

Supreme Court's Decision in *Boechler, P.C. v. Commissioner of Internal Revenue* May Save Some Late-Filed Tax Petitions

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On April 21, 2022, the Supreme Court issued a unanimous decision in *Boechler, P.C. v. Commissioner of Internal Revenue*, providing insight on when a tax statute's filing deadline becomes a jurisdictional requirement. If a deadline is a jurisdictional requirement, then a court has no discretion to review a matter when a taxpayer fails to meet the deadline. The Court's decision in *Boechler* might impact reviewing courts' authority to adjudicate petitions outside the tax context. Therefore, Congress may want to consider the Court's analysis in *Boechler* when drafting legislation limiting a court's jurisdiction.

Background

In *Boechler*, the taxpayer, a law firm, received a notice from the Internal Revenue Service (IRS) about a discrepancy in its tax filings, to which the taxpayer did not respond. As a result, the IRS imposed an "intentional disregard" penalty and notified the taxpayer that the IRS intended to levy the taxpayer's property to satisfy the penalty. *See* 26 U.S.C. §§ 6330(a), 6721(a)(2), (e)(2)(A). Pursuant to Internal Revenue Code (IRC) Section 6330(b), the taxpayer asked for and received a collection due process hearing before the IRS's Independent Office of Appeals to challenge the penalty. At the administrative hearing, the IRS's Independent Office of Appeals sustained the proposed levy. *See* 26 U.S.C. § 6330(a).

Under IRC Section 6330(d)(1), the taxpayer had 30 days to petition the Tax Court for review of the IRS's determination. The taxpayer filed its petition one day late. The Tax Court dismissed the taxpayer's petition for lack of jurisdiction. The Eighth Circuit affirmed the Tax Court's decision, agreeing that IRC Section 6330(d)(1)'s statutory deadline was jurisdictional and could not be equitably tolled. The Supreme Court granted review of the Eighth Circuit's judgment.

The first issue before the Supreme Court in *Boechler* was whether Congress had clearly stated that IRC Section 6330(d)(1)'s 30-day deadline was a jurisdictional procedural requirement. If not, the Court then would have to address whether IRC Section 6330(d)(1)'s statutory deadline could be equitably tolled. The unanimous Court held that IRC Section 6330's text did not "clearly mandate" a jurisdictional reading and that equitable tolling could apply to the statutory deadline in appropriate cases.

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Jurisdictional Requirements and the Clear Statement Rule

Not all procedural requirements are jurisdictional requirements. Procedural requirements that are nonjurisdictional guide the [orderly administration of litigation](#) and do not alter a court's ability to hear a case. In contrast, jurisdictional requirements limit the scope of a court's jurisdiction. They "cannot be waived or forfeited, must be raised by courts *sua sponte*, and, as relevant to this case, do not allow for equitable exceptions."

In *Boechler*, the Supreme Court reinforced that it only treats a procedural requirement as jurisdictional if Congress "[clearly states](#)" that the requirement is jurisdictional. To satisfy this clear-statement rule, a jurisdictional condition must be clear. Congress need not use [magic words](#). Instead, traditional [tools of statutory construction](#) must "plainly show" that Congress intended for a rule to serve as a "[procedural bar with jurisdictional consequences](#)."

IRC Section 6033(d)(1) provides: "The person may, within 30 days of a determination under this section, petition the Tax Court for review of such determination (and the Tax Court shall have jurisdiction with respect to such matter)." The taxpayer and the Commissioner [agreed](#) that this provision imposes a 30-day deadline to file petitions for review of a collection due process determination and that the parenthetical within the provision grants the Tax Court jurisdiction over collection due process determinations. Still, the parties disagreed over whether the provision limits the Tax Court's jurisdiction to petitions filed within the 30-day deadline. The Supreme Court [determined](#) that the answer depended on the meaning of the phrase "[such matter](#)" in IRC Section 6330(d)(1).

