



# DAILY TAX REPORT



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## Consideration of Subject Matter Jurisdiction of District Courts Required When Preparing Cases Where Taxpayers Seek Solely Statutory Interest

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discuss whether taxpayers are required to file a refund claim prior to bringing suit, whether in the Court of Federal Claims or district court.

### Introduction

Often clients want to recover interest on an overpayment of federal income taxes (statutory interest).

Generally, Internal Revenue Code Section 6611 gives taxpayers the right to receive interest on overpayments from the date of the overpayment to a date not more than 30 days before a check is tendered to the taxpayer.

The Court of Federal Claims has subject matter jurisdiction for claims seeking solely statutory interest.<sup>1</sup> This article will discuss whether the Court of Federal Claims has exclusive jurisdiction over these claims, or whether district courts have concurrent jurisdiction to decide these claims as well. In addition, this article will

### Analysis

**Subject Matter Jurisdiction.** For a court to have subject matter jurisdiction over a claim against the United States, there must be both a statute waiving the government's sovereign immunity and a statute conferring jurisdiction upon the court.<sup>2</sup> It is well established that, although Sections 1331 and 1340 of Title 28 confer jurisdiction on the district courts, they are not waivers of sovereign immunity.

The only statute that can waive sovereign immunity for a statutory interest claim in district court is 28 U.S. Code Section 1346(a), which states in relevant part:

(a) The district courts shall have original jurisdiction, concurrent with the United States Claims Court [U.S. Court of Federal Claims], of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regu-

<sup>1</sup> The Court of Federal Claims has subject matter jurisdiction to hear statutory interest claims pursuant to 28 U.S. Code Section 1491(a)(1).

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<sup>2</sup> See *Amoco Production Co. v. United States*, 61 A.F.T.R.2d (RIA) 750 (N.D. Ill. 1998).

lation of an executive department, or upon any express or implied contract with the United States . . . .

Initially, it should be noted that district courts have no dollar amount limitation in suits arising under Section 1346(a)(1), while they cannot hear cases that exceed \$10,000 if the suit arises under Section 1346(a)(2).

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In addition, two different legal theories exist to bring a suit for statutory interest. The first theory is based on Internal Revenue Code Sections 6611 and 6621, which entitle taxpayers to interest on overpayments. The second theory is known as the account stated theory. The account stated theory is based on the common law concept that an implied contract arises when the Internal Revenue Service submits to the taxpayer a statement of an account due and the taxpayer agrees to accept the stated balance to close the account.

This article only discusses subject matter jurisdiction of a claim under I.R.C. Sections 6611 and 6621, because a claim for an account stated, which is based on breach of contract principles, arises under Section 1346(a)(2).<sup>3</sup>

There is a split between the district courts as to whether a claim for statutory interest falls under Section 1346(a)(1). Five district courts, among four different states, have held a claim for statutory interest is an “internal revenue tax alleged to have been erroneously or illegally assessed or collected.”<sup>4</sup> Thus, these courts held that Section 1346(a)(1) waives sovereign immunity and the courts have subject matter jurisdiction to hear statutory interest claims regardless of amount.

The main theory advanced in these cases was that an overpayment of tax is not fully refunded until the statutory interest accrued during the time the government held the money has been returned by the government. For example, in *E.W. Scripps Co. v. United States*, the court held that statutory interest is effectively part of the overpayment of tax. The court explained:

It is clear that the plaintiff is seeking to recover an “internal revenue tax alleged to have been erroneously or illegally assessed or collected” as is permitted by Section 1346(a)(1).

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<sup>3</sup> *Oppel v. United States*, 82 A.F.T.R.2d (RIA) 6810 (9th Cir.) (“Because the statute [Section 1346(a)] plainly limits the jurisdiction of the district courts in contract claims against the United States to \$10,000, and because a claim against the government on an account stated is a contract claim, the district court had no jurisdiction to consider the merits of that claim.”). Of course, if an account stated action exceeds \$10,000, a taxpayer can bring suit in the Court of Federal Claims pursuant to 28 U.S.C. Section 1491(a)(1).

