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Third Circuit: 90-day time limit to file deficiency petition is not jurisdictional and thus subject to equitable tolling

The U.S. Court of Appeals for the Third Circuit today held that the 90-day time limit under section 6213(a) to file a deficiency petition is not a jurisdictional deadline, and thus is subject to equitable tolling.

The case is: *Culp v. Commissioner*, No. 22-1789 (3rd Cir. July 19, 2023). Read the Third Circuit's [decision](#) [PDF 192 KB]

Summary

The Tax Court previously dismissed the taxpayers' petition for redetermination of a tax deficiency for lack of jurisdiction because the taxpayers failed to file it within the time prescribed by section 6213(a) (i.e., within 90 days after the IRS mails its notice of deficiency).

The taxpayer appealed to the Third Circuit, challenging the Tax Court's dismissal on multiple grounds. First, they assert the IRS failed to mail them a notice, and thus section 6213(a)'s 90-day clock had yet to start. Second and third, they argued that section 6213(a)'s timeline is not jurisdictional and that it is subject to equitable tolling.

The Third Circuit found that the taxpayers' petition was untimely, but it further found that because Congress did not clearly state that section 6213(a)'s timeline is jurisdictional, such timeline is not jurisdictional and is subject to equitable tolling. The Third Circuit thus reversed the Tax Court's order and remanded for it to determine whether the taxpayers are entitled to equitable tolling.

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