The Court held that IRC Section 6330(d)(1) did not clearly mandate a jurisdictional reading. The Court [acknowledged](#) that multiple plausible nonjurisdictional interpretations of the term "such matter" exist, in part because the phrase lacked a clear antecedent. The taxpayer [contended](#) that "such matter" referred to the immediately preceding phrase, "petition [to] the Tax Court for the review of such determination," making the filing deadline independent of the jurisdictional grant. The Commissioner [argued](#) that "such matter" referred to the phrase, "[t]he person may, within 30 days of a determination under this section, petition the Tax Court for review of such determination," thus granting the Tax Court jurisdiction only over petitions filed within the 30-day deadline. The Court held that the taxpayer's argument had a [small edge](#) because a canon of statutory construction called the [last-antecedent rule](#) instructs that the correct antecedent is usually "the nearest reasonable" one. The Court observed by way of comparison that two other tax provisions enacted around the same time more clearly linked a jurisdictional requirement to a filing deadline. IRC Section [6015\(e\)\(1\)\(A\)](#) (Supp. IV 1999) provided:

The individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual under this section if such petition is filed during the 90-day period beginning on the date on which the Secretary mails by certified or registered mail a notice to such individual of the Secretary's determination of relief available to the individual.

IRC Section [6404\(g\)\(1\)](#) (Supp. II 1997) stated:

The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(ii) to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion, and may order an abatement, if such action is brought within 180 days after the date of the mailing of the Secretary's final determination not to abate such interest.

Citing *Sebelius v. Auburn Regional Medical Center*, the Court also [held](#) that the fact that the jurisdictional grant and filing deadline were in the same sentence did not make IRC Section 6330(d)(1)'s 30-day deadline a clear jurisdictional condition because "proximity" is not dispositive. It was not enough that the Commissioner's interpretation of the provision was plausible. Instead, the Court held that there must be "[a clear tie between the deadline and the jurisdictional grant](#)."

The Commissioner's [contention](#) that a neighboring provision in IRC Section 6330 clarified the jurisdictional effect of the 30-day deadline failed to sway the Court. The Commissioner argued that IRC Section 6330(e)(1)'s jurisdictional condition suggested that IRC Section 6330(d)(1)'s 30-day filing deadline was jurisdictional too. IRC Section 6330(e)(1) provides: "The Tax Court shall have no jurisdiction . . . to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates." IRC Section 6330(e)(1) conditions the Tax Court's jurisdiction to enjoin a levy on a timely filed petition under IRC Section 6330(d)(1). As a result, under a nonjurisdictional reading of IRC Section 6330(d)(1), the Tax Court can accept a late-filed petition, but can lack jurisdiction to stop collection through a levy. For a taxpayer with a late-filed petition accepted by the Tax Court to enjoin a levy, the taxpayer would have to initiate a new proceeding in district court. The Court [acknowledged](#) that "[t]he possibility of dual-track jurisdiction might strengthen the Commissioner's argument that his interpretation is superior to [the taxpayer's]." The Court emphasized again, however, that "[the Commissioner's interpretation must be not only better, but also clear.](#)" In the end, the Court's review of IRC Section 6330(e)(1)'s clear statement only highlighted IRC Section 6330(d)(1)'s lack of clarity.

According to the Court, the Commissioner's weakest argument was that Congress expected IRC Section 6330(d)(1)'s 30-day filing deadline to be jurisdictional because Congress was aware that lower courts had held an analogous provision—the filing deadline for challenging [IRS deficiency determinations](#) in IRC Section [6213\(a\)](#)—to be jurisdictional at the time of IRC Section 6330(d)(1)'s enactment. The Court found this argument unpersuasive because the cases cited by the Commissioner predated the Court's effort to "[bring some discipline](#)" to the term "jurisdictional." Citing *Fort Bend County v. Davis*, the Court explained that, while it "[has been willing](#)" to treat long lines of its decisions that have not been superseded by Congress "[as a clear indication that a requirement is jurisdictional](#)," there was "[no such 'long line' of authority](#)" in the case of IRC Section 6330(d)(1)'s 30-day filing deadline.

