

No. _____

In the
Supreme Court of the United States

FORD MOTOR COMPANY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Sixth Circuit—in conflict with the decisions of this Court and other circuits—improperly held the taxpayer to a heightened burden in construing the substantive interest provision at issue.
2. Whether the Sixth Circuit—in conflict with the decisions of other circuits—improperly frustrated the taxpayer’s right to rely on the Internal Revenue Service’s own published guidance materials.
3. Whether 28 U.S.C. § 1346(a)(1) confers jurisdiction over an action, such as this, for the recovery of overpayment interest—an issue that the Solicitor General has inserted into this case.

RULE 29.6 STATEMENT

Ford Motor Company (Ford) has no parent corporation. There are publicly-traded corporations that may, from time to time, own more than 10% of Ford's stock as trustee or independent fiduciary for various employee plans. The most recent trustee owner in this capacity is State Street Corporation.

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PETITION FOR A WRIT OF CERTIORARI

Ford Motor Company (Ford) respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-XXa) is reported at 768 F.3d 580. The order of the court of appeals denying rehearing (App. XXa-XXa) is not reported. The prior opinion of the court of appeals (*id.* at XXa-XXa) is reported at 508 App'x 506. The order of the district court granting the government's motion for judgment on the pleadings and denying Ford's motion for summary judgment (*id.* at XXa-XXa) is available at 2010 WL 2231894.

JURISDICTION

The court of appeals entered judgment on October 1, 2014 (App. 1a) and denied Ford's timely petition for rehearing on December 8, 2014 (*id.* at XXa). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Sections 6601 and 6611 of the Internal Revenue Code (Title 26 of the United States Code) are reproduced at App. XXa-XXa. Section 1346 of Title 28 of the United States Code is reproduced at App. XXa-XXa. Revenue Procedure 84-58, 1984-2 C.B. 501 is reproduced at App. XXa-XXa.

INTRODUCTION

This case raises important questions concerning the strict construction rule for waivers of sovereign immunity, the right of taxpayers to rely on the Internal

Revenue Service (IRS)'s own published guidance materials, and (because of the Solicitor General's position) the jurisdiction of the district courts to entertain taxpayer suits for the recovery of *overpayment* interest from the government—interest that the United States earns on amounts that taxpayers *overpay* to the IRS. This Court has already set aside the Sixth Circuit's initial decision in this case denying the taxpayer its statutory right to the overpayment interest at issue, and remanded the case for further consideration. *Ford Motor Company v. United States*, 134 S. Ct. 510 (2013) (per curiam). On remand, the Sixth Circuit reached the same result. That decision again warrants this Court's review.

As this Court is aware from the last time this case was before it, Ford brought this action in district court asserting jurisdiction under 28 U.S.C. § 1346(a)(1), and advancing a claim under 26 U.S.C. § 6611 for hundreds of millions of dollars of interest that the government earned on tax *overpayments* that Ford made, after the IRS erroneously told Ford it had *underpaid* its taxes. Section 6611 unambiguously creates a substantive right to overpayment interest. But the government disputes that such interest begins to accrue when the funds used to overpay the taxes are deposited with the IRS and placed in the U.S. Treasury—the point at which the government enjoys use of the funds as it sees fit and the point at which (all agree) any *underpayment* interest would be tolled under 26 U.S.C. § 6601.

In its initial decision, the Sixth Circuit recognized that Ford's interpretation of § 6611 was “strong” (App. XXa); that Ford's interpretation of the Revenue Procedure on point (Revenue Procedure 84-58) was “superior” to the IRS's “strained” reading of that

provision (*id.* at XXa); and that the government’s position was “contradicted” by a prior IRS pronouncement (*id.* at XXa n.6). But the court ultimately sided with the government’s position on the ground that § 6611 was “a waiver of sovereign immunity” that must be “strictly construed” in favor of the government, and Ford had not satisfied the rigors of the strict construction rule. App. XX, XXa.

Ford petitioned for certiorari to this Court, arguing that the Sixth Circuit’s application of the strict construction canon to § 6611 conflicted with this Court’s precedents that emphasize that the strict construction canon applies only to waivers of sovereign immunity and not to separate, substantive provisions. *See, e.g., Gomez-Perez v. Potter*, 553 U.S. 474, 491 (2008); *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003); *United States v. Mitchell*, 463 U.S. 206, 218-19 (1983). In response, the Solicitor General declined to seriously defend the Sixth Circuit’s application of the strict construction rule to § 6611 and, instead, argued—for the first time in this case—that § 1346(a)(1) did not supply jurisdiction (and thus waive sovereign immunity) over this action to begin with.

This Court issued a *per curiam* decision vacating the Sixth Circuit’s decision and remanding to give that court “the first opportunity to consider the Government’s new contention with respect to jurisdiction.” *Ford Motor Co.*, 134 S. Ct. at 510. The Court added: “Depending on that court’s answer, it may also consider what impact, if any, the jurisdictional determination has on the merits issues, especially whether or not § 6611 is a waiver of sovereign immunity that should be strictly construed.” *Id.*

On remand, the Sixth Circuit adhered to its position that § 1346(a)(1) confers jurisdiction over this action. App. XXa. Reversing course, the court then held—over the dissent of one of its members—that the strict construction canon does not apply to § 6611. *Id.* at XXa. But—notwithstanding that the court had explicitly invoked the strict construction canon in its prior decision to “tip the scales in favor of the government,” App. XXa—the court proceeded to reach the same result (with the canon removed). In the process, the court twisted the text of § 6611 and Revenue Procedure 84-58; flouted settled principles of construction, including the duty to harmonize parallel statutory provisions when possible; and disrupted the complementary statutory scheme that Congress established for overpayment and underpayment interest. Given the contortions in which the court had to engage in order to rule for the government again, the only way to make sense of the court’s decision is that the court still resisted construing § 6611 on a level playing field, as required by this Court’s precedents.

