

Supreme Court Holds That Late Petitions For Review Of IRS Collection Due Process Determinations Are Subject To Equitable Tolling

Client Alert | April 21, 2022

[Click for PDF](#) Decided April 21, 2022 *Boechler, P.C. v. Commissioner of Internal Revenue*, No. 20-1472 Today, the Supreme Court unanimously held that the Internal Revenue Code's 30-day deadline for taxpayers to seek Tax Court review of "collection due process" determinations is a nonjurisdictional claims-processing rule that is subject to equitable tolling. **Background:** When the IRS assesses a tax and the taxpayer doesn't pay, the IRS can seize the taxpayer's property to satisfy the outstanding amount. Since 1998, Congress has required the IRS to give advance notice to taxpayers before it levies their property to cover unpaid taxes. Taxpayers can challenge a proposed levy in an administrative hearing before the IRS's Independent Office of Appeals, which issues the taxpayer a notice of determination stating its findings and decision. And the Internal Revenue Code provides that a taxpayer "may, within 30 days of a determination [from the Independent Office of Appeals], appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter)." 26 U.S.C. § 6330(d)(1).

Boechler, P.C. received an unfavorable determination from the IRS's Independent Office of Appeals on a proposed levy but petitioned the Tax Court for review one day after the thirty-day deadline. The Eighth Circuit held that § 6330(d)(1)'s 30-day deadline is jurisdictional, meaning it could not be subject to equitable tolling.

Issue: Is § 6330(d)(1)'s 30-day deadline a jurisdictional requirement or a nonjurisdictional claims-processing rule? If it is a claims-processing rule, is it mandatory or subject to equitable tolling? **Court's Holding:** Section 6330(d)(1) is a nonjurisdictional claims-processing rule and is subject to equitable tolling.

"[The] 30-day time limit to file a petition for review of a collection due process determination is an ordinary, nonjurisdictional deadline subject to equitable tolling."

Justice Barrett, writing for the Court **What It Means:**

- The Court's decision reinforces the principle that filing deadlines are generally not jurisdictional unless the statute's text or structure provides a clear statement to the contrary. In rejecting the Commissioner's arguments, the Court reasoned that ambiguity in the text left "multiple plausible interpretations" and thus no clear statement of jurisdictional intent.
- The decision likewise confirms that nonjurisdictional filing deadlines are "presumptively subject to equitable tolling," particularly where the statutory framework in question is likely to produce circumstances warranting exceptions to a statutory deadline—for instance, where the provision appears as part of a scheme in which unrepresented parties often initiate the process.

Related People

[Lucas C. Townsend](#)

[Bradley J. Hamburger](#)

[Daniel R. Adler](#)

[Matt Aidan Getz](#)

GIBSON DUNN

- The Court's holding provides taxpayers with a limited opportunity to seek judicial review of unfavorable collection due process determinations even when they fail to petition the Tax Court for review within 30 days of the determination. That holding is consistent with the statute's underlying purpose, which was to give taxpayers a way to seek administrative and judicial review before the IRS took the serious step of levying their property to satisfy unpaid taxes.
- The Court did not elaborate on the circumstances in which it would be appropriate for courts to toll § 6330(d)(1)'s 30-day deadline, leaving those arguments for further proceedings on remand. Lower courts are likely to encounter arguments for tolling featuring a wide variety of factual scenarios, including with respect to lower-income taxpayers, many of whom do not have counsel in collection due process proceedings.
- While the Court's holding is limited to the deadline under § 6330(d)(1) for filing a collection due process case, the decision specifically calls into question a long line of cases holding that the 90-day deadline for invoking the Tax Court's general deficiency jurisdiction under 26 U.S.C. § 6213(a) is jurisdictional. Section 6213(a) applies broadly when a taxpayer seeks to challenge an IRS audit determination or other income tax adjustment in Tax Court. Of the more than 150 million income tax returns filed each year, the IRS has historically issued far more than one million such adjustments, typically resulting in around 25,000 cases filed in Tax Court. If, following the Court's holding, § 6213(a) is also found to be nonjurisdictional, it could open the door for a large number of taxpayers to argue for equitable tolling when they miss the 90-day general filing deadline.

The Court's opinion is available [here](#).

Appellate and Constitutional Law Practice

[Allyson N. Ho](#) +1 214.698.3233
aho@gibsondunn.com

[Thomas H. Dupree Jr.](#) +1 202.955.8547
tdupree@gibsondunn.com

[Julian W. Poon](#) +1 213.229.7758
jpoon@gibsondunn.com

[Bradley J. Hamburger](#)
+1 213.229.7658
bhamburger@gibsondunn.com

Related Practice: Global Tax Controversy and Litigation

[Michael J. Desmond](#) +1 213.229.7531
mjdesmond@gibsondunn.com

[Saul Mezei](#) +1 202.955.8693
smezei@gibsondunn.com

[Sanford W. Stark](#) +1 202.887.3650
sstark@gibsondunn.com

[C. Terrell Ussing](#) +1 202.887.3612
tussing@gibsondunn.com

Related Capabilities

[Appellate and Constitutional Law](#)

GIBSON DUNN

[Tax Controversy and Litigation](#)