Legislative Recommendation #45

Promote Consistency With the Supreme Court's *Boechler* Decision by Making the Time Limits for Bringing All Tax Litigation Subject to Equitable Judicial Doctrines

SUMMARY

- *Problem:* The U.S. Supreme Court has held that the Tax Court may toll the 30-day deadline for filing a petition in a Collection Due Process (CDP) case when it is equitable to do so (*e.g.*, when a taxpayer misses a filing deadline because he has had a heart attack and is temporarily incapacitated). However, the tax code contains other filing deadlines, including deadlines in deficiency cases and deadlines in refund cases, and it is not clear whether courts have the authority to toll those deadlines on equitable grounds.
- *Solution:* Clarify that federal courts may toll filing deadlines in tax cases when it is equitable to do so.

PRESENT LAW

Various provisions of the tax code authorize proceedings or suits against the government, provided such actions are brought timely. If a time limit for bringing suit is deemed a jurisdictional requirement, it cannot be waived. IRC § 7442, which relates to the jurisdiction of the Tax Court, does not specify that prescribed periods for petitioning the Tax Court are jurisdictional.[1] IRC § 7451(b) provides a *statutory* tolling rule for the filing of petitions in any case in which a filing location is inaccessible or otherwise unavailable to the general public on the date a petition is due, but it does not address whether the period for filing a petition is subject to *equitable* tolling by the courts.

Equitable doctrines that, if available, might excuse an untimely filing include (1) equitable tolling (applicable when it is unfair to hold a plaintiff/petitioner to a statutory deadline because of facts and circumstances that unduly impeded the plaintiff's/petitioner's compliance); (2) forfeiture (applicable when the parties have acted as if the case need not operate under the statutory deadlines); and (3) waiver (applicable when the parties have agreed explicitly that a case need not operate under legal deadlines).

In the *Boechler* case, the Supreme Court held that the 30-day time limit in IRC § 6330(d)(1) to file a petition with the Tax Court for review of a CDP determination is not a jurisdictional requirement.[2] The Court noted that time limits that are not jurisdictional are presumptively subject to equitable tolling and explained that "we treat a procedural requirement as jurisdictional only if Congress 'clearly states' that it is."[3] After parsing the language of IRC § 6330(d)(1), the Court found no such clear statement. The Court further held that the 30-day period in IRC § 6330(d)(1) is subject to equitable tolling.[4]

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1 IRC § 7442 provides in its entirety:

> The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10-87), or by laws enacted subsequent to February 26, 1926.

2 *Boechler, P.C. v. Comm'r*, 596 U.S. 199 (2022), *rev'g and remanding* 967 F.3d 760 (8th Cir. 2020).

3 *Id.* at 203.

4 *Id.* at 208-211.

Taxpayers generally bring their actions in the U.S. Tax Court, a U.S. district court, or the U.S. Court of Federal Claims.[5]

U.S. Tax Court

CDP cases like the one in the *Boechler* case are not the only type of controversy in which taxpayers, by filing a petition in the Tax Court within a specified period, may litigate their tax liabilities without first paying the tax. Other examples include deficiency proceedings and "stand-alone" innocent spouse cases (*i.e.*, where a taxpayer seeks innocent spouse relief in situations other than in response to a notice of deficiency or as part of a CDP proceeding).

IRC § 6213(a) provides that "[w]ithin 90 days ... the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency." The Supreme Court in *Boechler* acknowledged that lower courts have interpreted the IRC § 6213(a) deadline as jurisdictional and therefore not subject to equitable tolling but noted that "almost all [such lower court cases] predate this Court's effort to 'bring some discipline' to the use of the term 'jurisdictional.'"[6] After the Supreme Court decided the *Boechler* case, the Tax Court held that equitable tolling does not apply to deficiency cases.[7] In a separate case, however, the Third Circuit disagreed and held that the IRC § 6213(a) deadline is not jurisdictional and is subject to equitable tolling.[8]

As for tax code provisions imposing time limits for petitioning the Tax Court to determine the appropriate innocent spouse relief in stand-alone cases, the Supreme Court in *Boechler* noted that IRC § 6015(e)(1)(A) "much more clearly link[s] [its] jurisdictional grant[s] to a filing deadline," but the Court did not decide whether the time limit is jurisdictional.[9] Prior to *Boechler*, three appellate courts agreed with the Tax Court and held that the time limit for requesting stand-alone innocent spouse relief is jurisdictional.[10]