The last time that this case was here, the Solicitor General acknowledged that “the proper application of the strict construction canon for waivers of sovereign immunity is unquestionably important.” No. 13-113 Opp. 20. It is no less important today. And the Sixth Circuit’s decision below underscores that further guidance on that issue is needed from this Court. Not only did the court divide on whether the strict construction rule applies to § 6611, but the court’s decision illustrates that it once again tipped its statutory analysis in favor of the government. The Sixth Circuit’s decision also conflicts with the decisions of other circuits on a taxpayer’s right to rely on the

IRS's published guidance materials. Here, Ford expressly relied on IRS Revenue Procedure 84-58 when it deposited hundreds of millions of dollars with the IRS. The IRS now not only is wrongfully attempting to retain *overpayment* interest that it earned as a result of that error, but going back on what it told taxpayers in its own revenue procedure.

And underlying all of this is the government's position that the Sixth Circuit lacked jurisdiction under § 1346(a)(1) to issue its flawed decision to begin with. That position in itself heightens the need for review because if the government is right, then the proper result (as the government concedes) is to vacate the Sixth Circuit's decision and remand this case to the Court of Federal Claims pursuant to 28 U.S.C. § 1361.

This Court's review is still needed.

STATEMENT OF THE CASE

A. Statutory And Regulatory Backdrop

This case concerns the interest that a taxpayer is due under § 6611 on amounts that a taxpayer has overpaid to the government, an issue that frequently recurs with corporate taxpayers. Often years go by between when a corporation files and pays its income taxes, and when the IRS completes its audit and ultimately assesses the corporation's tax liability. It frequently takes even longer before the correctness of that liability is finally determined. To address this delay, Congress enacted two parallel and symmetrical provisions governing interest on tax payments, which address in complementary terms the possibility that taxes may be overpaid or underpaid up front. Congress also waived the United States' immunity from suit for actions by taxpayers for the recovery of unpaid interest. 28 U.S.C. § 1346(a)(1).

Section 6611 provides that, when a taxpayer *overpays* its taxes, the IRS “shall” pay it interest on the overpayment from “the date of the overpayment” to a date within 30 days of the refund check. 26 U.S.C. § 6611(b)(2). Section 6601 provides that, when a taxpayer *underpays* its taxes, it must pay the IRS interest on the amount of underpayment from “the last date prescribed for payment” to “the date paid.” *Id.* § 6601(a). Both provisions effectuate the use-of-money principle: taxpayers are “compensated for the lost time-value of their money when they make overpayments of tax,” App. XXa (citation omitted), and the IRS is compensated for the lost time-value of the government’s money when taxpayers do not fully pay their taxes. *See* I.R.S. TAM 9730005 (April 7, 1997), *available at* 1997 WL 415375. Both provisions express the trigger for interest in the same terms—the date of payment. 26 U.S.C. § 6611(b)(2) (“date of the overpayment”); *id.* § 6601(a) (“date paid”).

The IRS adopted a revenue procedure to implement this scheme. Subsection 5.01 of Revenue Procedure 84-58, as in effect at the time of the events at issue (App. XXa), says that *underpayment* interest “stop[s] on the date the remittance is received.” Subsection 5.05 provides the general rule for *overpayment* interest: “[r]emittances treated as payments of tax will be treated as any other assessed amount and compound interest will be paid on any overpayment under section 6611 of the Code.” *Id.* at XXa. It then carves out an exception: When a deposit is “posted to a taxpayer’s account as a payment of tax pursuant to subparagraph 3 of section 4.02 [a unique situation not presented here], interest will run on an overpayment later

determined to be due *only from the date the amount was posted as a payment of tax.*” *Id.* (emphasis added).

Subsection 2.03 also addresses the accrual of interest on funds deposited with the IRS. It says that “[a] deposit in the nature of a cash bond is not a payment of tax, is not subject to a claim for credit or refund, and, *if returned to the taxpayer*, does not bear interest.” Rev. Proc. 84-58 § 2.03 (emphasis added).

In 2004, after the events at issue in this case, Congress enacted 26 U.S.C. § 6603. Section 6603 not only ratified Congress’s longstanding practice of treating the date of remittance as the date of payment for purposes of § 6601 (underpayment interest), but grants taxpayers overpayment interest even on *returned* deposits (though at a lower rate than on deposits, like those at issue in this case, that are used to pay tax liabilities). Congress’s enactment of § 6603 closed a gap that had allowed the government’s interest-free use of deposits that were later returned at the taxpayer’s request and thus reinforces the complementary scheme that Congress enacted to ensure that both taxpayers and the government were compensated for the lost time value of money.

B. Underlying Facts

The facts are undisputed. Ford seeks interest pursuant to § 6611 on taxes that Ford overpaid for the 1983-89, 1992, and 1994 tax years. After the IRS advised Ford that it had underpaid its taxes for 1983-89, Ford submitted an additional \$875 million to the IRS in 1991, 1992, and 1994, as deposits pursuant to Revenue Procedure 84-58, 1984-2 C.B. 501. It is undisputed that those remittances stopped the accrual of *underpayment* interest under § 6601 on the date that they were received by the IRS. Ford later requested

that the IRS treat the deposits as advance payments towards any additional taxes Ford might owe. Several years after that, the IRS actually used Ford's remittances to satisfy tax liabilities it assessed against Ford. Ultimately, however, years later still, the IRS found that Ford had *overpaid* its taxes—by hundreds of millions of dollars—for the years at issue, refunded the overpayments to Ford, and paid Ford some of the overpayment interest it claimed under § 6611 but not the overpayment interest at issue here.

The parties disputed *when* the overpayment interest began to accrue. Ford claimed that, under § 6611 and Revenue Procedure 84-58, interest began to accrue on the date that Ford first remitted the funds to the IRS. After all, the funds went directly to the U.S. Treasury and the government had complete use of the funds from the date of remittance on. Moreover, the remittances stopped the accrual of underpayment interest (§ 6601) on later assessed taxes as soon as the remittances were received, so it follows that overpayment interest (§ 6611)—which operates based on the same date-of-payment trigger—would begin accruing at the same time. Contradicting its own Revenue Procedure and prior pronouncements, however, the IRS paid interest only from the date that Ford told the IRS to treat the deposits as advance payments, not from the date Ford gave the funds to the IRS. Because of the large sum Ford overpaid, the difference in interest amounts to over \$470 million.

