

Tax Court Deadlines: Greater Leeway for Taxpayers?

By **Jeremy H. Temkin**

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Congress created the United States Tax Court to hear grievances over certain actions taken by the Internal Revenue Service (IRS), but has fixed time limits for taxpayers to file petitions depending on the issue they seek to have reviewed. Unfortunately, taxpayers sometimes miss these deadlines, giving rise to litigation over whether the congressionally imposed time limit is jurisdictional, in which case the Tax Court is barred from reviewing the IRS's action, or a "claims-processing" rule, in which case the Tax Court can apply equitable principles in deciding whether to reach the merits of the petition.

In *Boechler, P.C. v. Commissioner of Internal Revenue*, 142 S. Ct. 1493 (April 21, 2022), the U.S. Supreme Court unanimously rejected the IRS's argument that a 30-day deadline for seeking review of a collection due process (CDP) determination is jurisdictional. See J. Temkin, "Boechler': A Day Late, But Not Necessarily a Dollar Short," N.Y.L.J. (May 18, 2022).

Since *Boechler*, lower courts have grappled with whether taxpayers who miss other time limits set forth in the Internal Revenue Code are similarly eligible for equitable tolling. This column examines an emerging split over the treatment of 26 U.S.C. §6213(a), which provides taxpayers seeking relief from deficiencies found by the IRS with 90 days to file their Tax Court petitions.

'Boechler'

In *Boechler*, a law firm petitioned the Tax Court to review an adverse determination from a CDP hearing, which sustained an IRS levy on the firm's property. While 26 U.S.C. §6330(d)(1) provides that a person subject to a levy "may, within 30 days of [the determination of a CDP hearing], petition the Tax Court for review of

such determination (and the Tax Court shall have jurisdiction with respect to such matter)," the firm filed its petition one day after the 30-day window had closed. The Tax Court dismissed the petition for lack of jurisdiction and the U.S. Court of Appeals for the Eighth Circuit affirmed in a split decision. See *Boechler, P.C. v. Comm'r*, 967 F.3d 760 (8th Cir. 2020).

In a unanimous opinion authored by Justice Amy Coney Barrett, the Supreme Court reversed the decisions below, stressing that "we treat a procedural requirement as jurisdictional only if Congress 'clearly states' that it is" and that, while no "magic words" are required, "traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences." *Boechler*, 142 S. Ct. at 1497.

Noting that the only reference to jurisdiction in the statute appeared in a parenthetical, which referred to the Tax Court's ability to hear "such matter[s]," Justice Barrett concluded that the statute was insufficiently clear to warrant the conclusion that the Tax Court lacked jurisdiction to consider the firm's claims.

Significantly, in *Boechler*, the IRS argued that, at the time Congress adopted section 6330(d)(1), it was aware that lower courts had treated analogous language in section 6213(a) as jurisdictional. In addressing



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this argument, Justice Barrett noted that the cases cited by the IRS predated the court's recent "effort to 'bring some discipline' to the use of the term 'jurisdictional,'" and rejected the assertion that there was a "long line" of Supreme Court decisions that would warrant viewing congressional inaction as a clear indication that a requirement is jurisdictional.

Section 6213(a)

When the IRS determines that a taxpayer owes additional tax, it issues a statutory notice of deficiency. See 26 U.S.C. §6212(a). Section 6213(a) provides that a taxpayer "may file a petition with the Tax Court for a redetermination of the deficiency" within 90 days after such a notice is mailed, and that "[t]he Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund ... unless a timely petition for a redetermination of the deficiency has been filed."

Historically, the Tax Court and United States Courts of Appeals treated this deadline as jurisdictional. See, e.g., *Organic Cannabis Found v. Comm'r*, 962 F.3d 1082, 1092-95 (9th Cir. 2020); *Tilden v. Comm'r*, 846 F.3d 882, 886 (7th Cir. 2017) (collecting cases); *Guralnik v. Comm'r*, 146 T.C. 230, 237 (2016).

Recently, however, courts have split over whether this previously settled view of section 6213(a) survives *Boechler*. Thus, while the Tax Court and the U.S. Court of Appeals for the Eleventh Circuit both concluded that *Boechler* does not affect precedent treating the 90-day deadline as jurisdictional, *Hallmark Research Collective v. Commissioner*, 159 T.C. 6, 2022 WL 17261546, at **9-10 (Dec. 5, 2022); *Allen v. Commissioner*, 2022 WL 17825934, at *2 (11th Cir. Dec. 21, 2022), the U.S. Court of Appeals for the Third Circuit reached the opposite conclusion, holding that *Boechler* requires treating section 6213(a)'s deadline as a non-jurisdictional claims-processing rule. *Culp v. Commissioner*, 75 F.4th 196, 201 (3d Cir. July 19, 2023).

'Hallmark Research' and 'Allen'

In *Hallmark Research*, the IRS sent a notice of deficiency to a corporate taxpayer, which filed a petition for redetermination one day after the 90-day deadline. The Tax Court issued an order to show cause as to why the case should not be dismissed for lack of jurisdiction. After briefing by the parties, the court dismissed the petition in accordance with "longstanding precedent." 2022 WL 17261546 at *2.

Twenty days later, the Supreme Court issued its decision in *Boechler*, prompting Hallmark Research to move to vacate the order of dismissal. In a detailed opinion reviewed by the full Tax Court and "agree[d] with" by all 13 active and three senior Tax Court judges, Judge David Gustafson concluded that section 6213(a) satisfies the Supreme Court's "clear statement" standard and that its 90-day deadline is jurisdictional.

