No. 20-1472

In the Supreme Court of the United States

BOECHLER, P.C.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Section 6330(d)(1) of the Internal Revenue Code establishes a 30-day time limit to file a petition for review in the Tax Court of a notice of determination from the Commissioner of Internal Revenue. 26 U.S.C. § 6330(d)(1). The question presented is:

Whether the time limit in Section 6330(d)(1) is a jurisdictional requirement or a claim-processing rule subject to equitable tolling.

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, petitioner Boechler, P.C. hereby states that it is neither owned by a parent corporation, nor is there a publicly held corporation owning ten percent (10%) or more of its shares.

RELATED PROCEEDINGS

Boechler, P.C. v. Commissioner, No. 19-2003, United States Court of Appeals for the Eighth Circuit, judgment entered July 24, 2020 (967 F.3d 760), rehearing denied November 17, 2020.

Boechler, P.C. v. Commissioner, No. 18578-17 L, United States Tax Court, judgment entered February 15, 2019.

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OPINIONS AND ORDERS BELOW

The decision of the court of appeals (Pet. App. 1a-12a) is reported at 967 F.3d 760. The order of the court of appeals denying rehearing and rehearing en banc (Pet. App. 16a-17a) is unreported. The Tax Court decision (Pet. App. 13a-15a) is unreported.

JURISDICTION

The court of appeals entered judgment on July 24, 2020. Pet. App. 1a. On November 17, 2020, the court of appeals denied petitioner's motion for rehearing and rehearing en banc. Pet. App. 16a-17a. On March 19, 2020, this Court extended the time within which to file a petition for a writ of certiorari to 150 days from the order denying a timely petition for rehearing. The petition was timely filed on April 16, 2021, and granted on September 30, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in the addendum to this brief.

INTRODUCTION

Section 6330(d)(1) of the Internal Revenue Code provides taxpayers with 30 days to file a petition with the Tax Court for review of a "collection due process" determination. Congress created the collection due process regime to give taxpayers process—including judicial review—before the Internal Revenue Service (IRS) could seize their property to pay a tax debt. The question presented is whether the 30-day period to seek pre-collection judicial review is jurisdictional. Under a long line of this Court's cases, it is not.

As this Court has said time and again, filing deadlines are quintessential claim-processing rules.

Unless Congress has clearly said otherwise, they must be treated as nonjurisdictional. That readily administrable bright line makes this a simple case: there is no clear statement.

Section 6330(d)(1) instructs 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)." 26 U.S.C. § 6330(d)(1). The text does not condition the Tax Court's jurisdiction on compliance with the 30-day time limit. Under the most natural reading, Section 6330(d)(1) simply does two things in the same sentence: (i) it confers jurisdiction on the Tax Court to hear a petition seeking review of a CDP determination, and (ii) it provides a filing deadline. That reading is reinforced (if not compelled) by the statutory history. And it furthers the purposes of the collection due process review scheme, which Congress enacted to be especially protective of taxpayers.

The Commissioner's attempts to link the limitations period to the jurisdictional grant do violence to the text and ignore the statutory history and purpose. But more to the point, they at best give rise to the sort of ambiguity that is, by definition, insufficient to overcome the Court's clear-statement rule. Nothing in the text, structure, or historical context plainly demonstrates that Congress chose to make this particular filing deadline the rare jurisdictional time limit.

The Commissioner has also argued that even if the 30-day deadline is nonjurisdictional, it is still not subject to equitable exceptions. He is wrong about that too. It is hornbook law that limitations periods are presumptively subject to equitable tolling. That

presumption is reinforced here. As filing deadlines go, Section 6330(d)(1) is not the kind this Court has found particularly emphatic. And the core purpose of the collection due process regime is to provide the taxpayer with fair and equitable pre-collection review. The Commissioner can no more overcome the presumption in favor of equitable tolling than he can the jurisdictional clear-statement rule.

In the end, the 30-day deadline in Section 6330(d)(1) is nothing more than an ordinary limitations period subject to equitable tolling in appropriate cases. This Court should reverse.

STATEMENT OF THE CASE

A. Legal Background

This case concerns the timeline that governs Tax Court review of determinations made by the Commissioner of Internal Revenue in "collection due process" (CDP) hearings.

1. One way the IRS collects outstanding tax obligations is by seizing the taxpayer's property by levy. Once the IRS assesses a tax against a taxpayer and the person does not pay, a federal tax lien automatically attaches to all of the taxpayer's real and personal property, including wages, by operation of law. 26 U.S.C. § 6321.[1] Unlike private creditors, the IRS does not need to go through a court to establish or enforce its lien. But if the IRS wants its lien to be effective against a wider range of creditors, it may record a formal "notice of federal tax lien" on the property. *See id.* § 6323(a), (f). Either way, once

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[1] All citations to the United States Code are to the 2018 version unless otherwise noted.

the automatic lien attaches, the IRS may levy the taxpayer's property. *Id.* § 6331.

2. Before 1998, the IRS "could exercise its administrative collection remedies without the prospect of judicial oversight or intervention." Harold Dubroff & Brant J. Hellwig, *The United States Tax Court: An Historical Analysis* 482 (2d ed. 2014), https://www.ustaxcourt.gov/resources/book/Dubroff_Hellwig.pdf. Taxpayers generally had no ability to prevent the IRS from carrying out a seizure of their property to pay a tax debt. *See id.*

In the mid-1990s, Congress held a series of highly publicized hearings in which witnesses recounted numerous stories of the IRS seizing residences, padlocking businesses, and otherwise employing overzealous and heavy-handed tactics. *See IRS Oversight: Hearings Before the S. Comm. on Finance*, 105th Cong. (1998) ("*IRS Oversight*"); *Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. on Finance*, 105th Cong. (1997) ("*IRS Practices and Procedures*"); Dubroff & Hellwig, *supra*, at 482. As a result of those hearings, Congress decided that taxpayers needed more robust protections against IRS collection actions. *See* Dubroff & Hellwig, *supra*, at 482-83 (explaining that "Congress was determined to recalibrate the balance of power in the tax collection setting").

So Congress created the "collection due process" regime: a scheme of administrative and judicial review designed to impose meaningful external checks on the IRS's collection decisions before they are carried out. *See* Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3401, 112 Stat. 685, 746. As the accompanying committee report explained, the goal

was to increase fairness to taxpayers by guaranteeing similar protections against the IRS that the taxpayers would have in dealing with any other creditor. S. Rep. No. 105-174, at 67 (1998); *see* Dubroff & Hellwig, *supra*, at 483.

3. The CDP regime works as follows. Thirty days before the IRS plans to seize the taxpayer's property, it must provide the taxpayer with a "notice of intent to levy" explaining the basis for the levy and detailing the taxpayer's procedural rights. 26 U.S.C. § 6330(a). The IRS must provide a similar notice to the taxpayer within five days of filing a notice of federal tax lien. *Id.* § 6320(a).

The taxpayer may then request a CDP hearing before the IRS Independent Office of Appeals. *Id.* §§ 6320(b), 6330(b).[2] At the administrative hearing, the taxpayer may raise "any relevant issue relating to the unpaid tax or proposed levy." *Id.* § 6330(c)(2); *see id.* § 6320(c) (cross-referencing same procedures for lien notices). The "[m]atters" to be "considered" include challenges to the "appropriateness" of the IRS's collection action, as well as spousal defenses. *Id.* § 6330(c)(2)(A)(i)-(ii). The taxpayer may offer "collection alternatives," including the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise. *Id.* § 6330(c)(2)(A)(iii).[3] The taxpayer may also

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[2] Before 2019, it was called the Office of Appeals. *See* Taxpayer First Act, Pub. L. No. 116-25, Title I, § 1001(b), 133 Stat. 981, 985 (2019) (changing the name but making no other changes to Section 6330).

[3] Under an offer-in-compromise, the IRS absolves the taxpayer of a portion of her liability if the taxpayer pays back

contest the underlying tax liability, but only if she did not receive a notice of deficiency or did not otherwise have an opportunity to dispute the liability. *Id.* § 6330(c)(2)(B).

In addition to considering those issues, the Independent Office of Appeals must obtain verification from the IRS that all required legal and procedural requirements have been met. *Id.* § 6330(c)(1). And it must make a determination that "any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary." *Id.* § 6330(c)(3).

4. After the hearing, the Independent Office of Appeals issues a "notice of determination." *Id.* The mailing of that notice triggers the Tax Court filing deadline at issue here. Section 6330(d)(1) states:

> (d) Proceeding after hearing
>
> (1) Petition for review by Tax Court
>
> 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).

Id. § 6330(d)(1); *see id.* § 6320(c) (cross-referencing same review procedures for lien notices).

Today, only the Tax Court has jurisdiction over petitions for review of CDP determinations. But as originally enacted in 1998, Section 6330(d)(1) split

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the remainder of the tax debt at once or over time. *See* 26 U.S.C. § 7122.

that jurisdiction between the Tax Court and the federal district courts, depending on the type of tax involved. *See* Pub. L. No. 105-206, § 3401(b), 112 Stat. at 749. Because that split of jurisdiction led to confusion, *see* S. Rep. No. 109-64, at 2-3 (2005), Congress amended the statute in 2006 to consolidate all review in the Tax Court. Pension Protection Act of 2006, Pub. L. No. 109-280, § 855(a), 120 Stat. 780, 1019; *see* Staff of the Joint Comm. on Taxation, *Technical Explanation of H.R. 4*, at 201-02 (Aug. 3, 2006), https://www.jct.gov/CMSPages/GetFile.aspx?guid=09ae9eb1-c324-4931-ae3a-5e0af6adfe48.

Either the taxpayer or the IRS may appeal the Tax Court's decision to the courts of appeals. *See* 26 U.S.C. § 7482(a).

5. During the administrative CDP proceedings and any subsequent appeals, the IRS generally may not execute the levy. *Id.* § 6330(e)(1); *see id.* § 6330(e)(2), (f) (noting limited exceptions). Various statutes of limitations—such as the ten-year period governing the IRS's authority to collect a tax after assessment—are also suspended during that time. *See id.* §§ 6330(e)(1), 6502(a). And Section 6330(e)(1) provides an exception to the Anti-Injunction Act, authorizing a "proper court, including the Tax Court" to enjoin any levy or proceeding that goes forward in violation of that suspension. *Id.* § 6330(e)(1). The Tax Court has jurisdiction to enjoin when a "timely appeal has been filed" and "only in respect of the unpaid tax or proposed levy to which the determination being appealed relates." *Id.*

B. Factual And Procedural Background

1. Petitioner Boechler, P.C. is a small law firm in Fargo, North Dakota. JA18, JA26. On June 5, 2015,

the IRS sent petitioner a letter noting a "discrepancy" in its tax filings for the year 2012. JA24-25. The IRS claimed that petitioner had failed to file certain documents with the Social Security Administration (SSA) for that year—specifically, copies of its employees' Form W-2s (showing each employee's earnings and tax withholdings) along with a required Form W-3 (reporting petitioner's aggregate wages and withheld taxes). JA24-25. The IRS did not claim that petitioner owed any payroll taxes for that year. *See id.*; JA32-33. The "discrepancy" existed because the amount petitioner had reported to the IRS as withheld taxes (on a separate Form 941) did not match the amount reported to the SSA on the W-2s and W-3—which the IRS treated as "zero" because those forms were (purportedly) missing. JA24-25.