C. District Court Proceedings

Ford filed suit against the United States in the U.S. District Court for the Eastern District of Michigan, seeking the overpayment interest that the IRS had refused to pay. Ford's complaint invoked the district

court's jurisdiction under, *inter alia*, 28 U.S.C. § 1346(a)(1), which grants district courts jurisdiction over claims against the United States for the recovery of erroneously assessed taxes “or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.” *Id.*; see Complaint for Interest and Jury Demand ¶ 3, *Ford Motor Co. v. United States*, No. 08-cv-12960 (E.D. Mich. filed July 10, 2008). In its Answer, the government did not raise a jurisdictional sovereign immunity defense but rather agreed with Ford that jurisdiction was proper under § 1346(a)(1). United States' Answer to Complaint ¶ 3, *Ford Motor Co. v. United States*, No. 08-12960 (E.D. Mich. filed Dec. 19, 2008).

The district court granted the government's motion for judgment on the pleadings, ruling—on the merits—that Ford was not entitled to overpayment interest from the dates that it remitted the deposits. App. 37a. The court recognized that there was “merit” to Ford's statutory interpretation and “d[id] not believe the Government addresse[d] sufficiently” § 5.05 of Revenue Procedure 84-58, but the court nevertheless found reasonable the government's interpretation of § 6611 and concluded that it was obliged to defer to that interpretation. *Id.* at 31a-37a. The government has since abandoned any argument for deference.

D. Initial Sixth Circuit Proceedings

The Sixth Circuit affirmed in a signed—yet unpublished—decision. On appeal, both the government and Ford recognized that § 1346(a)(1) supplied subject-matter jurisdiction in the case. See Ford Br., No. 10-1934 (6th Cir.), at 2; Govt. Br., No. 10-1934 (6th Cir.), at 1. Although the court of appeals recognized that § 1346(a)(1) provides a waiver of

sovereign immunity (which the government had conceded applies to this case), the court dismissed the relevance of that provision on the ground that it was a “different provision than the one at issue.” App. XXa. Instead, the court treated § 6611—the substantive provision governing when “[i]nterest shall be allowed and paid upon any overpayment,” 26 U.S.C. § 6611(a)—as the waiver of sovereign immunity and applied the canon of strict construction to that provision.

At the outset, the court stated that, “when interpreting § 6611, we bear foremost in mind that Ford’s challenge involves construing a waiver of sovereign immunity,” and that it was “bound to ‘strictly construe[]’ the waiver” in favor of the government. App. XXa (citation omitted). The court then proceeded to recognize that Ford’s interpretation of § 6611 was “strong” (*id.* at XXa); that Ford’s interpretation of Revenue Procedure 84-58 was “superior” to the IRS’s “strained” reading of that provision (*id.* at XXa); and that the government’s position was “contradicted” by a prior IRS pronouncement (*id.* at XXa n.6). But ultimately, the court sided with the government based on its conclusion that Ford had not overcome the rigors of the strict construction canon. *Id.* at XXa-XXa.

E. This Court’s Decision

This Court granted certiorari and reversed. Although the government had admitted in the lower courts that jurisdiction was proper over this action under § 1346(a)(1), before this Court it argued, for the first time, that § 1346(a)(1) did not supply jurisdiction, and thus did not waive sovereign immunity over this action. In light of the government’s new position, this Court, in a *per curiam* decision, vacated the Sixth

Circuit’s decision and remanded the case to give that court “the first opportunity to consider the Government’s new contention with respect to jurisdiction.” *Ford Motor Co.*, 134 S. Ct. at 510. The Court added: “Depending on that court’s answer, it may also consider what impact, if any, the jurisdictional determination has on the merits issues, especially whether or not § 6611 is a waiver of sovereign immunity that should be strictly construed.” *Id.*

F. Sixth Circuit Decision Below

On remand, the Sixth Circuit declined this Court’s invitation to consider the government’s jurisdictional argument in the first instance, and held instead that it was bound by circuit precedent to conclude that § 1346(a)(1) confers jurisdiction over this action. App. XXa (citing *E.W. Scripps Co. v. United States*, 420 F.3d 589, 498 (6th Cir. 2005)). The court declined the government’s request to reconsider *Scripps en banc*.

The court then considered whether, with jurisdiction supplied by § 1346(a)(1), the strict construction canon applies to § 6611. This time, in a 2-1 decision, the court held that the canon does not apply. *Id.* at XXa. The court went on to address the proper interpretation of § 6611—in particular, whether “the date of overpayment” under § 6611 was the date Ford remitted its deposits, or the date the deposits were converted into advance tax payments. Although the court acknowledged that its “initial opinion relied on the canon of strict construction to tip the scales in favor of the government,” *id.* at XXa, it nevertheless reached the same result on the merits—that, under § 6611, Ford was not entitled to overpayment interest from the date the government enjoyed use of the funds.

Judge Rogers concurred in that result, but disagreed with the court’s holding that the strict construction rule does not apply to § 6611. App. XXa. Judge Rogers reasoned that the concept of sovereign immunity protects the government not simply “from suit, but from liability.” *Id.* He further stated that “[c]ourts cannot take public funds and give them to private parties unless it is *particularly clear* that Congress intended for the courts to do so.” *Id.* (emphasis added). And, in his view, that clear-statement rule “applies not only to whether a particular court has jurisdiction, but also to whether the private parties are entitled to money.” *Id.*

The court denied Ford’s petition for rehearing.

REASONS FOR GRANTING THE WRIT

This Court already has recognized the importance of this case and, in particular, the proper application of the strict construction canon to waivers of sovereign immunity—granting Ford’s prior petition for certiorari, setting aside the Sixth Circuit’s initial decision, and remanding for further consideration. For three overriding reasons, certiorari is warranted again.

First, the proper application of the strict construction rule is still a central issue in this case. On remand from this Court’s decision, the Sixth Circuit split on whether the strict construction canon applies to § 6611. And while the majority correctly stated that the canon does *not* apply to a substantive interest provision like § 6611, the court’s construction of § 6611 is so convoluted and contrary to settled principles of interpretation that the only way to understand its decision is that the court still applied a *de facto* strict construction rule—or something like it—to § 6611. The

Sixth Circuit’s misconception of the proper role and scope of the strict construction canon, moreover, is emblematic of a broader confusion and conflict in the lower courts over when, and how, to apply the canon.

