . . ."). The 2018 edition of the manual took the opposite position; do not rely on it.

[44]I.R.S. Program Manager Technical Assistance PMTA 2018-019, at 2 (Aug. 23, 2018), https://www.irs.gov/pub/lanoa/pmta-2018-19.pdf ("restitution ordered solely as a condition of supervised release or probation is collectible only during the period of supervised release or probation, not before or after."); I.R.C. § 6325(a)(1) (certificate of release of lien required within 30 days after the liability "has become legally unenforceable"); IRM 25.26.1.1.2(4) (Aug. 25, 2021); IRM 5.1.5.18(4) (May 2, 2025).

[45]*Catlett v. Commissioner*, T.C. Memo. 2019-86, at *5–6 ("respondent 'concede[d] that the restitution-based assessments were premature and, therefore, must be abated.' . . . Because petitioner remains incarcerated, . . . respondent concluded that petitioner's restitution obligation is not yet enforceable or assessable.").

[46]*United States v. Young*, 593 F.3d 773, 774 (8th Cir. 2010) (per curiam) ("*Young* was ordered to pay restitution to the United States as a condition of supervised release . . . . The court denied the motion because *Young*'s obligation to pay restitution did not terminate when his supervised release ended.").

[47]Pub. L. No. 111-237, § 3, 124 Stat. 2497, 2497–98 (2010) ("An Act . . . to provide for the assessment by the Secretary of the Treasury of certain criminal restitution.").

[48]I.R.C. § 6201(a)(4)(A) ("The Secretary shall assess and collect the amount of restitution . . . for failure to pay any tax imposed under this title in the same manner as if such amount were such tax.").

or a section 6651(a)(3) addition to the RBA itself, but it may assess interest or a failure-to-pay amount that the restitution order or plea agreement includes in the restitution total.[49]

A. Four Rules Define the Restitution-Based Assessment

Rule	What it means	Authority
Wait for finality	No assessment until every appeal of the order is concluded and the time to appeal has run	I.R.C. § 6201(a)(4)(B)
No time limit to assess	The IRS may assess, or sue to collect without assessing, at any time	I.R.C. § 6501(c)(11)
No notice of deficiency	The notice of the RBA is not treated as a notice of deficiency, so there is no prepayment Tax Court petition	I.R.C. § 6213(b)(5)
No second look at the amount	The taxpayer may not challenge the amount on the basis of the existence or amount of the underlying tax in any proceeding under the Code	I.R.C. § 6201(a)(4)(C)

B. The Restitution Must Trace to a Title 26 Tax, Not to a Title 26 Count

The restitution must be for unpaid Title 26 tax, but the count of conviction need not be a Title 26 count.[50] In *Daugerdas v. Commissioner*, the Seventh Circuit held in 2026, in what it described as the first appellate decision on the question, that restitution ordered on a section 371 tax conspiracy count is assessable.[51] The Tax Court has sustained collection of an RBA where restitution under 18 U.S.C. § 3663(a)(3) followed a guilty plea in a wire fraud case,[52] and where the defendant pleaded guilty to helping his father evade payment of the father's tax.[53]

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[49]I.R.S. Chief Counsel Notice CC-2011-018, at 1 (Aug. 26, 2011), https://www.irs.gov/pub/irs-ccdm/cc-2011-018.pdf ("This notice addresses the Internal Revenue Service's authority under I.R.C. § 6201(a)(4) to assess and collect the amount of criminal restitution ordered for failure to pay any tax under Title 26 . . . ."); I.R.S. Chief Counsel Notice CC-2013-012, at 4 (July 31, 2013), https://www.irs.gov/pub/irs-ccdm/cc_2013_012.pdf ("Any payments made to satisfy the restitution-based assessment must also be applied by the Service to satisfy the civil tax liability for the same tax period."); I.R.S. Chief Counsel Notice CC-2019-004, at 2 (June 27, 2019), https://www.irs.gov/pub/irs-ccdm/cc-2019-004.pdf ("Accordingly, the failure to pay penalty does not apply to an amount of restitution assessed under section 6201(a)(4)(A)."); *Klein v. Commissioner*, 149 T.C. 341, 361–62 (2017) ("The restitution obligation is not a civil tax liability, and Congress did not change that fact when it authorized the IRS . . . to assess and collect restitution '. . . as if such amount were such tax.'").

[50]CC-2011-018, *supra* note 49 ("Conversely, a restitution-based assessment is not limited to conviction under Title 26. . . . Generally, if the restitution ordered is traceable to a tax imposed by Title 26 . . . then the restitution may be assessed as a tax.").

[51]*Daugerdas v. Commissioner*, 171 F.4th 924 (7th Cir. 2026) ("an issue of first impression for . . . all circuit courts: whether the Tax Code . . . authorizes the Internal Revenue Service to assess and collect restitution following a person's conviction of a federal tax-related crime under Title 18.").

[52]*Dawveed v. Commissioner*, T.C. Memo. 2023-28, at *2 ("petitioner pleaded guilty to one count of violating 18 U.S.C. § 1343 (wire fraud). . . . the District Court ordered, pursuant to 18 U.S.C. § 3663(a)(3), that petitioner pay restitution of $788,991 to the IRS").

[53]*Bontrager v. Commissioner*, 151 T.C. 213 (2018) ("We thus conclude that section 6201(a)(4) authorized the IRS to assess the restitution at issue. . . . Winston's [the father's] 1994 Federal income tax was '[a] tax imposed under this title[.]'").

C. The IRS Books the Restitution on a Separate Account

Criminal Investigation decides whether the order is assessable and sends it forward on Form 14104.[54] The IRS then creates a separate account for each period, under the master file code MFT 31, apart from the taxpayer's regular income tax account (MFT 30) for the same year.[55] Order transcripts of both accounts for every year. Almost every problem in Parts VII through XIV shows up when the two are laid side by side.

The restitution account prints as a "1040 SEPARATE ASSESSMENT" transcript in the defendant's name only. It is the only document that shows, year by year, what the IRS assessed as restitution and when it received each payment. The regular account shows the return and, later, any examination assessment. The IRS's own manual calls them "two separate debts for the same liability" and says the liability "cannot be collected twice," but the two accounts do not talk to each other. A payment reaches the regular account only when an IRS employee cross-references it, which shows on the transcript as a code 766 credit with credit reference number 337.[56] That gap is where double counting starts.

PRACTICE POINTER: Read the Two Transcripts Side by Side

1. Order the separate assessment transcript and the regular account transcript for every year, for each spouse and each co-defendant.
2. Match the restitution assessment (transaction code 290 on the separate account) to the order's figure for that year.
3. List each payment (code 670) with its date. The dates decide timing arguments, refund periods, and interest.
4. Look for interest or failure-to-pay additions on the separate account. Unless the order includes them, they are a Form 843 abatement claim (Appendix A).
5. Trace credits moved out of the account (code 826) to see where any excess went.
6. After the civil tax is assessed, confirm that the regular account shows the restitution credit, a code 766 entry with credit reference number 337. If it does not, the IRS is counting the tax twice.
7. Put the comparison in a one-page table, by year, and attach it to the protest, the stipulation, or the hearing request.

The restitution indicator on the separate account (code 971 with action code 102) also matters outside the double-counting problem: it is how the IRS identifies a restitution assessment in its systems, and the passport-certification rules, for example, exclude those accounts from

[54]IRM 25.26.1.1.2(1) (Aug. 25, 2021) ("The applicability of IRC 6201(a)(4) will be determined by Criminal Investigation (CI) with input from Criminal Tax Counsel and will be reflected on Form 14104, Notification of Court Ordered Criminal Restitution Payable to IRS.").

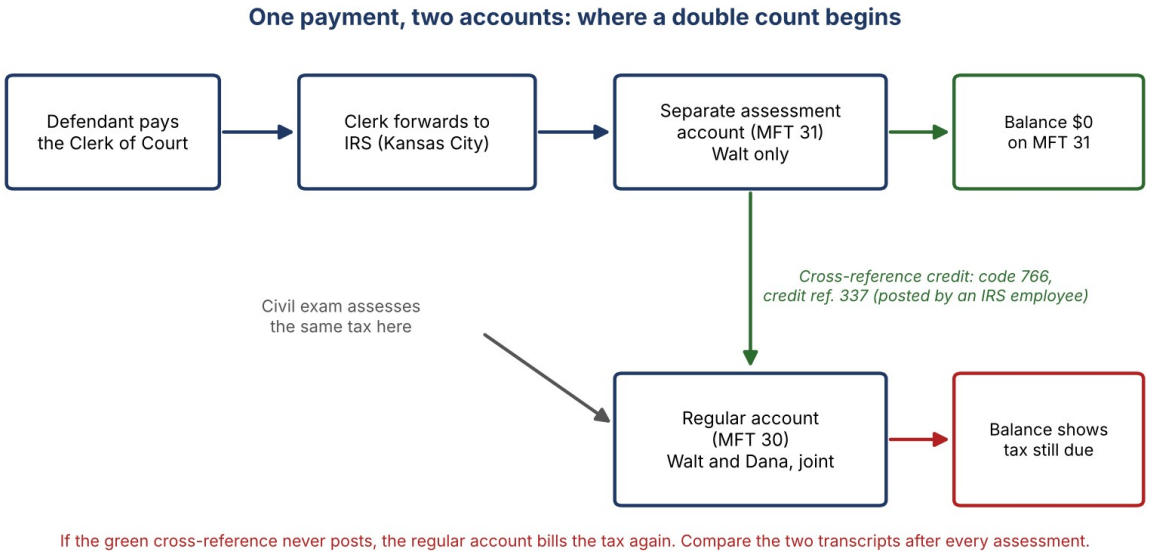
[55]IRM 5.1.5.15.4 (May 2, 2025) ("RBAs will be established by Examination. An MFT 31 module will generally be present for each tax year and/or tax period for which assessable criminal restitution was ordered by the court."); IRM 25.26.1.2 (Aug. 25, 2021).

[56]IRM 25.26.1.2(1) (Aug. 25, 2021); IRM 5.19.23.3.2 (Aug. 26, 2025); IRM 5.19.23.3.2(4) (Aug. 26, 2025) ("Payments and credits are cross-referenced using Transaction Code (TC) 290 $.00 and Credit Reference Number (CRN) 337"); IRM 5.19.23.2 (June 6, 2014) (reason code 150 "[u]sed with CRN 337 to cross-reference payments"); IRM 5.19.23.2.1(8) (Aug. 26, 2025) ("a payment or credit has posted to a module containing a TC 766 CRN 337").

seriously delinquent tax debt.[57] For the Pruitts, the comparison in Part VII.J shows the whole case on one page.

Figure 2 shows why a payment can be counted twice, and Figure 3 shows what the two transcripts look like for 2015 for Walt and Dana Pruitt, the composite taxpayers introduced in Part I (restitution of $81,400 paid on the separate account; a civil deficiency of $79,900 decided later), after the Tax Court decision, before anyone posts the cross-reference credit.

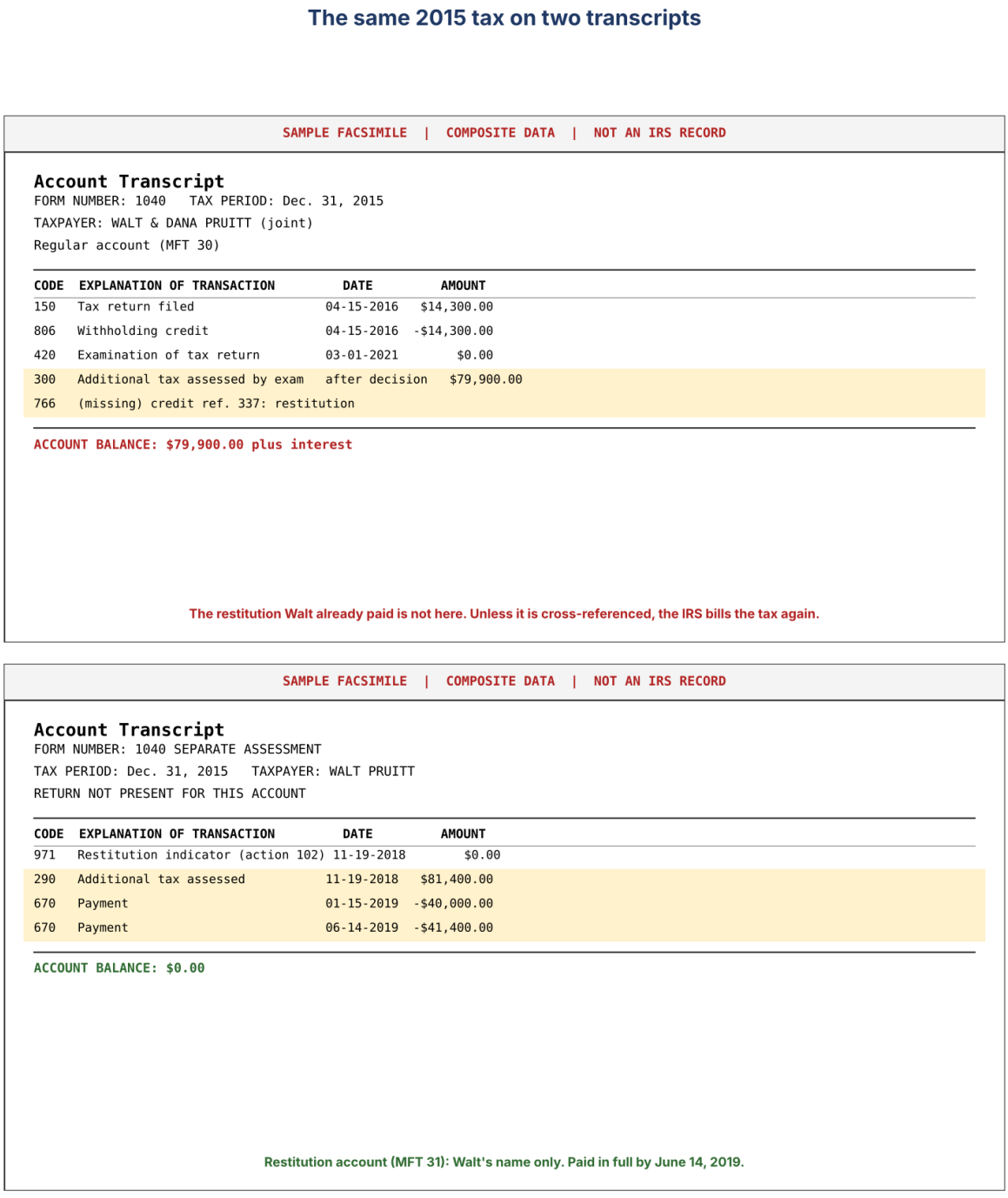
Figure 2. One payment, two accounts: where a double count begins



Source: IRM 25.26.1.2 (Aug. 25, 2021); IRM 5.19.23.3.2 (Aug. 26, 2025).

