

## TAX LITIGATION ISSUES

## 'Daugerdas v. Commissioner': The Seventh Circuit Addresses Tax Restitution

By Jeremy H. Temkin

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Under section 6201(a)(4)(A) of the Internal Revenue Code, the Internal Revenue Service has the authority to collect restitution ordered in criminal tax cases using the tools available to collect taxes, penalties, and interest. Specifically, the IRS can “assess and collect the amount of restitution under an order pursuant to section 3556 of title 18, United States Code, for failure to pay any tax imposed under this title in the same manner as if such amount were such a tax.” (emphasis added).

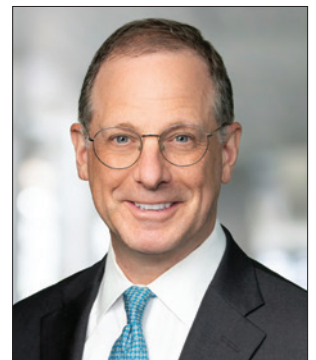
Because section 3556 requires sentencing courts to order restitution according to the Mandatory Victims Restitution Act (MVRA), 18 U.S.C. §3663A, and because the MVRA does not provide for restitution for federal tax offenses charged under Title 26, it is an open question as to whether the IRS can use section 6201(a)(4)(A) to assess and collect restitution in circumstances where a defendant is convicted of conspiracy to defraud the IRS under Title 18 rather than a substantive offense under Title 26.

On March 30, 2026, the Seventh Circuit Court of Appeals was the first appellate court to weigh in on this issue. In *Daugerdas v. Commissioner of Internal Revenue*, 171 F.4th 924 (7th Cir. 2026), a three-judge panel affirmed the Tax Court’s holding that section 6201(a)(4)(A) authorized the IRS to assess and collect restitution that a district court orders under Title 18.

This column examines the Seventh Circuit’s reasoning in *Daugerdas*, including its textual analysis of section 6201(a)(4)(A), its treatment of Daugerdas’s contention that the IRS was bound by the restitution payment schedule set at sentencing, and its rejection of his separation-of-powers challenge.

**Background**

In 2013, a federal jury in the Southern District of New York convicted Paul Daugerdas of multiple offenses arising out of his involvement



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in the promotion of fraudulent tax shelters. In addition to four counts of tax evasion under 26 U.S.C. §7201 and one count of interfering with the internal revenue laws under 26 U.S.C. §7212(a), Daugerdas was convicted of one count of conspiracy to defraud the IRS under 18 U.S.C. §371 and one count of mail fraud under 18 U.S.C. §1341.

His conspiracy conviction triggered mandatory restitution pursuant to the MVRA and, in addition to sentencing Daugerdas to 15 years in prison, the district court imposed restitution in the amount of \$371 million, reflecting the tax losses resulting from the conspiracy. The court also established a payment schedule, which required Daugerdas to pay 10% of his gross monthly income starting 30 days after his release from prison.

After the Second Circuit affirmed Daugerdas's convictions and sentence, see *United States v. Daugerdas*, 837 F.3d 212 (2d Cir. 2016), the IRS commenced administrative proceedings pursuant to section 6201(a)(4)(A) and assessed the full amount of the criminal restitution, making \$371 million immediately due and payable. The IRS also filed a notice of federal tax lien (NFTL) against Daugerdas's property in Cook County, Illinois. Daugerdas challenged the IRS's authority to collect restitution under section 6201(a)(4)(A), including its ability to accelerate his restitution obligation ahead of the payment schedule set by the sentencing judge.

After the IRS's Office of Appeals rejected Daugerdas's contention that section 6201(a)(4) is limited to convictions for offenses charged under Title 26, Daugerdas petitioned the Tax Court, which sustained the IRS's

actions. See Order, *Daugerdas v. Comm'r*, No. 7350-20L (T.C. Jan. 10, 2022), Dkt. No. 36. The court concluded that section 6201(a)(4)(A) provided the IRS with authority to assess restitution ordered for tax-related offenses under Title 18.

Rejecting Daugerdas's argument that the obligation "likely threatened or reinforced his swift financial ruin," the court further held that the IRS was not bound to follow the schedule set by the sentencing court. Daugerdas appealed a subsequent Tax Court decision, see *Daugerdas v. Comm'r*, 2024 WL 4448806 (T.C. Oct. 9, 2024), to the United States Court of Appeals for the Seventh Circuit.

### **The Seventh Circuit's Analysis**

The central dispute between the IRS and Daugerdas on appeal was whether section 6201(a)(4)(A)'s use of the phrase "for failure to pay any tax imposed under this title" limits the IRS's assessment authority to cases in which the defendant was convicted of an offense under Title 26, or whether the authority extends to cases where the underlying conviction related to the failure to pay taxes but arose under Title 18. Daugerdas argued that the IRS had exceeded its authority because his restitution obligation was not predicated on a conviction "for failure to pay any tax imposed under" the Tax Code.

He also contended that even if the IRS had the authority to impose a parallel administrative restitution obligation, it could not impose a payment schedule different from the schedule ordered by the sentencing court. Finally, Daugerdas contended that allowing the IRS to override the sentencing court's payment schedule impermissibly encroached on the judiciary's sentencing authority.