Because petitioner did not respond to the IRS's letter within 45 days, the IRS assessed an "intentional disregard" penalty. JA23-24. The penalty amount was $19,250—10% of the wages petitioner reported on its employment tax returns for 2012. JA24; *see* 26 U.S.C. § 6721(a)(2), (e).

2. On October 13, 2016, the IRS mailed petitioner the required notice of intent to levy. JA21. On November 1, 2016, petitioner requested a CDP hearing under Section 6330(b)(1). *Id.* Petitioner challenged the penalty, explaining that it had in fact filed the missing W-2s and W-3; petitioner later provided the Independent Office of Appeals with copies. JA21-22, JA27. Petitioner also argued that the penalty was excessive and would cause significant hardship to its small business. JA22. Petitioner requested abatement or a collection alternative. JA27, JA29-30.

The Independent Office of Appeals held a CDP hearing by telephone on May 19, 2017. JA26. On July 28, 2017, the Office mailed petitioner a notice of determination sustaining the proposed levy, denying the abatement request, and rejecting any collection alternative. JA18-20. As required by statute, the Office determined that the levy "balance[d] the need for efficient collection of taxes with [petitioner's] legitimate concern that any collection action be no more intrusive than necessary." JA29-30. The notice of determination was delivered to petitioner on July 31, 2017. Pet. App. 14a.

3. Under Section 6330(d)(1), petitioner had 30 days from the date of the notice's mailing (July 28) to file its petition for review with the Tax Court. Because the 30th day (August 27) fell on a Sunday, the deadline was Monday, August 28. *See* 26 U.S.C. § 7503. Petitioner mailed its petition one day late, on August 29. JA37; Pet. App. 14a; *see* 26 U.S.C. § 7502(a)(1) (petition deemed filed on date of mailing).

In the Tax Court, the Commissioner moved to dismiss the petition for lack of jurisdiction based on petitioner's failure to meet the 30-day filing deadline. JA11. In response, petitioner argued that Section 6330(d)(1) is not jurisdictional and is subject to equitable tolling. C.A. App. 32-42. And petitioner requested the opportunity to develop a factual record to establish its entitlement to tolling, including through an evidentiary hearing. *Id.* at 48-49.

The Tax Court agreed with the Commissioner and dismissed the petition. Pet. App. 15a. The court adhered to its long-held position that the filing deadline in Section 6330(d)(1) is jurisdictional. *Id.* (citing *Gray v. Commissioner*, 138 T.C. 295, 299 (2012)); *see also Guralnik v. Commissioner*, 146 T.C.

230, 235-36 (2016) (reaffirming position in the face of this Court's more recent jurisdictional precedent, which the Tax Court described as "outside the tax arena"). The court rejected petitioner's request for equitable tolling on that basis alone. Pet. App. 15a.

4. Petitioner timely appealed to the Eighth Circuit. In a split decision, the court of appeals affirmed. Pet. App. 1a.

a. The court of appeals acknowledged that this Court "has 'repeatedly held that filing deadlines ordinarily are not jurisdictional'" and instead should be treated as claim-processing rules presumptively subject to equitable tolling. *Id.* at 3a (quoting *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 154 (2013)). The court also recognized that "'Congress must do something special, beyond setting an exception-free deadline, to tag a [time limit] as jurisdictional and so prohibit a court from tolling it.'" *Id.* at 4a-5a (alteration in original) (quoting *United States v. Kwai Fun Wong*, 575 U.S. 402, 410 (2015)). And it agreed that this Court's decisions require a "clear statement" from Congress. *Id.* at 4a.

But the court of appeals believed that Section 6330(d)(1) met that standard. Relying on the Ninth Circuit's earlier decision in *Duggan v. Commissioner*, 879 F.3d 1029 (9th Cir. 2018), the court concluded that the parenthetical phrase "'(and the Tax Court shall have jurisdiction with respect to such matter)'" is "clearly jurisdictional and renders the remainder of the sentence jurisdictional." Pet. App. 6a (quoting 26 U.S.C. § 6330(d)(1)). The words "such matter," the court reasoned, refer to "a petition to the tax court that: (1) arises from 'a determination under this section' and (2) was filed 'within 30 days' of that

determination." *Id.* at 6a-7a (quoting 26 U.S.C. § 6330(d)(1)).

The Eighth Circuit acknowledged that the D.C. Circuit had reached the opposite conclusion regarding the filing deadline in 26 U.S.C. § 7623(b)(4), which includes "an identically worded parenthetical." Pet. App. 5a; *see Myers v. Commissioner*, 928 F.3d 1025, 1034-36 (D.C. Cir. 2019). But while conceding that "there might be alternative ways that Congress could have stated the jurisdictional nature of the statute more plainly," the court believed that Congress had "spoken clearly enough." Pet. App. 7a-8a.

Because the court of appeals held that Section 6330(d)(1)'s filing deadline was jurisdictional, it did not consider whether the deadline would otherwise be subject to equitable tolling or whether petitioner's circumstances would warrant tolling. *Id.* at 8a n.3.

b. Judge Kelly concurred in part and concurred in the judgment. *Id.* at 10a. Judge Kelly believed that a prior circuit decision had already held the Section 6330(d)(1) deadline jurisdictional, and she felt bound to affirm the Tax Court for that reason. *Id.* at 10a-11a. But she was "not convinced the statute contains a sufficiently clear statement to justify this result." *Id.* at 12a.

Judge Kelly observed that the Eighth Circuit's position is "an unusual departure from the ordinary rule that filing deadlines are 'quintessential claim-processing rules.'" *Id.* (quoting *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011)). She emphasized that treating the filing deadline as jurisdictional could have "'drastic' consequences for litigants." *Id.* (quoting *Henderson*, 562 U.S. at 435). And she

expressed concern that "the burden may fall disproportionately on low-income taxpayers." *Id.*

5. The Eighth Circuit denied a petition for rehearing en banc, with three judges (Judges Loken, Colloton, and Kelly) voting to grant. Pet. App. 16a.

SUMMARY OF ARGUMENT

The question presented is whether the 30-day limitations period in Section 6330(d)(1) is a jurisdictional requirement or a claim-processing rule subject to equitable tolling. This Court's precedent provides a clear answer: the deadline is not jurisdictional and it may be equitably tolled.

I. Under well-settled law, limitations periods are treated as nonjurisdictional claim-processing rules unless Congress clearly says otherwise. Section 6330(d)(1) has no clear statement.

That provision accomplishes two things: (i) it confers jurisdiction on the Tax Court over a petition for review of a CDP determination and, separately, (ii) it instructs the taxpayer to file a petition within 30 days of the CDP determination. This reading gives the phrase "such matter" in the jurisdictional parenthetical its most natural and proximate antecedent—consistent with the rules of grammar and the ordinary meaning of the word "matter." It gives due regard to the notable absence of conditional language found elsewhere in the Internal Revenue Code. It is the only way to make sense of Section 6330(d)(1)'s statutory history. And it is consistent with the remedial purpose of the CDP review scheme.

The Commissioner and the Eighth Circuit read "such matter" to condition the Tax Court's jurisdiction on the 30-day filing deadline. But those alternative interpretations require linguistic maneuvers that are

far from intuitive. They also cannot be squared with Section 6330(d)(1)'s history or purpose. Most importantly, they at best gives rise to ambiguity. That is never enough to carry the day when a clear statement from Congress is required. And the Commissioner cannot fall back on historical context or stare decisis in this case.

II. Under equally well-settled law, nonjurisdictional statutes of limitations are presumptively subject to equitable tolling. That presumption is reinforced here, based on the timing of Section 6330(d)(1)'s enactment. And there is nothing unique about Section 6330(d)(1)'s limitations period to overcome that general rule.

Quite the contrary. The time limit is not written in particularly emphatic terms: it states that a taxpayer "may, within 30 days" petition the Tax Court for review. The entire purpose of the CDP regime is to provide taxpayers with additional process, including external judicial review. And the subject matter of CDP proceedings is inherently equitable in nature. That all makes the limitations period in Section 6330(d)(1) qualitatively different from the limited instances in which this Court has found the presumption of equitable tolling overcome—and remarkably similar to those in which equitable tolling has been permitted. Finally, any concerns about administrability are both insufficient to overcome the presumption and overstated in any event.

ARGUMENT

The ultimate question in this case is whether the 30-day time period in Section 6330(d)(1) is subject to equitable tolling. The Commissioner has advanced two arguments for why it is not: (i) the filing deadline

is jurisdictional, and (ii) even if the deadline is not jurisdictional, it still is not subject to equitable tolling for other reasons. BIO 9, 25. The Eighth Circuit held that the deadline is jurisdictional, and accordingly did not reach the Commissioner's second argument. Pet. App. 8a n.3. Given that framing and the disposition below, petitioner addresses both arguments—but begins with the threshold jurisdictional question. *See United States v. Kwai Fun Wong*, 575 U.S. 402, 408-09 nn.2-3 (2015); Pet. Reply 10.

I. THE LIMITATIONS PERIOD IN SECTION 6330(d)(1) IS NOT JURISDICTIONAL

A. Limitations Periods Are Rarely Jurisdictional

In a series of decisions over the past two decades, this Court has endeavored "to ward off profligate use of the term 'jurisdiction.'" *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013). Jurisdictional requirements "'speak to the power of the court'" to adjudicate a dispute, as opposed to "'the rights or obligations of the parties.'" *Landgraf v. USI Film Prods.*, 511 U.S. 244, 274 (1994) (quoting *Republic Nat'l Bank of Miami v. United States*, 506 U.S. 80, 100 (1992) (Thomas, J., concurring in part and concurring in the judgment)). They "delineat[e] the classes of cases (subject-matter jurisdiction) . . . falling within a court's adjudicatory authority." *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004).

"Among the types of rules that should not be described as jurisdictional" are what this Court has called "claim-processing rules." *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011). Such rules "requir[e] that the parties take certain procedural steps at certain specified times." *Id.* And although

these rules serve the important goal of "promot[ing] the orderly progress of litigation," a party's compliance does not constrain the tribunal's authority to hear the case. *Id.*

The distinction is "not merely semantic but one of considerable practical importance." *Id.* at 434. "Branding a rule as going to a court's subject-matter jurisdiction alters the normal operation of our adversarial system." *Id.* A jurisdictional requirement cannot be waived or forfeited; it must be considered by the court sua sponte at any time, even after trial or on appeal. *See id.* There can be no equitable exceptions. *See Auburn Reg'l*, 568 U.S. at 154. Nor can an agency create regulatory exceptions. *See id.* Dismissal is the only option. *See Hamer v. Neighborhood Housing Servs. of Chicago*, 138 S. Ct. 13, 17 (2017).

"Because the consequences that attach to the jurisdictional label" are so "drastic," this Court has tried "to bring some discipline" to the term. *Henderson*, 562 U.S. at 435. To that end, the Court has adopted a "'readily administrable bright line.'" *Auburn Reg'l*, 568 U.S. at 153 (quoting *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 516 (2006)). Although Congress need not "incant magic words," a claim-processing requirement will be deemed jurisdictional only if there is a "clear statement" to that effect. *Auburn Reg'l*, 568 U.S. at 153; *see Fort Bend Cnty. v. Davis*, 139 S. Ct. 1843, 1850 (2019); *Hamer*, 138 S. Ct. at 20 n.9; *Musacchio v. United States*, 577 U.S. 237, 246 (2016); *Kwai Fun Wong*, 575 U.S. at 409; *Gonzalez v. Thaler*, 565 U.S. 134, 141-42 (2012); *Henderson*, 562 U.S. at 435-36; *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 163 (2010); *Arbaugh*, 546 U.S. at 515-56.