[57] IRM 5.19.25.3 (Jan. 24, 2024) (excluding "Criminal Restitution assessments (MFT 31 with unreversed TC 971 AC 102)").

Figure 3. The same 2015 tax on two transcripts (sample facsimile, composite data)



Source: composite facts. Transaction codes follow IRS usage: 150 (return filed), 806 (withholding), 420 (examination), 300 (additional tax by examination), 290 (additional tax assessed), 670 (payment), 766 with credit reference number 337 (the cross-reference credit; the employee input is a code 290 for zero with credit reference number 337, and the corresponding credit posts as code 766 with credit reference number 337; see IRM 5.19.23.3.2(4)*, and 971 with action code 102* (criminal restitution assessment indicator, see IRM 5.19.23.2.1(7); IRM 5.8.4.23.1.2). *The layout is simplified; real transcripts show more fields and cycle dates.*

VI. The Civil Examination Decides What the Taxpayer Owes

The RBA does not close the years. It gives the IRS an amount it can collect without an audit. The civil examination that follows decides what the client actually owes.

A. Restitution Is Neither a Floor nor a Ceiling on the Civil Tax

Chief Counsel treats restitution and the civil liability as separate. The civil deficiency can be larger or smaller than the restitution.[58] The courts agree that a restitution order does not cap the civil liability. The Eighth Circuit held that neither res judicata nor collateral estoppel stops the IRS from asserting a deficiency and a fraud penalty after a false-return conviction and a paid restitution order.[59] The Tax Court has said the same thing: restitution does not determine the civil liability.[60] And in *Klein v. Commissioner*, the opinion that barred interest on RBAs, the Tax Court told the IRS it may open a civil examination to determine the real liability.[61]

The harder lesson runs the other way. If the audit shows the true tax is less than the restitution, the IRS still collects the full restitution. Apart from correcting its own error, it will reduce the RBA only if the district court amends its order.[62] And a final restitution order can be changed only by the routes the statute lists: among them correction under Rule 35, appeal, an amendment for losses discovered later, an adjustment to the payment terms, and resentencing. A lower civil tax figure is not one of them.[63] That is why the number has to be fought at sentencing.

B. The Examiner Adds the Correct Tax, the Fraud Penalty, and Interest

The examiner determines the correct tax for each year, including years and items beyond the counts of conviction. The examiner then asserts the civil fraud penalty of 75 percent of the part of the underpayment due to fraud,[64] or the fraudulent failure-to-file addition,[65] and computes

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[58]CC-2013-012, *supra* note 49 ("the Service does not treat the amount of restitution as either the minimum or the maximum tax liability for the relevant tax period.").

[59]*Morse v. Commissioner*, 419 F.3d 829, 833–34 (8th Cir. 2005) ("We conclude neither doctrine precludes the imposition of civil liability for tax deficiency or fraud penalties.").

[60]*Schwartz v. Commissioner*, T.C. Memo. 2016-144, at *11–13, *aff'd*, No. 16-2502, 2017 WL 5125662 (6th Cir. Sept. 5, 2017) (per curiam) (unpublished) ("Although restitution is based upon an estimate of civil tax liability, it is not determinative of civil tax liability.").

[61]*Klein*, 149 T.C. at 362 ("If the IRS wishes to collect interest and additions to tax, it is free to commence a civil examination of those returns at any time.").

[62]CC-2013-012, *supra* note 49 ("Regardless of whether the civil examination . . . results in deficiency determination greater or lesser than the amount of restitution, the Service shall assess and collect the full amount of restitution ordered."); IRM 5.1.5.18.8 (May 2, 2025).

[63]18 U.S.C. § 3664(o) ("A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that[:] (1) such a sentence can subsequently be[:] (A) corrected under Rule 35 . . . ; (B) appealed . . . ; (C) amended . . . ; or (D) adjusted"); *see id.* § 3664(k) (court may adjust the payment schedule).

[64]I.R.C. § 6663(a) ("If any part of any underpayment of tax . . . is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment . . . attributable to fraud.").

[65]*Id.* § 6651(f) ("If any failure to file any return is fraudulent, paragraph (1) of subsection (a) shall be applied . . . by substituting '75 percent' for '25 percent'.").

interest. Once the IRS proves that any part of an underpayment is due to fraud, the whole underpayment is treated as fraudulent unless the taxpayer proves otherwise for some part.[66]

The Tax Court has allowed this two-step sequence. In *Ervin v. Commissioner*, after the RBA was assessed, the IRS examined the years and issued notices of deficiency. The court held that the RBA was not an amount "assessed as a deficiency," so the deficiencies equaled the correct tax; that the tax already paid through restitution could not be collected again; and that additions to tax that accrued before the restitution was ordered or paid were sustained.[67]

C. Collateral Estoppel Depends on the Count of Conviction

Conviction	Effect on the civil fraud penalty	Authority
Evasion, § 7201	Establishes fraud for that year; the taxpayer cannot deny it	DiLeo v. Commissioner, 96 T.C. 858, 885 (1991) (former § 6653(b)), *aff'd*, 959 F.2d 16 (2d Cir. 1992)
False return, § 7206(1)	Does not establish fraud, because intent to evade is not an element; the conviction is evidence the court weighs	*Wright v. Commissioner*, 84 T.C. 636, 643–44 (1985); *Schwartz*, T.C. Memo. 2016-144, at *21–22

After a section 7206(1) plea, the IRS must still prove fraud by clear and convincing evidence.[68] The Tax Court calls the conviction "highly persuasive" evidence,[69] so the penalty is in play but not decided.

D. The Assessment Period Stays Open Only If the IRS Proves Fraud

The IRS normally has three years from filing to assess, or six years when the taxpayer omitted more than 25 percent of gross income.[70] For a false or fraudulent return filed with intent to evade tax, it may assess at any time, and the same is true when no return was filed.[71] After a section 7206(1) plea, fraud is not established (Part VI.C). If the IRS cannot prove fraud by clear and convincing evidence, the ordinary periods apply, and a notice mailed after they ran is untimely. Once the three- and six-year periods have run, the limitations defense and the fraud defense are the same defense.

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[66] *Id.* § 6663(b) ("If . . . any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except [for] any portion . . . which the taxpayer establishes . . . is not attributable to fraud.").

[67] *Ervin v. Commissioner*, T.C. Memo. 2021-75, at *9–12 ("the amounts that the IRS 'previously assessed . . . as a deficiency' were likewise zero: Those amounts were not assessed as a deficiency in tax but as restitution").

[68] I.R.C. § 7454(a); Tax Ct. R. 142(b) ("In any case involving the issue of fraud . . ., the burden of proof . . . is on the respondent, and that burden of proof is to be carried by clear and convincing evidence.").

[69] *Schwartz*, T.C. Memo. 2016-144, at *21–22 ("a conviction for filing a false Federal income tax return under section 7206(1) is highly persuasive evidence that the taxpayer intended to evade tax.").

[70] I.R.C. § 6501(a), (e)(1)(A) ("the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed").

[71] *Id.* § 6501(c)(1), (3) ("In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed . . . at any time.").

E. Restitution of Income Tax Is Not Deductible

Clients ask whether restitution is deductible. The Code generally bars a deduction for fines paid to the government. Its exception for restitution covers unpaid tax only if the tax itself would have been deductible had it been paid on time.[72] Federal income tax fails that test. An employer's share of payroll tax may pass it.

VII. Restitution Paid Is Not a Deficiency Paid: The Notice That Arrives After the Check Clears

Back to Walt and Dana. In our experience their notice raises more hard questions than any other fact pattern in this area, and the answers do not all favor the taxpayer. A lawyer who takes this case has to work through every one of them, in order, before deciding what to file.

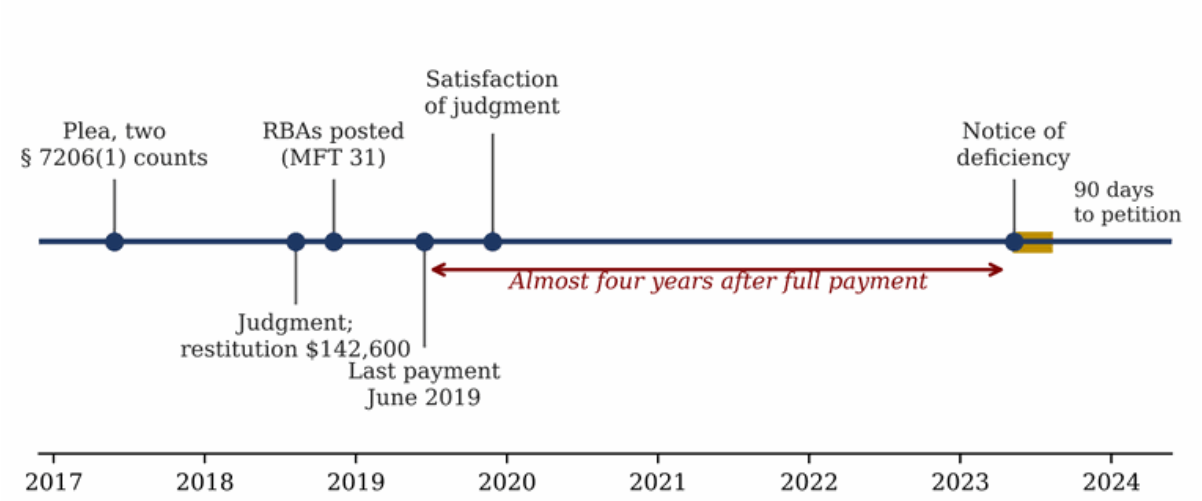
CASE STUDY: The Pruitts' Four-Year Gap

The taxpayers in this illustration are composites. Walt pleaded guilty in 2017 to two counts under § 7206(1) for 2014 and 2015 and agreed in his plea agreement to restitution, which the 2018 judgment made part of the sentence. The judgment ordered $142,600: $61,200 for 2014 and $81,400 for 2015. The IRS posted RBAs in November 2018. Walt made his last payment on June 14, 2019, and the court entered a satisfaction of judgment. The returns were filed on April 15, 2015 and April 15, 2016. On May 9, 2023, the IRS mailed a joint notice of deficiency: $64,750 for 2014 and $79,900 for 2015, with § 6663 penalties against Walt only of $48,562.50 and $59,925.

Year	Restitution assessed and paid	Deficiency in notice	Restitution minus deficiency	§ 6663 penalty (75%)
2014	$61,200	$64,750	($3,550)	$48,562.50
2015	$81,400	$79,900	$1,500	$59,925.00
Total	$142,600	$144,650	($2,050)	$108,487.50

[72] *Id.* § 162(f)(2)(A)(iii) ("in the case of any amount of restitution for failure to pay any tax imposed under this title . . ., would have been allowed as a deduction under this chapter if it had been timely paid.").

Figure 4. The Pruitts' timeline: almost four years between full payment and the notice



Source: composite facts; I.R.C. §§ 6201(a)(4), 6213(a), 6501(c)(1), 7454(a); Tax Ct. R. 142(b). *Section 6501(c)(1) is the IRS's asserted open-period basis; after a section 7206(1) conviction, timeliness depends on whether the IRS proves fraud by clear and convincing evidence.*

THE ISSUE: Twelve Questions the Pruitts' Notice Raises

1. Does a deficiency exist when the tax was paid as restitution before the notice?
2. If the answer is no, does the Tax Court still have jurisdiction?
3. Does Dana, who was never assessed, stand in a different position from Walt?
4. Was the assessment period still open, for Walt and for Dana?
5. Does the fraud penalty survive payment of the tax?
6. Does Walt's plea establish fraud?
7. Did the IRS obtain timely written approval of the penalty from the right supervisor?
8. What do the "zero" entries on the regular transcript mean?
9. What happens to the $1,500 Walt paid above the 2015 deficiency?
10. How do interest and credit work once the deficiency is assessed?
11. Which procedural rules can lose the case before trial?
12. What should the stipulation of settled issues say?

