

Third Circuit Decision Highlights Significance of Whether Tax Filing Deadlines In Tax Litigation Are Jurisdictional

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On July 19, the Third Circuit held in *Culp v. Commissioner* that the filing deadline in 26 U.S.C. § 6213(a) is nonjurisdictional and can be extended under certain circumstances. Section 6213(a) gives most taxpayers 90 days from the date the Internal Revenue Service (IRS) mails a [notice of deficiency](#) in payment of taxes owed to file a redetermination petition with the United States Tax Court. After holding that the 90-day deadline is nonjurisdictional, the Third Circuit found that equitable tolling—which pauses the running of a statute of limitations in certain circumstances—can apply to the deadline.

The *Culp* decision creates a split among federal courts over whether the § 6213(a) deadline is jurisdictional. The Third Circuit is the first federal court of appeals to hold that it is not after a Supreme Court [decision last year](#) provided guidance on determining whether tax filing requirements are jurisdictional. The [Tax Court](#) and [another federal court of appeals](#) have held that the deadline is jurisdictional under the Supreme Court's decision.

While only ruling on § 6213(a), the *Culp* decision calls attention to the jurisdictional character of other filing requirements in the Internal Revenue Code. This Legal Sidebar discusses the *Culp* decision and federal courts' interpretations of the jurisdictional nature of other filing requirements. It then explains the implications for tax litigation of a court's determination whether a filing requirement is jurisdictional and presents considerations for Congress arising from this issue.

The Third Circuit's *Culp* Decision

The IRS [sent](#) the plaintiffs in *Culp* a notice of deficiency alleging an underpayment of taxes and imposing penalties and interest after the IRS determined that the plaintiffs failed to report certain settlement payments in their tax return. After the IRS levied on the plaintiffs' property to collect the underpayment, the plaintiffs filed a petition in the Tax Court challenging the deficiency and seeking a refund. The Tax Court [dismissed](#) the petition for lack of jurisdiction—i.e., [power to decide the plaintiffs' claim](#)—because it was untimely under § 6213(a), having been filed more than 90 days after the IRS sent the plaintiffs the notice of deficiency. The plaintiffs appealed the Tax Court's dismissal to the Third Circuit.

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The Third Circuit first [held](#) that § 6213(a)'s deadline is not jurisdictional, that is, it does not place bounds on the [Tax Court's power](#) to decide the case. In coming to this conclusion, the court [explained](#) that nothing in the language of § 6213(a) links the [90-day deadline](#) with the Tax Court's jurisdiction. Yet, as the court [observed](#), § 6213(a) elsewhere [explicitly deprives](#) the Tax Court of jurisdiction to issue injunctions and order refunds when a petition is untimely. The court thus concluded that "Congress [knew how to limit](#) the scope of the Tax Court's jurisdiction" when it wished to do so.

The Third Circuit next [held](#) that § 6213(a)'s deadline may be equitably tolled, that is, [extended](#) due to circumstances that prevented the plaintiffs from bringing their claim to court within the statutory timeframe. The court explained that nonjurisdictional deadlines—as it held § 6213(a) to be—are [presumptively subject to equitable tolling](#). The court found insufficient textual evidence that Congress intended to bar the § 6213(a) deadline from equitable tolling. The court also held that, although Congress included three [statutory exceptions](#) to the § 6213(a) deadline, they are few in number and there was [no basis for concluding](#) that Congress intended this list to be exhaustive, and thus foreclose application of the equitable tolling doctrine. Additionally, the deadline is targeted at the taxpayer rather than the Tax Court and is short—90 days—which the court held [favors](#) application of equitable tolling principles. The court [rejected](#) the IRS's arguments that application of equitable tolling would create uncertainty in the deadline and would frustrate the IRS's ability to collect deficient taxes.

Having held that equitable tolling applies to § 6213(a)'s deadline, the Third Circuit [remanded](#) the case to the Tax Court to determine if the plaintiffs are entitled to have the deadline extended.