In support of this position, the court pointed to the fourth sentence of section 6213(a), which conditions the Tax Court's jurisdiction to issue an injunction or order a refund on the timely filing of a petition. The court also looked to 26 U.S.C. §7459(d), which treats the dismissal of a petition seeking redetermination of a deficiency as "the functional equivalent" of a decision on the merits, except in limited circumstances including when the "dismissal is for 'lack of jurisdiction'" in which case "there has been no adjudication of the liability that could give rise to res judicata" and the taxpayer may still challenge the deficiency by paying the tax and seeking a refund in the district court.

The court expressed concern that treating the 90-day deadline as a claims-processing rule would alter the relationship between section 6213(a), which allows a taxpayer to delay an assessment pending Tax Court review, and section 7459(d), which ensures that the taxpayer will be bound by the conclusion of the case.

Finally, the court applied the "prior-construction canon," which holds that if Congress reenacts a statute using language that has been authoritatively construed, "the later version of that statute preserving the wording is presumed to carry forward [the prior] interpretation."

Without acknowledging the Supreme Court's discussion of the issue in *Boechler*, the court conducted an extensive review of both the predecessors to section 6213(a) and the cases treating the deadlines set forth in those statutes as jurisdictional, and concluded that "[t]he Tax Court and the circuit courts of appeals have expressly and uniformly treated the deadline [] as jurisdictional" and "Congress – presumptively aware of this treatment by the courts – has preserved the operative text in section 6213 through every reenactment and amendment, thereby carrying forward that interpretation." *cf. Boechler*, 142 S. Ct. at 1500.

In contrast to the Tax Court's extensive analysis of the arguments raised by the taxpayer in *Hallmark Research*,

the Eleventh Circuit gave the issue short shrift in a two-page unpublished opinion. In *Allen*, while the taxpayer claimed he brought his Tax Court petition to the post office on the due date, it was deemed untimely because it was postmarked the following day.

The Tax Court dismissed the petition for lack of jurisdiction and the Court of Appeals summarily affirmed. Without addressing Allen's arguments to the contrary, the court summarily rejected the notion that *Boechler* had overruled circuit precedent holding that the Tax Court lacks jurisdiction to hear untimely petitions. *Allen*, 2022 WL 17825934, at *1.

'Culp'

In *Culp*, the IRS erroneously believed that the taxpayers had failed to report payments they received in settlement of an employment dispute on their 2015 tax return. The IRS sent the Culp's two notices of deficiency, ultimately claiming they owed approximately \$2,100 in additional taxes, penalties and interest. After the Culp's failed to respond to the notices, the IRS levied their property and collected approximately \$1,800 from their Social Security payments and a tax refund.

The Culp's filed a petition seeking Tax Court review outside of the 90-day window, and the Tax Court dismissed the petition for lack of jurisdiction.

Because the Culp's resided in Pennsylvania, their appeal was heard by the Third Circuit, which proved a much more hospitable forum than the Eleventh Circuit. While the court agreed that the Culp's' petition was untimely, it noted that "*Boechler* represents the Supreme Court's approach on whether a deadline is jurisdictional" and concluded that "[i]f the § 6330(d)(1) deadline in *Boechler* fell short of being jurisdictional, § 6213(a)'s limit must as well." *Culp*, 75 F.4th at 201.

In holding that the 90-day deadline was a "claims-processing rule," the court examined the language of section 6213(a) and found that the statutory window was not sufficiently tied to the court's jurisdiction. Unlike the Tax Court in *Hallmark Research*, the Third Circuit rejected the Service's contextual argument predicated on section 7459(d). In this regard, the court acknowledged the theoretic possibility that a non-jurisdictional dismissal of an untimely petition will preclude a subsequent

refund claim, but concluded that the scenario "seems seldom, if ever, to occur ... and therefore does not move the needle."

The court further rejected the commissioner's argument that precedent compels a different result, concluding that *Culp* was the court's "first published opinion to address squarely whether §6213(a)'s deadline ... is jurisdictional."

Finally, the court noted that equitable tolling is presumptively applicable to non-jurisdictional limitations periods and that the statutory text and context supported the doctrine's application to section 6213(a). In this regard, the court rejected the IRS's argument that equitable tolling would be "inadministerable," noting it would only affect a small subset of deficiency petitions, which supports the conclusion that the filing deadline "serves a . . . limited and ancillary role in the tax collection system." (quotations omitted).

Conclusion

Beyond cases addressing the impact of section 6213(a), *Boechler* has spawned litigation over whether other deadlines in the Internal Revenue Code are jurisdictional or claims-processing rules. See, e.g., *Frutiger v. Commissioner*, Case No. 31153-21, Dkt. No. 20 (T.C. Sept. 7, 2022) (concluding that validity of precedent treating § 6015(e)(1)(A)'s deadline for seeking review of an innocent spouse determination as jurisdictional is an open question in light of *Boechler*).

However, given that over 95% of petitions filed in Tax Court address deficiency notices, the growing split regarding the import of section 6213(a)'s 90-day deadline is especially significant. Following *Culp*, taxpayers who miss this deadline will undoubtedly argue that *Boechler* applies and that the Tax Court nonetheless has jurisdiction to hear their claims.

Unfortunately, because the Tax Court applies the law of the circuit in which the taxpayer's appeal will be heard, until the Supreme Court resolves the issue, taxpayers will be subject to different rules depending on where they live.

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