A. The Tax Court Holds That Restitution Does Not Reduce the Deficiency

Walt's first instinct is the natural one: the tax is paid, so there is no deficiency. In two memorandum opinions, the Tax Court rejected that argument. A deficiency is measured against the tax shown on the return plus amounts "previously assessed (or collected without assessment) as a deficiency."[73] In *Rozin v. Commissioner*, the court held that restitution is summarily assessed under

[73] I.R.C. § 6211(a)(1)(B) ("the term 'deficiency' means the amount by which the tax imposed . . . exceeds . . . the amount shown as the tax . . . upon his return . . . plus . . . the amounts previously assessed (or collected without assessment) as a deficiency").

section 6201(a)(4), outside the deficiency procedures, so it is not assessed "as a deficiency" and does not reduce the deficiency the court redetermines.[74] In March 2026, in *Thody v. Commissioner*, the court applied that rule to reject a taxpayer's claim that restitution paid before the notice made the notice invalid. Any such payments, the court held, will apply to the deficiency after it is assessed.[75] The court added that its holding "does not necessarily mean" the IRS can skip crediting the deficiency with restitution it actually collected.[76] *Ervin* follows the same sequence: the deficiency equals the correct tax, and the tax already paid through restitution cannot be collected again.[77]

The government will argue that these cases decide Walt's. Walt's lawyer should know their facts. In *Rozin*, the parties stipulated the deficiency, and the IRS agreed to credit the restitution as of the payment dates; the court noted that stipulation.[78] In *Thody* the taxpayer's only proof of payment was a set of documents purporting to be "dollars," and the fraud additions rested on a section 7201 conviction.[79] Neither case involved a spouse who was never assessed. The Tax Court has stated the rule broadly, and a taxpayer who wants a different result must persuade the court that those facts matter.

B. An Older Line of Cases Says a Tax Paid Before the Notice Leaves No Deficiency

There is an older line of authority from the Second Circuit. When a taxpayer paid the tax before the notice was mailed, the payment was "collected without assessment," there was no deficiency, and the notice was invalid.[80] The Tax Court dismissed an estate tax case for the same reason when levy proceeds satisfied the tax before the notice issued.[81] The Tax Court follows a court of appeals decision squarely on point only in cases appealable to that circuit.[82] The Pruitts lived in New Jersey when they filed their petition, so an appeal would go to the Third Circuit, and

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[74]*Rozin v. Commissioner*, T.C. Memo. 2017-52, at *10–11 ("Because restitution does not fit within the definition of a deficiency under section 6211, restitution payments made do not reduce or discharge a deficiency determination before the deficiency is assessed."); *see* I.R.C. § 6213(b)(5).

[75]*Thody v. Commissioner*, T.C. Memo. 2026-30, at *7–8 ("Mr. Thody's payments on the restitution liability, if any, do not affect the existence of deficiencies for the years in issue; but rather such payments will apply after assessment to satisfy that deficiency or a portion thereof.").

[76]*Id.* at *8 (*citing United States v. Tucker*, 217 F.3d 960, 962 (8th Cir. 2000), and *United States v. Helmsley*, 941 F.2d 71, 102 (2d Cir. 1991)); *Helmsley*, 941 F.2d at 102 (". . . any amount paid as restitution for taxes owed must be deducted from any judgment entered for unpaid taxes in such a civil proceeding. Restitution is in fact and law a payment of unpaid taxes.").

[77]*Ervin*, T.C. Memo. 2021-75, at *9–12 ("petitioner's 'deficiency' for each year is equal to his correct tax for each year . . . . Because the deficiencies have been fully paid via restitution, the IRS cannot collect the deficiencies again.").

[78]*Rozin*, T.C. Memo. 2017-52, at *1–2, *12 ("respondent will credit petitioner's account with the restitution payments, as of the date of those payments, against those civil tax assessments.").

[79]*Thody*, T.C. Memo. 2026-30, at *7 n.9, *10 ("Mr. Thody's evidence of payment is limited to a series of documents purporting to be 'dollars' . . . .").

[80]*Bendheim v. Commissioner*, 214 F.2d 26, 28 (2d Cir. 1954) ("As the additional tax in dispute had already been paid there was no 'deficiency' . . . . The Commissioner's letter . . . was not a valid notice of deficiency.").

[81]*Estate of Crawford v. Commissioner*, 46 T.C. 262, 271 (1966) ("We hold that the estate tax liability and interest thereon had been paid at the time the notice of deficiency herein was issued and, accordingly, that this Court is without jurisdiction.").

Bendheim is persuasive authority for them, not binding. We found no Third Circuit decision on the point.

The restitution decisions do not discuss these cases. The argument for the taxpayer is that the restitution decisions turn on the "assessed as a deficiency" clause, while section 6211(a) also subtracts amounts "collected without assessment" as a deficiency, and money the IRS has already received fits that clause. The argument for the government is the one the Tax Court has accepted. In *Thody*, the court addressed both clauses: although the IRS "may have previously collected without assessment or even summarily assessed the restitution liability, it neither assessed nor collected such restitution *as a deficiency*."[83] For Walt, the government has a second answer. The phrase "as a deficiency" modifies both clauses, and every payment he made after the RBAs posted in November 2018 was collected under an assessment, not without one. The taxpayer's argument is strongest for payments made before the RBA posted, and for Dana, against whom nothing was ever assessed.

A second line of authority complicates the jurisdictional point. The Tax Court has held that it is the IRS's determination of a deficiency, not the existence of one, that gives the court jurisdiction; otherwise, the court would lose jurisdiction every time it found that nothing was owed.[84] No court has stated the two lines as one rule but read together they suggest one. A notice that determines a deficiency gives the court jurisdiction to decide the correct amount, even if that amount is zero, unless the tax was fully paid before the notice in a way that counts under section 6211(a). The Tax Court has already held that restitution does not reduce a deficiency before assessment; whether Dana's facts justify a different result is the open question.

C. Dana Stands in a Different Position From Walt

Dana's position sharpens the question. Joint filers owe one obligation for each year. A payment by either spouse reduces the joint obligation dollar for dollar ("pro tanto," in the Tax Court's words), but an assessment against one spouse, like an unsatisfied judgment against one co-obligor, does not reduce the other spouse's deficiency.[85] No RBA was ever assessed against Dana. The restitution Walt paid was money in the Treasury on the joint obligation before her notice was mailed. As to Dana, the argument goes, nothing was assessed at all, so the money could only have been "collected without assessment." We found no decision that applies this rule to restitution paid by the other spouse.

The government's first answer is the *Thody* sequence: restitution money posts to Walt's separate restitution account and reaches the joint income tax account only after the deficiency is assessed, so, the argument goes, nothing was collected on the joint liability before the notice. Its

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[82] *Golsen v. Commissioner*, 54 T.C. 742, 757 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971) ("better judicial administration . . . requires us to follow a Court of Appeals decision which is squarely in point where appeal from our decision lies to that Court of Appeals and to that court alone.").

[83] *Thody*, T.C. Memo. 2026-30, at *7 ("*See* I.R.C. § 6213(b)(5) (providing that normal deficiency procedures do not apply to criminal restitution assessments)").

[84] *Hannan v. Commissioner*, 52 T.C. 787, 791 (1969) ("it is not the existence of a deficiency but the Commissioner's determination of a deficiency that provides a predicate for Tax Court jurisdiction.").

[85] *Dolan v. Commissioner*, 44 T.C. 420, 430–31 (1965) ("Since payment by either spouse effects a pro tanto extinguishment of the obligation . . . . [A]n unsatisfied judgment against one obligor does not discharge a coobligor who is jointly and severally liable.").

second answer comes from *Bachner v. Commissioner*, a 2023 Tax Court opinion. There the court kept jurisdiction over a wife who had received full innocent-spouse relief and faced no penalty, because the court could still, in theory, find that the couple had overpaid.[86] On appeal the Seventh Circuit did not review that reasoning; it dismissed the wife from the appeal because the judgment did not injure her.[87] The answer to the "theoretical overpayment" theory is arithmetic. The Tax Court can determine an overpayment only for tax paid within the lookback period measured as if a refund claim had been filed on the day the notice was mailed.[88] Here the notice was mailed May 9, 2023, more than three years after either return was filed, so the window reaches back two years, to May 9, 2021. Walt's last payment was June 14, 2019. Without any postponement, no payment falls inside the window. But if the COVID-19 postponement discussed in Part VII.I survives appeal, the disregarded period may extend the lookback far enough to reach Walt's payments. Until the appeal is decided, do not count on this arithmetic answer. Build the payment chronology into the record so the court can see that on the face of the transcripts. But weigh the forum before pressing the point: Dana needs the Tax Court for her innocent-spouse and limitations defenses, so seek dismissal only on a ground that invalidates the notice as to her (Part VII.D).

Two rules protect Dana, and one does not.

1. **She is not liable for the fraud penalty** unless some part of the underpayment is due to her own fraud.[89]
2. **She may seek relief from the joint tax itself** under the innocent-spouse provisions (on Form 8857), and she can petition the Tax Court on that claim.[90]

[86] *Bachner v. Commissioner*, T.C. Memo. 2023-148, at *25–27, *aff'd in part and appeal dismissed in part*, 124 F.4th 1066 (7th Cir. 2025) ("the Court has jurisdiction as to Mrs. Bachner . . ., thus giving the Court the theoretical ability to determine that she, together with Mr. Bachner, made overpayments for the years at issue.").

[87] *Bachner*, 124 F.4th at 1071 ("Rebecca is therefore 'relieved of liability' . . . and the Tax Court's judgment did not harm her in any way. . . . [W]e dismiss her from this appeal.").

[88] I.R.C. §§ 6512(b)(3)(B), 6511(b)(2) ("unless the Tax Court determines . . . that such portion was paid[:] . . . within the period . . . under section 6511(b)(2) . . . if on the date of the mailing of the notice of deficiency a claim had been filed").

[89] I.R.C. § 6663(c) ("In the case of a joint return, this section shall not apply with respect to a spouse unless some part of the underpayment is due to the fraud of such spouse.").

[90] *Id.* § 6015(b), (c), (f), (e)(1)(A) ("the individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual under this section").

3. **If the IRS proves Walt's fraud, the assessment period stays open for her too.** The fraud exception speaks of "a false or fraudulent return," not the fraud of a particular taxpayer, so one spouse's fraud lifts the bar for both. The innocent spouse's remedy is relief from liability, not the statute of limitations.[91] The Third Circuit, which hears appeals from New Jersey, has gone further and held that the exception does not care who intended to evade tax, so a preparer's fraud is enough.[92] Fraud still has to be proved against the right return. In May 2026 the Tax Court held that one spouse's evasion conviction does not estop the other spouse from contesting fraud. Against the spouse who was not convicted, the IRS cannot rest on the conviction; it must prove the fraud on the return by clear and convincing evidence before the bar lifts.[93] After a section 7206(1) plea that rule matters even more, because Walt himself is not estopped either.

The same point runs the other way: if the IRS cannot prove Walt's fraud, and no extension or other exception applies, the ordinary periods expired before the notice for both of them (Part VI.D). Keep the spouses' cases separate from the first day. Their theories, their exposure, and sometimes their interests differ. Before one lawyer represents both, assess the conflict and get informed written consent, or send one spouse to separate counsel; separate pleadings do not cure a conflict.

D. Winning the No-Deficiency Argument Can Cost the Taxpayer the Tax Court

Be careful what you ask for. If the payment eliminated the deficiency, the notice was invalid and the Tax Court has no jurisdiction. In *Pope v. Commissioner*, the Tax Court dismissed a case on similar reasoning where the notice determined no deficiency because the only adjustment was to withholding credits, which the Code excludes from the deficiency computation.[94] A dismissal for lack of jurisdiction decides nothing about the merits. Any other dismissal, such as one for failure to prosecute, is treated as a decision that the deficiency is what the IRS determined.[95]

A taxpayer whose case is dismissed has lost the prepayment deficiency forum, although collection due process review may remain available. Any balance must be paid in full and

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[91] *Vannaman v. Commissioner*, 54 T.C. 1011, 1018 (1970); *Ballard v. Commissioner*, 740 F.2d 659, 662–63 (8th Cir. 1984) ("We therefore join those courts which have held that section 6501(c)(1) lifts the statute of limitations on tax assessments against both spouses when they file jointly and one has defrauded the government in the process."); *see* I.R.C. § 6501(c)(1).

[92] *Murrin v. Commissioner*, 158 F.4th 527, 530, 536, 537–38 (3d Cir. 2025) (agreeing with *Allen v. Commissioner*, 128 T.C. 37, 42 (2007), and declining to follow *BASR P'ship v. United States*, 795 F.3d 1338 (Fed. Cir. 2015)), *cert. denied*, No. 25-988 (U.S. June 22, 2026) ("because the statute is agnostic about who must intend to evade tax, we hold that taxpayer intent is not required.").

[93] *Fuhai Li v. Commissioner*, T.C. Memo. 2026-42, at *12 ("The unconvicted spouse is not estopped from denying the existence of fraud.").

[94] *Pope v. Commissioner*, T.C. Memo. 2020-62, at *6–8 ("That adjustment did not create a 'deficiency' within the meaning of section 6211. Because no deficiency was determined, we lack jurisdiction to redetermine any deficiency under section 6213(a)."). Frank Agostino was counsel for the petitioner in that case.

[95] I.R.C. § 7459(d) ("a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary.").

recovered through a refund claim and a suit in district court or the Court of Federal Claims.[96] We have seen the IRS move to dismiss where a taxpayer without a lawyer paid the full proposed tax before the notice was mailed, to stop the interest. A deposit under section 6603 stops interest without that risk (Part VII.J). The risk is smaller for a taxpayer who also faces a penalty: a notice that determines a fraud penalty supports jurisdiction even without a deficiency (Part VII.E). Confirm what the notice actually determines, for each spouse, before asking the court to find it invalid.

