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SECOND CIRCUIT REVIEW

Second Circuit Loosens Rule for Taxpayer Deadline

By Martin Flumenbaum and Brad S. Karp
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In *Buller* v. *Commissioner of Internal Revenue*, No. 24-1557,—F.4th—, 2025 WL 2025 WL 2348969 (2d Cir. Aug. 14, 2025), the U.S. Court of Appeals for the Second Circuit reversed on a key question of tax procedure: whether the 90-day deadline for filing a petition in the United States Tax Court under Section 6213(a) of the Internal Revenue Code is jurisdictional, and if not, whether it is subject to equitable tolling.

In a unanimous opinion authored by Circuit Judge Richard J. Sullivan, joined by Senior Circuit Judge José A. Cabranes and Circuit Judge Raymond J. Lohier, Jr., the Second Circuit overruled its precedents to hold the deadline is a nonjurisdictional claim-processing rule and subject to equitable tolling, reversing the Tax Court's dismissal and remanding for further proceedings.

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This decision brings the Second Circuit in line with recent Supreme Court precedent and the holdings of other circuits, and indicates a further shift away from limitations on courts' jurisdiction.

Background and the Tax Court's Ruling

On Aug. 22, 2022, Mark Buller and Sarah Beatty (petitioners) received a notice of deficiency (*i.e.*, for the difference between the tax imposed and the amount shown on their return) from the Internal Revenue Service regarding their 2018 tax returns.

Under I.R.C. §6213(a), "[w]ithin 90 days…after the notice of deficiency…the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency…the Tax Court shall have no

jurisdiction to enjoin any action or proceeding or order any refund…unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition."

Petitioners' counsel filed such a petition with the tax court—nine days after the deadline. The IRS moved to dismiss for lack of jurisdiction, and the Tax Court, following longstanding precedent, granted the motion, holding that the untimely filing deprived it of jurisdiction to review the petition.

On appeal, petitioners argued that the 90-day deadline is not jurisdictional and is subject to equitable tolling, urging the Second Circuit to reconsider its prior precedent in light of recent Supreme Court decisions.

The Second Circuit's Analysis

The Second Circuit began its analysis by noting its own "long line" of cases describing §6213(a) as jurisdictional, going back to *Galvin* v. *Comm'r*, 239 F.2d 166 (2d Cir. 1956).

The difficulty for the court was that since 2006, the Supreme Court has tried to "bring some discipline" to when "jurisdictional" bars are applied, in contrast to the loose language previously used by courts. *Arbaugh* v. *Y&H Corp.*, 546 U.S. 500, 511 (2006).

This issue is critical since jurisdictional provisions "cannot be waived or forfeited, must be raised by courts *sua sponte*, and…do not allow for equitable exceptions." *Boechler, P.C. v. Comm'r*, 596 U.S. 199, 203 (2022). In contrast, a claims processing rule can be waived by a party or by a court for equitable reasons.

The court framed its inquiry as "whether our cases that described the filing deadline in section 6213(a) as jurisdictional—but offered no explanation for that conclusion—remain good law after *Arbaugh* and its progeny."

The court found no difficulty in overruling prior panel decisions that did not explain their reasoning, were vitiated by more recent Supreme Court precedents and the special rule that a prior decision that "simply states that the court is dismissing 'for lack of jurisdiction' when some threshold fact has not been established" should "receive[] no precedential effect." *Wilkins v. United States*, 598 U.S. 152, 160 (2023). Instead the court looked at §6213(a) with "fresh eyes."

The court emphasized that "the [g]overnment must clear a high bar to establish that a [procedural rule] is jurisdictional," and that "traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences."

Here, the court held, the text of §6213(a), "speaks only to a claim's timeliness, not to a court's power," and uses "mundane statute-of-limitations language." The provision states that "the taxpayer may file a petition," and, as the Supreme Court has held, similarly permissive language "does not speak in jurisdictional terms." *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 154 (2013).

The panel also highlighted that the deadline is directed at the taxpayer, not the court, and the deadline to file contains no "express link to the Tax Court's jurisdiction."

Counter-arguments presented by the IRS were unavailing. While later sentences in §6213(a) use the word "jurisdiction," a requirement "does not become jurisdictional simply because it is placed in a section of a statute that also contains jurisdictional provisions." *Auburn*, 568 U.S. at 155.

Moreover, the court held, the later sentence in explaining the Tax Court's jurisdiction pertains only to injunctive relief, highlighting the lack of a jurisdictional limit in the first sentence of the provision with the filing deadline.

Prior decisions of appellate courts around the country also were insufficient. These holdings are not, as would a Supreme Court holding leaving a "jurisdictional" label attached to a statute undisturbed, sufficient to create a precedent worth leaving in place, especially in light of countervailing Supreme Court reasoning.

The court concluded that "section 6213(a) is—quite clearly—a nonjurisdictional, claim-processing rule."

Equitable Tolling

If the 90-day deadline is a claims processing rule, it may then be subject to equitable tolling. The Supreme Court has explained that "equitable tolling is a traditional feature of American jurisprudence and a background principle against which Congress drafts limitations periods," *Boechler*, 596 U.S. at 208-09, including in the tax code.

And, as in *Boechler*, the time limit here is directed at the taxpayer—especially "laymen, unassisted by trained lawyers [who] initiate the process," not the court, making equitable tolling appropriate.

The court distinguished §6213(a) from the refund claim deadline in I.R.C. §6511, which the Supreme Court found not subject to equitable tolling in *United States* v. *Brockamp*, 519 U.S. 347, 350 (1997), noting that §6213(a) "sets forth its time limitations in less emphatic and technical form" than the detailed requirements in §6511.

Moreover, the court was persuaded (as other circuit courts have been) that §6213(a)'s deficiency procedure impacts only 0.11% of the tax base, whereas the refund procedure in §6511 touches 90 million tax refunds annually. *See Culp v. Comm'r*, 75 F.4th 196, 204 (3d Cir. 2023).

Remand

Because the Tax Court had not considered whether petitioners were entitled to equitable tolling, the Second Circuit remanded the case for that determination, as petitioners had asserted "it would be more efficient to consolidate their petition with other related petitions," and their petition was therefore timely.

Conclusion

Buller v. *Commissioner* continues the overall shift in interpretation of statutory deadlines from hard jurisdictional limits to more flexible claims-processing rules.

The Second Circuit's approach also aligns with the continuing and growing consensus among circuit courts. *See also, e.g.*, *Oquendo* v. *Comm'r of Internal Revenue*, No. 24-1205, 2025 WL 2434542 (6th Cir. Aug. 25, 2025) (similarly reversing Sixth Cir. precedent to hold §6213(a) is a nonjurisdictional claim-processing rule subject to equitable tolling).

These holdings open the door, not only for taxpayers who miss the deadline to seek relief in the Tax Court, but for other changes in courts' interpretation of their own jurisdictional limitations.

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