No. 20-1472

In the Supreme Court of the United States

BOECHLER, P.C., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

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

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Whether the statutory deadline for seeking Tax Court review of a determination of the Internal Revenue Service Independent Office of Appeals following a collection-due-process hearing, 26 U.S.C. 6330(d)(1), is a jurisdictional requirement or a claim-processing rule subject to equitable tolling.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 967 F.3d 760. The order of the Tax Court (Pet. App. 13a-15a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 24, 2020. A petition for rehearing was denied on November 17, 2020 (Pet. App. 16a-17a). On March 19, 2020, this Court generally extended the time within which to file petitions for writs of certiorari to the statutory limits. The effect of that order was to extend the deadline for filing a petition for a writ of certiorari in this case to April 16, 2021, and the petition was filed on that date. The petition was granted on September 30, 2021. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant statutory and regulatory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-38a.

STATEMENT

A. Legal Background

1. The traditional mechanism for a taxpayer to dispute the assessment or collection of a federal tax is a post-payment refund suit. See *CIC Servs., LLC* v. *IRS*, 141 S. Ct. 1582, 1586 (2021) ("[A] person can typically challenge a federal tax only after he pays it, by suing for a refund." (citation omitted)). To bring a refund suit, a taxpayer must first pay the tax—ordinarily, in full—and then request a refund from the Internal Revenue Service (IRS). 26 U.S.C. 6402(a), 6511; 26 C.F.R. 301.6402-2; *Flora* v. *United States*, 357 U.S. 63, 64-75 (1958), aff'd on reh'g, 362 U.S. 145 (1960). If the refund is denied, the taxpayer may sue to recover the disputed amount. 28 U.S.C. 1346(a)(1); see 26 U.S.C. 6532, 7422(a); 28 U.S.C. 1491(a)(1); *United States* v. *Clintwood Elkhorn Mining Co.*, 553 U.S. 1, 4 (2008). That "pay first and litigate later" approach, *Flora*, 357 U.S. at 75 (citation omitted), embodies the longstanding tradition of Anglo-American law. See, *e.g.*, *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 277-278 (1856). This Court has long recognized that post-payment review comports with due process. See *G.M. Leasing Corp.* v. *United States*, 429 U.S. 338, 352 n.18 (1977) (collecting cases).

For certain taxes, Congress has provided for an additional, pre-assessment avenue of judicial review. Specifically, for income, estate, gift, and various other taxes, Congress has directed the IRS to issue a "notice

of * * * deficiency" to a taxpayer who has failed to report a tax properly. 26 U.S.C. 6212(a). The taxpayer may then file a petition for redetermination in the Tax Court. 26 U.S.C. 6213. With certain exceptions, the IRS may not attempt to collect the tax at issue before the time for seeking judicial review has expired or while such review is pending. 26 U.S.C. 6213(a).

The Internal Revenue Code (Code) and other provisions channel judicial review of challenges to tax assessment and collection to those prescribed mechanisms. The Anti-Injunction Act, 26 U.S.C. 7421(a), and the tax exception to the Declaratory Judgment Act, 28 U.S.C. 2201(a), generally preclude suits for injunctive and declaratory relief regarding the assessment or collection of taxes. And 26 U.S.C. 7422(a) precludes suits to recover taxes alleged to have been assessed or collected unlawfully before a taxpayer has properly sought a refund from the IRS.

2. Once a tax is assessed, if the taxpayer "neglects or refuses to pay," the IRS may (with certain exceptions) "collect such tax * * * by levy[ing] upon," *i.e.*, seizing, "all property and rights to property * * * belonging to such person." 26 U.S.C. 6331(a); see 26 U.S.C. 6331(b); see also 26 U.S.C. 6321 (providing for tax liens). Some kinds of property—such as (with certain exceptions) a residence, welfare and unemployment benefits, and particular pensions—are exempt from levies. See 26 U.S.C. 6334.

The IRS generally must provide notice of a levy 30 days in advance. 26 U.S.C. 6331(d)(2). Before levying on property "which is to be sold," the IRS must conduct a "thorough investigation" of, *inter alia*, "the taxpayer's liability" and "alternative collection methods." 26 U.S.C. 6331(j)(1), (2)(A), and (D); see 26 U.S.C. 6331-6334.

The practice of collecting unpaid tax assessments by levy on a taxpayer's property to satisfy an unpaid tax assessment is deeply rooted. See, *e.g.*, Act of July 13, 1866, ch. 184, § 9, 14 Stat. 107; Revenue Act of 1924, ch. 234, § 1016, 43 Stat. 343. This Court has described "the levy power" as "an essential part of our self-assessment tax system" that "enhances voluntary compliance in the collection of taxes," which are "'the life-blood of government'" and whose "'prompt and certain availability'" is "'an imperious need.'" *G.M. Leasing*, 429 U.S. at 350 (quoting *Bull* v. *United States*, 295 U.S. 247, 259 (1935)).

3. Until 1998, the Code authorized the IRS to take taxpayer property by levy without any prior opportunity for a hearing or other pre-collection process, so long as post-deprivation procedures were provided. See *Phillips* v. *Commissioner*, 283 U.S. 589, 595 (1931). More recently, however, Congress has provided for pre-collection review before an IRS levy.

a. In 1998, Congress established what are known as collection-due-process procedures, which the IRS generally must follow before levying. See Taxpayer Bill of Rights 3 (1998 Act), Pub. L. No. 105-206, Tit. III, Subtit. E, Pt. 1, § 3401(b), 112 Stat. 747-749 (26 U.S.C. 6330); see also § 3401(a), 112 Stat. 746-747 (26 U.S.C. 6320) (establishing substantially the same framework for the filing of a notice of federal tax lien). Those procedures are designed to balance "the need for the efficient collection of taxes with the legitimate concern of the taxpayer that the collection action be no more intrusive than necessary." Staff of the Joint Comm. on Taxation, 105th Cong., 2d Sess., *General Explanation of Tax Legislation Enacted in 1998*, JCS-6-98, at 83 (Joint Comm. Print 1998); see *id.* at 81-85 (summarizing procedures).

Under the collection-due-process procedures, a taxpayer whose property the IRS seeks to take by levy generally must be notified at least 30 days before the levy of the right to request a hearing before an impartial officer in the Independent Office of Appeals (Appeals Office), 26 U.S.C. 6330(a), formerly the Office of Appeals, see Taxpayer First Act, Pub. L. No. 116-25, § 1001(b)(1)(C) and (3), 133 Stat. 985 (2019) (changing name). A taxpayer who timely requests a hearing may raise "any relevant issue relating to the unpaid tax or the proposed levy," including "challenges to the appropriateness of collection actions" and "offers of collection alternatives." 26 U.S.C. 6330(c)(2)(A)(ii) and (iii). In addition, "if the [taxpayer] did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability," the taxpayer may also challenge "the existence or amount of the underlying tax liability." 26 U.S.C. 6330(c)(2)(B).

Following the hearing, the Appeals Office issues to the taxpayer a notice of determination, setting forth its findings and decision. 26 U.S.C. 6330(c)(3); 26 C.F.R. 301.6330-1(e)(3) (A-E10). The 1998 Act made those determinations judicially reviewable. 1998 Act § 3401(b), 112 Stat. 749 (26 U.S.C. 6330(d)(1) (Supp. IV 1998)). As originally enacted, Section 6330(d)(1) provided:

> (1) JUDICIAL REVIEW OF DETERMINATION.—The person [*i.e.*, taxpayer] 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.

Ibid. Regulations provide that the notice of determination "will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice." 26 C.F.R. 301.6330-1(e)(3) (A-E8(i)).

To preserve the status quo while any collection-due-process proceedings are pending, Section 6330(a)(1) generally prohibits the IRS from levying on property before it has notified the taxpayer of the right to request a collection-due-process hearing. 26 U.S.C. 6330(a)(1). A taxpayer's request for such a hearing generally suspends the levy proceedings and the limitations periods for tax collection, criminal prosecution, and other tax-related actions. 26 U.S.C. 6330(e)(1).

In 2000, Congress amended Section 6330(e)(1) to authorize courts, including the Tax Court, to enjoin levies commenced in contravention of that provision's requirements. Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, App. G, § 313(b)(2), 114 Stat. 2763A-642 (26 U.S.C. 6330(e)(1) (2000)). As amended, Section 6330(e)(1) provides that, "[n]otwithstanding [the Anti-Injunction Act], the beginning of a levy or proceeding during the time the suspension under [Section 6330(e)(1)] is in force may be enjoined by a proceeding in the proper court, including the Tax Court." 26 U.S.C. 6330(e)(1). Section 6330(e)(1) further states, however, that "[t]he Tax Court shall have no jurisdiction under [Section 6330(e)(1)] to enjoin any action or proceeding

unless a timely appeal has been filed under [Section 6330(d)(1)] and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates." *Ibid.*

b. Congress later became concerned that the collection-due-process procedures that it had created to protect legitimate taxpayer interests were being used by some taxpayers to "delay" tax collection. *E.g.*, Staff of the Joint Comm. on Taxation, *Report of the Joint Committee on Taxation Relating to the Internal Revenue Service as Required by the IRS Reform and Restructuring Act of 1998*, JCX-53-03, at 88 (2003); see Bryan T. Camp, *Tax Administration as Inquisitorial Process and the Partial Paradigm Shift in the IRS Restructuring and Reform Act of 1998*, 56 Fla. L. Rev. 1, 122 (2004) (explaining that "the [collection-due-process] provisions have been a boon to tax protestors and a pain to everyone else," and detailing how few appeals "can remotely be construed as taxpayer 'wins'"); Steve Johnson, *The 1998 Act and the Resources Link Between Tax Compliance and Tax Simplification*, 51 U. Kan. L. Rev. 1013, 1060-1061 (2003). For example, as noted above, Section 6330(d)(1) originally granted both the Tax Court and district courts jurisdiction to review collection-due-process appeals, depending on the type of tax at issue; a taxpayer who sought review in the wrong court could file a petition in the correct court within 30 days. See pp. 5-6, *supra*. Congress learned, however, that "some taxpayers" intentionally filed in the wrong court to "delay the collection process." S. Rep. No. 174, 109th Cong., 1st Sess. 163 (2005).