E. The Fraud Penalty Survives Payment of the Tax

Walt's second instinct is that 75 percent of a zero deficiency is zero, but the fraud penalty is measured by the "underpayment," which the Code defines differently from the deficiency.[97] The regulations count only amounts assessed before the return was filed in computing the underpayment, so an RBA made years later does not reduce it. The statute itself subtracts amounts "previously assessed (or collected without assessment)" without the words "as a deficiency," so the result rests on the regulation, which a taxpayer may challenge after the Supreme Court ended judicial deference to agency interpretations.[98,99] The Second Circuit reached the same result under an earlier version of the statute, holding more than fifty years ago that amounts assessed and paid before the notice may be included in the underpayment for the fraud penalty; any other rule would let an evader escape the penalty by paying after he was caught.[100] The Tax Court has held that a notice determining a fraud penalty but no deficiency still gives the court jurisdiction, and the Seventh Circuit affirmed that holding because penalties are treated as tax for this purpose.[101]

The penalty fight is therefore about fraud and procedure.

F. Walt's Plea Does Not Establish Fraud, but His Plea Agreement Might

A section 7206(1) conviction does not estop the taxpayer from denying fraud, because intent to evade tax is not an element of the crime (Part VI.C). The IRS must prove fraud by clear and convincing evidence. But read the plea agreement's statement of facts before relying on that

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[96] *Id.* §§ 6511(a), 7422(a), 6532(a); *Flora v. United States*, 362 U.S. 145, 177 (1960) ("§ 1346 (a)(1), correctly construed, requires full payment of the assessment before an income tax refund suit can be maintained in a Federal District Court.").

[97] I.R.C. §§ 6663(a), 6664(a) ("If any part of any underpayment . . . is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.").

[98] I.R.C. § 6664(a)(1)(B) ("the term 'underpayment' means the amount by which any tax imposed by this title exceeds the excess of[:] . . . amounts not so shown previously assessed (or collected without assessment)"); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

[99] Treas. Reg. § 1.6664-2(a), (d) ("'amounts not so shown previously assessed' means only amounts assessed before the return is filed that were not shown on the return, such as termination assessments under section 6851 and jeopardy assessments under section 6861 . . . .").

[100] *Papa v. Commissioner*, 464 F.2d 150, 150–51, 153 (2d Cir. 1972) ("the Commissioner could include as part of an 'underpayment' the amounts assessed against and paid by the taxpayers . . . prior to the issuance of the Commissioner's statutory notice").

[101] *Bachner*, T.C. Memo. 2023-148, at *23–25; *Bachner*, 124 F.4th at 1071–72 ("The 'penalties' listed in Edward's notice gave the Tax Court jurisdiction . . . just as a 'deficiency' would have. In § 6665(a), Congress made clear that penalties . . . shall be treated 'in the same manner as taxes.'"); I.R.C. § 6665(a)–(b); *see Eck v. Commissioner*, 16 T.C. 511, 514–15 (1951), *aff'd per curiam*, 202 F.2d 750 (2d Cir. 1953).

rule. In *Abdallah v. Commissioner*, the Tax Court held that a false-return conviction did not estop the taxpayer, then found fraud anyway because the taxpayer admitted in his plea agreement that he underreported income to pay less tax.[102] The factual basis a defendant signs to get a plea accepted can become the government's best evidence in the civil case. That is one more reason a tax controversy lawyer belongs at the plea table.

G. The IRS Must Prove Timely Written Approval from the Right Supervisor

No penalty may be assessed unless the initial determination was personally approved in writing by the immediate supervisor of the individual who made it, or by a higher-level official the Secretary designates.[103] The IRS bears the burden of production on penalties.[104] The questions are who first determined the penalty, who that person's immediate supervisor was, and when the supervisor approved in writing. The rule has statutory exceptions, including additions to tax under section 6651, so it covers the section 6663 fraud penalty but not a fraudulent failure-to-file addition under section 6651(f).

Timing depends on the circuit and on the regulation. For a penalty assessed on or after December 23, 2024, as Walt's would be, the regulation controls. Before it, the Second Circuit required approval no later than the date the notice of deficiency is issued.[105] The Ninth Circuit required approval before assessment or before the supervisor loses discretion, while the Eleventh Circuit required only that approval precede assessment.[106] The final regulations require approval, by the immediate supervisor or a higher-level official, for a penalty in a notice of deficiency on or before the date the notice is mailed, and for a penalty first raised in the Tax Court no later than the date the IRS asks the court to determine it.[107] Each penalty is analyzed separately; approval of one penalty does not supply approval of another.[108] The regulation does not require a signature: any

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[102] *Abdallah v. Commissioner*, T.C. Memo. 2013-279, at *23–24 ("as part of the plea agreement Mr. Abdallah admitted that he 'intentionally underreported [his] income . . . in order to pay less in taxes'. . . . Therefore, Mr. Abdallah has admitted to fraud").

[103] I.R.C. § 6751(b)(1) ("No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination . . . .").

[104] *Id.* § 7491(c) ("the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount").

[105] *Chai v. Commissioner*, 851 F.3d 190, 220–21 (2d Cir. 2017) ("§ 6751(b)(1) requires written approval of the initial penalty determination no later than the date the IRS issues the notice of deficiency (or files an answer or amended answer) asserting such penalty.").

[106] *Laidlaw's Harley Davidson Sales, Inc. v. Commissioner*, 29 F.4th 1066 (9th Cir. 2022) ("§ 6751(b)(1) requires written supervisory approval before the assessment of the penalty or, if earlier, before the relevant supervisor loses discretion whether to approve the penalty assessment."); *Kroner v. Commissioner*, 48 F.4th 1272, 1276, 1279–80 (11th Cir. 2022) (approval must precede assessment). Outside the Ninth and Eleventh Circuits, the Tax Court has declined to follow them. *Aldridge v. Commissioner*, T.C. Memo. 2024-24.

[107] Treas. Reg. § 301.6751(b)-1(c)–(d), (f); T.D. 10017, 89 Fed. Reg. 104,419, 104,423 (Dec. 23, 2024) ("the immediate supervisor of the individual who first proposed the penalty personally approves the penalty in writing on or before the date the notice is mailed.").

[108] *Kelley v. Commissioner*, T.C. Memo. 2023-126, at *9–10 ("each of the eight causes of an underpayment listed in section 6662(b) yields a distinct penalty for purposes of the supervisory approval requirement under section 6751(b)(1).").

writing, including an electronic one, counts if the circumstances show it was meant as approval.[109] A signed approval form is still the IRS's usual proof.[110]

In a case like Walt's, years pass between the first examination reports and the notice. Ask in discovery for every revenue agent's report and Form 4549, the activity record, any fraud development materials, and every approval form, and line them up by date and by author. The question becomes whether a written approval, signed or not, exists for this penalty, this year, and this taxpayer, from someone with authority to give it, dated on or before the notice. Chief Counsel's own guidance tells its attorneys to concede a penalty when there is no evidence sufficient to meet the burden of production.[111]

H. The "Zero" Entries on the Regular Transcript Do Not Prove Zero Tax

A regular income tax transcript in a case like this may show an examination entry for "$0.00" additional tax posted after the notice, and a zero balance. Do not overread it. Once a Tax Court petition is filed, the IRS may not assess the deficiency until the court's decision is final.[112] The government reads a zero posting during the case as nothing more than that bar at work. A taxpayer may read it as evidence about what the IRS believes is owed. Neither reading should be left to argument. Ask the IRS to stipulate what the entries mean and that it is not collecting the tax twice.

I. Restitution Above the Civil Tax Is Hard to Get Back

For 2015, Walt paid $1,500 more in restitution than the deficiency the IRS later determined; for 2014 he paid $3,550 less. The IRS collects the full restitution even when the civil liability is lower, and only an amended restitution order reduces the RBA.[113] Walt's judgment is final, and a lower civil tax is not a ground the statute recognizes for changing it (Part VI.A). Restitution first satisfies the duplicate tax, and a cash refund of the excess is not automatic. Unless the sentencing court corrects the order on a ground the statute allows, the excess must be analyzed separately for credit against other unpaid liabilities, including additions to tax.

The refund statute sets its own limits. A claim must be filed within three years after the return was filed or two years after the tax was paid, whichever is later.[114] For Walt, the later date

[109] Treas. Reg. § 301.6751(b)-1(a)(3)(v) ("No signature or particular words are required so long as the circumstances of the writing reflect that it was intended as approval.").

[110] *See Frost v. Commissioner*, 154 T.C. 23, 34 (2020) ("if the taxpayer has challenged the Commissioner's penalty determinations, the Commissioner must come forward with evidence of penalty approval as part of his initial burden of production under section 7491(c).").

[111] I.R.S. Chief Counsel Notice CC-2018-006, § A (June 6, 2018) ("If there is no evidence sufficient to meet the burden of production, then Counsel attorneys should concede the penalty."); *id.* § D ("the attorney must concede the penalty").

[112] I.R.C. § 6213(a) ("no assessment of a deficiency . . . shall be made, begun, or prosecuted . . . if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.").

[113] CC-2013-012, *supra* note 49 ("Regardless of whether the civil examination . . . results in deficiency determination greater or lesser than the amount of restitution, the Service shall assess and collect the full amount of restitution ordered.").

[114] I.R.C. § 6511(a) ("shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later").

would ordinarily have been June 14, 2021, two years after his last payment and almost two years before the notice arrived. One open question could change that. In November 2025 the Court of Federal Claims held that the COVID-19 disaster declaration postponed tax deadlines falling between January 20, 2020 and July 10, 2023, so a deadline in that window ran until at least July 10, 2023.[115] If that decision survives appeal, Walt's deadline had not run when the notice arrived. Check Kwong's status before advising any client whose deadline fell in that window. Even an affirmance would not decide whether the statute tolls or only postpones deadlines, so its effect on a Tax Court overpayment lookback needs its own analysis. A client who is still paying restitution should file a protective claim within two years of each payment, and a Tax Court overpayment determination is limited by the lookback rule discussed in Part VII.C.[116]

J. A Stipulation Should Lock In the Credit and the Interest Date

Once the deficiency is finally determined and assessed, each restitution payment should be credited to the regular account for the right year, as of the date the IRS received it. Interest on an underpayment runs only "to the date paid,"[117] so the credit date controls how much interest the IRS can charge on the civil side. Do not leave the date to the transcript clerk. Put it in a stipulation, as the IRS did in *Rozin*.

For the Pruitts, the side-by-side comparison looks like this once the deficiency is assessed:

Year	Restitution assessed and paid (separate account)	Civil tax assessed (regular account)	Credit owed on the regular account	Tax left to pay	Restitution above the civil tax
2014	$61,200	$64,750	$61,200	$3,550	$0
2015	$81,400	$79,900	$79,900	$0	$1,500
Total	$142,600	$144,650	$141,100	$3,550	$1,500

The penalty against Walt and the civil interest sit outside this table: restitution covered only the tax, so it does not reduce them. If the regular account later shows $144,650 of tax due with no credit, the IRS is collecting $141,100 twice. A taxpayer who expects to owe more civil tax can stop

[115] *Kwong v. United States*, 179 Fed. Cl. 382 (2025) (No. 23-267) (applying I.R.C. § 7508A(d) to postpone the two-year refund-suit deadline in § 6532(a)(1)), *appeal pending* (Fed. Cir.). The IRS has posted filing instructions for claims citing *Kwong* without stating a position on the case. I.R.S., Filing Form 843 for Claims Citing Kwong v. United States (updated July 1, 2026), https://www.irs.gov/forms-pubs/filing-form-843-for-claims-citing-kwong-v-united-states. The National Taxpayer Advocate reports that the IRS has begun denying claims based on *Kwong* and warns that a formal notice of claim disallowance generally starts the two-year period for a refund suit. *See* Nat'l Taxpayer Advocate, NTA Blog (Oct. 13, 2026), reported in IRS Urged by National Taxpayer Advocate to Pause Kwong Claims Denials, J. Accountancy (Oct. 15, 2026). The government filed its opening brief in the Federal Circuit in September 2026. See Government Says Kwong Court Misread COVID Tax Relief Law, J. Accountancy (Sept. 16, 2026).

[116] I.R.C. § 6512(b)(3) ("No such credit or refund shall be allowed or made of any portion of the tax unless the Tax Court determines . . . that such portion was paid[:] (A) after the mailing of the notice of deficiency").

[117] I.R.C. § 6601(a) ("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.").

interest from running by making a deposit, which is treated as a payment for interest purposes once it is used to pay the tax.[118]

K. Procedural Rules Can Lose the Case Before Anyone Reaches the Merits

In our experience restitution cases sit in the Tax Court for years, and the procedural traps are real.

1. **Requests for admission.** Each matter in a request for admission is deemed admitted unless a written answer or objection is served within 30 days after service of the request, unless the court sets a different time.[119] The court may allow withdrawal if the presentation of the merits will be promoted and the party who obtained the admission cannot show prejudice.[120] Calendar the 30 days the day the requests arrive.
2. **Motions to compel stipulation.** If a party will not stipulate, the other side may move, no later than 45 days before the calendar call, for an order to show cause why the matters should not be deemed admitted. The response is due within 20 days after the order to show cause is served. An evasive response, or none, means the matters are deemed stipulated.[121] Answer every paragraph: what is admitted, what is disputed, and the basis for each.
3. **Informal discovery first.** The court expects the parties to try informal consultation before formal discovery.[122] A letter that lists the examination documents the taxpayer needs, and asks for a penalty concession where the record cannot support approval, in our experience often moves the case faster than a motion.