Other Federal Courts

Taxpayers seeking refunds may obtain judicial review in federal courts other than the Tax Court if they sue within a specified period. A refund suit can generally be brought in a U.S. district court or in the U.S. Court of Federal Claims within two years from the date the IRS denies a claim.[11] There is a split among the circuits regarding whether the statutory period for bringing a suit for refund is subject to equitable doctrines.[12]

Similarly, parties other than the taxpayers with an interest in or lien on levied property may sue in a U.S. district court to enjoin enforcement of a wrongful levy or sale or to recover property (or proceeds from the sale

5 Some tax claims may also be heard by U.S. bankruptcy courts. The Supreme Court has held that the three-year lookback period that may qualify a tax liability for discharge in bankruptcy is subject to equitable tolling. *Young v. United States*, 535 U.S. 43, 47 (2002).

6 *Boechler*, 596 U.S. at 208.

7 *Hallmark Res. Collective v. Comm'r*, 159 T.C. 126 (2022).

8 *Culp v. Comm'r*, 75 F.4th 196 (3d Cir. 2023).

9 IRC § 6015(e)(1)(A) provides, in relevant part, that "[t]he 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." The Court also noted that IRC § 6404(g)(1), which confers Tax Court "jurisdiction over any action . . . to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion, . . . if such action is brought within 180 days," more clearly links the jurisdictional grant to a filing deadline. *Boechler*, 596 U.S. at 206.

10 *Nauflett v. Comm'r*, 892 F.3d 649, 652-654 (4th Cir. 2018); *Matuszak v. Comm'r*, 862 F.3d 192, 196-198 (2d Cir. 2017); *Rubel v. Comm'r*, 856 F.3d 301, 306 (3d Cir. 2017).

11 IRC § 6532(a)(1).

12 *Compare RHI Holdings, Inc. v. United States*, 142 F.3d 1459, 1460-1463 (Fed. Cir. 1998) (declining to apply equitable principles to IRC § 6532), *and Becton Dickinson & Co. v. Wolckenhauer*, 215 F.3d 340 (3d Cir. 2000) (finding time limits set forth in IRC § 6532 are jurisdictional and not subject to equitable tolling), *with Volpicelli v. United States*, 777 F.3d 1042 (9th Cir. 2015) (concluding the time limits set forth in IRC § 6532 are not jurisdictional and are subject to equitable tolling), *and Howard Bank v. United States*, 759 F. Supp. 1073, 1080 (D. Vt. 1991), *aff'd*, 948 F.2d 1275 (2d Cir. 1991) (applying equitable principles to IRC § 6532 and estopping the IRS from raising the limitations period as a bar to suit).

of property) if they do so within a specified period (generally, within two years of levy).[13] Several federal courts have held that this period is not subject to equitable tolling,[14] but other appellate courts have held it is.[15]

Taxpayers may also bring suit, if they do so within the specified periods, to seek civil damages in a U.S. district court or bankruptcy court regarding unauthorized actions by the IRS.[16] Courts have differed on whether equitable doctrines can toll the period for bringing suit.[17]

REASONS FOR CHANGE

The *Boechler* decision clarified that the filing deadline in CDP cases is not jurisdictional, and that the deadline is subject to equitable tolling. However, it did not address whether filing deadlines in other tax cases are jurisdictional or subject to equitable tolling. There is inconsistency in lower courts' interpretations of the various statutes that contain filing deadlines in tax cases.

The consequence for failing to commence suit in the Tax Court or another federal court within the time limits prescribed by the tax code is severe – taxpayers forfeit their day in Tax Court or other federal courts with jurisdiction to hear their claims.

Treating the tax code time limits for bringing suit as jurisdictional – which means that taxpayers who file suit even seconds late are barred from court regardless of the cause – can lead to harsh and unfair results. For example, the IRS itself occasionally provides inaccurate information to taxpayers regarding the filing deadline, and even in that circumstance, the court has declined to hear the taxpayer's case.[18] Other extenuating circumstances may include a medical emergency (*e.g.*, a heart attack or other medical condition that requires a taxpayer to be hospitalized). Moreover, most U.S. Tax Court petitioners do not have representation,[19] and unrepresented taxpayers are less likely to recognize the severe consequences of filing a late petition.