<sup>4</sup> See *E.W. Scripps Co. v. United States*, 90 A.F.T.R.2d (RIA) 6835 (S.D. Ohio 2002); *Doolin v. United States*, 737 F.Supp. 732, *rev'd on diff. grounds*, 918 F.2d 15 (N.D. N.Y. 1990); *Trustees of the Bulkeley School v. United States*, 628 F.Supp. 802, (D. Conn. 1986); *Triangle Corp. v. United States*, 592 F.Supp. 1316, *clarified*, 597 F.Supp. 507 (D. Conn. 1984); *Draper v. United States*, 10 A.F.T.R.2d (RIA) 5446 (E.D. Wash. 1962).

. . . A taxpayer has not received a full refund of “erroneously . . . collected” taxes until he has recovered not only the nominal amount of the collection but also an amount of interest that will compensate him for the loss of the use of his money between the time he paid the tax and the time that he received the refund.<sup>5</sup>

Additionally, in *Citadel Industries Inc. v. United States*,<sup>6</sup> the court did not specifically address the issue of jurisdiction, but it assumed subject matter jurisdiction over the claim, even though the suit was for interest alone. The overwhelming majority of district courts that have addressed this issue have held that they have subject matter jurisdiction to hear suits solely for statutory interest.

Only one district court has held to the contrary. In *Amoco Production Co. v. United States*,<sup>7</sup> the court held that a suit solely for statutory interest was beyond the court’s jurisdiction. The court had three principal justifications for reaching its conclusion.

First, the court held that statutory interest is not “assessed and collected” as required by Section 1346(a)(1). Similarly, the court held that a claim for statutory interest is “still not . . . a ‘recovery’; that is, it is not seeking the return of sums already paid.”<sup>8</sup> Finally, the court relied on dictum in a decision by the Court of Federal Claims, which found that only deficiency interest falls under the language of Section 1346(a)(1).<sup>9</sup> The court transferred the case to the Court of Federal Claims, ruling that it had exclusive jurisdiction to hear the case pursuant to 28 U.S.C. Section 1491.

The cases mentioned above are the only courts that have addressed whether district courts have jurisdiction to hear statutory interest claims. Only six district courts, and no courts of appeal, have squarely decided this issue. Thus, this area of law is not well settled.

As a result, if the statute of limitations on a claim is close to running, the claim should be filed in the Court of Federal Claims where it is clear that subject matter jurisdiction exists. The client should not take the risk that a district court will render a decision contrary to the current majority view, which may allow the statute of limitations to run on their claim.

**Claim for Refund.** Generally, an administrative claim for refund must be filed with IRS prior to bringing suit in court.<sup>10</sup> However, because a claim for statutory interest is not a refund of an amount collected by IRS, there is no requirement to file a claim for refund.

This exact issue was before the *Amoco* court discussed above. In that case, the taxpayer had not filed a claim for refund but the court held that the Court of Federal Claims still had jurisdiction to hear a claim for statutory interest because the claim procedure of I.R.C. Section 7422(a) was not required.

Thus, a taxpayer is not required to file a claim for refund prior to bringing suit for statutory interest.

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<sup>5</sup> *E.W. Scripps*, 90 A.F.T.R.2d at 6835 (quoting *Bulkeley School*, 628 F. Supp. at 803).

<sup>6</sup> 314 F.Supp. 245 (S.D.N.Y. 1972).

<sup>7</sup> 61 A.F.T.R.2d at 750.

<sup>8</sup> *Id.*

<sup>9</sup> See *Alexander Proudfoot Co. v. United States*, 454 F.2d 1379, (Ct. Cl. 1972).

<sup>10</sup> See Internal Revenue Code Section 7422(a).

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## **CONCLUSION**

The prevailing judicial view is district courts have subject matter jurisdiction to hear claims for statutory interest. However, this area of law is not well settled and a court may take a position different from the current majority view.

Thus, if a claim is close to its statute of limitations, the claim should be filed in the Court of Federal Claims. Finally, a refund claim is not required prior to bringing suit for statutory interest.