In response, Congress amended Section 6330(d)(1) in 2006 to make the Tax Court the sole court with jurisdiction to review collection-due-process determinations.

Pension Protection Act of 2006 (2006 Act), Pub. L. No. 109-280, § 855(a), 120 Stat. 1019 (amending 26 U.S.C. 6330(d)(1)). As amended, Section 6330(d)(1) provides:

> (1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).

26 U.S.C. 6330(d)(1). In separate legislation enacted the same year, Congress also authorized the IRS to disregard collection-due-process hearing requests found to be "frivolous." Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, Div. A, § 407(b)(1), 120 Stat. 2961 (26 U.S.C. 6330(g)) (capitalization omitted).

B. The Present Controversy

1. a. The Code generally requires an employer to provide to each of its employees a Form W-2 showing the wages that the employee was paid and the taxes that the employer withheld. 26 U.S.C. 6051(a); see 26 U.S.C. 3402. The employer must send copies of its employees' Forms W-2 to the Social Security Administration, along with a Form W-3 reporting the employer's aggregate wages and withheld taxes. 26 C.F.R. 31.6051-2(a). And the employer must report to the IRS on Form 941 the taxes that it has withheld from its employees. See 26 C.F.R. 31.6011(a)-4(a).

In June 2015, the IRS sent a letter to petitioner, a law firm, noting a discrepancy between the amounts of its employees' earnings and tax withholdings that petitioner reported on its own tax returns (Form 941) and the amounts it reported to the Social Security Administration (Forms W-2 and W-3). Pet. App. 2a; J.A. 24-25. The IRS informed petitioner that it would assess

a penalty under 26 U.S.C. 6721(e)(2)(A) if petitioner did not file corrected forms or explain the discrepancy. J.A. 25. Section 6721 imposes a penalty—classified as a tax for purposes of the Code, 26 U.S.C. 6671(a)—for failing to file a timely return, failing to include all required information, or including "incorrect information." 26 U.S.C. 6721(a)(2). If the failure (or inclusion of incorrect information) was "intentional," the penalty for the type of return here is "$500, or, if greater, * * * 10 percent of the aggregate amount of the items required to be reported correctly." 26 U.S.C. 6721(e)(2)(A).

The IRS did not receive a response from petitioner. Pet. App. 2a; J.A. 25. In September 2015, the IRS assessed against petitioner a 10% intentional-disregard penalty of $19,250.37. J.A. 25. Petitioner did not pay the penalty. Pet. App. 2a.

b. In July 2016, the IRS mailed to petitioner a notice of intent to levy on petitioner's property to collect the unpaid penalty, plus interest. J.A. 13-15. In October 2016, after petitioner still had not paid, the IRS mailed to petitioner a final notice of intent to levy. J.A. 21.*

Petitioner timely requested a collection-due-process hearing. J.A. 16, 21. The Appeals Office sent petitioner a letter scheduling a telephone conference and identifying information that petitioner would need to provide to seek collection alternatives or to seek abatement of the penalty. J.A. 22-23, 25-26. Petitioner neither participated in the conference call nor supplied the requested

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* The October 2016 final notice of intent to levy relevant to the taxes at issue here is not in the lower-court record. See Gov't C.A. Br. 5-6 n.2. Petitioner acknowledges (Br. 8) that the relevant final notice of intent to levy was mailed on October 13, 2016, following which petitioner requested a collection-due-process hearing.

information. J.A. 22-23, 26. The Appeals Office sent a follow-up letter, but petitioner did not respond. J.A. 26.

The Appeals Office ultimately conducted a collection-due-process conference with petitioner by telephone. J.A. 26. Petitioner disputed the penalty, and the Appeals Office identified particular information that petitioner would need to supply to warrant abatement of the penalty. J.A. 27. Petitioner submitted copies of its Forms W-2 and W-3 for 2012. *Ibid.* The Appeals Office informed petitioner that those copies were insufficient to show that petitioner had timely filed those forms or timely responded to inquiries. J.A. 28. Petitioner did not supply further information. *Ibid.*

c. On July 28, 2017, the Appeals Office mailed to petitioner a notice of determination sustaining the proposed levy. J.A. 18-30; see Pet. App. 2a. The notice set forth the Appeals Office's reasoning in sustaining the penalty and rejecting petitioner's contrary contentions, J.A. 28-30. The notice advised that, if petitioner "want[ed] to dispute this determination in court, [petitioner] must file a petition with the United States Tax Court within a 30-day period beginning the day after the date of this letter." J.A. 19. The notice further advised petitioner that "[t]he law limits the time for filing your petition to the 30-day period" and that "[t]he courts cannot consider your case if you file late." *Ibid.*

2. a. The 30-day period for filing a petition for review ended on August 27, 2017, a Sunday. Pet. App. 14a. The deadline for petitioner to file a petition in the Tax Court for review of the determination was therefore Monday, August 28. *Ibid.*; see 26 U.S.C. 7503. For filings sent by mail, the Code treats timely mailing as timely filing. 26 U.S.C. 7502(a). Petitioner therefore had to mail its petition on or before August 28. Pet. App. 2a.

Petitioner mailed a petition for review to the Tax Court one day late, on August 29, 2017. Pet. App. 2a, 14a; see J.A. 37 (postmark). The petition and petitioner's request for the place of trial were also dated August 29, 2017. J.A. 35, 40. On September 1, 2017, the Tax Court received the petition. Pet. App. 14a; J.A. 38.

b. The Tax Court dismissed the petition for lack of jurisdiction based on petitioner's failure to file its petition within the period prescribed by Section 6330(d)(1). Pet. App. 13a-15a. The court rejected petitioner's contention that its untimely filing should be excused based on principles of equitable tolling. *Id.* at 14a-15a. The court observed that it had "repeatedly held that 'the 30-day period provided in section 6330(d)(1) for the filing of a petition for review is jurisdictional.'" *Id.* at 15a (quoting *Gray* v. *Commissioner*, 138 T.C. 295, 299 (2012)) (brackets omitted). The court explained that, "because the statutorily-prescribed filing period is jurisdictional, the period is not subject to equitable tolling." *Ibid.* (citing *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 154 (2013), *Guralnik* v. *Commissioner*, 146 T.C. 230, 237-238 (2016), and *Pollock* v. *Commissioner*, 132 T.C. 21, 29 (2009)).

3. The court of appeals affirmed. Pet. App. 1a-12a.

a. The court of appeals agreed with the Tax Court that Section 6330(d)(1)'s filing deadline is jurisdictional and therefore not subject to equitable tolling. Pet. App. 3a-8a. The court of appeals observed that, in *Hauptman* v. *Commissioner*, 831 F.3d 950 (8th Cir. 2016), it had "identified two prerequisites for jurisdiction over an initial notice of determination: (1) the issuance of a notice of determination following a [collection-due-process] hearing, and (2) the taxpayer's filing of a petition challenging that determination within 30 days of the

issuance date." Pet. App. 3a (citation omitted). But the court stated that *Hauptman*'s discussion was dictum, and it proceeded to address the issue de novo. *Id.* at 4a.

The court of appeals explained that, under this Court's precedent, "a statutory time limit is jurisdictional when Congress clearly states that it is," and courts "determine whether Congress made the necessary clear statement by examining 'the text, context, and relevant historical treatment of the provision at issue.'" Pet. App. 4a-5a (quoting *Musacchio* v. *United States*, 577 U.S. 237, 246 (2016)). The court of appeals 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," *ibid.* (quoting *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 410 (2015)) (brackets in original), and "[m]ere proximity to a jurisdictional provision is insufficient," *id.* at 4a (citing *Auburn Reg'l Med. Ctr.*, 568 U.S. at 155-156). But "Congress does not have to 'incant magic words' to make a deadline jurisdictional if the 'traditional tools of statutory construction . . . plainly show that Congress imbued a procedural bar with jurisdictional consequences.'" *Id.* at 5a (citation omitted).

Applying that precedent, the court of appeals determined that "[t]he statutory text of § 6330(d)(1) is a rare instance where Congress clearly expressed its intent to make the filing deadline jurisdictional." Pet. App. 6a. The court reasoned that "[t]he parenthetical '(and the Tax Court shall have jurisdiction with respect to such matter)' is clearly jurisdictional," and that the link between that phrase and "the remainder of the sentence" renders the entire provision jurisdictional. *Ibid.* (citing *Fort Bend Cnty.* v. *Davis*, 139 S. Ct. 1843 (2019)).