Rebuttable Presumption That Nonjurisdictional Deadlines Are Subject to Equitable Tolling

[Equitable tolling](#) allows a court to pause the running of a filing deadline when "a party 'has pursued his rights diligently but some extraordinary circumstance' prevents him from meeting a deadline." In *Boechler*, the Supreme Court explained that Congress drafts filing deadlines with the [understanding](#) that equitable tolling is a "[traditional feature of American jurisprudence](#)." The Court thus presumes nonjurisdictional filing deadlines are subject to equitable tolling. The Court found nothing to rebut the [presumption](#) that IRC Section 6330(d)(1)'s 30-day filing deadline could be equitably tolled. It also pointed out that the deadline is in a section of the IRC that is "[unusually protective](#)" of taxpayers.

The Court rejected the Commissioner's argument that equitable tolling is inapplicable to IRC Section 6330(d)(1)'s 30-day filing deadline because of its similarity to the deadline at issue in *United States v. Brockamp*. In that case, the Court held that several distinctive [features](#) of IRC Section [6511](#)'s deadline for taxpayers to file refund claims made equitable tolling inapplicable. In *Boechler*, the Court found that IRC Section 6330(d)(1)'s [deadline is distinguishable](#) from IRC Section 6511's deadline. IRC Section 6330(d)(1)'s deadline is not written in "emphatic form," does not contain "detailed" and "technical" language that could be construed as foreclosing implicit exceptions, does not reiterate the deadline multiple times, and does not have several explicit exceptions. Instead, the Court [found](#) IRC Section 6330(d)(1)'s deadline is like the nontax deadline in *Holland v. Florida*, 28 U.S.C. Section [2244\(d\)](#). In *Holland*, the Court held a deadline with a [single statutory exception](#) was subject to equitable tolling. As in *Holland*, there is a single express exception to IRC Section 6330(d)(1)'s deadline: IRC Section 6330(d)(2) tolls the 30-day period when a bankruptcy proceeding prohibits a taxpayer from filing a petition with the Tax Court.

Brockamp was also distinguishable because of the impact that IRC Section 6511's deadline had on tax collection. In *Brockamp*, the Court stressed the [potential administrative problems](#) that might result from applying equitable tolling to IRC Section 6511's deadline for taxpayers filing a refund claim. There, the Court was concerned about potentially extending the time to file a refund claim to around 200 million tax returns. At the time of *Brockamp*, the IRS was issuing about 90 million refunds.

In *Boechler*, the Court determined administrative problems that might arise from applying equitable tolling to IRC Section 6330(d)(1)'s 30-day filing deadline "[pale in comparison](#) to those at issue in *Brockamp*, which dealt with a central provision of tax law." The Court was "[not convinced](#) that the possibility of equitable tolling for the relatively small number of petitions at issue in this case will appreciably add to the uncertainty already present in the process." It described the role of IRC Section 6330(d)(1)'s deadline in the tax collection system as "[more limited and ancillary](#)."

Considerations for Congress

Tax commentators largely view *Boechler* as a [win for low-income taxpayer clinics](#) who have been challenging statutory tax filing deadlines that in the past have been treated as jurisdictional so that their [clients can be eligible for equitable tolling](#). At the same time, some tax commentators have raised concerns that more [sophisticated taxpayers](#) may now use the Court's decision in *Boechler* to challenge statutory deadlines outside the collection due process context to reopen cases that could have a much greater [impact](#) on tax collection and revenue. For example, in *Hallmark Research Collective v. Commissioner of Internal Revenue*, Hallmark Research Collective filed a [motion](#) and [memorandum of law](#) challenging the Tax Court's dismissal of a late-filed petition for lack of jurisdiction under IRC Section 6213(a). IRC Section 6213(a) contains the filing deadline for challenging IRS deficiency determinations. In FY2020, [95%](#) of the cases filed with the Tax Court were based on the Tax Court's original [deficiency](#) jurisdiction. Following *Boechler*, it is unclear how big of an impact a statutory deadline has to have on tax collection for a court to conclude equitable tolling is inapplicable. For these reasons, Congress may want to consider modeling tax filing deadline legislation after IRC Section 6511 when it wants courts to view the deadline as a jurisdictional requirement.

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