This clear-statement rule is meant to "leave the ball in Congress' court." *Arbaugh*, 546 U.S. at 515. It is an approach "suited to capture Congress' likely intent." *Henderson*, 562 U.S. at 436. But it serves another purpose too. Requiring Congress to make its intentions express ensures that courts and litigants will be "duly instructed" and not "left to wrestle with the issue." *Arbaugh*, 546 U.S. at 515-16; *see Henderson*, 562 U.S. at 436 (the bright-line rule requires Congress to provide "guidance").

Under this now well-settled approach, the Court has "repeatedly held that filing deadlines ordinarily are not jurisdictional." *Auburn Reg'l*, 568 U.S. at 154; *see Musacchio*, 577 U.S. at 246; *Arbaugh*, 546 U.S. at 510. "Time and again," the Court has "described filing deadlines as 'quintessential claim-processing rules'" that "do not deprive a court of authority to hear a case." *Kwai Fun Wong*, 575 U.S. at 410 (quoting *Henderson*, 562 U.S. at 435). There is accordingly a "high bar" before a time limit will be deemed so "exceptional" that it can be "rank[ed]" as jurisdictional. *Kwai Fun Wong*, 575 U.S. at 409; *Auburn Reg'l*, 568 U.S. at 155; *see Hamer*, 138 S. Ct. at 20 n.9. The 30-day filing deadline in Section 6330(d)(1) is hardly that exceptional case.

B. The Limitations Period Is Not Jurisdictional Under The Most Natural Reading Of Section 6330(d)(1)

To satisfy the clear-statement rule, the "traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences." *Kwai Fun Wong*, 575 U.S. at 410. Using those tools here, Congress did

not "do something special" to "tag" the limitations period in Section 6330(d)(1) as jurisdictional. *Id.*

1. The Statutory Text Does Not Condition Jurisdiction On The Limitations Period

Section 6330(d)(1) states: "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)." 26 U.S.C. § 6330(d)(1). Section 6330(d)(1) thus does two distinct things: (i) confers jurisdiction on the Tax Court to adjudicate petitions for review of CDP determinations, and (ii) provides a statute of limitations telling taxpayers to file their petitions within 30 days of the CDP determination. The Tax Court's jurisdiction is not "link[ed]" to, or otherwise conditioned on, compliance with the 30-day limitations period. *Kwai Fun Wong*, 575 U.S. at 412.

a. At the outset, the fact that Section 6330(d)(1) includes both the word "jurisdiction" and the 30-day limitations period does not answer the question presented. That is because a procedural requirement's proximity to a jurisdictional grant does not confer jurisdictional status. Or, as the Court phrased it in *Auburn Regional*: "[a] requirement we would otherwise classify as nonjurisdictional . . . does not become jurisdictional simply because it is placed in a section of a statute that also contains jurisdictional provisions." 568 U.S. at 155; *see Gonzalez*, 565 U.S. at 147 ("Mere proximity will not turn a rule that speaks in nonjurisdictional terms into a jurisdictional hurdle.").

This Court has accordingly found procedural requirements nonjurisdictional even when one or more jurisdictional requirements appeared in the

same subsection. *See Fort Bend*, 139 S. Ct. at 1851 n.8; *Gonzalez*, 565 U.S. at 143, 146-47. It has also deemed a deadline nonjurisdictional when it appeared in the *same sentence* as a jurisdictional requirement. *See Weinberger v. Salfi*, 422 U.S. 749, 763-64 (1975). The Court has even rejected an argument that (purportedly) jurisdictional requirements appearing in the *same conditional clause* as a time limit were enough to render the latter jurisdictional. *See Auburn Reg'l*, 568 U.S. at 155 (addressing 42 U.S.C. § 1395*oo*(a), which stated that a provider "may obtain a hearing . . . if" three conditions are met); *see also* 42 U.S.C. § 1395*oo*(a) (listing filing deadline as third condition).

b. The real question is whether the limitations period is linked to the jurisdictional grant, such that the Tax Court's authority to adjudicate the petition is conditioned on the taxpayer filing the petition within 30 days. Section 6330(d)(1) defines the scope of the Tax Court's jurisdiction: it has "jurisdiction with respect to such matter." 26 U.S.C. § 6330(d)(1). The critical interpretative issue, then, is what does "such matter" refer back to. The answer: a petition for review of a CDP determination.

In this context, "such" functions as a demonstrative adjective, or a "pointing word." Bryan A. Garner, *Garner's Modern English Usage* 873 (4th ed. 2016) (capitalization normalized); *id.* ("*Such* is properly used as an adjective when reference has previously been made to a category of people or things: hence *such* means 'of that kind' . . . ."). So it needs an antecedent. The most logical candidate is the immediately preceding phrase: "petition [to] the

Tax Court for review of such determination."[4] "Such determination," in turn, refers back to *its* immediately preceding antecedent: "a determination under this section." And "this section" refers to Section 6330, *i.e.*, the section providing for a CDP hearing. Putting that together, "such matter" is shorthand for a more cumbersome phrase: "petition [to] the Tax Court for review of" "a determination under [Section 6330]."

So understood, the parenthetical provides that the Tax Court "shall have jurisdiction with respect to" a petition for review of a CDP determination. Nothing less, nothing more. Or, as the D.C. Circuit put it, "such matter" means "the subject of litigation previously specified" in the sentence, which is a petition "to the Tax Court" seeking review of a certain type of decision. *Myers v. Commissioner*, 928 F.3d 1025, 1035 (D.C. Cir. 2019).

This interpretation of "such matter" follows the last-antecedent rule. As Chief Justice Ellsworth explained in the Court's very first articulation of the principle, "'such' applies to the last antecedent, unless the sense of the passage requires a different construction." *Sims's Lessee v. Irvine*, 3 U.S. (3 Dall.) 425, 444 n.* (1799); *see* Antonin Scalia & Bryan A.

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[4] To function as the antecedent of "such matter," the verb "petition" has to take its noun form. The alternative readings suggested by the Commissioner and the Eighth Circuit require this same implicit verb-to-noun shift. *See* Pet. App. 6a-7a; BIO 10-11; *see also infra* at 28-29. And the use of "petition" as a noun gains support from the title of the paragraph, "Petition for review by Tax Court." 26 U.S.C. § 6330(d)(1). But in any event, there is no noun in Section 6330(d)(1) that could serve as the antecedent for "such matter" and lead to a conclusion that the court's jurisdiction is conditioned on the 30-day filing deadline.

Garner, *Reading Law: The Interpretation of Legal Texts* 146 (2012) (discussing *Sims's Lessee* and the last-antecedent rule's application to "such"). Under that rule, a "demonstrative adjective generally refers" only "to the nearest reasonable antecedent"—and not to additional reference points that are more remote. Scalia & Garner, *supra*, at 144. The nearest reasonable antecedent here is "petition [to] the Tax Court," and that construction makes perfect sense.

The sentence's structure—which clearly separates the 30-day filing deadline from the jurisdictional grant—confirms that reading. *See* William Strunk Jr. & E.B. White, *The Elements of Style* 28-30 (4th ed. 2000) (explaining that the "position of the words in a sentence is the principal means of showing their relationship," which is why drafters should "[k]eep related words together"). The filing deadline is located in a prepositional phrase, offset by commas, that modifies the auxiliary verb "may" (not the whole verb phrase "may petition"). This phrase is part of the first independent clause in the sentence, which explains what *the person* may do. The jurisdictional grant is then set apart in a parenthetical at the end of the sentence, and it speaks to what the *Tax Court* shall do. Properly read, the deadline "does not speak to a court's authority, but only to a party's procedural obligations." *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 512 (2014); *cf. Kwai Fun Wong*, 575 U.S. at 429 (Alito, J., dissenting) (noting that "run-of-the-mill limitations provision[s]" often speak to what a "person" may or shall do).

Defining "such matter" to refer simply to a petition seeking review of a CDP determination also accords with the ordinary meaning of the word "matter." The term is often used in the legal context to mean "case."

Black's Law Dictionary (11th ed. 2019) ("A subject under consideration, esp. involving a dispute or litigation; CASE . . . ."). It is quite common, in fact, to hear a lawyer discussing a "matter" (read: "case") she is currently working on. And a court's subject-*matter* jurisdiction, incidentally, is defined as the "class[] of *cases* . . . falling within a court's adjudicatory authority." *Kontrick*, 540 U.S. at 455 (emphasis added). Not surprisingly, then, Congress has used the word "matter" in a variety of other statutes to refer to a type of action, proceeding, or controversy. *See, e.g.*, 18 U.S.C. §§ 1001, 1519; 28 U.S.C. §§ 1362, 1491(a)(2). Congress followed that same well-traveled path here.

c. There is nothing else in Section 6330(d)(1) to provide the necessary textual link between the grant of jurisdiction and the filing deadline. This Court, for example, has suggested that one way to speak in "jurisdictional terms" would be to say that a court has "jurisdiction" "only if" a requirement is satisfied. *V.L. v. E.L.*, 577 U.S. 404, 408-09 (2016) (per curiam). But Section 6330(d)(1) is devoid of that sort of conditional language too. *See Myers*, 928 F.3d at 1035 n.‡ (noting that the analogous 26 U.S.C. § 7623(b)(4) does not use the word "if").[5]

That absence is notable because Congress has used conditional "if" language in other provisions that both confer jurisdiction on the Tax Court and provide filing deadlines. Just two years prior, Congress had

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[5] Whether conditional language would alone suffice to render a time limit jurisdictional is an open question that may well depend on context. *See Auburn Reg'l*, 568 U.S. at 155 (rejecting argument of *amicus* that time limit in conditional "if" clause is jurisdictional).

enacted a provision giving the 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*." 26 U.S.C. § 6404(g) (Supp. III 1998) (emphasis added) (currently codified at 26 U.S.C. § 6404(h)); *see* Taxpayer Bill of Rights 2, Pub. L. No. 104-168, § 302, 110 Stat. 1452, 1457 (1996). Indeed, in the *very same legislation* adopting Section 6330(d)(1), Congress used conditional language when describing the filing deadline for stand-alone taxpayer petitions seeking review of "innocent spouse" defenses. Pub. L. No. 105-206, § 3201, 112 Stat. at 738. As enacted, Section 6015(e)(1)(A) 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* [following a notice of determination]." 26 U.S.C. § 6015(e)(1)(A) (Supp. IV 1999) (emphasis added).

Outside the Tax Court context, Congress similarly has used expressly conditional language to confer jurisdictional status on certain preconditions to judicial review. The diversity jurisdiction statute, for example, provides that the "district court shall have original jurisdiction of all civil actions *where* the amount in controversy exceeds . . . $75,000." 28 U.S.C. § 1332(a) (emphasis added); *see Arbaugh*, 546 U.S. at 514-15. And a court of appeals does not have jurisdiction to rule on a habeas petition "[*u*]*nless* a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1) (emphasis added); *see Fort Bend*, 139 S. Ct. at 1849; *Gonzalez*, 565 U.S. at 143.