The court of appeals further reasoned that "the phrase '*such matter*'" in the parenthetical addressing the Tax Court's jurisdiction "refers to a petition to the [T]ax [C]ourt that: (1) arises from 'a determination under this section' and (2) was filed 'within 30 days' of that determination." Pet. App. 6a-7a. The court determined that Congress's "use of '*such matter*' 'plainly shows that Congress imbued a procedural bar with jurisdictional consequences'" by "provid[ing] [a] link between the 30-day filing deadline and the grant of jurisdiction to the [T]ax [C]ourt that other statutory provisions lack." *Id.* at 7a (quoting *Kwai Fun Wong*, 575 U.S. at 410) (brackets omitted); see *ibid.* (citing *Auburn Reg'l Med. Ctr.*, 568 U.S. at 154, *Gonzalez* v. *Thaler*, 565 U.S. 134, 146-147 (2012), and *Henderson* v. *Shinseki*, 562 U.S. 428, 438 (2011)). The court acknowledged that "there might be alternative ways that Congress could have stated the jurisdictional nature of the statute more plainly." *Ibid.* But it concluded that Congress "has spoken clearly enough to establish that § 6330(d)(1)'s 30-day filing deadline is jurisdictional." *Id.* at 7a-8a.

The court of appeals found "persuasive" the Ninth Circuit's reasoning in *Duggan* v. *Commissioner*, 879 F.3d 1029 (2018), which reached the same conclusion. Pet. App. 6a. The court of appeals underscored the Ninth Circuit's observations that "§ 6330(d)(1) 'expressly contemplates the Tax Court's jurisdiction' and 'makes timely filing of the petition a condition of the Tax Court's jurisdiction,'" and that "'the filing deadline is given in the same breath as the grant of jurisdiction.'" *Ibid.* (quoting *Duggan*, 879 F.3d at 1034). In contrast, the court was unpersuaded by petitioner's reliance on *Myers* v. *Commissioner*, 928 F.3d 1025 (D.C. Cir. 2019), in which a divided panel held that a similarly worded

provision, 26 U.S.C. 7623(b)(4), is not jurisdictional. Pet. App. 5a-6a.

b. Judge Kelly concurred in part and in the judgment. Pet. App. 10a-12a. In her view, the majority's conclusion that Section 6330(d)(1)'s filing deadline is jurisdictional was compelled by *Hauptman*, but Judge Kelly disagreed with that reading as an original matter. *Id.* at 10a, 12a.

4. The court of appeals denied petitioner's petition for panel rehearing or rehearing en banc. Pet. App. 16a-17a. Judges Loken, Colloton, and Kelly noted that they would have granted rehearing en banc. *Id.* at 16a.

SUMMARY OF ARGUMENT

I. Section 6330(d)(1) of Title 26 provides that a taxpayer wishing to challenge a collection-due-process determination "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 statutory text and context and relevant judicial precedent predating the enactment of that provision clearly demonstrate that Congress intended the deadline to be jurisdictional.

A. 1. Section 6330(d)(1)'s text expressly addresses the Tax Court's jurisdiction, and the language conferring jurisdiction is both linguistically and logically linked to the deadline. The second clause of the provision's single sentence confers jurisdiction over "such matter," which refers to a petition described in the first clause, *i.e.*, a petition the first clause authorizes. The first clause permits only petitions addressing particular subject matter (collection-due-process determinations) filed within a certain period (30 days). Jurisdiction thus extends only to timely petitions.

The jurisdictional grant is also logically connected to the filing deadline. All agree that the Tax Court's jurisdiction is not free-floating but is triggered only by a certain kind of petition. All further agree that jurisdiction depends on a petition that satisfies the first clause's subject-matter requirement. It likewise depends on a petition that meets the first clause's other, timeliness requirement. That Congress did not use a term like "if" or "where" does not render the grant of jurisdiction any less contingent on the filing of a compliant petition.

2. The statutory context strongly reinforces that conclusion. A nearby provision explicitly makes the Tax Court's jurisdiction to grant a particular remedy—to enjoin levy actions while levies should be suspended—contingent on the filing of a "timely" petition. 26 U.S.C. 6330(e)(1). It follows that jurisdiction over the merits also depends on a timely petition. Moreover, various limitations periods are suspended during the pendency of Tax Court collection-due-process proceedings. Deeming Section 6330(d)(1) jurisdictional fits better within that intricate framework by providing certainty about when other parts of the tax system may resume.

3. When Congress enacted Section 6330(d)(1) in 1998, it had been settled for seven decades in uniform lower-court decisions that the deadline for seeking Tax Court review of deficiency notices, 26 U.S.C. 6213(a), is jurisdictional. In Section 6330(d)(1), Congress copied key aspects of that provision and added more explicit jurisdictional language. Congress clearly intended Section 6330(d)(1)'s deadline to be jurisdictional.

B. Petitioner contends that Section 6330(d)(1) can bear alternative, nonjurisdictional readings. But none of those interpretations can be reconciled with the statutory text, context, and history.

Petitioner argues that the last-antecedent rule requires reading "such matter" to refer only to the final portion of Section 6330(d)(1)'s first clause, which describes the subject matter that a petition filed under that provision must address (*viz.*, review of a collection-due-process determination). But petitioner offers no sound basis for that selective incorporation. Petitioner alternatively posits that "such matter" might mean all the issues that may be raised in a collection-due-process hearing, or might refer to the Appeals Office's determination. Neither reading fits with the text and context.

Petitioner's reliance on the statute's history and purported purposes is misplaced. Petitioner's argument that a prior version of Section 6330(d)(1) shows that the current deadline is not jurisdictional misapprehends that prior version and disregards the legislative change. Silence in the legislative history and broad-brush statements of purpose cannot cloud the clear statement in the statutory text and context. The policy arguments of petitioner and its amici are misdirected and overstated.

II. Even if Section 6330(d)(1) is not jurisdictional, it is at least mandatory and not subject to equitable tolling. Assuming arguendo that a rebuttable presumption of tolling applies, it is rebutted by the statutory text and context. The Tax Court lacks general equitable powers, nothing in Section 6330(d)(1) invites ad hoc exceptions, and Congress's creation of a single exception for a particular circumstance—where bankruptcy proceedings preclude the filing of a petition—undermines any inference that Congress intended to permit other exceptions. Open-ended equitable exceptions are especially unsuited to the context of levies undertaken to collect taxes. Allowing equitable tolling could create substantial uncertainty about the IRS's ability to pursue collection.

ARGUMENT

I. THE STATUTORY TIME LIMIT TO PETITION THE TAX COURT FOR REVIEW OF A COLLECTION-DUE-PROCESS DETERMINATION IS JURISDICTIONAL

Although time limits generally are subject to a "'rebuttable presumption of equitable tolling,'" that presumption is rebutted where Congress has "made the time bar at issue jurisdictional." *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 408 (2015) (citation omitted). Whether a requirement is jurisdictional turns on whether "traditional tools of statutory construction * * * plainly show that Congress imbued [the requirement] with jurisdictional consequences." *Id.* at 410; see *Arbaugh* v. *Y & H Corp.*, 546 U.S. 500, 515-516 (2006).

Congress must "speak clearly" to give a deadline jurisdictional significance, but it need not "incant magic words." *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013). Instead, in ascertaining whether "Congress has made the necessary clear statement," courts "examine the 'text, context, and relevant historical treatment' of the provision at issue." *Musacchio* v. *United States*, 577 U.S. 237, 246 (2016) (citation omitted). The court of appeals correctly recognized, in line with every other appellate court to consider the issue, that Section 6330(d)(1)'s time limit is jurisdictional. Pet. App. 4a-8a; see *Duggan* v. *Commissioner*, 879 F.3d 1029, 1031-1035 (9th Cir. 2018); *Gray* v. *Commissioner*, 723 F.3d 790, 793 (7th Cir. 2013), cert. denied, 572 U.S. 1137 (2014); *Springer* v. *Commissioner*, 416 Fed. Appx. 681, 683 & n.1 (10th Cir. 2011); *Boyd* v. *Commissioner*, 451 F.3d 8, 10-11 (1st Cir. 2006); see also *Kaplan* v. *Commissioner*, 552 Fed. Appx. 77, 78 (2d Cir. 2014); *Tuka* v. *Commissioner*, 348 Fed. Appx. 819, 820 (3d Cir. 2009) (per curiam).

A. The Statutory Text, Context, And History Clearly Show That The Deadline For Seeking Tax Court Review Of A Collection-Due-Process Determination Is Jurisdictional

As petitioner acknowledges (Br. 15-16), Congress is free to "rank a time limit as jurisdictional" so long as it makes that intention clear. *Auburn Reg'l Med. Ctr.*, 568 U.S. at 155. That clear intention may be manifested in several ways. The statutory text may "expressly refer to subject-matter jurisdiction or speak in jurisdictional terms." *Musacchio*, 577 U.S. at 246. Courts must also consider the "context." *Reed Elsevier, Inc.* v. *Muchnick*, 559 U.S. 154, 166 (2010). And a requirement's jurisdictional character may be established by "precedent and practice in American courts." *Auburn Reg'l Med. Ctr.*, 568 U.S. at 155 (quoting *Bowles* v. *Russell*, 551 U.S. 205, 209 n.2 (2007)). Section 6330(d)(1)'s text, its context, and precedent predating Section 6330(d)(1)'s enactment deeming a similar provision jurisdictional all show Congress's clear intent to make Section 6330(d)(1)'s deadline jurisdictional.

1. The text of Section 6330(d)(1) expressly conditions the Tax Court's jurisdiction on a timely petition

"Congress may make * * * prescriptions jurisdictional by incorporating them into a jurisdictional provision, as Congress has done with the amount-in-controversy requirement for federal-court diversity jurisdiction" in 28 U.S.C. 1332(a). *Fort Bend Cnty.* v. *Davis*, 139 S. Ct. 1843, 1849 (2019). Congress did just that in Section 6330(d)(1). Section 6330(d)(1) states that "[t]he person" whose property is at issue in a collection-due-process hearing "may, within 30 days of a determination under [Section 6330], 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) (emphasis added). Section 6330(d)(1) thus "speak[s] in jurisdictional terms" by "expressly refer[ring] to" the Tax Court's "jurisdiction." *Musacchio*, 577 U.S. at 246.