In its opinion, the Third Circuit [acknowledged](#) that the [Ninth Circuit](#) has held § 6213(a)'s deadline to be jurisdictional. Although not mentioned in the *Culp* opinion, the [Seventh Circuit](#) has also held that the deadline is jurisdictional. [Other circuits](#) have assumed that the deadline is jurisdictional, without deciding the issue. Additionally, just prior to *Culp*, the [Tax Court](#) and [Eleventh Circuit](#) held the deadline to be jurisdictional. This split among federal courts about the jurisdictional nature of § 6213(a) also calls attention to the question of whether other filing requirements in the Internal Revenue Code are jurisdictional in effect.

Jurisdictional Nature of Other Tax Filing Requirements

In its *Culp* decision, the Third Circuit relied substantially on the 2022 Supreme Court decision in *Boechler v. Commissioner*. *Boechler* concerned [26 U.S.C. § 6330\(d\)\(1\)](#), which gives a taxpayer 30 days to petition the Tax Court for review of an IRS determination on a pending collection action. Employing [reasoning](#) that the Third Circuit would follow in *Culp*, the Supreme Court unanimously held that the 30-day deadline is [nonjurisdictional](#) and subject to [equitable tolling](#). The holding resolved a split among the federal [courts](#) of [appeals](#) on those questions.

Uncertainty remains, however, as to whether other filing requirements in the Internal Revenue Code are jurisdictional. For example, taxpayers can [file suit against the United States](#) for a tax refund in either a federal district court or the Court of Federal Claims, but only after, among other requirements, the taxpayer "[duly file\[s\]](#)" an [administrative claim for refund](#) with the IRS. To be [timely filed](#), an administrative claim for refund of overpaid tax must "be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later." These requirements are known as the "administrative exhaustion requirements" for filing a tax refund suit against the United States.

In its 1990 decision in *United States v. Dalm*, the Supreme Court stated without discussion that the administrative exhaustion requirements are jurisdictional, calling them "[statutory requirements](#)." In a 1997 [decision](#), the Supreme Court held that the time limits for filing administrative refund claims with the IRS are [not subject to equitable tolling](#), but did not expressly address jurisdiction. The Court's [most recent discussion](#) of the administrative exhaustion requirements [does not describe](#) them as "jurisdictional," but

does cite to *Dalm*. Some lower federal courts have suggested, however, that a later decision of the Supreme Court in *Lexmark International v. Static Control Components* casts doubt on whether the administrative exhaustion requirements have jurisdictional effect.

In *Lexmark*, the Supreme Court held that “statutory standing” (i.e., whether a given statute permits a party to sue) does not implicate a court’s jurisdiction. The Federal Circuit subsequently wrote in dicta that, in light of the holding in *Lexmark*, “it may be improper to continue to refer to the administrative exhaustion requirements . . . as ‘jurisdictional pre-requisites.’” The Federal Circuit explained that the administrative exhaustion requirements are statutory standing requirements that set out [preconditions to suit](#) and thus are unlikely to be jurisdictional under *Lexmark*. In a [later opinion](#), the Federal Circuit adopted a split approach, [distinguishing](#) between the *adequacy* of filing an administrative claim (i.e., whether the claim was signed) from the *fact* of filing the claim (i.e., whether the claim was timely filed). The court [held](#) that the lack of signature on the administrative claim was not jurisdictional, but did not decide whether the timeliness requirement had jurisdictional effect because it was not at issue in the case. In a [later decision](#), however, the Federal Circuit did [refer to](#) the timeliness requirement as jurisdictional. Other federal circuit courts continue to refer to the administrative exhaustion requirements as jurisdictional without further analysis. In an [unpublished opinion](#), however, the Seventh Circuit [cast doubt](#) on the Supreme Court’s suggestion in *Dalm* that the administrative exhaustion requirements are jurisdictional in light of subsequent [Supreme Court opinions](#) which held that requirements for suits in other statutes were “[claim-processing rules](#)” and did not invoke a federal court’s jurisdiction. The Seventh Circuit also [explained](#) that the Supreme Court’s [most recent discussion](#) of the administrative exhaustion requirements does not describe them as jurisdictional.

The jurisdictional nature of waivers of sovereign immunity permitting suit against the United States, like those for [tax refunds](#), also complicates the analysis. For example, in the [Seventh Circuit](#), such waivers are [nonjurisdictional](#); rather, the government must plead sovereign immunity as an [affirmative defense](#). On this basis, [district courts](#) in the Seventh Circuit have treated the administrative exhaustion requirements as nonjurisdictional.