The availability (and use) of these alternative formulations—and the absence of any conditional language in Section 6330(d)(1)—is further evidence that Congress did not imbue the 30-day limitations period with jurisdictional significance. *See Henderson*, 562 U.S. at 438-39 (noting that Congress "could have cast" the provision at issue "in language like" another statutory deadline, which was more obviously jurisdictional); *Gomez-Perez v. Potter*, 553 U.S. 474, 487 (2008).

2. The Statutory History Strongly Reinforces The Plain Text

The statutory history strongly reinforces the plain reading of the operative text. As originally enacted, Section 6330(d)(1) provided for review of CDP determinations in both the Tax Court and the district courts, depending on the kind of tax at issue. *See supra* at 6-7. The original provision read:

> The person may, within 30 days of a determination under this section, appeal such determination—
>
> (A) to the Tax Court (and the Tax Court shall have jurisdiction to hear such matter); or
>
> (B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States.

26 U.S.C. § 6330(d)(1) (Supp. IV 1999). Significantly, Subparagraph (A) includes essentially the same "jurisdiction" parenthetical that exists today, but Subparagraph (B) does not.[6] This drafting choice is

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[6] In 2000, Congress made a nonsubstantive change from "jurisdiction to hear" to "jurisdiction with respect to." *See*

readily explained if the parenthetical is understood to simply grant the Tax Court jurisdiction over CDP petitions. It is inexplicable if the parenthetical also conditions the Tax Court's jurisdiction on the 30-day deadline.

Congress needed to confer jurisdiction on the Tax Court to adjudicate petitions seeking review of CDP determinations. *See* 26 U.S.C. § 7442. But there was no need to do the same for district courts. Congress had elsewhere specified that district courts have subject-matter jurisdiction over cases arising under federal statutes, 28 U.S.C. § 1331, and cases involving the federal tax laws specifically, *id.* § 1340. Including a grant of jurisdiction in Subparagraph (A) (*i.e.*, for the Tax Court) and not Subparagraph (B) (*i.e.*, for district courts) was a perfectly logical distinction.

But if the Subparagraph (A) parenthetical were read to *also* condition the Tax Court's jurisdiction on the 30-day deadline, that logical distinction falls apart. Under the Court's clear-statement rule, there could be no argument that the *district courts'* jurisdiction was conditioned on compliance with the 30-day time limit. And why would Congress have limited the Tax Court's jurisdiction to CDP petitions filed within 30 days, but not a district court's jurisdiction over the same kind of petition? No answer is apparent. The only plausible reading of the original enactment, then, is that the time limit was *not* jurisdictional.

Nothing has changed since 1998 to transform the nonjurisdictional filing deadline into a jurisdictional one. Congress amended the statute in 2006 to

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Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, App. G, § 313(d), 114 Stat. 2763, 2763A-643.

eliminate the district courts' jurisdiction, but it made no changes to the language in Subparagraph (A). *See* Pension Protection Act of 2006, Pub. L. No. 109-280, § 855(a), 120 Stat. 789, 1019; *see supra* n.6. That language means the same thing today as it did in 1998: the Tax Court has jurisdiction over petitions for review of CDP determinations, period.

3. The Purpose Of CDP Proceedings Supports A Nonjurisdictional Reading

Another "telling" indication that Congress did not intend to condition the Tax Court's jurisdiction on compliance with the limitations period is the purpose and "characteristics" of the review scheme at issue—here, a collection *due process* proceeding. *Henderson*, 562 U.S. at 440; *see Dolan v. United States*, 560 U.S. 605, 611 (2010).

As an initial matter, none of the congressional reports accompanying the 1998 Restructuring and Reform Act called the 30-day time limit jurisdictional, or even hinted as much. *See* S. Rep. No. 105-174, at 68-69 (1998); H.R. Rep. No. 105-599, at 264, 266 (1998) (Conf. Rep.). Nor did Congress ever describe the deadline as jurisdictional when amending Section 6330(d) in the ensuing years.[7] So even if legislative history could itself provide a clear statement, which is doubtful, it does not do so here. *Cf. Kwai Fun Wong*, 575 U.S. at 412.

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[7] *See* H.R. Rep. No. 106-1033, at 1024-25 (2000) (Conf. Rep.); S. Rep. No. 109-64, at 2-3 (2005); Staff of the Joint Comm. on Taxation, *Technical Explanation of H.R. 4*, at 201-02 (Aug. 3, 2006); S. Rep. No. 114-14, at 4-6 (2015); Staff of Joint Comm. on Taxation, *Technical Explanation of the Protecting Americans From Tax Hikes Act of 2015*, at 255-56 (Dec. 17, 2015), https://www.jct.gov/publications/2015/jcx-144-15/.

What the relevant history does reveal is a review scheme fundamentally at odds with a harsh jurisdictional rule. Section 6330 was part of landmark legislation that was "decidedly favorable to" taxpayers. *Henderson*, 562 U.S. at 441. The paramount purpose of the new collection due process regime was—as the title suggests—to give taxpayers facing collection actions more procedural rights. 26 U.S.C. § 6330; *see supra* at 4-5.

Section 6330 was at its essence "remedial" legislation. *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 398 (1982); *see Auburn Reg'l*, 568 U.S. at 159-60. And ensuring meaningful judicial review was a key part of the remedy provided. Because Congress wanted to stamp out "perceived abuses in the Government's exercise of its administrative collection powers," it was "not content in supplying an additional administrative hearing alone." Harold Dubroff & Brant J. Hellwig, *The United States Tax Court: An Historical Analysis* 488 (2d ed. 2014), https://www.ustaxcourt.gov/resources/book/Dubroff_Hellwig.pdf. Congress went further: it "subjected the administrative hearing to judicial review." *Id.*; *see* Michael I. Saltzman & Leslie Book, *IRS Practice & Procedure* ¶ 14B.16 (Oct. 2021, Westlaw) (enabling the taxpayer "to go to court" to challenge IRS collections "mark[ed] the true radical departure from [pre-Act] practice"). Indeed, the legislative hearings and debates emphasized the importance of external checks on the IRS's authority.[8] Imposing a rigid

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[8] *See*, *e.g.*, *IRS Practices and Procedures* at 46 (statement of Sen. William V. Roth) (agreeing with a witness's testimony about "the importance of protecting the taxpayer" and "having the right to be heard" before seizure); *IRS Oversight* at 211

jurisdictional deadline with no escape valve would "clash sharply" with this scheme. *Henderson*, 562 U.S. at 441.

That is all the more true because the CDP regime is one "in which laymen, unassisted by trained lawyers," often "initiate the process." *Zipes*, 455 U.S. at 397 (citation omitted). The majority of taxpayers who seek review of CDP determinations (61%) are representing themselves pro se. National Taxpayer Advocate, *Annual Report to Congress 2020*, at 188 (Dec. 31, 2020), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_FullReport.pdf. And the vast majority (90%) are individuals and not businesses. *Id.* As the IRS National Taxpayer Advocate has emphasized, "[u]nrepresented taxpayers may be less likely to anticipate the severe consequences of filing a Tax Court petition even one day late." National Taxpayer Advocate, *2021 Purple Book* 100-01 (Dec. 31, 2020), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_PurpleBook.pdf.

(statement of Sen. Phil Gramm) ("With the Internal Revenue Service, you have no external checks, and I think, basically, that is the problem."); *IRS Restructuring: Hearings on H.R. 2676 Before the S. Comm. on Finance*, 105th Cong. 4 (1998) (statement of Sen. William V. Roth) ("[R]eform must go beyond a few minor improvements of strengthening taxpayer protections to literally addressing the balance of power between the taxpayer and the agency."); 144 Cong. Rec. 14,695 (1998) (statement of Sen. Craig L. Thomas) (the "reform package" "puts the law on the side of the taxpayer" and "gives new powers to the taxpayers who petition the courts to contest decisions"); 144 Cong. Rec. 14,790 (1998) (statement of Sen. Pete Domenici) (the legislation imposes "a checks and balances system so that the IRS will no longer be the judge, jury, and executioner").

It is implausible that the same Congress that showed so much solicitude for taxpayers facing IRS levies would have eschewed an ordinary filing deadline in favor of a "rare" jurisdictional one, with all the "harsh consequences" that follow. *Kwai Fun Wong*, 575 U.S. at 409-10. Which further supports a nonjurisdictional reading.

C. There Is (At Least) No Clear Statement That Section 6330(d)(1) Is The Rare Jurisdictional Limitations Period

A plain reading of Section 6330(d)(1) shows that the 30-day deadline does not limit the Tax Court's subject-matter jurisdiction. But even if there were some doubt on that score, the Court's case law requires considerably more clarity than the text provides. The arguments the Commissioner has pressed to date fail on their own terms and, at least, fall far short of the requisite clear statement.

1. The Commissioner's Alternative Interpretation Is The Opposite Of Clear

a. The Commissioner's textual argument for why the 30-day time limit is jurisdictional rests on an alternative reading of "such matter." In his brief in opposition, the Commissioner took the position that the phrase "most naturally refers to both the 'determination under this section' of which a person seeks judicial review and the 'petition . . . for review of such determination' by which such review may be sought if filed 'within 30 days of [the] determination.'" BIO 10-11 (quoting 26 U.S.C. § 6330(d)(1)) (alterations in original).

There is nothing natural about that sentence. Many of the words do not appear in Section 6330(d)(1)—most noticeably, the conditional phrase

"if filed," as well as the connecting phrase "by which such review may be sought." And the repeated use of "determination" and "review" appears to make the second half of the sentence subsume the first. The Commissioner has pointed to no rule of grammar or syntax to support his construction.

The same goes for the Eighth Circuit. The majority believed "such matter" refers to "a petition to the tax court that: (1) arises from 'a determination under this section' and (2) was filed 'within 30 days' of that determination." Pet. App. 6a-7a. But like the Commissioner's, that reading takes a prepositional phrase ("within 30 days of a determination") that restricts a *different* verb ("may") attached to a *different* subject ("person")—and transforms it into a new phrase ("that . . . was filed 'within 30 days'"), modifying an entirely different noun ("petition"). "That maneuver has no grammatical basis" either. *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 138 S. Ct. 1061, 1077 (2018).

The crux of both interpretations is the notion that "such matter" must somehow, in some way, incorporate everything that came earlier in the sentence. But as explained above, that runs afoul of the last-antecedent rule and ignores the sentence structure. *See supra* at 19-20. According to the Commissioner and the Eighth Circuit, the reader should not only transform "petition" into a noun (an admitted feature of petitioner's interpretation too, *see supra* at n.4), but then continue to read on, past the comma, to incorporate a prepositional phrase that restricts the action of a different subject. There is no basis to perform such linguistic gymnastics. *See Fort Bend*, 139 S. Ct. at 1851 n.8 (refusing to read Title VII's charge-filing requirement as "textually linked"

to the statute's jurisdictional provision by way of a vague cross-reference).

b. This debate about the intended antecedent for "such matter," though, really just proves a more critical point: Section 6330(d)(1) does not have the clarity necessary to "rank" this limitations period as jurisdictional. *Auburn Reg'l*, 568 U.S. at 155.