Section 6330(d)(1)'s explicitly jurisdictional language renders the filing deadline jurisdictional as well, by making the filing of a timely petition a prerequisite to the Tax Court's jurisdiction. Pet. App. 6a-7a. The jurisdictional grant "is given in the same breath as" the statutory deadline for seeking Tax Court review. *Id.* at 6a (quoting *Duggan*, 879 F.3d at 1034). And although petitioner correctly observes that "[m]ere proximity" to a jurisdictional provision is insufficient to render a requirement jurisdictional, Pet. Br. 17 (quoting *Gonzalez* v. *Thaler*, 565 U.S. 134, 147 (2012)), Section 6330(d)(1)'s deadline and jurisdictional grant are linked both linguistically and logically.

a. Section 6330(d)(1)'s "filing period and the grant of jurisdiction * * * are explicitly linked" by the statutory language. *Guralnik* v. *Commissioner*, 146 T.C. 230, 237 (2016). Section 6330(d)(1) does not confer on the Tax Court blanket authority to adjudicate all disputes involving certain topics. Cf. generally 28 U.S.C. 1330 *et seq.* Instead, it grants the Tax Court "jurisdiction with respect to *such matter*." 26 U.S.C. 6330(d)(1) (emphasis added). The term "such" refers to something previously specified. See 17 *The Oxford English Dictionary* 101 (2d ed. 1989) (explaining that "[*s*]*uch* is a demonstrative word used to indicate the quality or quantity of a thing by reference to that of another," and, "syntactically," it has a "backward * * * reference" when it describes a person or thing previously mentioned); see also *Salinas* v. *United States R.R. Ret. Bd.*, 141 S. Ct. 691, 698 (2021) ("By using the language 'such' and 'by

which he claims to be aggrieved,' Congress clearly referred to the particular type of decision described earlier in [45 U.S.C.] 355(c)(5), thus limiting judicial review to final decisions 'provided for' in §§ 355(c)(2)-(4).").

The "matter" previously specified, 26 U.S.C. 6330(d)(1), is described in the first clause of the same sentence: a petition seeking Tax Court review of a collection-due-process determination, which must be filed within 30 days of the determination. Section 6330(d)(1)'s first clause states that "[t]he person may, within 30 days of a determination under this section, petition the Tax Court for review of such determination." *Ibid.* Petitioner acknowledges (Br. 19) that "such determination" refers to "a determination under this section," *i.e.*, a collection-due-process determination under Section 6330. And although the word "petition" is used in Section 6330(d)(1)'s first clause as a verb—the act of petitioning the Tax Court—not as a noun, all agree that "such matter" in Section 6330(d)(1)'s second clause refers to *a* petition by which a "person" seeks Tax Court review in accordance with the provision's first clause. 26 U.S.C. 6330(d)(1); see Pet. Br. 19 n.4 (contending that, "[t]o function as the antecedent of 'such matter,' the verb 'petition' has to take its noun form").

It follows that "such matter" in Section 6330(d)(1)'s jurisdictional grant refers to, and the Tax Court's jurisdiction thus encompasses, a petition that Section 6330(d)(1)'s first clause authorizes. That clause permits only petitions that address a particular subject matter (*i.e.*, that seek review of a collection-due-process determination) and are filed by a specified deadline (*i.e.*, within 30 days of the determination). 26 U.S.C. 6330(d)(1). Section 6330(d)(1)'s second clause cannot plausibly be construed to confer jurisdiction over peti-

tions that seek review of other types of determinations. By the same token, it confers no jurisdiction over petitions that flunk the first clause's timely-filing limitation.

b. The text also evinces a logical connection between the jurisdictional grant in Section 6330(d)(1)'s second clause and the first clause's requirements for petitions, including its filing deadline. The second clause, as noted, does not confer freestanding adjudicatory authority over all cases involving particular topics. Instead, it presupposes a particular occurrence—the filing of a petition described in the first clause—that triggers the Tax Court's jurisdiction.

Petitioner disputes (Br. 21-23) that logical connection, citing the absence of "conditional language," such as "if" or "where," that Congress sometimes employs. But requiring those or other specific terms to key jurisdiction to a deadline would reduce the clear-statement standard to a "magic words" rule. *Auburn Reg'l Med. Ctr.*, 568 U.S. at 153. Moreover, terms such as "if" or "where" are unnecessary because the text and context already make the conditional relationship clear. That is commonplace in everyday usage: "Give me $50 by Friday and the tickets are yours"; "Miss this deadline and you're fired"; "Come back with the prize turkey in less than five minutes and I'll give you half a crown." None of those examples employs "if" or "where," but the import of each is unmistakable. Petitioner's contrasting example at the petition stage—"You bring the juice (and I'll bring the soda)," Cert. Reply Br. 6—simply shows that, in some contexts, a conjunction alone may be insufficient to create a conditional relationship.

c. As the court of appeals correctly recognized, the textual and logical links between the deadline and the jurisdictional grant set Section 6330(d)(1) apart from

other statutes that this Court has found to be nonjurisdictional. Pet. App. 7a (collecting cases). In *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. 385 (1982), for example, the Court concluded that a filing deadline was not jurisdictional because the "provision specifying the time for filing charges with the [agency] appears as an entirely separate provision, and it does not speak in jurisdictional terms or refer in any way to the jurisdiction of the district courts." *Id.* at 394. The same is true of other nonjurisdictional deadlines. See *Kwai Fun Wong*, 575 U.S. at 411 (collecting cases); *e.g.*, *Hamer* v. *Neighborhood Hous. Servs.*, 138 S. Ct. 13, 20 (2017); *Auburn Reg'l Med. Ctr.*, 568 U.S. at 155; *Henderson* v. *Shinseki*, 562 U.S. 428, 441 (2011). Unlike those provisions, Section 6330(d)(1) addresses jurisdiction and timeliness together, and the deadline operates as a limit on "a court's power," *Kwai Fun Wong*, 575 U.S. at 410.

As the court of appeals further explained, whether Congress might have made the jurisdictional character of Section 6330(d)(1)'s deadline even clearer is immaterial. Pet. App. 7a. This Court "ha[s] routinely construed statutes to have a particular meaning even as [it] acknowledged that Congress could have expressed itself *more* clearly." *Torres* v. *Lynch*, 578 U.S. 452, 472 (2016) (emphasis added) (collecting cases); see *Negusie* v. *Holder*, 555 U.S. 511, 550 (2009) (Thomas, J., dissenting) ("It is certainly correct that Congress 'could have spoken in clearer terms,' as it almost always can in any statute. However, this 'proves nothing' in evaluating whether the statute is ambiguous." (citations omitted)).

2. The statutory context confirms that the deadline to petition the Tax Court is jurisdictional

"Statutory construction * * * is a holistic endeavor," and "[a] provision that may seem ambiguous in isolation

is often clarified by the remainder of the statutory scheme"—for example, where "only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Ass'n* v. *Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). In determining whether a statutory requirement is jurisdictional, a court must consider the relevant "context," *Reed Elsevier*, 559 U.S. at 166, including other pertinent provisions and the broader statutory structure, see, *e.g.*, *id.* at 164-166. The statutory context of Section 6330(d)(1) powerfully confirms that its deadline is jurisdictional.

a. A related, nearby portion of Section 6330 relies on Section 6330(d)(1)'s filing deadline to define the Tax Court's jurisdiction to grant a particular remedy. 26 U.S.C. 6330(e)(1). Section 6330(e)(1) specifies that, if a collection-due-process hearing is requested, "the levy actions which are the subject of the requested hearing * * * shall be suspended for the period during which such hearing, and appeals therein, are pending." *Ibid.* To enforce that suspension, Section 6330(e)(1) authorizes "the proper court, including the Tax Court"—"[n]otwithstanding the [Anti-Injunction Act, 26 U.S.C. 7421(a)]"—to "enjoin[]" a "levy or proceeding during the time the suspension * * * is in force," 26 U.S.C. 6330(e)(1). Section 6330(e)(1) expressly makes the Tax Court's "jurisdiction" to grant that relief contingent on the filing of a "timely" petition: "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)." *Ibid.*

As courts of appeals have recognized in the context of analogous Code provisions, it would be incongruous to make the filing of a timely petition a jurisdictional

prerequisite to a particular remedy (an injunction), but not a jurisdictional prerequisite to the underlying proceeding itself. See, *e.g.*, *Organic Cannabis Found., LLC* v. *Commissioner*, 962 F.3d 1082, 1094 (9th Cir. 2020) (concluding that 26 U.S.C. 6213(a)'s filing deadline for a petition for redetermination of a tax deficiency is jurisdictional, in part because it "seems clearly to reflect an understanding that the manner in which the Tax Court *acquires* jurisdiction over a deficiency dispute is through the filing of a 'timely petition'" (citation omitted)), cert. denied, 141 S. Ct. 2596, and 141 S. Ct. 2598 (2021); *Tilden* v. *Commissioner*, 846 F.3d 882, 886 (7th Cir. 2017) (similar); *Nauflett* v. *Commissioner*, 892 F.3d 649, 653 (4th Cir. 2018) (concluding that 26 U.S.C. 6015(e)(1)'s filing deadline for a petition for review of an innocent-spouse determination is jurisdictional based in part on a similar provision); *Matuszak* v. *Commissioner*, 862 F.3d 192, 197 (2d Cir. 2017) (per curiam) (same); *Rubel* v. *Commissioner*, 856 F.3d 301, 305 (3d Cir. 2017) (same).

