

## Can a Tax Court Filing Deadline be Equitably Tolled?

---

July 21, 2023

All is not necessarily lost if a taxpayer files a petition after the filing deadline in United States Tax Court to contest a federal tax deficiency. A recent case ruled that the filing deadline may be suspended in appropriate circumstances.

The Internal Revenue Commissioner is authorized to examine a taxpayer's books and records<sup>[1]</sup> and issue a notice of deficiency if the Commissioner determines that additional tax is due.<sup>[2]</sup> The taxpayer can contest the determination in the United States Tax Court by filing a petition with the court within 90 days of the mailing of the notice.<sup>[3]</sup>

A statutory deadline for filing an action in court may be either a jurisdictional rule or a claims processing rule. If the missed filing deadline is jurisdictional, the court has no authority to hear the action and will dismiss the filing. If the filing deadline is a claims processing rule, then the rule merely provides for orderly litigation. In that case, the litigant can present an equitable reason for suspending the running of the filing period, and the court will hear the action. An example of an equitable reason is that the litigant's adversary tricked the litigant into filing late.

In *Culp v. Commissioner*,<sup>[4]</sup> the taxpayer filed the Tax Court petition more than 90 days after the Commissioner mailed the tax deficiency notice. The Commissioner moved the court to dismiss the petition on the theory that the court lacked jurisdiction because of the late filing. The court granted the motion. The taxpayer then appealed to the United States Court of Appeals for the Third Circuit, which ruled that the 90-day period could be equitably tolled in appropriate circumstances. The Third Circuit remanded the case to the Tax Court to decide if the taxpayer's circumstances justified equitably tolling the 90-day period.

The Third Circuit decision applied the reasoning of the recent decision of the Supreme Court in *Boechler, P.C., v. Commissioner*.<sup>[5]</sup> At issue in *Boechler* was application of equitable tolling to a filing deadline for a petition filed in the Tax Court challenging a determination of the Independent Appeals Office – an administrative office within the IRS – in a collection due process hearing. The deadline to file this petition is 30 days following the Appeals Office determination.<sup>[6]</sup> The taxpayer filed after the deadline. The Commissioner moved to dismiss the action on the theory late filing deprived the Tax Court of jurisdiction. The Supreme Court disagreed, ruling that the statute providing the filing deadline must state *clearly* that timely filing is jurisdictional, and that the statute providing the 30-day deadline was unclear, thus permitting equitable tolling of the filing deadline. The Supreme Court said that even if a *better* reading of the statute might support an interpretation that the filing period is jurisdictional, that interpretation must be rejected if the statute does not provide *clearly* that the filing deadline is jurisdictional. Miller Canfield previously issued an alert on *Boechler* when it was decided.<sup>[7]</sup>

In December 2022, the Tax Court issued a 57-page opinion in *Hallmark Research Cooperative v. Commissioner*,<sup>[8]</sup> concluding that the 90-day filing period to contest a notice of deficiency was jurisdictional. The decision was a "reviewed decision" signed by all – seventeen – of the Tax Court judges. The opinion pays respect to the rule that a filing deadline must be stated clearly to be jurisdictional, and that if it is not, then the filing deadline is merely a claims processing rule, which can be equitably tolled. The Tax Court reviewed the text of the filing deadline, its history (which goes back to 1926), the context in the tax code in which the filing deadline appears, and its judicial interpretation over the last hundred years by all the federal courts, including the federal courts of appeal, that considered the issue. The Tax Court concluded that these legal authorities supported a clear finding that the 90-day filing deadline to contest the Commissioner's notice of tax deficiency is a jurisdictional rule.

## Continued

---

The Third Circuit in *Culp* did not discuss the *Hallmark Research Collective* opinion, though some arguments rebut arguments in that Tax Court opinion.

Underlying the Third Circuit decision is that many Tax Court litigants are not represented by counsel. Rather, most are lay persons, and Congress thus intended that Tax Court procedure be comprehensible by them. Consequently, if a filing deadline is not clear, and if a taxpayer has a good "equitable" reason for having filed a Tax Court petition late, the taxpayer may have a day in court. That is always true for the 30-day filing deadline to contest an Appeals Office determination in a collection due process hearing. It also is true for cases in the Third Circuit involving the 90-day filing deadline to contest the Commissioner's notice of tax deficiency. Whether it is true for the other federal circuits remains to be seen.

Please contact the authors of this alert or your Miller Canfield attorney to discuss this issue further.

[1] IRC §7602(a).

[2] IRC §6212(a).

[3] IRC §6213(a).

[4] No. 22-1789 (3<sup>rd</sup> Cir. July 19, 2023).

[5] 142 S.Ct. 1493 (2022).

[6] IRC 6330(d)(1).

[7] <https://www.millercanfield.com/resources-Procedural-Actions-Following-Supreme-Court-Boechler-Remand.html>

[8] 159 T.C. No. 6 (Nov. 29, 2022).