L. The Stipulation Should Lock In Six Points

A good stipulation in a case like Walt's covers six points:

1. The restitution ordered for each year and the dates and amounts paid, with the Clerk's records and the RBA transcripts attached.
2. The IRS's agreement that restitution payments will be credited against the deficiency for the same year, up to that year's deficiency, as of the date of payment, with any excess identified for refund or other application.

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[118] *Id.* § 6603(a)–(b) ("To the extent that such deposit is used by the Secretary to pay tax, . . . the tax shall be treated as paid when the deposit is made.").

[119] Tax Ct. R. 90(c) ("Each matter is deemed admitted unless, within 30 days after service of the request . . . , the party to whom the request is directed serves . . . a written answer . . . or . . . an objection").

[120] *Id.* R. 90(f) ("withdrawal or modification may be permitted if the presentation of the merits . . . will be promoted thereby, and the party who obtained the admission fails to satisfy the Court that the withdrawal . . . will prejudice that party").

[121] Tax Ct. R. 91(f) ("if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof will be deemed stipulated for purposes of the pending case").

[122] Tax Ct. R. 70(a)(1) ("the Court expects the parties to attempt to attain the objectives of discovery through informal consultation or communication before utilizing the discovery procedures provided in these Rules."); *Branerton Corp. v. Commissioner*, 61 T.C. 691, 692 (1974).

3. The IRS's statement that it is not seeking to collect the tax twice.
4. The meaning of the zero entries on the regular transcripts.
5. For the spouse, that no penalty is asserted and that her case is separate.
6. Which issues remain for trial: the existence of fraud, the penalty approval, and any computational dispute.

Walt still may owe a fraud penalty. But with the credit locked in and the issues narrowed, he will not pay the same tax twice, and Dana's exposure will be limited to the tax and interest unless she obtains innocent-spouse relief, with her other defenses preserved.

VIII. How a Comprehensive Justice Department Settlement Can Restrain an IRS Levy in Collection Due Process

The second story comes from the collection side, and it shows what happens when IRS Collection acts without regard to a Justice Department settlement.[123]

CASE STUDY: Marco Settles with Justice and Gets a Levy Notice

This illustration is adapted from a recent Tax Court memorandum opinion; the figures are changed. Marco pleaded guilty to evading payment of a decade of income taxes. Under his plea agreement the court ordered $950,000 in restitution, waived interest, and set small monthly payments after release. The IRS made RBAs for that amount. It also held separate assessments for the same years from returns Marco had filed late. Justice Department attorneys sued to reduce the liabilities to judgment. The parties settled: a consent judgment that would be satisfied if Marco paid $1.3 million on a 40-month schedule. Marco was current on every payment when the levy notice arrived.

Then IRS Collection mailed a notice of intent to levy on the RBAs for $790,000. At the collection due process hearing, the Appeals officer said Marco could not challenge the RBA and sustained the levy, reasoning that the RBA was a separate liability not covered by the consent judgment.

The Tax Court disagreed and declined to sustain the levy. Its reasoning teaches four lessons.

1. **Review was limited.** Because the RBA amount cannot be challenged, the court reviewed Appeals' decision only for abuse of discretion.

[123] This illustration is adapted from a 2026 Tax Court memorandum opinion in which one of the authors represented the taxpayer. The figures and terms are changed, and the case name and citation are omitted by editorial choice. A memorandum opinion is not binding precedent.

2. **The RBA is a second way to collect the same income tax.** The court treated the restitution assessments and the income tax assessments as distinct liabilities for the same tax, giving the IRS parallel routes to collect it. That does not take away the IRS's power to collect an RBA administratively (Carpenter); in this case the consent judgment covered the same tax, and that is what limited the levy. The court also rejected Marco's argument that two sets of assessments meant double punishment: the IRS cannot collect both, and any collection on the RBA must be credited to the tax years.
3. **The levy conflicted with the settlement.** Marco had been paying on schedule, so the levy demanded more than the balance left under the consent judgment, and it would have allowed immediate collection of installments the settlement spread over years. Sustaining it failed the statutory requirement that Appeals balance the need for efficient collection against the concern that the action be no more intrusive than necessary.[124]
4. **Issues not raised at the hearing stay out.** The court refused to let Marco add a new interest argument he had not raised before Appeals.

Compare two cases that went the other way. In *Carpenter v. Commissioner*, the Tax Court sustained a levy where the restitution order made the full amount due immediately and the taxpayer was current on the judge's monthly schedule.[125] In *Daugerdas*, the Seventh Circuit held that the IRS is not bound by the sentencing court's payment schedule.[126] And an informal monthly payment arrangement with the U.S. Attorney's office is not an installment agreement under section 6159, so it does not stop an IRS levy.[127] The difference in Marco's case was a formal consent judgment in which the Justice Department, acting for the United States, substituted a new way to collect the same tax.

[124] I.R.C. § 6330(c)(3)(C) ("whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.").

[125] *Carpenter v. Commissioner*, 152 T.C. 202, 218 (2019), *aff'd*, 788 F. App'x 187 (4th Cir. 2019) ("We hold that the District Court's payment schedule does not limit the Secretary's administrative collection authority. The Secretary may properly . . . levy on property to collect the full unpaid amounts of the RBAs.").

[126] *Daugerdas*, 171 F.4th at 929 ("the IRS is not bound or limited by these considerations in imposing parallel restitution pursuant to § 6201(a)(4)(A) . . . . Nor have we identified anything limiting the Service's authority to establish its own schedule for the collection of the restitution."). A federal district court reached a related result in September 2026, holding that a criminal restitution order did not limit the IRS's levy on a defendant's pension for delinquent taxes because "the IRS is not collecting criminal restitution pursuant to this Court's judgment." *United States v. Sorensen*, No. 21-CR-0196 (PJS/TNL), ECF No. 237, at 8 (D. Minn. Sept. 30, 2026). The levy there was for pre-existing civil taxes, not a restitution-based assessment.

[127] *Reynolds v. Commissioner*, T.C. Memo. 2021-10, at *24–25 (finding no formal payment plan with the Justice Department and holding the § 6331(k)(2) levy bar inapplicable) ("Regardless of how these payments might be characterized, they were not the result of any installment agreement under section 6159, which authorizes the Secretary to enter into installment agreements for the payment of taxes.").

PRACTICE POINTER: Make the Settlement Say What It Covers

When you settle a suit to reduce tax liabilities to judgment, make the agreement name every assessment it resolves, including each RBA by year. Ask the trial attorney to send a copy to IRS Advisory and to the revenue officer. If a levy notice arrives anyway, request a collection due process hearing, put the settlement and the payment history in the record, and raise every issue there. Issue exhaustion generally limits what the Tax Court will review, although the court reviews Appeals' verification under section 6330(c)(1) even if the taxpayer did not raise it at the hearing.

IX. Appeals and the Tax Court Run the Two Assessments on Separate Tracks

The client now has two assessments in motion for the same years, and they move on different tracks.

	Restitution-based assessment	Civil deficiency
How it is made	Summary assessment from the criminal judgment	Notice of deficiency after examination
Appeals conference before assessment	No	Yes, on the tax and the penalties
Deficiency petition before assessment	No[128]	Yes, within 90 days of the notice, or 150 days if addressed to a person outside the United States[129]
Can the amount be contested?	No[130]	Yes
Burden on fraud	Not applicable	On the IRS, by clear and convincing evidence, unless the taxpayer is estopped

A. The Appeals Protest Is the Only Administrative Forum for the True Tax

The protest on the civil case is the main place outside court where the true tax for each year is open before assessment. Most of the IRM guidance on RBAs is written for Criminal Investigation, Examination, and Collection.[131] Bring the provisions with you.

[128] I.R.C. § 6213(b)(5) ("If the taxpayer is notified that an assessment has been or will be made pursuant to section 6201(a)(4) . . . subsection (a) shall not apply with respect to the amount of such assessment.").

[129] *Id.* § 6213(a) ("Within 90 days, or 150 days if the notice is addressed to a person outside the United States, . . . the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency.").

[130] *Id.* § 6201(a)(4)(C) ("The amount of such restitution may not be challenged by the person against whom assessed on the basis of the existence or amount of the underlying tax liability in any proceeding authorized under this title").

[131] IRM 25.26.1 (Mar. 13, 2025) ("These procedures apply to the TS employees assigned to the CR Program . . . . These procedures also apply to Field Examination, Kansas City (KC) Accounting, Collection (Collection Field Areas, Campus Collection and Collection Advisory)."); IRM 5.1.5.15–.27 (May 2, 2025). Temporary guidance effective July 16 through December 31, 2026, changes the intake timing and removes certain release-date monitoring steps for these cases, but does not change the collection rules discussed in this article. I.R.S. Mem. SBSE-05-0726-0049 (July 16, 2026).

Two points belong in every protest. First, ask that the settlement state that restitution payments will be credited against the civil tax for the same period. Second, if the true tax is less than the restitution, document it. Appeals cannot reduce the RBA. A civil determination of a lower tax will not by itself reopen a final restitution judgment, but it documents the overpayment if the order is still open to correction or appeal.

B. In Tax Court, Stipulate the Credit Before the Decision Is Entered

The Tax Court has no deficiency jurisdiction over the RBA itself, but it has full jurisdiction over the civil deficiency and penalties for the same years. Because restitution paid does not reduce the redetermined deficiency (Part VII.A), the decision will show the full amount. File a stipulation with the decision that recites the restitution paid for each year and the IRS's agreement to credit it as of the payment dates. After assessment, check the transcript to see that it happened.

X. Collection Due Process Is the Taxpayer's Only Prepayment Forum for the RBA

Because the RBA is collected as if it were a tax, a notice of federal tax lien or a notice of intent to levy on it carries a right to a collection due process hearing and to Tax Court review.[132] For most clients this is the only road to the Tax Court on the RBA.

A. The Amount of the Restitution Is Off the Table

The bar comes from section 6201(a)(4)(C), and the IRS also relies on the rule that an issue raised in a prior proceeding in which the taxpayer meaningfully participated cannot be raised again.[133] The Tax Court has enforced the bar and holds that the IRS cannot compromise an RBA.[134]

B. A Good Deal Remains Open

- **Whether the assessment was premature.** It cannot precede the end of the criminal appeal or, for a conditions-only order, the start of supervision.
- **Whether the RBA matches the order.** The amount, the years, and the person assessed must track the judgment.
- **Whether interest or failure-to-pay additions were wrongly added** (Part XIII).
- **Whether the balance is right.** A claim that payments were not credited goes to the unpaid balance, not the amount ordered. We found no decision on this point for an RBA, so build the record with transcripts and the Clerk's payment history.
- **Whether collection conflicts with another agreement** (Part VIII).
- **Collection alternatives,** which are narrower than usual (Part XI).

[132] I.R.C. §§ 6320, 6330(d)(1) ("The person may, within 30 days of a determination under this section, petition the Tax Court for review of such determination (and the Tax Court shall have jurisdiction with respect to such matter).").

[133] *Id.* § 6330(c)(4)(A); CC-2013-012, *supra* note 49 ("section 6330(c)(4) prohibits a challenge to the amount of restitution because a criminal case is considered a prior judicial hearing in which a taxpayer has meaningfully participated.").

[134] *Bontrager*, 151 T.C. at 219 ("The Code expressly precludes review of the amount of restitution ordered by the sentencing court."); *Dawveed*, T.C. Memo. 2023-28, at *8, *10.

Alternative	Available for the RBA?	Authority
Offer in compromise	No. The IRS will not compromise court-ordered restitution. Under the current manual an offer may cover other civil tax, penalties, and interest, even for the same periods; older Chief Counsel advice conditioned an offer on the same periods on the defendant's having paid, or paying as part of the offer, the full restitution (Part XI.A).	IRM 5.1.5.18.6 (May 2, 2025); IRM 5.8.4.23.1 (Apr. 25, 2025)
Installment agreement	Only if it fully pays the RBA by the collection statute expiration date, requires payments at least as large and as frequent as the court's schedule, and ends no later than the court's schedule; otherwise a partial payment agreement on the civil tax, with the RBA reported currently not collectible (Part XI)	IRM 5.1.5.18.5(1)–(2) (May 2, 2025); IRM 5.14.4.6(4) (Oct. 9, 2020)
Currently not collectible	Yes, for hardship	IRM 5.1.5.18.3(1) (May 2, 2025)

C. The Court's Payment Schedule Does Not Bind the IRS, but a Later Settlement Can Matter

Carpenter and *Daugerdas* give the IRS the power to levy despite the sentencing court's schedule. In *Carpenter* the order's "due immediately" language mattered; the Seventh Circuit in *Daugerdas* did not rely on it. Either way, Appeals must still weigh collection alternatives and the intrusiveness of the levy, and Marco's case shows it must deal with an arrangement the government itself made. Put the plan, the payment history, and the hardship facts in the hearing record. And at sentencing, ask the judge not to make the full amount due immediately, because *Carpenter* turned on those words.

XI. No One Can Compromise Restitution, but a Partial Payment Installment Agreement Can Carry the Client

Clients who cannot pay ask the obvious question: "Can we settle it for less?" For the restitution itself, the answer is no. The IRS cannot compromise it, the Justice Department cannot compromise it, and the sentencing court cannot reduce it because the client is broke. A partial payment installment agreement on the civil tax is the practical alternative, and the IRS's own procedures allow it.

A. The IRS Has No Authority to Compromise Restitution

The statute that created the RBA tells the IRS to "assess and collect" the amount the court ordered, and it bars the taxpayer from challenging that amount in any tax proceeding.[135] Nothing in it lets the IRS take less. The Internal Revenue Manual says so directly: the IRS does not have authority to compromise court-ordered restitution or restitution-based assessments.[136] An offer in compromise may address only the taxpayer's other civil liabilities, and an offer that includes the

[135]I.R.C. § 6201(a)(4)(A), (C) ("The Secretary shall assess and collect the amount of restitution under an order pursuant to section 3556 of title 18 . . . in the same manner as if such amount were such tax.").