Moreover, if Section 6330(d)(1)'s deadline allowed the Tax Court to exercise jurisdiction over an untimely petition, then the ban on a levy action by the IRS to collect the tax until the time for seeking Tax Court review has expired (or during the pendency of such review) would *lapse* at the end of the 30-day period for seeking such review, but the ban would then *revive* if the Tax Court subsequently accepted a late-filed petition. See *Organic Cannabis Found.*, 962 F.3d at 1094 (making the same observation in the context of Section 6213(a)). But "the Tax Court would then unquestionably lack jurisdiction to enjoin violations of that prohibition" under Section 6330(e)(1), because no timely petition was filed, "thereby necessitating a *separate* court proceeding in the district

court to do so." *Ibid.* "Nothing in the statute suggests that Congress intended to pointlessly require such a peculiar dual-track mode of procedure." *Ibid.*

Petitioner's efforts to resolve that incongruity are unavailing. Petitioner correctly observes (Br. 31-32) that Section 6330(e)(1) itself speaks only to the Tax Court's jurisdiction "under this paragraph," 26 U.S.C. 6330(e)(1), *i.e.*, to enjoin levy proceedings, not to its jurisdiction to review the notice of determination. But petitioner offers no reason why Congress would make the timeliness of a petition a prerequisite for the Tax Court's "jurisdiction" to grant a particular remedy that may preserve the ability to adjudicate the petition's merits, but not a prerequisite for the court's jurisdiction to decide those merits. Petitioner observes (Br. 32-33) that, if the Tax Court lacks jurisdiction to enjoin a levy, the person still may seek an injunction from a district court. But petitioner again identifies no reason why Congress would have intended to bifurcate judicial review only in the subset of cases where a timely petition was not filed, and then to require a parallel district-court proceeding to preserve the Tax Court's ability to review the merits.

Finally, petitioner posits that Section 6330(e)(1)'s reference to a "timely" petition encompasses a petition that was *not* timely filed but that a court accepts based on equitable-tolling principles. Pet. Br. 32 (citation omitted). That is incorrect. When a court applies equitable tolling, it is not "interpret[ing] and enforc[ing] [the] statutory provision[]" at issue to conclude that an ostensibly tardy filing is actually timely; instead, the court is exercising "the judicial power to promote equity" by *excusing* noncompliance. *California Pub. Emps.' Ret. Sys.* v. *ANZ Sec., Inc.*, 137 S. Ct. 2042, 2051

(2017); see *id.* at 2050-2051; cf. *Rotkiske* v. *Klemm*, 140 S. Ct. 355, 360 (2019) (distinguishing the "discovery rule as a principle of statutory interpretation" from "equitable doctrine[s]").

Treating an untimely petition as "timely" would be especially peculiar in the context of 26 U.S.C. 6330(e)(1), which expressly addresses the Tax Court's "jurisdiction" to grant injunctions. *Ibid.* Given that jurisdictional deadlines are inherently impervious to equitable exceptions, *Kwai Fun Wong*, 575 U.S. at 409, it is implausible that Congress intended "timely" in Section 6330(e)(1) to encompass late filings whose tardiness is excused for equitable reasons. It is particularly implausible that Congress presupposed that courts' traditional equitable powers could transform untimely petitions into timely ones here, because "[t]he Tax Court is a court of limited jurisdiction" that "lacks general equitable powers," *Commissioner* v. *McCoy*, 484 U.S. 3, 7 (1987) (per curiam), and may exercise jurisdiction only as expressly provided by statute, see 26 U.S.C. 7442.

b. The jurisdictional character of Section 6330(d)(1)'s deadline is confirmed by its place in the broader, reticulated tax-collection scheme. When a collection-due-process hearing is requested, multiple other "period[s] of limitations" governing tax collection and enforcement are also "suspended for the period during which such hearing, and appeals therein, are pending." 26 U.S.C. 6330(e)(1). Those include the time that the government has to collect a tax, 26 U.S.C. 6502; to prosecute a tax offense, 26 U.S.C. 6531; and to collect an erroneous refund, 26 U.S.C. 6532(b). They also include the period for the taxpayer to bring a tax-refund suit. 26 U.S.C. 6532(a); see 26 U.S.C. 6330(e)(1). As the Third Circuit observed in determining that the statutory period for

seeking Tax Court review of innocent-spouse determinations is jurisdictional, the "period is meant to allocate when different components of the tax system have the authority to act." *Rubel*, 856 F.3d at 305. The statutory "structure" thus "reflects Congress's intent to set the boundaries of the Tax Court's authority" by making the filing of a timely petition a jurisdictional requirement for review. *Ibid.*

Given that intricate, interlocking statutory structure, this is a context where "[j]urisdictional treatment of statutory time limits makes good sense." *Bowles*, 551 U.S. at 212. Because Section 6330(e)(1) suspends the levy action that is at issue in the collection-due-process hearing during the pendency of the hearing and any appeals, Section 6330(d)(1)'s jurisdictional deadline provides a date certain on which the levy may resume. See *Rubel*, 856 F.3d at 306 ("Rigid deadlines, such as those embodied in the tax law's jurisdictional requirements, promote predictability of the revenue stream, which is vital to the government.").

3. Congress enacted Section 6330(d)(1) against the backdrop of a longstanding lower-court consensus that a similarly worded provision is jurisdictional

Judicial precedent addressing a similar provision at the time of Section 6330(d)(1)'s enactment reinforces the most natural reading of its text and context. This Court "normally assume[s] that, when Congress enacts statutes, it is aware of relevant judicial precedent," *Merck & Co.* v. *Reynolds*, 559 U.S. 633, 648 (2010), including "lower court precedent," *Guerrero-Lasprilla* v. *Barr*, 140 S. Ct. 1062, 1072 (2020). When Congress first enacted Section 6330(d)(1) in 1998, a long, consistent line of lower-court decisions held that an analogous provision

governing Tax Court review of deficiency determinations was jurisdictional.

Provisions conferring jurisdiction on the Tax Court (and its predecessor) to review IRS deficiency determinations have been a central feature of federal law since 1924. See Revenue Act of 1924 § 274(a), 43 Stat. 297. Petitions to review deficiency determinations constitute nearly 95% of the court's case load. See U.S. Tax Court, *Congressional Budget Justification, Fiscal Year 2022*, at 21 (submitted Apr. 5, 2021), https://go.usa.gov/xeV4U. The current provision authorizing Tax Court review of such petitions is 26 U.S.C. 6213(a), which provides that, "[w]ithin 90 days * * * after the notice of deficiency * * * is mailed" to a taxpayer in the United States, "the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency." *Ibid.*

By 1998, the jurisdictional nature of Section 6213(a)'s deadline was well established. See *Tadros* v. *Commissioner*, 763 F.2d 89, 91 (2d Cir. 1985); *Pugsley* v. *Commissioner*, 749 F.2d 691, 692 (11th Cir. 1985) (per curiam); *Johnson* v. *Commissioner*, 611 F.2d 1015, 1018 (5th Cir. 1980); *Shipley* v. *Commissioner*, 572 F.2d 212, 213 (9th Cir. 1977) (per curiam); *Andrews* v. *Commissioner*, 563 F.2d 365, 366 (8th Cir. 1977) (per curiam); *Ryan* v. *Alexander*, 118 F.2d 744, 750 (10th Cir.), cert. denied, 314 U.S. 622 (1941). Indeed, "the circuits have uniformly adopted a jurisdictional reading of § 6213(a) or its predecessor since at least 1928." *Organic Cannabis Found.*, 962 F.3d at 1095; see *Guralnik*, 146 T.C. at 238 (collecting cases); Dana Latham, *Jurisdiction of the United States Board of Tax Appeals Under the Revenue Act of 1926*, 15 Calif. L. Rev. 199, 222 (1927); Walter W. Hammond, *The United States Board of Tax Appeals*, 11 Marq. L. Rev. 1, 7-8 (1926). When Congress

enacted Section 6330 in 1998, it appreciated that Section 6213(a)'s deadline was understood to be jurisdictional. See S. Rep. No. 174, 105th Cong., 2d Sess. 90 (1998); H.R. Rep. No. 364, 105th Cong., 1st Sess. Pt. 1, at 71 (1997).

The settled judicial understanding of Section 6213(a) is pertinent because of its close parallels with Section 6330. Both provisions state that a taxpayer "may," within a specified period, petition the Tax Court for review. 26 U.S.C. 6213(a), 6330(d)(1). Both provisions suspend the IRS's tax-collection activity during the period of review. 26 U.S.C. 6213(a), 6330(e)(1). Both provisions authorize courts to enjoin collection activity during that period, but eliminate the Tax Court's "jurisdiction" to do so if no timely petition is filed. *Ibid.* One notable difference is that, unlike Section 6330(d)(1), Section 6213(a) does *not* contain language expressly tying the Tax Court's "jurisdiction" over the petition itself to the petition's timeliness. Congress's use in Section 6330(d)(1) and (e)(1) of language that parallels Section 6213, plus its inclusion of additional text linking Section 6330(d)(1)'s jurisdictional grant and deadline, clearly evinces an intent to make Section 6330(d)(1)'s deadline jurisdictional as well.