Petitioner advances an alternative to the Commissioner's reading, which was adopted by the D.C. Circuit and is at the very least plausible. *See* Part I.B, *supra*; *Myers*, 928 F.3d at 1034-35. But there are other alternative readings too. "Such matter" instead could be referring back to the list of "[m]atters" that may be considered during the CDP hearing. *See* 26 U.S.C. § 6330(c) (titled "Matters considered at hearing"); Bryan T. Camp, *New Thinking About Jurisdictional Time Periods in the Tax Code*, 73 Tax L. 1, 38 (2019) (advancing this reading). Or "such matter" could just be another way of saying "such determination." *See Deal v. United States*, 508 U.S. 129, 134 (1993) (noting that "Congress sometimes uses slightly different language to convey the same message"); *cf. Pereira v. Sessions*, 138 S. Ct. 2105, 2118 (2018) (concluding that three different statutory phrases refer to the same thing). Indeed, one might reasonably argue that Congress's use of the phrase "such matter" without a corresponding use of "matter" earlier in the sentence itself creates ambiguity. *See* Garner, *supra*, at 873 (calling sentence "vague[]" if it uses "such [noun]" without using the same noun previously in the sentence, because then there is no "clear antecedent").

The entire point of this Court's recent jurisprudence is to have a "readily administrable bright line" so that courts and litigants "will not be

left to wrestle with the issue." *Arbaugh*, 546 U.S. at 515-16. That other sensible readings *exist* proves that Congress's intent to impose a jurisdictional time limit through the use of "such matter" is not clear. *Cf. Sossamon v. Texas*, 563 U.S. 277, 287 (2011) (applying clear-statement rule and holding that, if a statute has "multiple plausible interpretations," the Court will adopt the one that preserves immunity); *INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001) (applying clear-statement rule and holding that the language must be "so clear" as to "sustain only one interpretation" (citation omitted)).

c. Nor can contextual clues supply the needed clarity. The Commissioner has argued that Section 6330(e)(1) supports a jurisdictional reading of the limitations period in Section 6330(d)(1). BIO 11. It does not.

Section 6330(e)(1) provides that any levy actions (along with certain statutes of limitations) must be suspended during the pendency of the taxpayer's CDP hearing and any subsequent appeals. 26 U.S.C. § 6330(e)(1). And it creates an exception to the Anti-Injunction Act, granting a "proper court, including the Tax Court" authority to enjoin any levy or proceeding that goes forward in violation of that suspension. *Id.*; *see id.* § 7421(a). The paragraph then instructs: "The Tax Court shall have no jurisdiction under this paragraph 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." *Id.* § 6330(e)(1).

Section 6330(e)(1)'s statement about the Tax Court's jurisdiction "under this paragraph" plainly applies only to the Tax Court's authority *to issue*

injunctions, not to its authority to adjudicate petitions for review of CDP determinations. *See Reed Elsevier*, 559 U.S. at 164 (reasoning that a subsection's reference to the court's "jurisdiction" with respect to a specific "issue" was not probative of whether another requirement in the subsection was jurisdictional). If anything, Section 6330(e)(1) shows that "Congress would have spoken in clearer terms" if it intended Section 6330(d)(1) "to have similar jurisdictional force." *Gonzalez*, 565 U.S. at 143.

The Commissioner has nonetheless argued that it would be "incongruous" for Congress to make the Tax Court's jurisdiction to enjoin levy actions contingent on a "timely" petition, while not so limiting the court's jurisdiction to adjudicate the petition itself. BIO 11-12. But the word "timely" in Section 6330(e)(1) is best read to include a petition rendered timely *by operation of law* because the 30-day period has been equitably tolled. *See, e.g.*, *In re Milby*, 875 F.3d 1229, 1235 (9th Cir. 2017) (calling an action "timely" when equitable tolling applied). Any perceived "incongruity" is thus vastly overstated.

Even if the law were otherwise, the supposed incongruity would arise only when the taxpayer fails to file a Tax Court petition within 30 days, the IRS begins executing a levy on the taxpayer's property, the taxpayer files a petition while the levy action is ongoing, the Tax Court later determines that the late filing should be excused, *and* the IRS refuses to voluntarily stop the levy. The Commissioner concedes that the taxpayer could still seek recourse from a district court in that situation. BIO 12. He merely suggests it would be "peculiar" for Congress to require such a "dual-track mode of procedure." *Id.* at 12-13 (citation omitted). But given that this is a fairly

remote set of circumstances to begin with, the possibility of dual proceedings is not so "tellingly awkward" as to compel a jurisdictional reading of Section 6330(d)(1). *Hinck v. United States*, 550 U.S. 501, 509 (2007); *see id.* at 508-09 (rejecting argument that the possibility of claim-splitting precluded reading a statute to confer exclusive jurisdiction on the Tax Court). And certainly not under a clear-statement rule.

2. There Is No Longstanding Jurisdictional Interpretation To Fall Back On

This Court has on occasion deemed particular statutory time periods jurisdictional *not* because Congress clearly stated as much in the text, but because of their prior treatment by this Court. The Commissioner has previously relied on these decisions. BIO 13-14. They have no application here.

In *Bowles v. Russell*, this Court held that the statutory time limit on taking an appeal from one Article III court to another is jurisdictional based on the Court's "longstanding treatment" of such time limits. 551 U.S. 205, 209-11 (2007); *see Reed Elsevier*, 559 U.S. at 168 (explaining that "[t]he statutory limitation in *Bowles* was of a type that we had long held *did* 'speak in jurisdictional terms' even absent a 'jurisdictional' label" (citation omitted)). And in *John R. Sand & Gravel Co. v. United States*, this Court adhered to its prior "definitive interpretation" of the Tucker Act's limitations period, which the Court had held to be jurisdictional in decisions dating back to the nineteenth century. 552 U.S. 130, 135-37 (2008).

The Court has sometimes described these cases as standing "for the proposition that context, including this Court's interpretation of similar provisions in

many years past, is relevant" to discerning congressional intent. *Reed Elsevier*, 559 U.S. at 168; *see Auburn Reg'l*, 568 U.S. at 153-54. Other times the Court has explained them as a kind of stare decisis exception to the clear-statement rule. *See Kwai Fun Wong*, 575 U.S. at 416 (explaining that the result in *John R. Sand* "came down to two words: *stare decisis*"). Either way, the takeaway is clear: to escape the clear-statement rule, there must at least be an on-point holding by this Court. *See Fort Bend*, 139 S. Ct. at 1849 (The Court "treat[s] a requirement as 'jurisdictional' when a long line of [Supreme] Cour[t] decisions left undisturbed by Congress attached a jurisdictional label to the prescription." (alterations in original) (internal quotation marks omitted)); *Reed Elsevier*, 559 U.S. at 167-68; *id.* at 173 (Ginsburg, J., concurring in part and concurring in the judgment).

Take this Court's decision in *Kwai Fun Wong*. There, the government argued that the Court had repeatedly held the Tucker Act's time bar to be jurisdictional (*see John R. Sand*); that Congress had thereafter adopted identical language for the time bar in the Federal Tort Claims Act; and that Congress would have wanted the two statutes to operate the same way. *See Kwai Fun Wong*, 575 U.S. at 412-13. The Court disagreed, and held that this historical context could not supply "the needed clear statement" the text lacked. *Id.* at 416-17.

So too here—and then some. Not only is there no "long line of [this Court's] decisions left undisturbed by Congress" on which to rely. *Fort Bend*, 139 S. Ct. at 1849. There is not even a single decision. This Court has never treated Section 6330(d)(1)'s time limit as jurisdictional. The Court has never treated an analogous time limit with identical language as

jurisdictional. Nor has it consistently treated any time limit of the same type to be jurisdictional.[9] Historical context thus offers the Commissioner no refuge from the clear-statement rule.

* * *

In the end, "[n]either the text nor the context nor the legislative history indicates (much less does so plainly) that Congress meant to enact something other than a standard time bar." *Kwai Fun Wong*, 575 U.S. at 410. Under this Court's bright line, Section 6330(d)(1) imposes a nonjurisdictional claim-processing rule.

II. THE LIMITATIONS PERIOD IN SECTION 6330(d)(1) IS SUBJECT TO EQUITABLE TOLLING

A. Limitations Periods Are Presumptively Subject To Equitable Tolling

Statutory time limits are presumptively subject to equitable tolling. *See Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95-96 (1990). This is true whether the suit is against a private party or the federal government—even when it implicates the government's sovereign immunity. *Id.*; *see Kwai Fun*

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[9] This case does not involve "the timebound transfer of adjudicatory authority from one Article III court to another." *Hamer*, 138 S. Ct. at 20 & n.9; *see Fort Bend*, 139 S. Ct. at 1850 n.6; *Henderson*, 562 U.S. at 436. And this Court has made clear that judicial review of an administrative decision by an Article I court is different in kind. *See Henderson*, 562 U.S. at 436-38; *cf. Gonzalez*, 565 U.S. at 159 (Scalia, J., dissenting) ("[W]e have said that a requirement prescribed as a condition to obtaining judicial review of agency action is quite different (nonjurisdictional) from a requirement prescribed as a condition to appeal from one court to another (jurisdictional).").

Wong, 575 U.S. at 407 ("[*Irwin*] sets out the framework for deciding the applicability of equitable tolling in suits against the Government." (internal quotation marks omitted)). The same "general rule" in favor of tolling applies because it is "likely to be a realistic assessment of legislative intent" and because it produces consistency and predictability. *Irwin*, 498 U.S. at 95; *see Kwai Fun Wong*, 575 U.S. at 408. Put simply, the *Irwin* presumption is "hornbook law." *Young v. United States*, 535 U.S. 43, 49 (2002); *see Kwai Fun Wong*, 575 U.S. at 407-08; *Holland v. Florida*, 560 U.S. 631, 645-46 (2010); BIO 14-15.

This presumption is "reinforced" when (as here) the time limit was adopted after *Irwin*. *Holland*, 560 U.S. at 646. In those instances, Congress "was likely aware that courts" would interpret the relevant "timing provision" to "apply the presumption." *Id.*; *see Young*, 535 U.S. at 49-50; *Minerva Surgical, Inc. v. Hologic, Inc.*, 141 S. Ct. 2298, 2319 (2021) (Barrett, J., dissenting) ("[A] federal statute of limitations ordinarily is subject to equitable tolling even when the text is silent because 'Congress must be presumed to draft limitations periods in light of this background principle.'" (quoting *Young*, 535 U.S. at 49-50)).

"Congress, of course, may provide otherwise if it wishes to do so." *Irwin*, 498 U.S. at 96. One way is to make a statute of limitations jurisdictional. *Kwai Fun Wong*, 575 U.S. at 420. But that "requires its own plain statement," *id.*, which cannot be found here for the reasons set forth above. *See* Part I, *supra*. And although the presumption can be overcome in other ways, there is nothing unique about Section 6330(d)(1)'s limitations period that clearly evidences Congress's intent to preclude equitable exceptions.

B. Nothing Rebuts The *Irwin* Presumption

1. The Text Of Section 6330(d)(1) Does Not Preclude Equitable Tolling

Nothing in the text of Section 6330(d)(1) precludes equitable tolling. There is no express prohibition. Nor is the 30-day limitations period written in "'emphatic form.'" *Kontrick*, 540 U.S. at 458 (quoting *Kontrick* Brief for the United States as Amicus Curiae 16 (July 17, 2003)). Section 6330(d)(1) simply provides that a person "may" petition the Tax Court for review "within 30 days of a determination under this section." 26 U.S.C. § 6330(d)(1). It is directed at the taxpayer, not the court. *Cf. Kwai Fun Wong*, 575 U.S. at 429 (Alito, J., dissenting). And the time period is quite short: 30 days. *See Holland*, 560 U.S. at 647 (describing one-year limitations period as "not particularly long").