Second, the Sixth Circuit’s decision conflicts with the decisions of other circuits on a taxpayer’s right to rely on the IRS’s published guidance materials. As the Second Circuit has held, “[e]ven when the IRS is not bound to follow ... a Revenue Procedure, ‘an abuse of discretion can occur where the Commissioner fails to observe self-imposed limits on the exercise of his discretion, provided he has invited reliance on such limitations.’” *Estate of Shapiro v. Commissioner*, 111 F.3d 1010, 1118 (2d Cir. 1997). The IRS invited taxpayer reliance on Revenue Procedure 84-58 when it published it. And Ford expressly relied on that guidance when it deposited some \$875 million with the IRS, after the IRS mistakenly told Ford it had *underpaid* its taxes. Yet the Sixth Circuit, while recognizing that Ford’s reading of Revenue Procedure 84-58 was “superior” (App. XXa), refused to give effect to the plain terms of that provision—frustrating the taxpayer’s right to rely on that guidance.

Third, the government’s position that the Sixth Circuit lacked jurisdiction to issue its flawed decision bolsters need for this Court’s review. The government concedes that, if the Sixth Circuit lacked jurisdiction over this action under § 1346(a)(1), then the proper result would be to vacate the Sixth Circuit’s decision and remand this case to the Court of Federal Claims pursuant to 28 U.S.C. § 1361. The last time that this case was before the Court, the Solicitor General advanced the argument that the Sixth Circuit lacked jurisdiction as a reason to *deny* review. But in fact,

this argument cuts the other way. Not only does the doubt that the Solicitor General has cast on whether § 1346(a)(1) grants jurisdiction over overpayment interest actions like this raise a significant question that itself warrants this Court’s review, but if the Solicitor General is right then the Sixth Circuit never should have entered its flawed decision to begin with.

Especially given the Court’s familiarity with the case already, this case provides an excellent vehicle to address the important questions presented.

I. THE SIXTH CIRCUIT’S DECISION UNDERSCORES THE NEED FOR FURTHER GUIDANCE FROM THIS COURT ON WHEN, AND HOW, THE STRICT CONSTRUCTION CANON APPLIES

A. As This Court Has Repeatedly Held, The Strict Construction Canon Applies Only To Waivers of Sovereign Immunity and Not To Separate, Substantive Provisions

Anyone who brings suit against the government must first confront the doctrine of sovereign immunity. Sovereign immunity is a jurisdictional doctrine under which the United States “is immune from suit save as it consents to be sued.” *United States v. Sherwood*, 312 U.S. 584, 586-87 (1941); *see also* No. 13-113 Pet. at 10-11. A court’s jurisdiction to entertain a suit against the United States is thus defined by “the terms of [the United States’] consent.” *Sherwood*, 312 U.S. at 586-87. As this Court has held, sovereign immunity is an immunity *from suit*, and a waiver of sovereign immunity is ‘a consent *to be sued*.’” *United States v. Bormes*, 133 S. Ct. 12, 16 (2012) (emphasis added).

Courts presented with a suit against the United States must therefore assess the contours of the government's consent to ensure that jurisdiction is proper. That interpretation is subject to the long-standing canon "that the Government's consent to be sued 'must be construed strictly in favor of the sovereign.'" *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 34 (1992) (quoting *McMahon v. United States*, 342 U.S. 25, 27 (1951)). That canon is an enormous advantage to the government in litigation brought against it because, as the Sixth Circuit observed in this case, the canon "tips the scales in favor of the government" in close cases. App. XXa.

No doubt given the heavy advantage that the canon bestows on the government, the government has sought to invoke the canon not only in construing waivers of sovereign immunity, but also the separate, substantive provisions sought to be enforced against the government. In response, this Court has repeatedly held that the canon is confined to *wivers of sovereign immunity*—and does not extend to separate, substantive provisions. *See, e.g., Gomez-Perez v. Potter*, 553 U.S. 474, 491 (2008); *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003); *United States v. Mitchell*, 463 U.S. 206, 218-19 (1983). Nevertheless, the government has persisted in its efforts to extend the canon to substantive provisions, including before this Court. *See* No. 13-113 Pet. 12-15.

B. The Sixth Circuit's Decision In This Case Underscores That This Court's Intervention Is Again Needed Concerning The Proper Application Of The Strict Construction Rule

Notwithstanding this Court's efforts to address this problem in decisions like *Gomez-Perez* and *White*

Mountain Apache, the lower courts remain confused and conflicted over when, and how, to apply the strict construction canon. *See* No. 13-113w Pet. 18-24. The Sixth Circuit’s decisions in this case are emblematic of the conflict and confusion that still exists.

1. In its prior petition for certiorari, Ford explained the substantial conflict and confusion in the lower courts on the proper application of the strict construction canon in this context. *See* No. 13-113 Pet. 18-27. While trying to underplay that state of disarray, the Solicitor General nevertheless conceded that “the proper application of the strict construction canon for waivers of sovereign immunity is unquestionably important.” No. 13-113 Opp. 20. And this Court, in vacating the Sixth Circuit’s prior decision, specifically invited the Sixth Circuit to reconsider “whether or not § 6611 is a waiver of sovereign immunity that should be strictly construed.” 134 S. Ct. at 510.

In two different respects, the Sixth Circuit’s decision below only exacerbates the conflict and confusion that already pervades the lower courts. First, the court expressly divided on whether the strict construction canon applies to § 6611. The majority held that the strict construction rule does not apply, rejecting the government’s reliance on *Library of Congress v. Shaw*, 478 U.S. 310 (1978). App. XXa. But Judge Rogers disagreed. He took issue with fundamental proposition that sovereign immunity shields “the government from suit, and not from liability.” *Id.* at XXa. In addition, he argued that a clear statement rule applies “not only to whether a particular court has jurisdiction, but also to whether the private parties are entitled to the money.” *Id.*

And second, the Sixth Circuit's convoluted interpretation of § 6611 shows that—while correctly stating that the strict construction canon does not apply to that provision—the court still tipped the scales in favor of the government. Indeed, when the Sixth Circuit first considered this case, it recognized that Ford had the better interpretation of the statute (§ 6611) and revenue procedure (84-58). But it ultimately concluded that the strict construction canon required it to rule for the government. App. XXa. The strict construction canon was the decisive piece of the court's statutory interpretation. As the court put it below, the canon “tip[ped] the scales in favor of the government.” *Id.* at XXa. In the decision below, the Sixth Circuit, on reflection, held that the strict construction canon does not apply to § 6611. Yet it still reached the same result on the merits.