RBA will be returned if the taxpayer will not remove it.[137] Chief Counsel takes the same position: the IRS may not accept an offer that in any way modifies the terms of a restitution order, and it is without authority to compromise the district court's order.[138] The same notice was stricter about the civil side than the current manual: it allowed an offer on the same periods only if the defendant paid, or would pay as part of the offer, the full restitution.[139] The manual's own example, by contrast, compromises the civil tax for the same year while the RBA stays owed.[140] That kind of offer does not touch the restitution, but it can resolve the fraud penalty, civil interest, and any tax above the restitution amount. Expect a revenue officer to follow the manual and Counsel to know the notice. The Tax Court agrees that an RBA cannot be compromised under section 7122, because the restitution order is a final judgment that can be modified only on the grounds 18 U.S.C. § 3664(o) lists.[141]

The reason is structural. Section 7122(a) lets the Secretary compromise a "civil or criminal case arising under the internal revenue laws."[142] A restitution order is not a case awaiting settlement. It is part of a sentence already imposed under Title 18, and Title 18 lists the only ways to change it. The RBA and the income tax are two ways to collect one tax loss, and money collected on either reduces both. But the RBA's amount is fixed by the court's judgment, so no one can compromise it.

B. The Justice Department Cannot Compromise It Either

Practitioners sometimes assume that what the IRS cannot do, the Justice Department can. Section 7122(a) does give the Attorney General authority to compromise a civil or criminal case arising under the internal revenue laws after it has been referred to the Department.[143] That power lets the Department settle a tax case instead of prosecuting or litigating it. It does not reach a

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[136]IRM 5.1.5.18.6 (May 2, 2025) ("The IRS does not have the authority to compromise court-ordered restitution or Restitution-Based Assessments.").

[137]IRM 5.8.4.23.1 (Apr. 25, 2025) (an offer "may be considered for all civil tax liabilities other than restitution based assessments").

[138]CC-2011-018, *supra* note 49, Q&A 18, at 8 ("The Service may not accept an offer-in-compromise that in any way modifies the terms of a restitution order."), *as clarified on other points by* CC-2013-012, *supra* note 49, and CC-2019-004, *supra* note 49; *see* CC-2013-012, *supra* note 49, at 3 ("The Service is without authority to compromise the federal district court's order of restitution.").

[139]CC-2011-018, *supra* note 49, Q&A 18 ("the Service may consider an offer-in-compromise . . . but only if the defendant has paid or will pay, as part of the offer, the full amount of the restitution").

[140]IRM 5.8.4.23.1 (Apr. 25, 2025) ("The IRS may compromise the civil tax assessment ($30,000) and the additional amount assessed as civil tax liabilities ($10,000). The taxpayer will separately continue to owe the $50,000 in restitution").

[141]*Dawveed*, T.C. Memo. 2023-28, at *10 ("An RBA liability, based on court-ordered restitution, cannot be compromised by the IRS under section 7122.") (citing *Carpenter v. Commissioner*, 152 T.C. 202, 213 (2019), for the point that a restitution order, once imposed, is a final judgment that may be modified only on enumerated statutory grounds); *see* 18 U.S.C. § 3664(o).

[142]I.R.C. § 7122(a) ("The Secretary may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense").

[143]I.R.C. § 7122(a) ("the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense."); I.R.S. Chief Counsel Notice CC-2007-008 (Feb. 27, 2007).

criminal sentence the court has already imposed. We found no authority applying section 7122 to a restitution judgment after conviction, and Title 18 forecloses it.

1. **The judgment is final, and the list of ways to change it is exclusive.** A restitution order may be changed only by correction under Rule 35 and section 3742, appeal, amendment for later-discovered losses, adjustment of the payment schedule, or resentencing.[144] The Eleventh Circuit calls that list exhaustive and holds that a court has no authority to wipe out restitution outside it.[145]
2. **Remission is for fines, not restitution.** The statute that lets the government petition the court to remit an uncollectible criminal debt covers fines and special assessments only.[146] The Justice Manual says plainly that restitution cannot be remitted under it.[147]
3. **The Attorney General may waive interest and penalties, not principal.**[148]
4. **"Suspending" a debt does not forgive it.** A U.S. Attorney's office may stop active collection of an uncollectible criminal debt, but suspension has no effect on the judgment's validity, and enforcement resumes when the debtor can pay.[149] Department policy is to enforce orders under the Mandatory Victims Restitution Act to the fullest extent of the law.[150]
5. **Inability to pay changes the schedule, not the amount.** When the defendant's finances change, the court may adjust the payment schedule.[151] It may not reduce what is owed.[152]

What the Justice Department can settle is the civil tax. That is what happened in Marco's case (Part VIII): the Department settled a suit to reduce the income tax liabilities to judgment, and the settlement controlled how the IRS could collect the same tax loss. It did not reduce what the

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[144]18 U.S.C. § 3664(o) ("A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that[:] . . . such a sentence can subsequently be[:] (A) corrected . . . ; (B) appealed and modified . . . ; (C) amended . . . ; or (D) adjusted").

[145]*United States v. Puentes*, 803 F.3d 597, 599, 605–07 (11th Cir. 2015) ("The law is clear that the district court has no inherent authority to modify a sentence; it may do so only when authorized by a statute or rule.").

[146]18 U.S.C. § 3573 ("Upon petition of the Government . . . the court may . . . remit all or part of the unpaid portion of the fine or special assessment, including interest and penalties").

[147]U.S. Dep't of Justice, Justice Manual § 9-143.510 ("Restitution cannot be remitted under 18 USC § 3573.").

[148]18 U.S.C. § 3612(h) ("The Attorney General may waive all or part of any interest or penalty . . . if . . . reasonable efforts to collect the interest or penalty are not likely to be effective.").

[149]Justice Manual § 9-143.400 ("Suspending a criminal debt has no effect upon the judgment's validity.").

[150]*Id.* § 9-143.600 ("Orders of restitution imposed under the Mandatory Victims Restitution Act must be enforced to the fullest extent of the law.").

[151]18 U.S.C. § 3664(k) ("the court may, on its own motion, or the motion of any party, . . . adjust the payment schedule, or require immediate payment in full, as the interests of justice require.").

[152]*Id.* § 3664(k), (o); *Puentes*, 803 F.3d at 606–08 (district court "has no inherent authority to modify a sentence" and § 3664(o) is "an exclusive list of the ways in which a mandatory order of restitution can be changed"); Criminal Tax Manual, *supra* note 4, §§ 44.04–.05 ("while a change in financial circumstances can justify modification of the payment schedule, it does not justify modification of the restitution order.").

court ordered. The *Creel* case discussed in Part XII.D does not show otherwise; it shows that the words a U.S. Attorney files can have civil consequences the Department did not intend.

C. A Civil-Only Partial Payment Agreement Can Manage the IRS Side When the Manual's Conditions Are Met

The Code allows an installment agreement that will facilitate "full or partial collection" of a liability.[153] For the RBA itself, the IRS will consider an installment agreement only if it will pay the RBA in full by the collection statute expiration date, with payments at least as large and as frequent as the court's schedule and a term no longer than the court's.[154] But the manual expressly allows a manually monitored installment agreement on the civil assessments, including a partial payment installment agreement, established without the RBA.[155] The RBA modules left out of the agreement are reported as currently not collectible.[156] That status has a side benefit clients ask about. The IRS does not treat a criminal restitution assessment as a seriously delinquent tax debt for passport certification, and it excludes hardship currently-not-collectible debt as a matter of policy.[157] The civil tax is another matter: until the partial payment agreement is in place, the civil balance can be certified if it exceeds the threshold and no exclusion applies (debt in a properly pending installment agreement request is also excluded as a matter of IRS policy), which is indexed for inflation each year ($66,000 for 2026).[158] The client keeps paying the court-ordered restitution to the Clerk; compliance with those payments is a condition of the agreement, and the payment counts as an allowable expense in the financial analysis.[159]

A payment applied to the duplicate civil tax for a year also reduces the RBA for that year.[160] A payment applied to penalties, interest, or tax above the restitution does not. Under a civil-only agreement the IRS applies payments to the civil assessments in the government's best interest.[161] The IRS picks the years. Within a year it applies the payment to tax first, then penalty,

[153]I.R.C. § 6159(a) ("The Secretary is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to make payment on any tax in installment payments").

[154]IRM 5.14.4.6(4) (Oct. 9, 2020) ("[Installment agreements] for RBAs can only be considered if the proposed [installment agreement] will result in the full payment of the RBA within the terms of the IA and by the CSED."); IRM 5.1.5.18.5(1)–(2) (May 2, 2025).

[155]IRM 5.14.4.6(6) (Oct. 9, 2020) ("In the event the taxpayer's ability to pay will not result in the full payment of the RBA, [manually monitored installment agreements] for civil assessments (including PPIAs) can be established exclusive of RBA assessments").

[156]*Id.* ("The RBA modules should be reported as CNC using closing code 32.")

[157]I.R.C. § 7345(b); IRM 5.19.25.3, 5.19.25.5 (Jan. 24, 2024) ("This does not include other non-tax liabilities such as: . . . Criminal Restitution assessments (MFT 31 with unreversed TC 971 AC 102)").

[158]I.R.C. § 7345(b)(1)(B), (f); I.R.S., Revocation or Denial of Passport in Cases of Certain Unpaid Taxes, https://www.irs.gov/passports ("totaling more than $66,000 (adjusted yearly for inflation)").

[159]IRM 5.14.4.6.1(4) (Oct. 9, 2020) ("[C]ompliance with the court ordered payments will be listed as an additional condition of the IA. This payment will be considered an allowable expense when determining the taxpayer's ability to make monthly payments.").

[160]IRM 25.26.1.2(3) (Aug. 25, 2021) ("Because restitution debts stem from the same underlying tax liability, the full amount can only be collected once."); IRM 5.19.23.3.2(2) (Aug. 26, 2025) ("Payments applied to non-MFT 31 accounts must first pay non-duplicate portions of tax assessments").

[161]IRM 5.14.4.6.1(7) (Oct. 9, 2020) ("Payments on MMIAs that exclude RBAs will be posted to the civil assessments in the best interest of the government.").

then interest,[162] and on the regular account it pays the tax that does not duplicate the restitution before it reaches the tax that does. A payment reduces the RBA only when it reaches the duplicate tax, so other years and the non-duplicate tax may absorb the payments first. Check the collection expiration dates and the non-duplicate balances on each civil year before telling a client that the agreement will shrink the restitution balance. After payments post, pull both transcripts and confirm that the amount that reached the duplicate tax shows up as the code 766 cross-reference credit.

PRACTICE POINTER: How to Propose the Agreement

1. Prepare a complete collection information statement (Form 433-A for an individual, including a self-employed individual, and Form 433-B for a business entity) with documents.
2. List the monthly restitution payment to the Clerk as an allowable expense.
3. Propose a monthly payment equal to the remaining ability to pay, applied to the civil assessments only, and ask that the RBA modules be reported currently not collectible.
4. Explain why equity in assets cannot be reached or should not be required.
5. Expect review by a revenue officer and manager; an agreement that includes an RBA is set up only by a revenue officer, requires managerial approval, and is manually monitored.
6. If the IRS rejects the civil-only proposal, use the ordinary independent review and appeal procedures. The extra concurrence rule for rejections applies only to an agreement that includes the RBA.
7. Calendar the IRS's financial review, usually every two years.

Authority for these steps: the financial statement and review requirements,[163] the revenue officer, managerial approval, and manual monitoring rules,[164] and the concurrence rule for rejecting an agreement that includes an RBA.[165] Payments under an agreement that includes the RBA go to the RBA first; under a civil-only agreement they go to the civil assessments in the government's best interest.[166]

D. A Worked Example Shows How the Numbers Fit

Suppose a different client, Lena, who never settled with the Justice Department. After release she earns $9,000 a month. Her allowable living expenses are $6,100. She pays $300 a month to the Clerk on the restitution order. Her civil assessments for the same years total $1.1 million, and the IRS's collection period on them has about seven years left. Assume the financial

[162]Rev. Proc. 2002-26, § 3.02, 2002-1 C.B. 746 ("the amount will be applied to tax, penalty, and interest, in that order").

[163]IRM 5.14.2.2.1 (Oct. 18, 2023) ("A full Collection Information Statement is required for all PPIAs."); IRM 5.14.2.2.4 (Apr. 26, 2019).

[164]IRM 5.14.4.6(5), 5.14.4.6.1(6) (Oct. 9, 2020) ("If accepted, IAs that include RBAs require managerial approval and will be sent to CCP as a MMIA.").

[165]IRM 5.14.4.6.1(5) (Oct. 9, 2020) ("Rejection of an IA that includes a RBA requires concurrence from the Independent Administrative Reviewer.").

[166]IRM 5.14.4.6.1(7) (Oct. 9, 2020) ("Payments on IAs that include both RBAs and civil assessments should be posted to the RBAs until fully paid and then in the best interest of the government for the civil assessments.").

analysis shows she cannot pay the RBA in full by its own collection deadline and has no reachable equity.