In each of these respects, Section 6330(d)(1) is remarkably similar to the statutory time limit at issue in *Irwin*—which this Court had deemed subject to equitable tolling eight years prior. *See* 498 U.S. at 94-95 ("'Within *thirty days* of receipt of notice of final action . . . *an employee or applicant* for employment . . . *may* file a civil action . . . .'" (emphases added) (quoting 42 U.S.C. § 2000e-16(c))); *cf. Kwai Fun Wong*, 575 U.S. at 428-29 (Alito, J., dissenting) (emphasizing that "*forever* barred" language is "no weak-kneed command," and describing *Irwin* language as a considerably "weaker command"). So even if the *Irwin* presumption could be overcome by particularly forceful language, no such argument could prevail here.

2. The Nature Of The Collection Due Process Regime Supports Equitable Tolling

"[E]quity . . . finds a comfortable home" in the CDP regime. *Holland*, 560 U.S. at 647. Section 6330 is a remedial statute with the core objective of enhancing the rights (including procedural rights) of taxpayers facing IRS collection actions. *See supra* at 25-27; *see* S. Rep. No. 105-174, at 67 (the CDP regime was intended to "increase fairness to taxpayers" through "formal procedures"). It is designed to be "protective" of taxpayers who might otherwise lose their wages, their car, or their business to pay a tax debt. *Auburn Reg'l*, 568 U.S. at 160. And it is a proceeding "in which laymen, unassisted by trained lawyers," often 'initiate the process.'" *Auburn Reg'l*, 568 U.S. at 160 (quoting *Zipes*, 455 U.S. at 397); *see id.* (contrasting Medicare payment-review system that applies to "'sophisticated' institutional providers" who are "repeat players" with counsel (citation omitted)); *see supra* at 27.

The CDP proceedings themselves also involve inherently equitable determinations. Although the taxpayer can sometimes challenge the underlying tax liability in a CDP hearing, Congress's key innovation was to provide taxpayers with a mechanism to challenge the "appropriateness" of the IRS's chosen collection action. 26 U.S.C. § 6330(c)(2); *see* S. Rep. No. 105-174, at 67-68. The taxpayer can argue for alternatives to levy, including deferrals of collection due to hardship, substitution of other assets, an installment plan, or offers-in-compromise. *See* 26 U.S.C. § 6330(c)(2); Leslie Book, *A Response to Professor Camp: The Importance of Oversight*, 84 Ind. L.J. Supp. 63, 69 (2009) (noting that determinations

regarding collection alternatives "raise individual particularized taxpayer interests"). With respect to offers-in-compromise specifically, Congress expected that the IRS would take into account "factors such as equity, hardship and public policy." H.R. Rep. No. 105-599, at 289 (Conf. Rep.); *see* 26 C.F.R. § 301.7122-1(b) (implementing this guidance).

And Congress required the IRS Independent Office of Appeals to determine "whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary." 26 U.S.C. § 6330(c)(3)(C). This "subjective balancing test"—which "necessitates consideration of the effect of collection on the taxpayer"—is itself a case-specific, equitable determination. Dubroff & Hellwig, *supra*, at 487.

These equitable determinations are then reviewable on appeal in the Tax Court. *See Sego v. Commissioner*, 114 T.C. 604, 608-10 (2000); Saltzman & Book, *supra*, ¶ 14B.16[5], [6]. Upon the filing of a petition for review, the Tax Court determines whether the taxpayer is entitled to any relief from the IRS's proposed collection. *See Lundsford v. Commissioner*, 117 T.C. 183, 185 (2001). The Tax Court can remand the case for the IRS to consider a collection alternative, or even order that it accept the alternative. Saltzman & Book, *supra*, ¶ 14B.16[9]. And the Tax Court can instruct the IRS to take particular considerations or circumstances into account. *Id.*; *see, e.g.*, *Bogart v. Commissioner*, T.C. Memo. 2014-46, 2014 WL 1041443, at *1 (Mar. 18, 2014) (remanding where IRS did not "adequately consider" an offer-in-compromise on "public policy and equity grounds").

In short, "all that is special" about the CDP regime "cuts *in favor of* allowing equitable tolling." *Kwai Fun Wong*, 575 U.S. at 419.

3. This Court's Cases Rejecting Equitable Tolling Are Readily Distinguishable

Since *Irwin*, this Court has only rarely found the presumption in favor of equitable tolling to be overcome. The limitations periods at issue in those cases are fundamentally different than Section 6330(d)(1), and those critical distinctions support the availability of tolling here.

a. In *United States v. Brockamp*, this Court held that the two- and three-year limitations periods in 26 U.S.C. § 6511 for a taxpayer to file an administrative claim for a tax refund with the IRS are not subject to equitable tolling. 519 U.S. 347, 349 (1997). The Court provided a long list of "strong reasons" why Congress did not intend to permit equitable exceptions to those deadlines. *Id.* at 350-53; *see Holland*, 560 U.S. at 646-47 (listing five features in *Brockamp*). Beyond the superficial fact that Section 6330 is also part of the Internal Revenue Code, none applies to the 30-day deadline for judicial review in Section 6330(d)(1).

Section 6511 set forth its time deadlines "in unusually emphatic form." *Brockamp*, 519 U.S. at 350. Congress "reiterate[d]" those time limitations several times in several different ways"—five total, to be exact. *Id.* at 351; *see* 26 U.S.C. §§ 6511(a), (b)(1), (b)(2)(A)-(B), 6514. Each time, Congress used the word "shall." 26 U.S.C. §§ 6511(a), (b)(1), (b)(2)(A)-(B), 6514. And Section 6511 set forth numerous explicit exceptions to those time periods. *Brockamp*, 519 U.S. at 351; *see* 26 U.S.C. § 6511(d)(1)-(8). Reading an implicit equitable exception into those

provisions, the Court explained, "would work a kind of linguistic havoc." *Brockamp*, 519 U.S. at 352.

The limitations periods in Section 6511 were unusual in another respect too: they imposed "substantive limitations on the amount of recovery." *Id.* Specifically, the amount of the tax refund available was keyed to the timing of the claim. *Id.* at 351. And the Court could find "no direct precedent" for this "kind of tolling." *Id.* at 352.

So it was "Section 6511's detail, its technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of exceptions, *taken together*," that led this Court to conclude that Congress did not intend any equitable exceptions. *Id.* (emphasis added). The "underlying subject matter—tax collection" only served to "underscore[] the linguistic point." *Id.* The Court observed, for example, that the IRS processes hundreds of millions of tax returns per year and issues refunds in nearly one-hundred million cases. *Id.* If equitable tolling were available in these *administrative* refund actions, the Court reasoned, the IRS could face a staggering number of cases where the taxpayer brought an untimely claim and argued tolling. *Id.* The "nature and potential magnitude" of that "administrative problem," the Court explained, counseled in favor of hewing closely to the statutory text. *Id.* at 352-53.

The 30-day judicial review filing deadline in Section 6330 is worlds apart from the administrative tax-refund deadlines in Section 6511 in every relevant respect. The limitations period in Section 6330(d)(1) is not unusually emphatic or repetitive. This is a deadline to petition a court, not an administrative agency. And in Section 6330(d)(1), Congress used

"simple" language of the kind that *Brockamp* itself characterized as being "plausibly read as containing an 'equitable tolling' exception." *Id.* at 350 (pointing to 42 U.S.C. § 2000e-16(c) as an example).

Section 6330 also does not have eight "explicit" and "very specific" statutory exceptions. *Brockamp*, 519 U.S. at 352. It has *one*—added in 2015—that applies when the taxpayer is prohibited from filing a Tax Court petition by reason of a bankruptcy proceeding. 26 U.S.C. § 6330(d)(2); Protecting Americans From Tax Hikes Act of 2015, Pub. L. No. 114-113, Div. Q, § 424(b)(1)(D), 129 Stat. 2244, 3124. This is not akin to the carefully reticulated scheme that implicitly weighed against equitable tolling in *Brockamp*. If anything, the presence of the bankruptcy exception indicates that Congress did not consider Section 6330(d)(1) to be a hard-and-fast deadline categorically unsuited to exceptions. *See Young*, 535 U.S. at 53; *Bowen v. City of New York*, 476 U.S. 467, 480 (1986); *cf. Holland*, 560 U.S. at 647-48 (finding equitable tolling despite presence of express exception to deadline).

Nor does the 30-day deadline impose any "substantive limitations on the amount of recovery." *Brockamp*, 519 U.S. at 352. Under Tax Court precedent, a taxpayer appealing a CDP determination cannot recover funds from the government. *See McLane v. Commissioner*, T.C. Memo. 2018-149, 2018 WL 4350097, at *5, *13 (Sept. 11, 2018), *appeal pending*, No. 20-1074 (4th Cir. docketed Jan. 23, 2020). And Section 6330 does not condition the

ultimate non-monetary relief a taxpayer can receive on compliance with the deadline, either.[10]

The point of overlap, of course, is the fact that both provisions implicate tax collection. But there is no "tax collection exception" to *Irwin*'s general rule. *See Volpicelli v. United States*, 777 F.3d 1042, 1046 (9th Cir. 2015) (holding that statutory deadline to file wrongful levy action against government in 26 U.S.C. § 6532(c) is subject to equitable tolling, notwithstanding *Brockamp*); *cf. Mayo Found. for Med. Educ. & Research v. United States*, 562 U.S. 44, 55 (2011) (refusing to "carve out an approach to administrative review good for tax law only"). And here there is no "linguistic point" for the tax-collection subject matter to "underscore[]." *Brockamp*, 519 U.S. at 352; *see also* Part II.B.4, *infra* (explaining why perceived administrative difficulties do not counsel against the availability of tolling).

b. The Court's decision in *United States v. Beggerly*, 524 U.S. 38 (1998), is even further afield. The Court there found the *Irwin* presumption overcome when the statute of limitations was an "'unusually generous'" 12 years, and the "underlying claim 'deal[t] with ownership of land,'" where the need for certainty was at its apex. *Holland*, 560 U.S. at 647-48 (alteration in original) (quoting *Beggerly*, 524 U.S. at 48-49). Neither describes Section 6330(d)(1)'s 30-day period to seek review of a CDP determination.

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[10] As explained above, while Section 6330(e)(1) does require a "timely appeal" before the Tax Court may enjoin a wrongly commenced levy action, "timely" can mean timely by way of tolling, *see supra* at 32—and, regardless, any injunctive relief would be separate from the Tax Court's remedial authority with respect to the petition itself.

c. Which leaves this Court's decision in *Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710 (2019), about the time limit for filing an interlocutory appeal from a class-certification decision under Federal Rule of Civil Procedure 23(f). There, the Court explained that Rule 23(f)'s filing deadline does not just stand on its own. It is reaffirmed in Federal Rule of Appellate Procedure 5(a)(2), which instructs that petitions for interlocutory review "must be filed within the time specified by . . . rule." *See Nutraceutical*, 139 S. Ct. at 715. And the Federal Rules of Appellate Procedure "single out Civil Rule 23(f) for inflexible treatment" in other ways, too. *Id.* They generally allow courts to suspend the rules for "good cause" and to extend time limits—*except* when it comes to petitions for leave to appeal. *Id.* (quoting Fed. R. App. P. 2, 26(b)(1)). That "clear intent to compel rigorous enforcement" even when good cause might otherwise exist was enough to "overcome" any "background preference for flexibility." *Id.* at 715, 716 n.5 (citing *Young*, 535 U.S. at 49). That "interlocutory appeal is an exception to the general rule that appellate review must await final judgment" only further reinforced that intent. *Id.* at 716.