At the petition stage, petitioner dismissed the judicial consensus regarding the interpretation of Section 6213(a) on the ground that, unlike that provision, *subsection* (*e*) of Section 6330 "refers to the court's jurisdiction '*under this paragraph*' only." Cert. Reply Br. 7. But the proper comparison is to Section 6330(d)(1) and (e)(1) together, because those two paragraphs collectively track the template of Section 6213(a). In its merits brief, petitioner does not address case law addressing Section 6213(a). Petitioner instead contends (Br. 33-35)

that this Court has not previously deemed a time limit jurisdictional based on lower-court decisions. But where lower courts have uniformly deemed a requirement jurisdictional for decades, and Congress *then* enacts a new provision in the same field that employs parallel language—and even more explicitly ranks a requirement as jurisdictional—Congress's intention to accord the new provision the same treatment is clear.

B. Petitioner's Contrary Interpretations Are Unsound

Petitioner's principal submission (Br. 17-21, 23-28, 30-31) is that one or more alternative, nonjurisdictional interpretations of Section 6330(d)(1) are also plausible. According to petitioner, the provision cannot contain a clear statement if "other sensible readings exist." Pet. Br. 31 (emphasis omitted). But none of petitioner's alternative readings of "such matter" can be squared with the text and context. And petitioner's arguments based on the statute's history, purpose, and policy consequences cast no cloud over Congress's clear statement.

1. Alternative interpretations of "such matter" are untenable

Petitioner posits multiple "alternative" interpretations of "'such matter'" that it contends are at least linguistically possible. Pet. Br. 18-21, 30. According to petitioner (Br. 30), the mere existence of "debate about the intended antecedent for 'such matter' * * * proves" that the statute is ambiguous as to the deadline's jurisdictional character. "Ambiguity," however, "is a creature not of definitional possibilities but of statutory context," *Brown* v. *Gardner*, 513 U.S. 115, 118 (1994), and a provision is not ambiguous merely because a particular phrase in isolation could bear more than one meaning, see *United Sav. Ass'n*, 484 U.S. at 371. Here, none

of the alternatives petitioner advances (Br. 30) as "plausible" comports with the statute as a whole.

a. Petitioner agrees (Br. 18) that "'such matter'" in Section 6330(d)(1)'s jurisdictional grant "needs an antecedent" and that the "most logical candidate" lies in the same sentence's first clause. But petitioner contends (Br. 19) that "such matter" does not refer to the entire first clause. Instead, petitioner asserts (*ibid.*) that "such matter" is "shorthand" for that clause's final portion, describing a petition concerning particular subject matter—*viz.*, "a petition for review of a [collection-due-process] determination." Petitioner is mistaken.

Invoking "the last-antecedent rule," petitioner contends that the "nearest reasonable antecedent" of "'such matter'" in Section 6330(d)(1) is a "'petition [to] the Tax Court for review of' 'a determination under [Section 6330].'" Pet. Br. 19-20 (citation omitted; brackets in original). As those spliced quotations reflect, that phrase does not appear in the statute. And although it is common ground that "such matter" refers to a petition filed pursuant to Section 6330(d)(1)'s first clause, see p. 20, *supra*, that conclusion follows from the context of the first clause as a whole. That clause authorizes a person to seek Tax Court review of a collection-due-process determination by filing a petition within 30 days. 26 U.S.C. 6330(d)(1). The product of that process—the "such matter" to which the jurisdictional grant refers, *ibid.*—is a petition meeting the first clause's criteria.

Petitioner agrees (Br. 19) that the first clause of Section 6330(d)(1) limits *which* petitions the second clause empowers the Tax Court to entertain. But petitioner selectively reads "such matter" (Br. 19-20) to incorporate only one of the first clause's conditions—that

the petition seeks review of a collection-due-process determination—but not the other condition requiring that it be filed within 30 days. No principle of law, language, or logic supports that pick-and-choose approach.

Petitioner appears to reason (Br. 19-20) that, because the subject-matter limitation, viewed by itself, is fewer words away from "such matter," it alone is incorporated as a jurisdictional element. But that reasoning assumes the conclusion that the conditions should be treated separately. Section 6330(d)(1)'s first clause places limits on what a petition may challenge as well as on when it may be filed.

Petitioner also contends (Br. 20) that, because the time-limit condition is set off by commas in between "may" and "petition," the condition "modifies the auxiliary verb 'may' (not the whole verb phrase 'may petition')." That parsing is perplexing. The word "may" is a modal auxiliary verb that cannot stand alone; it has meaning only in conjunction with the particular action that a person may (or may not) undertake. See, *e.g.*, Bryan A. Garner, *The Chicago Guide to Grammar, Usage, and Punctuation* 83-84, 121-122 (2016). It is meaningless—as senseless as "one-half of an idiom," *District of Columbia* v. *Heller*, 554 U.S. 570, 587 (2008)—to specify that "The person may, within 30 days." A limitation on what a person "may" *do* necessarily limits the thing to be *done*—here, the filing of a petition.

Petitioner suggests (Br. 20-21) that "matter" can be a synonym for "case," and therefore "such matter" incorporates only subject-matter constraints. While a "matter" can be a "case," "such matter" in Section 6330(d)(1) directs the reader to the matter just described. That "matter" is not merely a case on a specific topic, but one that was commenced within a particular

time. "Put another way, the notion of 'subject-matter' jurisdiction obviously extends to 'classes of cases . . . falling within a court's adjudicatory authority,' but it is no less 'jurisdictional' when Congress prohibits federal courts from adjudicating an otherwise legitimate 'class of cases' after a certain period has elapsed from" the event that triggers that filing period. *Bowles*, 551 U.S. at 213 (citations omitted).

Petitioner relies on the D.C. Circuit's decision in *Myers* v. *Commissioner*, 928 F.3d 1025 (2019), in which a divided panel addressed a separate but similar provision, 26 U.S.C. 7623(b)(4). Unlike Section 6330(d)(1), Section 7623(b)(4) does not concern judicial review of a taxpayer's own tax liability or related enforcement efforts, but instead addresses awards to whistleblowers. The *Myers* majority concluded that Section 7623(b)(4) "comes closer to satisfying the clear statement requirement than any [this] Court ha[d] heretofore held to be non-jurisdictional" but still falls short. *Id.* at 1035. Judge Henderson would have held that it surmounts that bar. *Id.* at 1039-1041 (opinion concurring in part and dissenting in part).

As we have explained (Br. in Opp. 23-24), Section 7623(b)(4)'s context and purpose distinguish it from Section 6330(d)(1). For example, Section 7623(b)(4) lacks any analogue to Section 6330(e)(1). And unlike Section 6330(d)(1)—which is part of an interconnected web of provisions addressing the intricate tax-collection process, in which the pendency of a collection-due-process proceeding suspends tax collection and various limitations periods—Section 7623 is a standalone provision. See *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130, 137-139 (2008) (declining to treat a statute as nonjurisdictional merely because it was "linguisti-

cally similar" to another statute that this Court had previously held to be nonjurisdictional, in light of differences in the statutes' context and history).

In any event, *Myers* did not endorse petitioner's last-antecedent rationale. See 928 F.3d at 1035. And the reasoning *Myers* did adopt is incorrect on its own terms. *Myers* recognized that "Congress need only include words linking the time period for filing to the grant of jurisdiction." *Ibid.* The majority thought that Congress's use of "and" instead of "if" showed that Congress did not tether jurisdiction to a timely petition. *Id.* at 1035 & n.‡. That is incorrect as explained above. See p. 21, *supra*.

b. Petitioner briefly mentions (Br. 30) two further fallback readings of "such matter" that exclude the filing deadline. But petitioner makes no effort to defend those interpretations, and neither squares with the text and context.

Drawing on 26 U.S.C. 6330(c), entitled "Matters considered at hearing," *ibid.* (emphasis omitted), petitioner suggests that "'[s]uch matter' instead could be referring back to the list of 'matters' that may be considered during the [collection-due-process] hearing," Pet. Br. 30 (quoting 26 U.S.C. 6330(c)) (brackets omitted). As we explained at the petition stage, that reading is untenable, Br. in Opp. 17-18, and petitioner makes no attempt to rehabilitate it. Section 6330(c) sets forth parameters for the hearing conducted and determination made by the Appeals Office. Apart from both provisions' reference to "matter[s]," Section 6330(c) and (d)(1) do not overlap, and nothing in either subsection's text or context indicates that Congress intended "such matter" in Section 6330(d)(1) to incorporate the entirety of a separate subsection addressing different issues.

Petitioner also suggests (Br. 30) that "'such matter' could just be another way of saying 'such determination.'" Congress doubtless can use synonyms to express the same or similar ideas. But petitioner points to nothing in those terms' ordinary meaning or their usage in Section 6330 that supports equating them here.

2. Arguments premised on prior versions of the statute do not demonstrate any ambiguity today

Petitioner contends (Br. 23-25) that an earlier version of Section 6330(d)(1) shows that the Tax Court's jurisdiction is contingent only on a petition's subject matter, not on its timeliness. Petitioner observes (Br. 23-24) that, as enacted in 1998, Section 6330(d)(1) authorized appeals of collection-due-process determinations either to the Tax Court (with a parenthetical conferring jurisdiction on that court to "hear such matter") or, if that court could not adjudicate the underlying tax liability, to a district court (with no similar parenthetical). 26 U.S.C. 6330(d)(1) (Supp. IV 1998). The 30-day filing deadline appeared in an introductory portion applicable to appeals to both courts. *Ibid.*; see pp. 5-6, *supra*. Petitioner reasons (Br. 24) that, in that original scheme, the deadline was not a jurisdictional prerequisite for appeals to district courts, so Congress would not have wanted the deadline to be jurisdictional for the Tax Court either. Petitioner further reasons (Br. 24-25) that the 2006 amendment that eliminated district-court review did not materially modify the text relating to the Tax Court, and therefore the deadline remains nonjurisdictional in Tax Court appeals. Petitioner's inferences based on that prior provision fail.