That result is not only counter-intuitive, but it defies the laws of physics. If the scales tip one way because of a weight applied on one side (like the strict construction rule here), then *removing* the weight can only alter the balance. If there were any doubt about whether the Sixth Circuit genuinely removed the canon here, it is eliminated by the contorted statutory analysis in which the court engaged to reach the conclusion that the scales still tipped in the government's favor, even without the strict construction rule. Defying any semblance of a level playing field, the Sixth Circuit flouted settled principles of statutory interpretation and the decisions of this Court and other circuits to reach its result.

2. The Sixth Circuit's failure to heed settled rules of statutory construction exposes that—
notwithstanding what the court said about the strict

construction canon—it still granted the government an improper advantage in construing § 6611.

a. One of the cardinal principles of statutory construction is to harmonize statutory provisions when possible. *Adirondack Med. Ctr. v. Sebelius*, 740 F.3d 692, 698-99 (D.C. Cir. 2014). *See id.* (“Absent clearly expressed congressional intent to the contrary, it is our duty to harmonize [statutory] provisions”); *United States v. Gallenardo*, 579 F.3d 1076, 1083 (9th Cir. 2009) (“Where an appellate court can construe two statutes so that they conflict, or so that they can be reconciled and both can be applied, it is obliged to reconcile them.”) (citation and internal quotations marks omitted); *US W. Commc’ns, Inc. v. Hamilton*, 224 F.3d 1049, 1053 (9th Cir. 2000) (duty to harmonize parallel statutory provisions applies even if agency suggests a contrary interpretation.). Indeed, where, as here, the construction involves provisions that were enacted at the same time as part of the same Act, “the duty to harmonize them is particularly acute.” *FAG Italia S.p.A.*, 291 F.3d at 820 (citation omitted); *id.* (citing cases); *see Gallenardo*, 579 F.3d at 1083 (same).

This duty of harmonization is a logical extension of the settled principle that “similar language contained within the same section of a statute must be accorded a consistent meaning.” *National Credit Union Admin. v. First Nat’l Bank & Trust Co.*, 522 U.S. 479, 501 (1998). Congress plainly used similar language to create a symmetrical interest scheme: underpayment interest runs until the “date paid” (§ 6601) and overpayment interest runs from the “date of overpayment” (§ 6611). It is undisputed that the IRS has long treated cash deposits as *payments* that toll underpayment interest under § 6601 on the date that

the deposits are made (*i.e.*, remitted) to the IRS. *See* App. XXa. Given the textual similarity in the triggers that Congress used in §§ 6601 and 6611, it follows that if a deposit *stops* the accrual of underpayment interest under § 6601, then it also must *start* the accrual of overpayment interest under § 6611. That conclusion squares with the fact that, on the date a deposit is made, it is usually unknown (because the tax liability has not yet been finally assessed by the IRS) whether there is an underpayment or an overpayment.

Without offering any reason why Congress would have intended these similar provisions to have a different meaning, the Sixth Circuit adopted an illogical interpretation of § 6611 under which the exact same deposit will have a different payment date depending on whether the IRS ultimately determines that the taxpayer has underpaid, or overpaid, its taxes. That conclusion not only directly conflicts with the decisions of this Court and other circuits on the duty to harmonize parallel statutory provisions, but also conflicts with this Court's proclamation that "[i]t will not do to treat the same transaction as payment and not as payment, whichever favors the Government." *Rosenman v. United States*, 323 U.S. 658 (1945).

What is more, the Sixth Circuit held that "the duty of harmonization falls on the IRS, not this Court." App. XXa. In other words, the court adopted an interpretation that places similar statutory provisions in conflict with one another; then it held that it was the *agency's* to duty to harmonize the provisions in the wake of its decision. That rule turns the duty of the *courts* to harmonize parallel statutory provisions on its head and is a recipe for administrative disruption. Indeed, while it was not challenged by either party

(including the IRS), the court’s decision casts serious doubt on the IRS’s longstanding practice of treating the date of deposit as the “date paid” under § 6601. Instead of harmonizing the parallel interest provisions, the Sixth Circuit threw the entire scheme into doubt.

The only explanation for this bizarre result is that the court was, in fact, strictly construing the statute in favor of the government. Nothing else explains the Sixth Circuit’s outright rejection of a symmetrical reading of the statutes—an interpretation the court had previously considered “strong.” App. XXa.

b. The Sixth Circuit’s decision below also contravenes this Court’s teaching that statutory interpretation should not be undertaken in a vacuum. *Abramski v. United States*, 134 S. Ct. 2259, 2267 (2014). Instead, courts must look not only to the language at issue but also to “the statutory context, ‘structure, history, and purpose.’” *Id.* (citation omitted); *see also Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006) (“Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.”).

Section 6611, and the surrounding statutory provisions, make clear that the intent of Congress in enacting Chapter 67’s interest provisions is to account for the lost time value of money—whether it is to ensure that the government is made whole when a taxpayer *underpays* his taxes or that the taxpayer is made whole when he *overpays* its taxes. The Sixth Circuit has recognized this objective (App. XXa), as have other circuits. *See, e.g., Int’l Bus. Machines Corp. v. United States*, 201 F.3d 1367, 1374-75 (Fed. Cir. 2000) (“interest to be paid on certain refunds to allow for the

time value of money when the Government has had the use for a period of time of money to which it is not lawfully entitled”); *MNOPF Trustees Ltd. v. United States*, 123 F.3d 1460, 1465 (Fed. Cir. 1997). (“The purpose of the interest provisions in tax law is to remove the factor of the time value of money from tax procedures, in fairness to the public and to the public fisc.”); *Godfrey v. United States*, 997 F.2d 335, 338 (7th Cir. 1993) (“Section 6611 attempts to compensate the taxpayer for the time value of money”).

