



TaxNewsFlash

United States



No. 2023-338
September 27, 2023

U.S. Tax Court: 30-day time limit for requesting collection due process hearing subject to equitable tolling

The U.S. Tax Court today held that the 30-day time limit for requesting a collection due process hearing under section 6320(a)(3)(B) is a nonjurisdictional deadline subject to equitable tolling.

The case is: *Organic Cannabis Foundation, LLC v. Commissioner*, 161 T.C. No. 4 (September 27, 2023). Read the Tax Court's [opinion](#) [PDF 339 KB] (44 pages)

Summary

The taxpayer had unpaid tax for 2010, 2011, and 2018. The IRS issued notices of federal tax lien filings to the taxpayer for all three years, and the taxpayer timely requested a hearing with the IRS Independent Office of Appeals during the 30-day period for requesting a collection due process hearing under section 6320(a)(3)(B) for 2010 and 2011, but requested a hearing for 2018 after the 30-day period.

IRS Appeals provided a hearing for 2010 and 2011, but because the taxpayer's hearing request for 2018 was untimely, it provided an equivalent hearing for 2018 under Treas. Reg. § 301.6320-1(i)(1). IRS Appeals issued a notice of determination for 2010 and 2011 but no determination for 2018.

The taxpayer then filed a petition before the Tax Court seeking review for all three years. After the petition was filed, IRS Appeals issued a decision letter for 2018.

The IRS moved to dismiss the taxpayer's case before the Tax Court as to 2018 for lack of jurisdiction on the ground that IRS Appeals did not make a determination for review under section 6330(d)(1). The taxpayer argued that the 30-day period for requesting a collection due process hearing under section 6320(a)(3)(B) is subject to equitable tolling and thus IRS Appeals erred in failing to make a determination for 2018. In response, the IRS argued that the 30-day period is a fixed deadline that is not amenable to equitable tolling.

The Tax Court began its discussion by noting that it previously held in *Kennedy v. Commissioner*, 116 T.C. 255 (2001), that the 30-day period for requesting a collection due process hearing is a fixed deadline not subject to equitable tolling. However, in *Boechler, P.C. v. Commissioner*, 142 S. Ct. 1493, 1501 (2022), the U.S. Supreme Court held that a different 30-day period in section 6330(d)(1) for a taxpayer to file a petition with the Tax Court for review of IRS Appeals' determination following a collection due process hearing is a nonjurisdictional deadline that is subject to equitable tolling. Thereafter, in *Hallmark Research Collective v. Commissioner*, 159 T.C. 126 (2022), the Tax Court distinguished *Boechler* in holding that the 90-day deadline for filing a deficiency petition under section 6213(a) is jurisdictional.

In the light of the Supreme Court's decision in *Boechler* and its opinion in *Hallmark*, the Tax Court decided to reexamine its precedent as to the 30-day deadline in section 6320(a)(3)(B) for requesting a collection due process hearing. The court ultimately held that the 30-day period in section 6320(a)(3)(B) is subject to equitable tolling when the circumstances warrant it, and thus overruled *Kennedy* in that regard.

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