Petitioner's premise (Br. 24) that the deadline in the prior provision was not jurisdictional is unfounded. Even before 2006, multiple courts had reached the op-

posite conclusion. See, *e.g.*, *Ulloa* v. *United States*, No. 05-cv-124, 2005 WL 2739105, at *2 (N.D.N.Y. Oct. 24, 2005); *Walz* v. *United States*, No. 01-cv-1858, 2002 WL 523880, at *2 (D. Minn. Mar. 22, 2002); *McNeil* v. *United States*, No. 01-cv-597, 2002 WL 507821, at *3 (W.D. Mich. Mar. 7, 2002); *Sarrell* v. *Commissioner*, 117 T.C. 122, 125 (2001). That consensus comports with the fact that the Tax Court's jurisdiction over collection-due-process appeals existed solely by virtue of Section 6330(d)(1); jurisdiction, then as today, extended only to appeals that Section 6330(d)(1) authorized, *i.e.*, those commenced in 30 days. It also aligned with longstanding precedent construing Section 6213(a)'s similar deadline to be jurisdictional. See pp. 27-30, *supra*.

Moreover, petitioner's assumption (Br. 24) that Congress would not have made timeliness a jurisdictional prerequisite for Tax Court, but not district-court, appeals is undermined by Congress's decision in the 2000 amendment to do exactly that in Section 6330(e)(1). That provision expressly authorizes the Tax Court and other courts to enjoin levy actions during collection-due-process proceedings, and it makes a timely petition a prerequisite to the Tax Court's (but not a district court's) jurisdiction to grant that remedy. 26 U.S.C. 6330(e)(1).

In any event, Congress amended the statute in 2006 to its current form, once again against the backdrop of judicial consensus that similarly worded deadlines are jurisdictional. See pp. 7-8, *supra*. "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Intel Corp. Inv. Policy Comm.* v. *Sulyma*, 140 S. Ct. 768, 779 (2020) (citation omitted). The current text and context contain no residual uncertainty: the filing deadline is jurisdictional in the Tax Court.

3. Neither legislative history nor broad statements of legislative purpose support petitioner's reading

Petitioner additionally contends (Br. 25-27) that Section 6330(d)(1)'s legislative history and purpose support treating its filing deadline as nonjurisdictional. Petitioner's contentions lack merit.

Petitioner points (Br. 25) to silence in committee reports regarding the jurisdictional character of Section 6330(d)(1)'s deadline. But "silence in the legislative history, 'no matter how "clanging,"' cannot defeat the better reading of the text and statutory context." *Encino Motorcars, LLC* v. *Navarro*, 138 S. Ct. 1134, 1143 (2018) (citation omitted). The generalized floor and hearing statements that petitioner cites (Br. 26-27 n.8), which addressed a desire for greater checks on tax-collection authority, likewise cannot "muddy clear statutory language." *Milner* v. *Department of the Navy*, 562 U.S. 562, 572 (2011).

Petitioner also suggests that Section 6330 was enacted to serve "remedial" purposes that would be undermined by strict deadlines. Pet. Br. 26 (citation omitted). But as the reticulated statutory scheme reflects, in Section 6330, as elsewhere in the Code, Congress struck a calibrated balance between competing interests. Congress's creation of an additional layer of pre-collection administrative and judicial review, which interrupts the ordinary course of collection efforts, reflects a concern with protecting taxpayers' property interests. But the short (30-day) deadlines Congress prescribed for seeking collection-due-process hearings and judicial review of a resulting determination show that Congress did not intend the pause of collection efforts to be protracted, given the critical need for efficient tax collection.

4. Policy concerns do not support petitioner's reading

Finally, petitioner and its amici suggest that policy concerns require deeming Section 6330(d)(1)'s deadline nonjurisdictional. *E.g.*, Pet. Br. 27-28. Those policy arguments are misdirected. The judgment whether to make a statutory requirement for seeking judicial review a precondition for jurisdiction is for Congress, which "is free to attach the conditions that go with the jurisdictional label to a rule that [a court] would prefer to call a claim-processing rule." *Henderson*, 562 U.S. at 435. Indeed, the National Taxpayer Advocate—an office within the IRS that recommends legislation to assist taxpayers, 26 U.S.C. 7803(c)(2)(A)(iv)—has proposed amendments to modify the Tax Court's jurisdiction to allow for equitable tolling of Section 6330(d)(1) and other provisions. *E.g.*, Taxpayer Advocate Serv., *2017 Annual Report to Congress*, LR #3, Vol. 1, at 283-292 (2017). But Congress has not adopted those amendments. Moreover, concerns about the "consequences that attach to the jurisdictional label" are already accounted for by, and in part underlie, the Court's requirement that Congress "speak clearly." *Henderson*, 562 U.S. at 435-436; see, *e.g.*, *Kwai Fun Wong*, 575 U.S. at 409-410; *Arbaugh*, 546 U.S. at 514-515.

In any event, the policy concerns asserted here are overstated. For example, some amici suggest that deadlines like Section 6330(d)(1) must be subject to equitable exceptions, to ensure that taxpayers have an opportunity for judicial review of the merits. National Taxpayers Union Found. Amicus (NTUF) Br. 6, 14; see Fed. Tax Clinics Amici (Clinics) Br. 9. But construing Section 6330(d)(1) to bar jurisdiction over untimely petitions for review of collection-due-process determinations does not eliminate a taxpayer's ability

to obtain judicial review. All taxpayers may pursue the traditional remedy of a refund suit, which has long been held to satisfy due process. See p. 2, *supra*. And for many taxes—including income taxes, which are at issue in most collection-due-process proceedings—a taxpayer often may seek pre-assessment review through the deficiency process. See pp. 2-3, *supra*. That particular avenue was not available here because petitioner was assessed a reporting penalty, not additional income tax. See 26 U.S.C. 6212(a). But the availability of that procedure in many settings mitigates the concern.

Other amici suggest that treating Section 6330(d)(1)'s deadline as jurisdictional disproportionately harms low-income taxpayers. Clinics Br. 8-9. The available data do not support that prediction. The IRS has informed this Office that, over the past five fiscal years, taxpayers who filed returns and had low incomes (*i.e.*, at or below 250% of federal poverty guidelines) accounted for only 15.9% of taxpayers who requested collection-due-process hearing, for only 16.8% of taxpayers who filed a petition for review of a collection-due-process notice of determination, and for only 3.7% of taxpayers who filed such a petition that was dismissed for lack of jurisdiction.

Petitioner and its amici assert that taxpayers who seek Tax Court review of collection-due-process determinations frequently proceed pro se and may not know how to seek review or appreciate the consequences of not filing by the deadline. Clinics Br. 2, 9; see *id.* at 8; Pet. Br. 27. But as this case illustrates, the notice of determination itself provides that information. The notice informs taxpayers of their right to seek Tax Court review; how "to obtain a petition form and the rules for filing a petition"; the Tax Court's "simplified procedure" for collection actions involving $50,000 or less; the

30-day deadline to seek Tax Court review; the consequences of not filing a timely petition; and courts' inability to alter the deadline or excuse an untimely filing. J.A. 19; see 26 C.F.R. 301.6330-1(e)(3) (A-E8). The IRS has informed this Office that each final notice of intent to levy (or notice of lien filing) is also accompanied by a document advising taxpayers of the availability of assistance from low-income-taxpayer clinics. See IRS, Dep't of the Treas., *The IRS Collection Process*, Pub. 594, at 2 (rev. July 2018), https://go.usa.gov/xFqkn.

* * * * *

As petitioner observes (Br. 16), statutory deadlines with jurisdictional consequences are uncommon. That is because few statutes contain the requisite clear statement from Congress to achieve that effect. But in Section 6330(d)(1), Congress clearly conveyed its intent to condition the Tax Court's jurisdiction over collection-due-process determinations on a timely petition. The Court should give effect to that clear statement.

II. EVEN IF SECTION 6330(d)(1)'S FILING DEADLINE IS NOT JURISDICTIONAL, IT IS MANDATORY AND NOT SUBJECT TO EQUITABLE TOLLING

If the Court concludes that Section 6330(d)(1)'s deadline is not jurisdictional, it should make clear that the provision is mandatory and not subject to equitable tolling. "The mere fact that a time limit lacks jurisdictional force * * * does not render it malleable in every respect." *Nutraceutical Corp.* v. *Lambert*, 139 S. Ct. 710, 714 (2019). Some time bars, "[t]hough subject to waiver and forfeiture, * * * are 'mandatory'—that is, they are 'unalterable' if properly raised by an opposing party." *Ibid.* (citation omitted). As the government argued below and at the petition stage, Section 6330(d)(1)

is, at a minimum, mandatory in that sense. Gov't C.A. Br. 41-46; Br. in Opp. 25-29.

A. "[E]quitable tolling pauses the running of * * * a statute of limitations when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action." *Lozano* v. *Montoya Alvarez*, 572 U.S. 1, 10 (2014). Such tolling does not "derive from legislative enactments" but "from the traditional power of the courts to 'apply the principles . . . of equity jurisprudence.'" *ANZ Sec.*, 137 S. Ct. at 2050 (citation omitted). But whether equitable tolling is available under a particular law is a matter of statutory interpretation, such that a court must determine whether Congress intended to displace tolling principles in a particular context. See *Lozano*, 572 U.S. at 18. Where a statute or rule "show[s] a clear intent to preclude tolling, courts are without authority to make exceptions merely because a litigant appears to have been diligent, reasonably mistaken, or otherwise deserving." *Nutraceutical Corp.*, 139 S. Ct. at 714.