The IRS, in numerous publications, has likewise explained that the time-value-of-money principle underlies both §§ 6601 and 6611. In a 1997 Technical Advice Memorandum, the IRS said that “[t]he Code’s interest provisions reflect the economic basis for interest, *i.e.*, use of money. . . . The underlying objective [of the provisions] is to determine, in a given situation, who is owed money and how long the other party had the use of it.” I.R.S. TAM 9730005 (April 7, 1997), *available at* 1997 WL 415375. As to §§ 6601 and 6611, in particular, the IRS continued: “Generally, under § 6601 of the Code, a taxpayer owes the government interest for the time the taxpayer has the use of the government’s money. Similarly, under § 6611, the government pays the taxpayer interest on an overpayment for the time the government has use of the taxpayer’s money.” Other IRS publications are in accord. *See, e.g.* Field Serv. Adv. 200149028 (Dec. 7, 2001), *available at* 2001 WL 1559040 (“Compensation for the use of money is the principal rationale for charging interest with respect to both overpayments and underpayments.”); Rev. Proc. 60–17, § 2.01, *reprinted in* 1960–2 C.B. 942, 943 (“Under the general rule, interest is paid on a tax overpayment for the time

the government has the use of the taxpayer's money The underlying objective is to determine in a given situation whose money it is and for how long the other party had the use of it.”).

The Sixth Circuit acknowledged that “Congress, in enacting 26 U.S.C. § 6611 , has made clear that it believes that taxpayers should be compensated for the lost time-value of money when they make overpayments of tax.” App. XXa (quoting *Scripps*, 420 F.3d at 597). Yet it refused to construe § 6611 in light of that objective, and it reached an interpretation that flouts that objective. Under the time-value-of-money principle, interest runs from the date that the government enjoyed use of the funds—*i.e.*, the date that the funds were remitted to the IRS and deposited in the U.S. treasury. And that conclusion is of course consistent with the IRS's longstanding practice of tolling underpayment interest on the date that the remittances are made (regardless of whether they are designated as advance payments), since that is the date that the IRS enjoys use of the funds.

In an effort to gloss over the court's refusal to give effect to the time-value-of-money principle, the Sixth Circuit purported to follow the dictionary definition of payment, which it framed in terms of “paying or giving compensation” for the “discharge of a debt or an obligation.” App. XXa (quoting dictionary). But here again, the Sixth Circuit disregarded the plain intent of Congress. In responding to a prior circuit court decision adopting a similar interpretation of payment, Congress enacted 26 U.S.C. § 6401(c), which specifically states that “[a]n amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.”

The Sixth Circuit's fundamental failure to interpret § 6611 in light of its surrounding provisions and objective is further evidenced by the court's refusal to give any weight to Congress's enactment of § 6603. App. XXa. The Sixth Circuit rejected § 6603 out of hand simply because Congress enacted this provision after the remittances at issue. But "it is well established that a court can, and should, interpret the text of one statute in the light of text of surrounding statutes, even those subsequently enacted." *Vt. Agency of Natural Res. v. United States*, 529 U.S. 765, 786 n.17 (2000). And later enacted statutes are all the more relevant when they "more specifically" address "the topic at hand." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000).

Section 6603 is contained in the same chapter as § 6611 and was intended to reinforce the statutory scheme at issue. It was therefore incumbent on the Sixth Circuit to consider § 6603 rather than sweep it aside as irrelevant. Had it done so, it would have realized that § 6603 not only ratifies the IRS's longstanding practice of treating the date of deposit as the "date paid" for purposes of § 6601, but grants taxpayers overpayment interest even on *returned* deposits. The enactment of § 6603 is consistent with a parallel construction of the interest provisions, but utterly at odds with the Sixth Circuit's reading. It is absurd to conclude that Congress would have intended in 2004 to grant interest on deposits that are *returned*, but not deposits that are actually used to pay taxes. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (statutes should not be interpreted in ways that lead to absurd results). Yet that is the scheme that the Sixth Circuit's decision leaves in its wake.

d. The Sixth Circuit’s decision also conflicts with the decisions of this Court and other circuits holding that, “[i]f the words [of the Internal Revenue Code] are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer.” *United States v. Merriam*, 263 U.S. 179, 188 (1923); *see also United Dominion Indus., Inc. v. United States*, 532 U.S. 822, 839 (U.S. 2001) (Thomas, J., concurring) (referring to “the traditional canon that construes revenue-raising laws against their drafter”) (collecting cases); *Exxon Mobil Corp. & Affiliated Cos. v. Commissioner.*, 689 F.3d 191, 199 (2d Cir. 2012) (same). If the text and parallel structure of the interest provisions do not compel Ford’s interpretation, then it is at least *debatable* which interpretation is correct—making this the kind of close case in which “doubt must be resolved against the Government and in favor of the taxpayer.” *Merriam*, 263 U.S. at 188. Yet, here again, the Sixth Circuit’s construction went off the rails.

Instead of resolving any doubt *against* the government, the Sixth Circuit went searching for reasons to rule *for* the government. Indeed, in its first decision, the Sixth Circuit—after recognizing that Ford’s interpretation was “strong” (App. XXa)—stated that § 6611 was “ambiguous.” *Id.* at XXa. Yet in the decision below, the Sixth Circuit declined to admit even to an ambiguity. That shift was not based on any change in the statute or the parties’ positions. The only difference was that, this time around, the court purported to *remove* the strict construction canon. But in that canon’s absence, when faced with the same text, the court should have resolved the ambiguity in favor of the taxpayer—Ford. Its conclusion to the contrary

directly contravenes the requirement that ambiguity in tax statutes be construed in favor of the taxpayer.

3. In the end, the only way to explain the Sixth Circuit's decision on remand is that—notwithstanding its statement that the strict construction rule does not apply—the court still held the taxpayer to a higher burden in construing § 6611. Nothing else logically explains the court's convoluted statutory analysis and irreconcilable set of opinions—in which the court first invoked the strict construction canon to interpret what it characterized as an ambiguous provision in favor of the government, and then stated that the canon did not apply and yet nevertheless reached the same result. The Sixth Circuit's paradoxical set of decisions in this case therefore only add to the conflict and confusion that already permeates the lower courts. *See* No. 13-113 Pet. 18-27. And that conclusion is underscored by the court's open split on whether the strict construction canon applies to § 6611. App. XXa, XXa.