Tax Litigation Implications of Whether Tax Filing Requirements Are Jurisdictional

As *Boechler* and *Culp* illustrate, the question of whether a requirement is jurisdictional can sometimes determine the outcome of a case. Both *Boechler* and *Culp* addressed whether a filing deadline can be subject to equitable tolling. Nonjurisdictional deadlines are [presumptively subject to equitable tolling](#), while jurisdictional deadlines [cannot be tolled](#). Equitable tolling pauses the running of a statute of limitations in certain circumstances such that failing to meet a filing deadline would not necessarily be fatal to a plaintiff’s case. Failing to meet jurisdictional deadlines, by contrast, is fatal to a plaintiff’s case, because a court lacks power to extend such deadlines. [Commentators](#) have argued that equitable tolling benefits unsophisticated, lower-income taxpayers who might have difficulty meeting filing deadlines.

Further, whether a requirement is jurisdictional can determine the burdens of the parties during litigation. For example, under the Federal Rules of Civil Procedure, which govern cases in federal district courts, where a court’s subject-matter jurisdiction is challenged under [Rule 12\(b\)\(1\)](#), the party asserting that jurisdiction exists—the taxpayer in tax refund suits—has the [burden of establishing jurisdiction](#). On the other hand, the failure of a taxpayer to meet a nonjurisdictional deadline likely would be raised by the government as a basis for dismissal for [failure to state a claim](#) under [Rule 12\(b\)\(6\)](#) or for [summary judgment](#) under [Rule 56](#). The government, as the moving party, would bear the burden of proof on such motions.

During litigation, the distinction between jurisdictional and nonjurisdictional requirements also matters because jurisdictional requirements [cannot be waived or forfeited](#). This limitation means that an argument

that a party has failed to meet a jurisdictional requirement can be [raised at any time](#), and a court can dismiss a case for lack of jurisdiction on its own, without motion from a party. On the other hand, a defendant who fails to argue in its first responsive pleading (or in a valid amendment to that pleading) that the plaintiff has failed to satisfy a nonjurisdictional statutory requirement for suit [forfeits](#) the right to raise that argument.

Additionally, after the litigation, whether a requirement is jurisdictional impacts the preclusive effect of the court's decision (i.e., whether the issue can be relitigated in another case). For example, as the court in *Culp* [explained](#), because the 90-day deadline in § 6213(a) is not jurisdictional, a taxpayer whose redetermination petition is dismissed for untimeliness would be [precluded](#) from bringing a refund suit.

Considerations for Congress

As explained above, whether a requirement is jurisdictional can impact a taxpayer's ability to bring a case to court, the burdens of proof borne by each party in litigation, and the preclusive effect of the court's decision after litigation. These effects can impact both [taxpayers](#) and the government's ability to collect taxes, as the government argued in *Culp* and *Boechler*. Congress may consider amending the statutory language for filing requirements in the Internal Revenue Code to ensure that courts give these requirements the jurisdictional effect that Congress intends them to have.

Boechler and *Culp* provide guidance on how courts consider whether statutory requirements are jurisdictional. A procedural requirement is jurisdictional only if Congress "[clearly states](#)" that it is. Although Congress need not use "[magic words](#)," a statute clearly states that a requirement is jurisdictional if, for example, it [links](#) the requirement with the court's jurisdiction. In *Boechler*, the Supreme Court [identified](#) 26 U.S.C. §§ [6404\(h\)\(1\)](#) and [6015\(e\)\(1\)\(A\)](#) as clearly jurisdictional because the statutory language in both explicitly links a filing deadline to the Tax Court's jurisdiction.

If a filing deadline is not jurisdictional, courts would then analyze whether the deadline may be equitably tolled. Nonjurisdictional deadlines are [presumptively subject to equitable tolling](#), and courts will only find otherwise if Congress indicates it did not want equitable tolling to apply. In considering Congress's intent, courts may look to the [number of statutory exceptions](#) to the deadline and whether the exceptions are [exclusive](#). *Boechler* [identified](#) 26 U.S.C. § [6511](#) as an example where equitable tolling does not apply because the deadline is written in "detailed technical" language and has many explicitly listed exceptions.

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