The contextual factors that drove the outcome in *Nutraceutical* are absent here. Section 6330(d)(1)'s deadline is not reinforced elsewhere in the Internal Revenue Code. And no other provision singles out the 30-day time limit for inflexible treatment. The text, context, and remedial scheme at issue make this case far more like *Bowen*, *Irwin*, *Young*, and *Holland*, where this Court held that the presumption had not been rebutted and that the limitations periods were subject to equitable tolling.

4. Any Administrability Concerns Are Misplaced And Overstated

Concerns about administrability, standing alone, cannot overcome the *Irwin* presumption. The Commissioner has nevertheless argued that allowing equitable tolling might delay tax collection, and deprive the IRS of a "clear end date" for when the suspension period is lifted and it can begin levying the taxpayer's property. BIO 27. These concerns are overblown—and do not provide an "affirmative indication" that Congress precluded tolling. *Kwai Fun Wong*, 575 U.S. at 420.

To start, the potential administrative burdens the Commissioner alludes to are not remotely comparable to those raised in *Brockamp*. Unlike a refund claim, a taxpayer's success on a CDP petition does not take money out of the government's coffers. *See supra* at 42; *Brockamp*, 519 U.S. at 353 (referring to congressional objective of avoiding "stale demands" against the government). And while CDP proceedings are undoubtedly important to many taxpayers, the number of CDP hearings and subsequent Tax Court petitions are a tiny fraction of the number of tax returns and refund claims filed with the IRS each year.[11]

The Commissioner's argument that the mere possibility of tolling could create undue delay and uncertainty is no more convincing. BIO 27. As noted, Section 6330(d)(2) already tolls the limitations period when the taxpayer is in bankruptcy proceedings and

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[11] In 2020, there were about 28,000 requests for CDP hearings and about 1,200 CDP petitions to the Tax Court. *See Annual Report to Congress 2020*, at 185.

for 30 days thereafter. 26 U.S.C. § 6330(d)(2). The Internal Revenue Code sets forth other exceptions to statutory limitations periods, which the Commissioner has chosen to extend to Section 6330(d)(1) by regulation. *See id.* § 7508(a), (c) (exceptions for taxpayers who are members of the armed forces serving or injured in a combat zone or contingency operation, or their spouses); *id.* § 7508A(a), (d) (exceptions for taxpayers affected by a federally declared disaster, terrorism, or military action or who are providing disaster relief); 26 C.F.R. §§ 301.7508-1, 301.7508A-1(c)(iv); Rev. Proc. 2018-58 §§ 1.01-1.03, 4.02-4.03, 14.3, 2018 WL 6113260. And a petition is considered timely filed if postmarked by the filing deadline, even if it is delayed in transit and arrives late. 26 U.S.C. § 7502.

In all of these situations, a taxpayer would be eligible to seek relief from an IRS collection action after the 30-day period has expired—sometimes well after. Those exceptions and other means of calculating time (some of which the IRS has voluntarily put in place) create the same possibility of delay and uncertainty that the IRS warns about here. The mere availability of equitable tolling in compelling cases would not be a sea change.

The idea that equitable tolling would plague the CDP regime with administrative difficulties is also undercut by the views of another IRS official. Beginning in 2017, the National Taxpayer Advocate—an official within the IRS with expertise in tax law and procedure, *see* 26 U.S.C. § 7803(c)—has consistently recommended that Congress amend the Internal Revenue Code to expressly clarify that Tax Court deadlines, including the CDP appeal deadline,

are subject to equitable tolling.[12] The National Taxpayer Advocate's judgment further weakens any claim that making tolling available in CDP appeals would result in significant disruption to tax administration.

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[12] *See 2021 Purple Book*, *supra,* at 100-02; National Taxpayer Advocate, *2020 Purple Book* 85-87 (Dec. 31, 2019), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19_PurpleBook.pdf; National Taxpayer Advocate, *2019 Purple Book* 88-90 (Dec. 31, 2018), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_PurpleBook.pdf; National Taxpayer Advocate, *Annual Report to Congress 2017*, at 283-84, 286-87, 290-92 (Dec. 31, 2017), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1.pdf. These recommendations are pursuant to the National Taxpayer Advocate's obligation to identify "such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers." 26 U.S.C. § 7803(c)(2)(B)(ii)(IX).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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ADDENDUM

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26 U.S.C. § 6015 (Supp. IV 1999)

§ 6015. Relief from joint and several liability on joint return

* * *

(e) Petition for review by Tax Court

(1) In general

In the case of an individual who elects to have subsection (b) or (c) apply—

(A) In general

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. Notwithstanding the preceding sentence, an individual may file such petition at any time after the date which is 6 months after the date such election is filed with the Secretary and before the close of such 90-day period.

(B) Restrictions applicable to collection of assessment

(i) In general

Except as otherwise provided in section 6851 or 6861, no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subsection (b) or (c) for collection of any assessment to which such election relates until the expiration

of the 90-day period described in subparagraph (A), or, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Rules similar to the rules of section 7485 shall apply with respect to the collection of such assessment.

(ii) Authority to enjoin collection actions

Notwithstanding the provisions of section 7421(a), the beginning of such levy or proceeding during the time the prohibition under clause (i) is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this subparagraph to enjoin any action or proceeding unless a timely petition has been filed under subparagraph (A) and then only in respect of the amount of the assessment to which the election under subsection (b) or (c) relates.

* * *

26 U.S.C. § 6320 (2018)

§ 6320. Notice and opportunity for hearing upon filing of notice of lien

(a) Requirement of notice

(1) In general

The Secretary shall notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323.

(2) Time and method for notice

The notice required under paragraph (1) shall be—

(A) given in person;

(B) left at the dwelling or usual place of business of such person; or

(C) sent by certified or registered mail to such person's last known address,

not more than 5 business days after the day of the filing of the notice of lien.

(3) Information included with notice

The notice required under paragraph (1) shall include in simple and nontechnical terms—

(A) the amount of unpaid tax;

(B) the right of the person to request a hearing during the 30-day period beginning on the day after the 5-day period described in paragraph (2);

(C) the administrative appeals available to the taxpayer with respect to such lien and the procedures relating to such appeals;

(D) the provisions of this title and procedures relating to the release of liens on property; and

(E) the provisions of section 7345 relating to the certification of seriously delinquent tax debts and the denial, revocation, or limitation of passports of individuals with such debts pursuant to section 32101 of the FAST Act.

(b) Right to fair hearing

(1) In general

If the person requests a hearing in writing under subsection (a)(3)(B) and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Office of Appeals.

(2) One hearing per period

A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

(3) Impartial officer

The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6330. A taxpayer may waive the requirement of this paragraph.

(4) Coordination with section 6330

To the extent practicable, a hearing under this section shall be held in conjunction with a hearing under section 6330.

(c) Conduct of hearing; review; suspensions

For purposes of this section, subsections (c), (d) (other than paragraph (3)(B) thereof), (e), and (g) of section 6330 shall apply.

26 U.S.C. § 6321 (2018)

§ 6321. Lien for taxes

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

26 U.S.C. § 6330 (2018)

§ 6330. Notice and opportunity for hearing before levy

(a) Requirement of notice before levy

(1) In general

No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

(2) Time and method for notice

The notice required under paragraph (1) shall be—

(A) given in person;

(B) left at the dwelling or usual place of business of such person; or

(C) sent by certified or registered mail, return receipt requested, to such person's last known address;

not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

(3) Information included with notice

The notice required under paragraph (1) shall include in simple and nontechnical terms—

(A) the amount of unpaid tax;

(B) the right of the person to request a hearing during the 30-day period under paragraph (2); and

(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

(i) the provisions of this title relating to levy and sale of property;

(ii) the procedures applicable to the levy and sale of property under this title;

(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;

(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159); and

(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

(b) Right to fair hearing

(1) In general

If the person requests a hearing in writing under subsection (a)(3)(B) and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Office of Appeals.

(2) One hearing per period

A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

(3) Impartial officer

The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.

(c) Matters considered at hearing

In the case of any hearing conducted under this section—

(1) Requirement of investigation

The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

(2) Issues at hearing

(A) In general

The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—

(i) appropriate spousal defenses;

(ii) challenges to the appropriateness of collection actions; and

(iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

(B) Underlying liability

The person may also raise at the hearing challenges to the existence or amount of the

underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

(3) Basis for the determination

The determination by an appeals officer under this subsection shall take into consideration—

(A) the verification presented under paragraph (1);

(B) the issues raised under paragraph (2); and

(C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

(4) Certain issues precluded

An issue may not be raised at the hearing if—

(A)(i) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and

(ii) the person seeking to raise the issue participated meaningfully in such hearing or proceeding;

(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A); or

(C) a final determination has been made with respect to such issue in a proceeding brought under subchapter C of chapter 63.

This paragraph shall not apply to any issue with respect to which subsection (d)(3)(B) applies.

(d) Proceeding after hearing

(1) Petition for review by Tax Court

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).

(2) Suspension of running of period for filing petition in title 11 cases

In the case of a person who is prohibited by reason of a case under title 11, United States Code, from filing a petition under paragraph (1) with respect to a determination under this section, the running of the period prescribed by such subsection for filing such a petition with respect to such determination shall be suspended for the period during which the person is so prohibited from filing such a petition, and for 30 days thereafter.

(3) Jurisdiction retained at IRS Office of Appeals

The Internal Revenue Service Office of Appeals shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—

(A) collection actions taken or proposed with respect to such determination; and

(B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

(e) Suspension of collections and statute of limitations

(1) In general

Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph 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.

(2) Levy upon appeal

Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.

(f) Exceptions

If—

(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy,

(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund,

(3) the Secretary has served a disqualified employment tax levy, or

(4) the Secretary has served a Federal contractor levy,

this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

(g) Frivolous requests for hearing, etc.

Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.

(h) Definitions related to exceptions

For purposes of subsection (f)—

(1) Disqualified employment tax levy

A disqualified employment tax levy is any levy in connection with the collection of employment taxes for any taxable period if the person subject to the levy (or any predecessor thereof) requested a

hearing under this section with respect to unpaid employment taxes arising in the most recent 2-year period before the beginning of the taxable period with respect to which the levy is served. For purposes of the preceding sentence, the term "employment taxes" means any taxes under chapter 21, 22, 23, or 24.

(2) Federal contractor levy

A Federal contractor levy is any levy if the person whose property is subject to the levy (or any predecessor thereof) is a Federal contractor.

26 U.S.C. § 6330 (Supp. IV 1999)

§ 6330. Notice and opportunity for hearing before levy

* * *

(d) Proceeding after hearing

(1) Judicial review of determination

The person may, within 30 days of a determination under this section, appeal such determination—

(A) to the Tax Court (and the Tax Court shall have jurisdiction to hear such matter); or

(B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States.