Item	Monthly amount
Gross income	$9,000
Allowable living expenses	($6,100)
Court-ordered restitution to the Clerk (allowable expense)	($300)
Ability to pay the IRS	$2,600

At $2,600 a month for 84 months, the IRS would collect $218,400, far less than $1.1 million. That is a partial payment agreement. The RBA modules are reported currently not collectible, Lena keeps paying the Clerk, and each civil payment applied to the duplicate tax for a year also reduces the RBA for that year. The criminal judgment remains enforceable by the Justice Department for its own 20-year period (Part XV), so the agreement manages only the IRS side.

E. Raise It at the Collection Due Process Hearing

At a collection due process hearing the taxpayer may offer collection alternatives, including an installment agreement.[167] Appeals must consider the proposal and balance the need for efficient collection against the intrusiveness of the proposed levy.[168] Put the financial statement, the restitution payment history, and the proposed agreement in the record. If Appeals sustains a levy without dealing with a reasonable partial payment proposal that follows the manual, that is the record on which the Tax Court reviews for abuse of discretion.

XII. Double Counting Is the Government's Error and the Practitioner's Job

The government may hold several assessments for the same tax. It may collect that tax only once.

A. Restitution Paid Must Be Credited Against the Civil Tax, and the Reverse

Restitution paid for taxes must be deducted from a civil judgment for the same taxes.[169] The IRS applies the rule in both directions: a payment that satisfies the RBA must also be applied to the duplicate civil liability for the same tax and period, and a payment on the civil tax reduces the

[167] I.R.C. § 6330(c)(2)(A)(iii) ("The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including[:] . . . offers of collection alternatives, which may include . . . an installment agreement").

[168] *Id.* § 6330(c)(3)(C) ("whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.").

[169] *Helmsley*, 941 F.2d at 102 ("we believe it is self-evident that any amount paid as restitution for taxes owed must be deducted from any judgment entered for unpaid taxes in such a civil proceeding."); *Tucker*, 217 F.3d at 962; *Morse*, 419 F.3d at 834 n.4.

RBA.[170] The criminal statute has its own version: restitution is reduced by amounts the victim later recovers for the same loss in a civil case.[171]

B. A Worked Example Shows How the Credit Should Post

Suppose a court orders $300,000 in restitution for three years. The civil audit later finds $340,000 of tax and asserts a $255,000 fraud penalty. By then the client has paid $120,000 through the Clerk.

Account	Assessed	Credit for the $120,000	Balance
Restitution-based assessment	$300,000	$120,000	$180,000
Civil tax, same years	$340,000	$120,000	$220,000
Civil fraud penalty	$255,000	None	$255,000

The two tax balances are not added together. The most the government can collect in tax is $220,000, of which $180,000 is also restitution. The penalty, and interest on the civil side, are additional because the restitution order did not include them. A client who reads the two notices as $180,000 plus $220,000 is being double counted, and so is a revenue officer who collects that way.

C. Double Counting Happens in Five Places

1. **The credit never posts.** The IRS links duplicate accounts with manual transaction codes.[172] If the link is missing, a payment reduces one balance and not the other.
2. **The years do not line up.** A lump-sum order allocated one way by the IRS and another way by the examiner strands credits in the wrong period.
3. **Co-defendants.** When defendants are jointly and severally liable, each may carry an RBA for the full amount. A payment by one should reduce all of them. The confidentiality rules generally keep the IRS from showing one co-defendant another's transcripts,[173] so ask the Clerk's finance office for the case payment ledger to prove what the others paid.

[170] IRM 25.26.1.2(1), (3) (Aug. 25, 2021) ("any payments that wholly or in part satisfy the RBA must also be applied against the underlying tax liability for the same type of tax and tax periods"); IRM 5.19.23.3.2 (Aug. 26, 2025).

[171] 18 U.S.C. § 3664(j)(2) ("Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in[:] . . . any Federal civil proceeding").

[172] IRM 5.19.23.3.2(4) (Aug. 26, 2025) ("Payments and credits are cross-referenced using Transaction Code (TC) 290 $.00 and Credit Reference Number (CRN) 337"). The input posts on the transcript as a code 766 credit with credit reference number 337. *See supra* note 56.

[173] I.R.C. § 6103(a) ("Returns and return information shall be confidential").

4. **Different taxpayers.** Restitution assessed against a corporate officer and civil tax assessed against the corporation may be the same dollars. In an employment tax case the IRS's own manual counts four assessments of one liability: the restitution judgment, the RBA, the corporation's civil employment tax assessment, and the officer's trust fund recovery penalty.[174] Ask that every account, under every taxpayer identification number, be cross-referenced.
5. **Interest and penalties inside the order.** If the restitution figure already includes interest or penalties, the civil computation must not charge them again.

D. Read the Satisfaction of Judgment Before You Rely on It

Words in a satisfaction of judgment can matter. In one case the restitution order covered tax "plus any applicable penalties and interest," and the U.S. Attorney later filed a satisfaction reciting that the judgment was paid or otherwise settled. The Eleventh Circuit held that, on those facts, the civil liabilities for those years were settled too.[175] The court acknowledged the general rule that restitution does not bar civil collection,[176] and Chief Counsel disagrees with it.[177] The Justice Department's form plea language says that satisfying the restitution does not settle, satisfy, or compromise the civil liability.[178] When restitution is paid in full, get a satisfaction of judgment and read it closely. Do not assume that paying the restitution closed the civil years.

[174]IRM 25.26.1.2 (Aug. 25, 2021) (Note and Example) ("The employment tax liability . . . can be assessed four different times as follows: (1) the restitution judgement, (2) the restitution based assessment, (3) the MFT 01 civil assessment, and (4) the MFT 55 TFRP.").

[175]*Creel v. Commissioner*, 419 F.3d 1135, 1140–41 (11th Cir. 2005) ("we conclude that the Tax Court did not err in finding that *Creel*'s civil tax liabilities were settled by virtue of the $83,830 payment and the actions of the U.S. Attorney.").

[176]*Id.* at 1140 ("As a general rule, the government can recover criminal penalties from an individual in a criminal prosecution and can recover additional civil penalties in a civil proceeding.").

[177]CC-2007-008, *supra* note 143, at 2 ("The Office of Chief Counsel disagrees with both courts' conclusions."); *id.* at 3 ("The taxpayer has the burden of presenting evidence to prove that, contrary to the normal course of events, civil tax liability was compromised by satisfaction of a restitution obligation.").

[178]Criminal Tax Manual, *supra* note 4, § 44.10[1] ¶ 5 ("Defendant understands and agrees that . . . satisfaction of the restitution debt does not settle, satisfy, or compromise Defendant's obligation to pay any remaining civil tax liability.").

XIII. Four Kinds of Interest Can Attach to One Tax Loss

Kind of interest	Runs on	Who collects it	Can it be avoided?
Interest built into the restitution figure	The tax loss, from the return due date to sentencing	Justice Department, and the IRS through the RBA	Negotiate it in the plea agreement
Title 18 interest after judgment	Unpaid restitution over $2,500	Justice Department only	The court may waive or limit it
Title 26 interest on the RBA	Nothing accrues on the RBA itself; interest included in the court-ordered total is collected as part of that total	No one	Settled by *Klein*
Title 26 interest on the civil deficiency	The true tax and penalties, from the original due dates	IRS	Payment, a deposit, or a lower civil liability

A. The Restitution Order May Include Interest but Generally Not Penalties

The Second Circuit allows prejudgment interest in restitution because the loss of the use of money is part of the victim's loss.[179] The Eighth Circuit approved interest in restitution payable to the IRS as a condition of supervised release,[180] and the Seventh Circuit approved a calculation that included interest, although it vacated the restitution order on other grounds.[181] Penalties are different. The Justice Department's own manual treats civil penalties as generally outside restitution unless the defendant agrees to them.[182] We did not find a court of appeals decision holding that restitution to the IRS may never include civil penalties.

B. Title 18 Interest Runs After Judgment Unless the Court Waives It

Interest runs on restitution of more than $2,500 unless the fine is paid in full before the fifteenth day after the judgment, language that on its face speaks of a fine rather than restitution.[183] The rate is the weekly average one-year constant maturity Treasury yield for the calendar week before the first day the defendant is liable for interest, computed daily.[184] The sentencing judge may

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[179] *United States v. Qurashi*, 634 F.3d 699, 700, 702–05 (2d Cir. 2011) ("the prejudgment interest award . . . is designed to ensure that the insurer victims are fully compensated for their actual loss, which includes the loss of the ability to put their money to productive use.").

[180] *United States v. Perry*, 714 F.3d 570, 577 (8th Cir. 2013) ("the district court did not abuse its discretion by including interest in a restitution order intended to compensate the IRS as a victim for the full amount of its losses").

[181] *Hassebrock*, 663 F.3d at 926 (approving restitution calculation of tax owed "plus interest until the date of sentencing hearing" as within the district court's discretion, but vacating the restitution order on other grounds) ("The PSR arrived at an amount of restitution ($997,582.98) based on a tax amount owed of $593,557, representing actual loss, plus interest until the date of sentencing hearing.").

[182] Criminal Tax Manual, *supra* note 4, § 44.03[4] ("As a general rule, the amount of the loss does not include penalties. . . . An exception applies, however, if the defendant agrees to pay penalties as part of a plea agreement.").

[183] 18 U.S.C. § 3612(f)(1) ("The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment.").

[184] *Id.* § 3612(f)(2) ("Interest on a fine shall be computed[:] (A) daily . . . ; and (B) at a rate equal to the weekly average 1-year constant maturity Treasury yield . . . for the calendar week preceding the first day on which the defendant is liable for interest under paragraph (1)."); *see id.* § 3612(f)(1) (interest provision applies to "any fine or

waive it, cap it, or limit the period when the defendant cannot pay.[185] Ask at sentencing. The IRS cannot assess this interest.[186]

C. Klein Bars Title 26 Interest on the RBA

For seven years the IRS charged underpayment interest and failure-to-pay additions on RBAs, until the Tax Court stopped it in *Klein*. Restitution is assessed as if it were a tax, but it is not a tax, so section 6601 interest and the section 6651(a)(3) addition do not apply to it.[187] The IRS did not appeal and now abates interest and failure-to-pay additions on an RBA unless the restitution order or plea agreement includes them.[188] Appendix A shows a sample request for abatement.

Klein also explains the government's plea form. Because the IRS cannot add interest to the RBA, prosecutors now ask the defendant to agree to Title 26 interest inside the restitution figure. Read that paragraph before your client signs it.

D. Title 26 Interest Runs on the Civil Deficiency

Klein left the civil route open. When the IRS determines the deficiency through an examination, underpayment interest runs on that tax from the original due date,[189] and is collected like tax.[190] Two checks follow. If the restitution figure already included interest through sentencing, the civil interest computation must give credit for it. And each restitution payment should be credited to the civil account as of the date it was received.

XIV. Payments Follow Three Sets of Ordering Rules

A. Payments Travel from the Clerk to Kansas City

A restitution payment ordinarily goes to the Clerk of Court, and the Clerk forwards it to the IRS. The Collection manual gives this address for court-ordered restitution payments to the IRS:[191]

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restitution of more than $2,500").

[185]*Id.* § 3612(f)(3) ("the court may[:] (A) waive the requirement for interest; (B) limit the total of interest payable to a specific dollar amount; or (C) limit the length of the period during which interest accrues.").

[186]CC-2019-004, *supra* note 49 ("Title 18 interest that accrues on the amount of restitution ordered (that is, interest accruing on the amount of restitution ordered under 18 U.S.C. § 3612(f)) continues not to be assessable by the Service").

[187]*Klein*, 149 T.C. at 361–62 ("The restitution obligation is not a civil tax liability, and Congress did not change that fact when it authorized the IRS . . . to assess and collect restitution '. . . as if such amount were such tax.'").

[188]CC-2019-004, *supra* note 49; IRM 25.26.1.1.2(3) (Aug. 25, 2021); IRM 25.26.1.2(6)–(7) (Aug. 25, 2021) ("Interest and IRC 6651(a)(3) penalties should not be assessed on RBAs; unless the interest and penalties are included in the restitution amount ordered by a federal district court.").

[189]I.R.C. § 6601(a) ("If any amount of tax . . . is not paid on or before the last date prescribed for payment, interest on such amount . . . shall be paid for the period from such last date to the date paid.").

[190]*Id.* § 6601(e)(1) ("Interest prescribed under this section on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes.").

[191]IRM 5.1.5.19.3 (Nov. 4, 2019) ("All court ordered restitution payments to the IRS are processed by the Kansas City Submission Processing Center"). The Justice Department's form plea language uses an older version of the address. Criminal Tax Manual, *supra* note 4, § 44.10[1] ¶¶ 10–11 ("IRS - RACS," "Pershing Ave."). Verify the address against the judgment and the IRS's notices, or with the U.S. Attorney's office, before relying on it.

> Department of the Treasury, Internal Revenue Service, Attn: DOJ/Criminal Restitution, Mail Stop 6261 P-6, 333 West Pershing Road, Kansas City, MO 64108

Kansas City posts the payment to the restitution account for the period.[192]

B. The Clerk, the Court, and the IRS Each Apply Their Own Order

Stage	Rule	Authority
At the Clerk	Principal, then costs, then interest, then penalties	18 U.S.C. § 3612(i)
Among victims	When the United States is one of several victims, the others are paid in full first	18 U.S.C. § 3664(i)
At the IRS	Court payments post to the RBA account for the period; under an installment agreement that includes an RBA, payments go to the RBA first, and under a civil-only agreement to the civil assessments in the government's best interest	IRM 5.19.23.3.2(6) (Aug. 26, 2025); IRM 5.14.4.6.1(7) (Oct. 9, 2020); see IRM 25.26.1.4 (Aug. 25, 2021) (processing and DPC 26 posting)

The second rule matters in a mixed fraud case. A client who also owes restitution to investors or a bank may pay for years before a dollar reaches the IRS, while civil interest keeps running.