This Court's review is warranted not only to address the conflicts between the Sixth Circuit's statutory analysis and the decisions of this Court and other circuits, but to provide further guidance on the proper application of the strict construction rule.

II. THE SIXTH CIRCUIT'S DECISION CONFLICTS WITH THE DECISIONS OF OTHER CIRCUITS ON A TAXPAYER'S RIGHT TO RELY ON PUBLISHED IRS GUIDANCE

The Sixth Circuit's decision conflicts with the decisions of other circuits in another important respect: the court disregarded a taxpayer's right to rely on published IRS guidance, endorsing an interpretation of Revenue Procedure 84-58 that the court itself

previously recognized is “illogical” (App. XXa). The Sixth Circuit’s treatment of the Revenue Procedure not only provides still more evidence that it did not genuinely construe § 6611 on a level playing field, but provides an independent basis to grant certiorari.

The First, Second, Fifth, and Ninth Circuits have all held that the IRS’s revenue procedures are of particular significance when the IRS invites taxpayers to rely on them. The Fifth Circuit has held, for example, that “the Commissioner will be held to his published rulings in areas where the law is unclear, and may not depart from them in individual cases.” *Estate of McLendon v. Commissioner*, 135 F.3d 1017, 1024-25 (5th Cir. 1998). The Second Circuit has likewise explained that the IRS’s failure to comply with its revenue procedures can constitute “an abuse of discretion . . . provided [it] has invited reliance upon [the procedures].” *Estate of Shapiro v. Commissioner*, 111 F.3d 1010, 1118 (2d Cir. 1997) (citation omitted); see also *United States v. Jopin*, 535 F.2d 154, 159 (1st Cir. 1976) (recognizing “taxpayer’s right to rely on published statements of the IRS”). The Federal Circuit has also weighed in, stating that “failure to revoke [a Revenue Procedure] gives rise to a reasonable expectation on the part of the taxpayer that the statements made in a published Revenue Procedure have continued vitality.” *Dillon, Read & Co. v. United States*, 875 F.2d 293, 299 (Fed. Cir. 1989).

The IRS has invited taxpayer reliance on its revenue procedures in the plainest terms possible—stating that “[t]axpayers generally may rely upon . . . revenue procedures published in the Bulletin in determining the tax treatment of their own transactions” Rev. Proc. 89-14, 1989-1 C.B. 814,

§ 7.01(5). And when the IRS published Revenue Procedure 84-58—the “only published guidance bearing on the meaning of ‘date of overpayment’ in § 6611(b)(1),” App. XXa—it invited taxpayers to rely on that procedure to decide whether, and how, to deposit money with the IRS, and created a reasonable expectation concerning the interest that taxpayers would be owed on any overpayments.

Multiple subsections of Revenue Procedure 84-58 address when interest is due to a taxpayer under the Code. And those subsections all communicate the same message to taxpayers—that they will accrue overpayment interest from the date of remittance. Subsection 2.03 of Revenue Procedure 84-58, for example, states that “[a] deposit in the nature of a cash bond is not a payment of tax, is not subject to a claim for credit or refund, and, *if returned to the taxpayer*, does not bear interest.” Rev. Proc. 84-58 § 2.03 (emphasis added). It follows, then, that if a deposit in the nature of a cash bond is not returned to the taxpayer, it does bear interest. Such interest would only come to the taxpayer if the deposit is actually used to over pay the taxes. Otherwise, as the Revenue Procedure indicates, a (pre § 6603) deposit “returned to the taxpayer[] does not bear interest.” App. XXa.

Subsections 5.01 and 5.05 confirm that understanding. Subsection 5.01 of Revenue Procedure 84-58 states that *underpayment* interest “will stop on the date the remittance is received” without regard to whether it is designated as an advance payment.” Rev. Proc. 84-58 § 5.01. Subsection 5.05—the general rule for *overpayment* interest—states: “Remittances treated as payments of tax will be treated as any other assessed amount and compound interest will be paid on

any overpayment under section 6611 of the Code.” *Id.* § 5.05. It then carves out a limited exception: when a deposit is “posted to a taxpayer’s account as a payment of tax pursuant to subparagraph 3 of section 4.02, interest will run on an overpayment later determined to be due *only from the date the amount was posted as a payment of tax.*” *Id.* (emphasis added). That overpayment interest accrues from the date of conversion under the *exception* (not applicable here) shows that the general rule is that overpayment interest accrues from the date of remittance. *Cf. TRW Inc. v. Andrews*, 534 U.S. 19, 28-29 (2001) (“converting the exception into the rule” would “distort” statute).

A taxpayer’s right to rely on revenue procedures is of greatest importance where the statutory provision at issue is arguably ambiguous or the “law is unclear.” *Estate of McLendon*, 135 F.3d at 1024-25. As the Ninth Circuit has explained, “taxpayers have a right to rely on the[] substantive content [of revenue procedures] when other guideposts” are ambiguous. *United States v. Metro Const. Co.*, 602 F.2d 879, 882 (9th Cir. 1979). There are only two guideposts available for taxpayers with respect to when overpayment interest begins accruing—the statutory scheme and Revenue Procedure 84-58. The Sixth Circuit concluded in its initial decision that § 6611 is ambiguous on whether overpayment interest begins to run. App. XXa. Yet, despite that conclusion, and in direct conflict with the decisions of other circuits, the Sixth Circuit declined to afford any weight to Ford’s reliance on the “only written guidance” that addressed that ambiguity.

The Sixth Circuit’s failure to account for the taxpayer’s right to rely on the IRS’s published guidance on §§ 6601 and 6611 in determining whether

Ford is entitled to the overpayment interest at issue not only is another way in which the court stacked the deck in favor of the government, but provides an independent reason to grant further review.

III. THE SOLICITOR GENERAL'S OWN POSITION THAT THE SIXTH CIRCUIT LACKED JURISDICTION OVER THIS CASE UNDERSCORES THE NEED FOR REVIEW BY THIS COURT

The Solicitor General's position that the Sixth Circuit lacked jurisdiction in this case under § 1346(a)(1) also bolsters the need for review.

