

SCOTUS Holds in *Boechler* that the 30-Day Time Limit to File a Tax Court Petition Is Not a Hard Deadline

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On April 21, 2022, the Supreme Court of the United States held in *Boechler, P.C. v. Commissioner*^[1] that the 30-day time limit under Internal Revenue Code (“I.R.C.” or “Code”) § 6330(d)(1) for a taxpayer to file a petition for a collection due process (“CDP”) hearing with the United States Tax Court is a non-jurisdictional deadline. The Supreme Court’s holding is significant because, as a non-jurisdictional deadline, I.R.C. § 6330(d)(1)’s 30-day time limit would not prohibit the Tax Court from considering an untimely filed petition when appropriate.

I.R.C. § 6330(d)(1) provides that a “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 Internal Revenue Service (“IRS”), the Tax Court, and other Federal Courts have treated this 30-day deadline as jurisdictional, meaning that a taxpayer who files an untimely petition for a CDP hearing will not have his or her case considered by the Tax Court.^[2]

This very event happened in *Boechler*, where the taxpayer—Boechler, P.C. (“Boechler”), a law firm based in North Dakota—filed a petition for a CDP hearing with the Tax Court on August 29, 2017, one day after the 30-day deadline of August 28, 2017, under I.R.C. § 6330(d)(1). Because of this untimely filing, the IRS moved to dismiss the case for lack of jurisdiction. Boechler objected to the motion, arguing that the 30-day time limit under I.R.C. § 6330(d)(1) is non-jurisdictional; but, if the Court found it to be jurisdictional, Boechler argued in the alternative that I.R.C. § 6330(d)(1) is subject to equitable tolling and that the 30-day period, which, for the IRS’s and Tax Court’s method of calculation, commences on the date of mailing rather than the date of receipt, violates Boechler’s rights under the 5th Amendment because the method is arbitrary. Relying on well-established case law that has held that the 30-day time limit under I.R.C. § 6330(d)(1) is jurisdictional and not subject to equitable tolling, the Tax Court dismissed the petition for lack of jurisdiction, and the United States Circuit Court of Appeals for the Eighth Circuit affirmed.^[3]

In analyzing whether I.R.C. § 6330(d)(1)’s deadline is jurisdictional, the Supreme Court focused on the parenthetical at the end of the sentence: “(and the Tax Court shall have jurisdiction with respect to such matter).”^[4] Specifically, the Court focused on the meaning of the phrase “such matter.”⁵ The Court stated that it will treat a procedural requirement like I.R.C. § 6330(d)(1) as jurisdictional only if Congress “clearly states” that it is.⁶

The Court determined that the text of I.R.C. § 6330(d)(1) does not “mandate” a jurisdictional reading because it was subject to multiple interpretations, “[n]othing else in the provision’s text or structure advances the case for

jurisdictional clarity,” and “the broader context confirms the lack of any clear statement” in the Code provision.^[7] When comparing I.R.C. § 6330(d)(1) to subsection (e)(1), which conditions the Tax Court’s jurisdiction to enjoin a levy on a timely filing under subsection (d)(1), the Court found that the plain language of subsection (e)(1)’s jurisdictional mandate highlights the lack of clarity in subsection (d)(1) and militates against a finding that subsection (d)(1) is jurisdictional.^[8]

The Court lastly turned to whether equitable tolling applied.^[9] The Court noted that non-jurisdictional limitation periods are presumptively subject to equitable tolling and concluded that nothing rebutted that presumption with respect to I.R.C. § 6330(d)(1).^[10] The Court observed that I.R.C. § 6330(d)(1)’s 30-day time limit is directed at taxpayers and appears in a section of the Code that is “unusually protective” of taxpayers who are often “laymen, unassisted by trained lawyers.”^[11]

In light of these circumstances, the Court held that I.R.C. § 6330(d)(1)’s 30-day deadline for a taxpayer to file a petition for a CDP hearing with the Tax Court is non-jurisdictional, subject to equitable tolling when appropriate. In other words, the Supreme Court’s holding enables the Tax Court, in certain instances, to consider untimely filed collection due process petitions.

KEY TAKEAWAYS

- The 30-day deadline to file a petition with the Tax Court is no longer a hard and fast deadline. In certain instances, taxpayers who file an untimely petition can still have their case considered by the Tax Court.
- For those taxpayers not represented by counsel and unaware of the complexity of the Code, the Supreme Court’s *Boechler* decision gives certain latitude to those who can demonstrate circumstances justifying an untimely filing.
- Now that the Supreme Court has held that I.R.C. § 6330(d)(1) is non-jurisdictional, other Code sections, such as I.R.C. § 6213, which gives taxpayers 90 days (or 150 days for a taxpayer living outside the United States) to file a petition after receiving a notice of deficiency, may be prone to similar challenges by taxpayers.
- *Boechler* creates uncertainty with respect to other Code sections that the IRS, the Tax Court, and other Federal courts have believed to be well-established jurisdictional deadlines.

Winston & Strawn will continue to monitor further developments. For further information, or if you have received a notice from the IRS, please contact any of the authors listed or your Winston relationship attorney.

^[1] 596 U.S. ___, slip op. at 1 (2022).

^[2] See, e.g., *McCune v. Commissioner*, 115 T.C. 114 (2000); *Duggan v. Commissioner*, 879 F.3d 1029 (9th Cir. 2018).

^[3] See generally *Boechler v. Commissioner*, 967 F.3d 760 (8th Cir. 2020).

^[4] *Boechler*, slip op. at 3.

^[5] *Id.*

^[6] *Id.*

^[7] *Id.* at 5.

^[8] *Id.* at 7.

^[9] See *id.* at 8.

^[10] *Id.* at 7-8.

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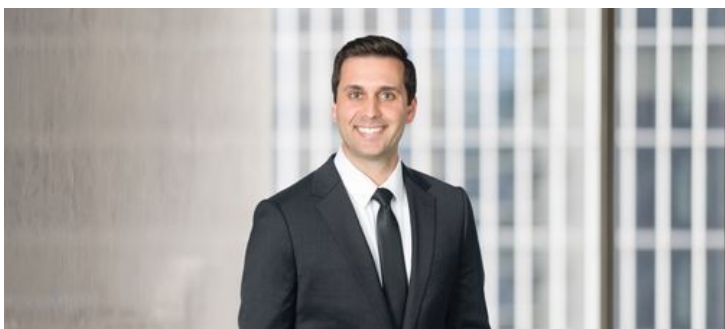
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