C. Only Voluntary Payments Can Be Designated, and Only in Writing

A taxpayer who makes a voluntary payment may tell the IRS in writing how to apply it. Without directions, the IRS applies the payment in its own best interest, period by period, to tax, then penalty, then interest.[193] Money the IRS takes by levy is involuntary and cannot be designated.[194] Do not count on designating payments made through the Clerk under a criminal judgment; the IRS posts them under its own procedures. That is the reason to settle allocation in the judgment itself.

What works in practice:

1. **Put the allocation in the order,** by year and type of tax.
2. **Designate any direct payment to tax, by year.** A payment applied to the duplicate civil tax also reduces the RBA for that period; the IRS first applies payments to the non-duplicate tax. A payment applied to the fraud penalty or to interest reduces neither the RBA nor the criminal judgment.

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[192] IRM 25.26.1.4 (Aug. 25, 2021) ("Kansas City (KC) Accounting is responsible for processing restitution payments. . . . If an MFT 31 account exists, KC applies the payments directly to IDRS with a Designated Payment Code (DPC) 26.").

[193] Rev. Proc. 2002-26, §§ 3.01, 3.02, 2002-1 C.B. 746 ("the Service will apply the payment to periods in the order of priority that the Service determines will serve its best interest. . . . the amount will be applied to tax, penalty, and interest, in that order").

[194] IRM 5.1.5.19.1 (Dec. 16, 2014) ("Payments received as a result of collection enforcement action to collect RBAs are involuntary payments and may be applied in the best interest of the government.").

3. **Report direct payments to the U.S. Attorney's office and the probation officer.** A payment sent straight to the IRS will not show on the Clerk's ledger unless someone reports it.
4. **In an employment tax case, designate to trust fund tax.**
5. **Reconcile once a year.** Compare the Clerk's payment history with both IRS transcripts, and write to the IRS when they disagree.

XV. Five Clocks Run on the Same Money

Clock	Period	Starts	Authority
Enforcing the criminal judgment	20 years, or 20 years after release from prison, whichever is later; the estate remains liable after death; conditions-only orders end with supervision under current guidance	Entry of judgment	18 U.S.C. § 3613(b); Criminal Tax Manual § 44.02[4]
Assessing the RBA	No limit, but not before appeals are exhausted	Final order	I.R.C. §§ 6501(c)(11), 6201(a)(4)(B)
Collecting the RBA	10 years for most RBAs, extended if the government sues in time	Date of the RBA	I.R.C. § 6502(a); IRM 5.1.5.18(3) (May 2, 2025)
Assessing the civil tax	No limit if the IRS proves fraud, or if no return was filed; otherwise 3 years, or 6 for a substantial omission	Filing of the return	I.R.C. § 6501(a), (c)(1), (c)(3), (e)(1)(A)
Collecting the civil tax	10 years, extended if the government sues in time	Date of the civil assessment	I.R.C. § 6502(a)

A. The Clocks Do Not Run Together

The criminal judgment and the RBA are enforced by different agencies under different statutes. The 20-year period belongs to the Justice Department; the 10-year period belongs to the IRS. Because the RBA can be assessed at any time, a late assessment can start a new 10-year period well into the life of the judgment. The RBA and the civil assessment for the same year also carry separate collection periods. An expired civil collection period does not mean the restitution is safe.

B. Conditions-Only Orders End with Supervision Under Current Guidance

For restitution ordered only as a condition of probation or supervised release, the IRS treats the end of supervision as the end of its collection period, and its technical advice says it "seems logical" that the lien must then be released.[195] The current Criminal Tax Manual agrees (Part IV.C). A client coming off supervision should get the IRS lien released and confirm in writing that the U.S. Attorney's office has closed its file.

[195]PMTA 2018-019, *supra* note 44 ("restitution ordered solely as a condition of supervised release or probation is collectible only during the period of supervised release or probation, not before or after."; "it seems logical that the Service would have to release the lien"); IRM 5.1.5.18(4)–(5) (May 2, 2025).

C. Some Events Stop the IRS Clock

The RBA is collected as a tax, so the ordinary suspensions apply. A collection due process hearing and any appeal suspend the collection period, which cannot expire before the 90th day after the final determination.[196] So does a pending installment agreement request that can cover the liability (a civil-only proposal that leaves out the RBA does not suspend the RBA clock), the 30 days after a rejection, and a timely appeal of the rejection.[197] A bankruptcy case suspends it for the time collection is barred plus six months.[198] A pending offer in compromise suspends the clock only for the civil liabilities in the offer. Because an offer cannot include the RBA, a pending offer does not stop the RBA clock.[199] Count those days before telling a client when the IRS's period ends.

XVI. A Defense Kit Covers the Case from Plea to Last Payment

DEFENSE KIT: Before the Plea and at Sentencing

1. Identify each count as Title 18 or Title 26 and what that means for timing and duration.
2. Compute the tax by year; test the special agent's figure.
3. Negotiate relevant-conduct years, Title 26 interest, penalties, and immediate enforcement.
4. Prefer a count that leaves the civil fraud penalty open to contest.
5. Object in writing to the presentence report's restitution figures.
6. Ask for an order by year and tax type, stating whether interest and penalties are included.
7. Ask the court not to make the full amount due immediately, and to waive Title 18 interest if the client cannot pay.

[196] I.R.C. § 6330(e)(1) ("if a hearing is requested . . . , the running of any period of limitations under section 6502 (relating to collection after assessment) . . . shall be suspended for the period during which such hearing, and appeals therein, are pending.").

[197] *Id.* § 6331(k)(2)(A)–(B), (k)(3)(B); *see id.* § 6331(i)(5) ("The period of limitations under section 6502 shall be suspended for the period during which the Secretary is prohibited under this subsection from making a levy.").

[198] *Id.* § 6503(h) ("The running of the period of limitations . . . on . . . collection shall, in a case under title 11 of the United States Code, be suspended for the period during which the Secretary is prohibited . . . from collecting and[:] . . . (2) for collection, 6 months thereafter.").

[199] *Id.* § 6331(k)(1), (k)(3)(B) (levy bar applies to the tax covered by the offer); IRM 5.8.4.23.1 (Apr. 25, 2025) ("Since the IRS does not have the authority to compromise restitution, any restitution or associated RBAs should not be included in any OIC.").

DEFENSE KIT: After Judgment and Through the Last Payment

1. Calendar the end of the appeal period; the RBA cannot come before it.
2. Pull MFT 31 and MFT 30 transcripts for every year, and check for interest or failure-to-pay additions on the RBA.
3. In the civil case, contest the tax and the penalty; stipulate the restitution credit with the decision.
4. If the true tax is less than the restitution, raise it before the judgment is final: object at sentencing, alert the court at once to any arithmetical or other clear error, because Rule 35(a) gives the court itself only 14 days after the oral announcement of sentence to correct it, and the correcting order must be entered within that period, or appeal.[200]
5. Request a collection due process hearing on every lien and levy notice; raise every issue there.
6. Designate direct payments to tax by year and report them to the U.S. Attorney's office.
7. If the client cannot pay, propose a partial payment agreement on the civil tax, with the RBA reported currently not collectible.
8. When restitution is paid, obtain a satisfaction of judgment and lien releases from both agencies.

XVII. One Number, Written Well, Saves Years of Fighting

Restitution looks like the simplest part of a criminal tax sentence: one number on one page. But that number will usually outlive the prison term and the supervised release, and it follows the client into the audit, the Tax Court, and the collection division. Walt and Dana learned that the hard way, and Marco learned that a settlement with one part of the government still has to be enforced against another. Most of what can go wrong later can be prevented with a few sentences in the plea agreement and the judgment. That is where the tax controversy lawyer earns a seat at the criminal defense table.

[200] Fed. R. Crim. P. 35(a) ("Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error."), (c) ("'[S]entencing' means the oral announcement of the sentence."); *see id.* 35 advisory committee's note to 1991 amendment (correcting order "must be entered within the . . . period"; rule has no "formalized method of bringing the error to the attention of the court") (period lengthened from 7 to 14 days in 2009).

Appendix A. Sample Request to Abate Interest and Failure-to-Pay Additions on an RBA

The entries below show how a taxpayer might ask the IRS to abate underpayment interest and failure-to-pay additions charged on a restitution-based assessment when the restitution order did not include them. The facts are invented and are not drawn from the Pruitt composite. This is a set of sample entries keyed to Form 843 (instructions revised December 2024), not a facsimile of the form. Check the current revision of the form and its instructions before filing.[201]

[201] I.R.S., Instructions for Form 843 (Rev. Dec. 2024), https://www.irs.gov/instructions/i843 ("Use Form 843 to claim a refund or request an abatement of certain taxes, penalties, additions to tax, interest, and fees.").

Form 843 line	Sample entry for the composite taxpayer
Reason box at top of form	Check one box only. Check "Other (specify)" and enter "Abatement or refund of § 6601 interest and § 6651(a)(3) additions assessed on a restitution-based assessment (*Klein*)." If the claim covers only the additions, the penalty box for "reasonable cause or other reason allowed under the law" also fits.
Name, address, SSN	Taxpayer's name, address, and SSN (the person against whom the RBA was assessed)
Line 1: Tax period	From 01/01/2016 to 12/31/2016 (one form for each period)
Line 2: Amount to be refunded or abated	$4,489.62 (sample figure: $2,914.62 of underpayment interest plus $1,575.00 of § 6651(a)(3) additions, explained on line 8)
Line 3: Payment dates	Dates of any payments actually applied to the interest or additions; leave blank if the request is only to abate unpaid amounts
Line 4: Type of tax	Income (identify the restitution-based assessment and MFT 31 in the line 8 explanation)
Line 5: Type of return	1040
Line 6: Penalty Code section	6651(a)(3)
Line 7: Reason	Box c ("Reasonable cause or other reason allowed under the law can be shown"), because *Klein* bars the charges; explain the legal basis on line 8
Line 8: Explanation	"The IRS assessed restitution for 2016 under I.R.C. § 6201(a)(4) on its MFT 31 account. The restitution order and plea agreement do not include interest or penalties. *Under Klein v. Commissioner*, 149 T.C. 341 (2017), Chief Counsel Notice CC-2019-004, and IRM 25.26.1.2(6)–(7), the IRS may not assess § 6601 interest or § 6651(a)(3) additions on this assessment. Please abate $2,914.62 of interest and $1,575.00 of additions, a total of $4,489.62, and refund any amounts paid. Copies of the judgment, the plea agreement, and the MFT 31 transcript are attached."
Signature and filing	Sign and date the form. The instructions require both spouses to sign a request "relating to a joint return." An RBA is assessed on MFT 31 against the defendant alone, but it may arise from a joint Form 1040, so get both signatures when the underlying return was joint. If only the defendant can sign, the instructions identify no exception to the two-signature requirement; explain on line 8 that the request concerns only the defendant's separate MFT 31 assessment, and expect the IRS to ask for the other signature. File the original at the address in the instructions' "Where To File" section (the return address on the notice, if you are responding to one). As a practice suggestion, send any assigned revenue officer a courtesy copy; the instructions do not provide for filing with the officer. Keep proof of mailing.

Appendix B. Desk Reference: Authorities, Deadlines, and Forms

Event	Deadline or rule	Authority
Presentence report objections	Ordinarily within 14 days after receiving the presentence report (Fed. R. Crim. P. 32(f)(1)); check any local rule or court order	Fed. R. Crim. P. 32
Deferred restitution determination	Up to 90 days after sentencing	18 U.S.C. § 3664(d)(5)
Appeal of an amended restitution judgment	Separate notice of appeal required	*Manrique*, 581 U.S. 116
Title 18 interest avoided	Pay in full before the 15th day after judgment	18 U.S.C. § 3612(f)(1)
RBA assessed	Only after all appeals of the order are final	I.R.C. § 6201(a)(4)(B)
Collection due process request	The date stated in the lien or levy notice (generally 30 days)	I.R.C. §§ 6320(a)(3)(B), 6330(a)(3)(B)
Tax Court petition after collection due process determination	30 days from the notice of determination	I.R.C. § 6330(d)(1)
Tax Court petition on a deficiency	90 days (150 days if addressed outside the United States)	I.R.C. § 6213(a)
Refund claim	File by the later of 3 years from filing or 2 years from payment; the refund is limited to tax paid within the lookback period (3 years plus extensions before the claim, or 2 years if the claim relies on the 2-year rule)	I.R.C. § 6511(a), (b)(2)
Restitution liability ends	Later of 20 years from judgment or 20 years from release	18 U.S.C. § 3613(b)
Request abatement of interest on an RBA	Form 843	IRM 25.26.1.2(6)–(7)
Request a collection due process hearing	Form 12153	I.R.C. §§ 6320, 6330
Court's correction of an arithmetical, technical, or other clear error in the sentence	The court must act within 14 days after the oral announcement of sentence; the correcting order must be entered within that period	Fed. R. Crim. P. 35(a), (c)
Respond to a Tax Court request for admissions	30 days after service, or the matter is deemed admitted	Tax Ct. R. 90(c)
Respond to an order to show cause on a motion to compel stipulation	20 days after the order is served (motion due at least 45 days before the calendar call)	Tax Ct. R. 91(f)
Propose a civil-only partial payment agreement	Form 433-A for an individual; Form 433-B for a business entity	IRM 5.15.1.2 (June 29, 2026); see IRM 5.14.4.6(4)
Request innocent-spouse relief for the spouse	Form 8857	I.R.C. § 6015