Consistent with taxpayers' *right to a fair and just tax system,*[20] equitable doctrines should be available to excuse a late filing in extenuating circumstances. Taxpayers would still be required to demonstrate that an equitable doctrine applies, and courts could apply the doctrines narrowly. However, the National Taxpayer Advocate believes courts should have the flexibility to make those determinations.

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13 IRC § 6532(c).

14 *See Becton Dickinson and Co. v. Wolckenhauer*, 215 F.3d 340, 351-354 (3d Cir. 2000), and cases cited therein from four other circuits (holding that the IRC § 6532(c) period is jurisdictional and not subject to equitable tolling).

15 *See, e.g., Volpicelli v. United States*, 777 F.3d 1042, 1047 (9th Cir. 2015) (holding that the IRC § 6532(c) period is subject to equitable tolling); *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204 (9th Cir. 1995) (same).

16 IRC §§ 7431(d), 7432(d)(3), 7433(d)(3).

17 *Compare Aloe Vera of America, Inc. v. United States*, 580 F.3d 867, 871-872 (9th Cir. 2009) (holding that the time for bringing suit under IRC § 7431 is not subject to equitable tolling), *and Hynard v. IRS*, 233 F. Supp. 2d 502, 509 (S.D.N.Y. 2002) (holding that the time for bringing suit under IRC § 7433 is not subject to equitable tolling), *with Ramos v. United States*, 90 A.F.T.R.2d (RIA) 7176 (N.D. Cal. 2002) (denying motion to dismiss because doctrine of equitable tolling might apply to an IRC § 7433 action), *and Bennett v. United States*, 366 F. Supp. 2d 877, 879 (D. Neb. 2005) (holding that the application of equitable tolling to IRC §§ 7432 and 7433 actions has not been definitively determined, but it is an extraordinary remedy and did not apply in this case).

18 *See, e.g., Nauflett*, 892 F.3d at 652-54 (doctrine of equitable tolling did not apply to innocent spouse case despite reliance on alleged erroneous IRS advice regarding the filing deadline); *see also Rubel v. Comm'r*, 856 F.3d 301, 306 (3d Cir. 2017).

19 In fiscal year 2023, 91 percent of taxpayers were unrepresented before the Tax Court. National Taxpayer Advocate 2023 Annual Report to Congress 158 (Most Litigated Issues), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/02/ARC23_MostLitigatedIssues.pdf.

20 *See* IRC § 7803(a)(3)(J) (identifying the "right to a fair and just tax system" as a taxpayer right); *see also* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited Oct. 18, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3). The TBOR lists rights that already existed in the tax code, putting them in simple language and grouping them into ten fundamental rights. Employees are responsible for being familiar with and acting in accord with TBOR, including the *right to a fair and just tax system*.

RECOMMENDATIONS

- Enact a new section of the tax code to clarify that the time periods in the code within which taxpayers may petition the Tax Court or file suit in other federal courts are not jurisdictional and are subject to equitable judicial doctrines.[21]
- Specify that equitable tolling periods are included in timeliness determinations for purposes of enjoining any actions or proceedings or ordering any refunds or relief.[22]

21 If this change to the tax code is enacted, a late-filed petition in the Tax Court would no longer be dismissed for lack of jurisdiction if the taxpayer is able to establish that equitable tolling should apply. That would mean that a dismissal of a petition from a notice of deficiency by the Tax Court due to untimeliness would be treated as a decision on the merits under IRC § 7459(d), and the doctrine of *res judicata* would prevent the taxpayer from pursuing a refund suit. We therefore recommend that IRC § 7459(d) be correspondingly amended to make clear that a dismissal based on untimeliness is not a decision on the merits.

22 For example, the last two sentences of IRC § 6213(a) provide that:

> The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

To ensure consistency, equitable tolling must be applied to the underlying cause of action. Otherwise, a change in law consistent with our first recommendation could lead to the absurd result in which equitable tolling is interpreted as applying to the filing of a suit for refund, thus making the suit timely, but not applying to the underlying statutory period in which the IRS is authorized to issue a refund under IRC § 6514, thus barring the taxpayer from receiving a refund if the suit is successful. For discussion of a related issue, see *Extend the Deadline for Taxpayers to File a Refund Suit When They Request Appeals Reconsideration of a Notice of Claim Disallowance But the IRS Has Not Acted Timely Decided Their Claim, infra*.