1. As relevant here, § 1346(a)(1) grants jurisdiction in the district courts over “[a]ny civil action against the United States for the recovery of ... *any sum* alleged to have been excessive *or* in any manner wrongfully collected under the internal-revenue laws.” 28 U.S.C. § 1346(a)(1) (emphasis added). In *Scripps*, the Sixth Circuit held that the “any sum” clause grants district courts jurisdiction over overpayment interest claims under § 6611. 420 F.3d at 598. That interpretation squares with this Court's recognition that “any sum” includes interest. *Flora v. United States*, 362 U.S. 145, 149 (1960). Although the Sixth Circuit did not reach the issue in *Scripps* (see 420 F.3d at 596), jurisdiction is also proper under the “any internal-revenue” clause of § 1346(a)(1). As the district court in *Scripps* reasoned, “statutory interest compensates for [the] lost [time] value and therefore should not be considered a sum separate from the initial overpayment.” *Scripps*, 420 F.3d at 594-95 (quoting district court decision).

When this case was last here, the Solicitor General nevertheless took the position that § 1346(a)(1) does not confer jurisdiction over an action, like this one, for

the recovery of overpayment interest. In his view, the language of § 1346(a)(1) “does not literally encompass (and, *a fortiori*, does not unambiguously authorize) petitioner’s current suit.” No. 13-113 Opp. 17. According to the Solicitor General, “[p]etitioner does not seek to recoup any prior payment made to the government that was ‘excessive’ or ‘wrongfully collected,’ but instead seeks *additional interest* on an overpayment that already has been refunded.” *Id.* Nor, in the Solicitor General’s view, does the “any sum” clause confer jurisdiction over an action, such as this, to recover overpayment interest. Although the Solicitor General acknowledged that this “phrase might encompass interest that the taxpayer has paid over to the IRS and seeks to recoup,” he argued that “[t]he interest the petitioner seeks here ... was never in petitioner’s possession....” *Id.*

This Court vacated the Sixth Circuit’s prior decision and remanded the case to give the Sixth Circuit “the first opportunity to consider the Government’s new contention with respect to jurisdiction in this case.” *Ford*, 134 S. Ct. at 510. On remand, the government renewed the Solicitor General’s argument that the court lacked jurisdiction over this action under § 1346(a)(1). U.S. Supp. Br. 2-4. In addition, the government argued that the Sixth Circuit’s prior decision in *Scripps* was wrong and suggested that the Sixth Circuit “reconsider *en banc* the jurisdictional issue decided in *Scripps*.” *Id.* at 15. The government further recognized, however, that, “if the full Court were to overrule *Scripps* and dismiss this case for lack of jurisdiction, *Ford* would not be left without a remedy” because, at that point, the proper course would be to transfer the case to the Court of Federal Claims under 28 U.S.C. § 1631.” *Id.* at 4.

In its decision below, the Sixth Circuit agreed with Ford that its prior decision in *Scripps* was controlling on the jurisdictional issue and declined to rehear *Scripps en banc*. Indeed, the court declined even “to poll the *en banc* court to gauge its interest in revisiting the issue decided by *Scripps*.” App. XXa.

2. For at least three reasons, the government’s position that the Sixth Circuit lacked jurisdiction strengthens the case for this Court’s review.

First, the doubt that the Solicitor General himself has cast over whether § 1346(a)(1) grants jurisdiction over overpayment interest actions warrants resolution by this Court. Section 1346(a)(1) is a bedrock jurisdictional grant for taxpayer claims against the United States. The government’s position frustrates the intent of Congress to open Article III courts across the country to taxpayer suits seeking the recovery of overpayment interest and instead consigns taxpayers to one Article I court, in Washington, D.C. The conflict between the Sixth Circuit’s decision in *Scripps* and the Solicitor General’s position in this case indicates that there is serious disagreement over the proper construction of § 1346(a)(1). Moreover, as this Court recognized in its prior decision, the question whether § 1346(a)(1) grants jurisdiction over—and thus waives sovereign immunity as to—overpayment interest claims is bound up with the proper application of the strict construction rule to § 6611. 134 S. Ct. at 510.

Second, if the Sixth Circuit did lack jurisdiction to issue its decision, then that decision must be vacated and the proper course—as the government itself has recognized, CA6 Supp. Br. 4—is to order that this case be transferred under § 1631 to the Court of Federal Claims for it to consider Ford’s claim. *See United States Marine, Inc. v. United States*, 722 F.3d 1360

(Fed. Cir. 2013); *see also Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 834 (2002) (vacating and remanding with instructions to transfer the case to the Tenth Circuit under § 1631). In other words, lack of jurisdiction would itself require setting aside the Sixth Circuit’s flawed decision below.

And third, the Solicitor General’s position that jurisdiction is lacking under § 1346(a)(1) is tantamount to a confession of error. If the Solicitor General is right, then the Sixth Circuit erred in issuing the decision below and that decision must be vacated. A confession of error ordinarily is a sufficient basis for this Court to act. *See Lawrence v. Chater*, 516 U.S. 163, 167-68 (1996) (per curiam). But here, with all the questions swirling around the Sixth Circuit’s decision on the merits, the Solicitor General’s *de facto* confession of error is a particularly compelling reason for this Court to at least grant further review.

* * * * *

The important questions raised by the Sixth Circuit’s decision satisfy this Court’s conventional criteria for certiorari. But the facts of this case, and patent unfairness of the IRS’s position, make this case an especially strong candidate for review. In response to the IRS’s directive that it had *underpaid* its taxes, Ford gave the IRS hundreds of millions of dollars—capital that otherwise would have gone to running its business—to avoid crippling underpayment interest penalties. Those funds were immediately deposited in the U.S. Treasury and they were eventually used to pay Ford’s tax liability. Come to find out years later, the IRS was wrong. Ford had actually *overpaid* its taxes. And to add insult to injury, the IRS now claims it is entitled to retain the time value of the money that Ford deposited with the IRS, about \$475 million dollars

given the large amount that the IRS mistakenly told Ford it had underpaid. Congress, on behalf of taxpayers, enacted a complementary interest scheme that precludes that unjust result. The Sixth Circuit's decision allowing it should not be permitted to stand.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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