After undertaking a close reading of the statute's text and cross-referenced provisions, the Seventh Circuit rejected Daugerdas's construction of section 6201(a)(4)(A). The court began with the plain language of the statute and its direction to the Secretary of the Treasury to assess and collect restitution ordered pursuant to 18 U.S.C. §3556, which in turn allows district courts to impose discretionary restitution under the Victim and Witness Protection Act (18 U.S.C. §3663) and requires the imposition of mandatory restitution under the MVRA. The court explained that, in sentencing Daugerdas, the district court imposed restitution pursuant to section 3556 for criminal conduct that was rooted in a "failure to pay" taxes imposed under the Internal

Revenue Code and which constituted a crime against property within the meaning of the MVRA. Accordingly, the court found the IRS acted within its authority under section 6201(a)(4)(A).

The court emphasized that Daugerdas's position effectively "rewrites" section 6201(a)(4)(A) by ignoring that "Congress conditioned the administrative assessment of restitution on whether such an obligation arose under 18 U.S.C. §3556 for 'failure to pay' taxes owed under Title 26," which is exactly what the IRS considered before assessing the \$371 million in restitution.

The court further explained that if Congress intended to limit the IRS's authority to cases in which a defendant committed a Title 26 offense, it could have done so by omitting the cross reference to section 3556. According to the court, section 6201(a)(4)(A)'s inclusion of section 3556 matters because it triggers

the mandatory assessment of restitution under the MVRA for Title 18 offenses against property, including a conspiracy to defraud the IRS charged under section 371.

The Seventh Circuit also found no issue with the lien that the IRS imposed on Daugerdas's property, observing that the district court's imposition of criminal restitution at sentencing acted as "a lien in favor of the United States on all property and rights to property" of the defendant under 18 U.S.C. §3613(c). By extension, the court concluded the IRS acted within its authority when it filed its own federal tax lien and corresponding NFTL on specific property.

The court rejected Daugerdas's reliance on the Tax Court's decision in *Klein v. Commissioner*, 149 T.C. 341, 355-58 (2017), which describes the "modest aim" of section 6201(a)(4)(A) as no more than "to allow the IRS to create an account receivable against which the restitution payments can be credited."

While expressing doubt that Congress's objective was "entirely clerical," the court explained that even if Congress enacted section 6201(a)(4)(A) to "close an internal accounting gap," as the Tax Court contended in *Klein*, application of the section would still allow the IRS to "close the gap" in cases like Daugerdas's where the IRS assesses restitution following a Title 18 conviction.

Next, the court addressed and rejected Daugerdas's contention that the IRS lacked the authority to impose its own payment schedule. The Seventh Circuit explained that by directing the IRS to assess and collect restitution "in the same manner as if such amount were such tax," section 6201(a)(4)(A) empowers the IRS to use its full suite of

administrative collection tools, including tax liens and demand for immediate payment, without being tethered to the payment schedule imposed by the sentencing court.

Although a sentencing court must weigh financial considerations when deciding a restitution payment schedule pursuant to section 3664(f)(2), the Seventh Circuit held that the IRS “is not bound or limited by these considerations” when collecting restitution pursuant to section 6201(a)(4)(A). Thus, according to the Seventh Circuit, section 6201(a)(4)(A), in effect, creates an independent, parallel civil collection mechanism that operates according to the IRS’s administrative procedures.

Finally, the court rejected *Daugerdas*’s separation of powers challenge, finding nothing unconstitutional about Congress enacting complementary provisions in both Title 18 and Title 26 to address the assessment and collection of restitution in tax-related criminal cases. The Seventh Circuit therefore affirmed the Tax Court’s entry of judgment for the IRS.

### **Implications of ‘Daugerdas’**

At its core, the Seventh Circuit’s decision in *Daugerdas* confirms that section 6201(a)(4) permits the IRS to layer civil collection powers on top of criminal restitution orders, even when the defendant is convicted of an offense under Title 18 rather than Title 26. The Seventh Circuit further made clear that section 6201(a)(4)(A) does not disturb the

criminal restitution order, but rather it creates a separate administrative track for collecting the same amount.

Thus, in addition to the lien created by a criminal restitution order pursuant to 18 U.S.C. §3613(c), the IRS can utilize its independent lien authority under 26 U.S.C. §§6321 and 6323, and is not limited to collecting restitution in accordance with the schedule set by the district court.

While the Department of Justice generally requires defendants pleading guilty to tax conspiracies under Title 18 to acknowledge application of section 6201(a)(4), *Daugerdas* makes clear that defendants charged with tax-related conspiracies will need to anticipate the possibility of independent and potentially more aggressive collection efforts by the IRS.

In cases where multiple defendants are jointly and severally liable for restitution or in cases where a defendant is liable for taxes evaded by a third party (such as the taxpayers who used the shelters that *Daugerdas* had promoted), practitioners also must account for the logistical complexity of how the IRS will apply payments recorded from multiple sources. Given the IRS’s limited resources, this will create additional burdens for the Service, the DOJ, practitioners, and defendants convicted of tax-related offenses.

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