If a court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court.

* * *

26 U.S.C. § 6331 (2018)

§ 6331. Levy and distraint

(a) Authority of Secretary

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) Seizure and sale of property

The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights

to property (whether real or personal, tangible or intangible).

(c) Successive seizures

Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

* * *

26 U.S.C. § 6404 (Supp. III 1997)

§ 6404. Abatements

* * *

(g) Review of denial of request for abatement of interest

(1) In general

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.

(2) Special Rules

(A) Date of mailing

Rules similar to the rules of section 6213 shall apply for purposes of determining the date of the mailing referred to in paragraph (1).

(B) Relief

Rules similar to the rules of section 6512(b) shall apply for purposes of this subsection.

(C) Review

An order of the Tax Court under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

26 U.S.C. § 6511 (2018)

§ 6511. Limitations on credit or refund

(a) Period of limitation on filing claim

Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall 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, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

(b) Limitation on allowance of credits and refunds

(1) Filing of claim within prescribed period

No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2) Limit on amount of credit or refund

(A) Limit where claim filed within 3-year period

If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension

of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(B) Limit where claim not filed within 3-year period

If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

(C) Limit if no claim filed

If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed.

(c) Special rules applicable in case of extension of time by agreement

If an agreement under the provisions of section 6501(c)(4) extending the period for assessment of a tax imposed by this title is made within the period prescribed in subsection (a) for the filing of a claim for credit or refund—

(1) Time for filing claim

The period for filing claim for credit or refund or for making credit or refund if no claim is filed, provided in subsections (a) and (b)(1), shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under section 6501(c)(4).

(2) Limit on amount

If a claim is filed, or a credit or refund is allowed when no claim was filed, after the execution of the agreement and within 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (b)(2) if a claim had been filed on the date the agreement was executed.

(3) Claims not subject to special rule

This subsection shall not apply in the case of a claim filed, or credit or refund allowed if no claim is filed, either—

(A) prior to the execution of the agreement or

(B) more than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(d) Special rules applicable to income taxes

(1) Seven-year period of limitation with respect to bad debts and worthless securities

If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

(A) The deductibility by the taxpayer, under section 166 or section 832(c), of a debt as a debt which became worthless, or, under section 165(g), of a loss from worthlessness of a security, or

(B) The effect that the deductibility of a debt or loss described in subparagraph (A) has on the application to the taxpayer of a carryover,

in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 7 years from the date prescribed by law for filing the return for the year with respect to which the claim is made. If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of such a debt or loss has on the application to the taxpayer of a carryback, the period shall be either 7 years from the date prescribed by law for filing the return for the year of the net operating loss which results in such carryback or the period prescribed in paragraph (2) of this subsection, whichever expires the later. In the case of a claim described in this paragraph the amount of the credit or refund may exceed the portion of the tax paid within the period prescribed in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in this paragraph.

(2) Special period of limitation with respect to net operating loss or capital loss carrybacks

(A) Period of limitation

If the claim for credit or refund relates to an overpayment attributable to a net operating loss

carryback or a capital loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the net operating loss or net capital loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) Applicable rules

(i) In general

If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback or a capital loss carryback is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph.

(ii) Tentative carryback adjustments

If the allowance of an application, credit, or refund of a decrease in tax determined under section 6411(b) is otherwise prevented by the operation of any law or rule of law other than section 7122, such application, credit, or refund may be allowed or made if application for a

tentative carryback adjustment is made within the period provided in section 6411(a).

(iii) Determinations by courts to be conclusive

In the case of any such claim for credit or refund or any such application for a tentative carryback adjustment, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to—

(I) the net operating loss deduction and the effect of such deduction, and

(II) the determination of a short-term capital loss and the effect of such short-term capital loss, to the extent that such deduction or short-term capital loss is affected by a carryback which was not an issue in such proceeding.

(3) Special rules relating to foreign tax credit

(A) Special period of limitation with respect to foreign taxes paid or accrued

If the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country or to any possession of the United States for which credit is allowed against the tax imposed by subtitle A in accordance with the provisions of section 901 or the provisions of any treaty to which the United States is a party, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 10 years from the date prescribed by law

for filing the return for the year in which such taxes were actually paid or accrued.

(B) Exception in the case of foreign taxes paid or accrued

In the case of a claim described in subparagraph (A), the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the allowance of a credit for the taxes described in subparagraph (A).

(4) Special period of limitation with respect to certain credit carrybacks

(A) Period of limitation

If the claim for credit or refund relates to an overpayment attributable to a credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the unused credit which results in such carryback (or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, the period shall be that period which ends 3 years after the time prescribed by law for filing the return, including extensions thereof, for such subsequent taxable year) or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or

refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) Applicable rules

If the allowance of a credit or refund of an overpayment of tax attributable to a credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to any credit, and the effect of such credit, to the extent that such credit is affected by a credit carryback which was not in issue in such proceeding.

(C) Credit carryback defined

For purposes of this paragraph, the term "credit carryback" means any business carryback under section 39.

(5) Special period of limitation with respect to self-employment tax in certain cases

If the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to an agreement, or modification of an agreement, made pursuant to section 218 of the Social Security Act (relating to coverage of State

and local employees), and if the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made if claim therefor is filed on or before the last day of the second year after the calendar year in which such agreement (or modification) is agreed to by the State and the Commissioner of Social Security.

(6) Special period of limitation with respect to amounts included in income subsequently recaptured under qualified plan termination

If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 4045 of the Employee Retirement Income Security Act of 1974, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund of the amount of the recapture, until the date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.

(7) Special period of limitation with respect to self-employment tax in certain cases

If—

(A) the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to Tax Court determination in a proceeding under section 7436, and

(B) the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises),

such credit or refund may be allowed or made if claim therefor is filed on or before the last day of the second year after the calendar year in which such determination becomes final.

(8) Special rules when uniformed services retired pay is reduced as a result of award of disability compensation

(A) Period of limitation on filing claim

If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

(i) the reduction of uniformed services retired pay computed under section 1406 or 1407 of title 10, United States Code, or

(ii) the waiver of such pay under section 5305 of title 38 of such Code,

as a result of an award of compensation under title 38 of such Code pursuant to a determination by the Secretary of Veterans Affairs, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund based upon the amount of such reduction or waiver, until the end of the 1-year period beginning on the date of such determination.

(B) Limitation to 5 taxable years

Subparagraph (A) shall not apply with respect to any taxable year which began more than 5 years before the date of such determination.

[(e) Repealed. Pub. L. 101–508, title XI, § 11801(c)(22)(C), Nov. 5, 1990, 104 Stat. 1388–528]

(f) Special rule for chapter 42 and similar taxes

For purposes of any tax imposed by section 4912, chapter 42, or section 4975, the return referred to in subsection (a) shall be the return specified in section 6501(*l*)(1).

[(g) Repealed. Pub. L. 114–74, title XI, §1101(f)(6), Nov. 2, 2015, 129 Stat. 638]

(h) Running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability

(1) In general

In the case of an individual, the running of the periods specified in subsections (a), (b), and (c) shall be suspended during any period of such individual's life that such individual is financially disabled.

(2) Financially disabled

(A) In general

For purposes of paragraph (1), an individual is financially disabled if such individual is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not

be considered to have such an impairment unless proof of the existence thereof is furnished in such form and manner as the Secretary may require.

(B) Exception where individual has guardian, etc.

An individual shall not be treated as financially disabled during any period that such individual's spouse or any other person is authorized to act on behalf of such individual in financial matters.

(i) Cross references

(1) For time return deemed filed and tax considered paid, see section 6513.

(2) For limitations with respect to certain credits against estate tax, see sections 2014(b) and 2015.

(3) For limitations in case of floor stocks refunds, see section 6412.

(4) For a period of limitations for credit or refund in the case of joint income returns after separate returns have been filed, see section 6013(b)(3).

(5) For limitations in case of payments under section 6420 (relating to gasoline used on farms), see section 6420(b).

(6) For limitations in case of payments under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), see section 6421(d).

(7) For a period of limitations for refund of an overpayment of penalties imposed

under section 6694 or 6695, see section 6696(d)(2).

26 U.S.C. § 6514 (2018)

§ 6514. Credits or refunds after period of limitation

(a) Credits or refunds after period of limitation

A refund of any portion of an internal revenue tax shall be considered erroneous and a credit of any such portion shall be considered void—

(1) Expiration of period for filing claim

If made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(2) Disallowance of claim and expiration of period for filing suit

In the case of a claim filed within the proper time and disallowed by the Secretary, if the credit or refund was made after the expiration of the period of limitation for filing suit, unless within such period suit was begun by the taxpayer.

(3) Recovery of erroneous refunds

For procedure by the United States to recover erroneous refunds, see sections 6532(b) and 7405.

(b) Credit after period of limitation

Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 6401(a).

26 U.S.C. § 7421 (2018)

§ 7421. Prohibition of suits to restrain assessment or collection

(a) Tax

Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6232(c), 6330(e)(1), 6331(i), 6672(c), 6694(c), 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

(b) Liability of transferee or fiduciary

No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of—

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3713(b) of title 31, United States Code, in respect of any such tax.

26 U.S.C. § 7442 (2018)

§ 7442. Jurisdiction

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.

26 U.S.C. § 7623 (2018)

§ 7623. Expenses of detection of underpayments and fraud, etc.

* * *

(b) Awards to whistleblowers

(1) In general

If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the proceeds collected as a result of the action (including any related actions) or from any settlement in response to such action (determined without regard to whether such proceeds are available to the Secretary). The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.

(2) Award in case of less substantial contribution

(A) In general

In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from

the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds collected as a result of the action (including any related actions) or from any settlement in response to such action (determined without regard to whether such proceeds are available to the Secretary), taking into account the significance of the individual's information and the role of such individual and any legal representative of such individual in contributing to such action.

(B) Nonapplication of paragraph where individual is original source of information

Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in paragraph (1) was originally provided by the individual described in paragraph (1).

(3) Reduction in or denial of award

If the Whistleblower Office determines that the claim for an award under paragraph (1) or (2) is brought by an individual who planned and initiated the actions that led to the underpayment of tax or actions described in subsection (a)(2), then the Whistleblower Office may appropriately reduce such award. If such individual is convicted of criminal conduct arising from the role described in the preceding sentence, the Whistleblower Office shall deny any award.

(4) Appeal of award determination

Any determination regarding an award under paragraph (1), (2), or (3) may, within 30 days of such determination, be appealed to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).

(5) Application of this subsection

This subsection shall apply with respect to any action—

(A) against any taxpayer, but in the case of any individual, only if such individual's gross income exceeds $200,000 for any taxable year subject to such action, and

(B) if the proceeds in dispute exceed $2,000,000.

(6) Additional rules

(A) No contract necessary

No contract with the Internal Revenue Service is necessary for any individual to receive an award under this subsection.

(B) Representation

Any individual described in paragraph (1) or (2) may be represented by counsel.

(C) Submission of information

No award may be made under this subsection based on information submitted to the Secretary unless such information is submitted under penalty of perjury.

* * *

42 U.S.C. § 2000e-16 (1988)

§ 2000e-16. Employment by Federal Government

* * *

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

* * *