In recent years, this Court has applied a rebuttable presumption that federal statutes of limitation are subject to equitable tolling. See, *e.g.*, *Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89, 95-96 (1990). That presumption "reflect[s] Congress' likely meaning in the mine run of instances where it enacted a Government-related statute of limitations." *John R. Sand & Gravel Co.*, 552 U.S. at 137. But the presumption is "'*rebuttable*,'" not "conclusive," and is rebutted when the text, context, and history reveal "Congress' intent to the contrary." *Id.* at 137-138 (citation omitted); see, *e.g.*, *Nutraceutical*, 139 S. Ct. at 715 (holding that the nonjurisdictional deadline in Federal Rule of Civil Procedure 23(f) for appealing an order granting or denying

class-action certification is mandatory and "not subject to equitable tolling," in light of a "clear intent to compel rigorous enforcement").

This Court's decision in *United States* v. *Brockamp*, 519 U.S. 347 (1997), is instructive. *Brockamp* unanimously held that the Code's deadline for tax-refund claims (26 U.S.C. 6511) is not subject to equitable tolling. 519 U.S. at 349-354. The Court expressed doubt about whether *Irwin*'s rebuttable presumption applied but assumed, "only for argument's sake," that it did apply. *Id.* at 350; see *id.* at 349-350 (citing cases "distinguishing common-law suit against the tax collector from action of assumpsit for money had and received," to which the taxpayers contended "principles of equitable tolling would have applied"). But the Court found "strong reasons" to conclude that Congress did not intend to allow tolling. *Id.* at 350. The Court cited several attributes of the statute supporting that conclusion, including the deadline's "emphatic" yet "detailed" and "technical" language that could not "easily be read as containing implicit exceptions," *ibid.*; the fact that the statute "reiterate[d]" the deadline in several places, *id.* at 351 (citing 26 U.S.C. 6511(a), (b)(1), (2)(A), and (B), 6514); and its inclusion of certain express exceptions, *id.* at 351-352 (discussing 26 U.S.C. 6511(d)).

The *Brockamp* Court further observed that "[t]ax law * * * is not normally characterized by case-specific exceptions reflecting individualized equities," and that the large volume of claims that the IRS must address each year would make it burdensome to consider and possibly litigate "large numbers of late claims[] accompanied by requests for 'equitable tolling.'" 519 U.S. at 352. The Court concluded that "Congress decided to pay the price of occasional unfairness in individual cases

(penalizing a taxpayer whose claim is unavoidably delayed) in order to maintain a more workable tax enforcement system." *Id.* at 352-353.

B. Even assuming that *Irwin*'s presumption applies, Section 6330(d)(1)'s text and context rebut it and show that Congress did not intend the deadline to be subject to ad hoc equitable exceptions. As an initial matter, Congress would have recognized that the Tax Court, unlike many other courts, "lacks general equitable powers." *McCoy*, 484 U.S. at 7. And the statutory text sets forth a bright-line rule applicable to all petitions for review of collection-due-process determinations. Like the provision in *Brockamp*, Section 6330(d)(1) contains no language that can "plausibly [be] read as containing an implied 'equitable tolling' exception"—such as a deadline that runs from the date of a claimant's "'receipt'" of a notice from an agency. *Brockamp*, 519 U.S. at 350 (citation omitted). The filing period runs instead from the date of the Appeals Office's determination. That deadline is reiterated in Section 6330(e)(1), which makes filing a "timely" petition under Section 6330(d)(1) a condition of the Tax Court's "jurisdiction" to enjoin levy actions. 26 U.S.C. 6330(e)(1).

Congress also has created only one exception in Section 6330(d). Section 6330(d)(2) expressly suspends the filing period for a person who is "prohibited" from filing a petition "by reason of" bankruptcy proceedings. 26 U.S.C. 6330(d)(2). Congress's inclusion of that exception bolsters the conclusion that tolling is otherwise unavailable. See *Brockamp*, 519 U.S. at 351-352; *United States* v. *Beggerly*, 524 U.S. 38, 48-49 (1998).

In addition, the *Brockamp* Court's observation that tax law generally is not amenable to "case-specific exceptions reflecting individualized equities," 519 U.S. at

352, applies with particular force in the context of administrative levies, where the need for promptness is paramount. As this Court has recognized, "'[t]he underlying principle' justifying the administrative levy is 'the need of the government promptly to secure its revenues.'" *United States* v. *National Bank of Commerce*, 472 U.S. 713, 721 (1985) (citation omitted); see *Bull* v. *United States*, 295 U.S. 247, 259 (1935) ("[T]axes are the life-blood of government, and their prompt and certain availability an imperious need."). Unlike a private litigant who must pursue a claim to judgment to collect, Congress allows the IRS to collect a tax liability simply by making an assessment, sending a notice and demand for payment to the taxpayer, and levying on property. See 26 U.S.C. 6201(a), 6303(a), 6330(a), 6331(a).

The inflexibility of Section 6330(d)(1)'s deadline also makes sense in context. Allowing equitable tolling for Section 6330(d)(1) petitions would significantly complicate and delay the IRS's collection efforts. Absent equitable tolling, a clear end date exists for the period during which the IRS is prohibited from collecting by levy: the date when the 30-day filing period under Section 6330(d)(1) expires. After that date, the IRS may proceed to collect by levy. If the deadline could be equitably tolled, a delinquent taxpayer might be able to prolong the suspension period by filing a tardy petition in the Tax Court and then seeking to excuse the failure to file a timely petition on equitable-tolling grounds. That, in turn, could create uncertainty about whether the property previously seized by the levy would need to be returned after the fact—a result that would be in substantial tension with Congress's express instruction in Section 6330(e)(1) that the Tax Court may not enjoin levy activities during the suspension period absent a

timely filed petition for review, see pp. 6-7, 23-25, *supra*. And the IRS would be unable to know with certainty when it could safely begin to collect.

Section 6330's history reinforces that conclusion. The version enacted in 1998 permitted review of some collection-due-process determinations in a district court and of others in the Tax Court. 26 U.S.C. 6330(d)(1) (Supp. IV 1998). The statute included a tolling provision that applied if a taxpayer filed in the wrong forum. *Ibid.* In 2006, in light of concerns that some taxpayers were abusing that provision to delay proceedings by deliberately filing in the wrong court, Congress eliminated district-court review and the tolling provision. 2006 Act § 855(a), 120 Stat. 1019; see pp. 7-8, *supra*. And in 2015, Congress added the sole current exception to Section 6330(d)(1)'s deadline (the one, noted above, for taxpayers precluded from filing a petition by pending bankruptcy proceedings). See Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, Div. Q, § 424(b)(1)(D), 129 Stat. 3124.

C. Petitioner's contrary arguments lack merit. Petitioner contends (Br. 37) that Section 6330(d)(1)'s language alone is no more "forceful" than that of the statute that the *Irwin* Court held was subject to tolling. But petitioner does not confront the other attributes of Section 6330(d)(1)'s text and context discussed above, the special considerations present in the tax-collection context, the role of Section 6330(d)(1)'s deadline in the broader architecture of the tax-collection process, or the statutory history that reflects congressional intent not to embrace broad, ad hoc exceptions.

Petitioner contends that no "'tax collection exception' to *Irwin*'s" rebuttable presumption should be recognized. Pet. Br. 43 (citation omitted). But *Brockamp*

expressly reserved the question whether *Irwin*'s presumption applies to tax collection. 519 U.S. at 350. Petitioner's suggestion (Br. 43), echoed by its amici, *e.g.*, NTUF Br. 6-7, that this Court disapproved any approach that takes account of the unique concerns present in the tax-administration context in *Mayo Foundation for Medical Education & Research* v. *United States*, 562 U.S. 44 (2011), is incorrect. The Court there simply rejected an argument "for applying a less deferential standard of review to Treasury Department regulations than [courts] apply to the rules of any other agency." *Id.* at 55. In any event, as explained above, Section 6330(d)(1)'s text and context rebut any presumption in favor of tolling.

Petitioner's assertion (Br. 38-40) that collection-due-process proceedings are broadly remedial in purpose does not support bending the deadline Congress established. As discussed above, in creating that mechanism, Congress struck a careful balance, providing a window for pre-collection review but carefully limiting it to avoid large-scale disruption of collection efforts. The tax-collection context bears no resemblance, for example, to the habeas corpus context addressed in *Holland* v. *Florida*, 560 U.S. 631 (2010), on which petitioner extensively relies (Br. 36-38, 40, 42-44). See *Holland*, 560 U.S. at 647 (contrasting the "tax collection" context with "habeas corpus," because the latter "pertains to an area of the law where equity finds a comfortable home").

D. If the Court concludes that Section 6330(d)(1)'s deadline may ever be equitably tolled, it should underscore that such tolling will be available only in "extraordinary circumstance[s]." *Lozano*, 572 U.S. at 10. The Court has previously limited equitable tolling to circumstances where a claimant demonstrates both "'(1) that

[it] has been pursuing [its] rights diligently, and (2) that some extraordinary circumstance'" that was "beyond [the claimant's] control" "'stood in [its] way and prevented timely filing.'" *Menominee Indian Tribe of Wisc.* v. *United States*, 577 U.S. 250, 255, 257 (2016) (citation omitted). Equitable tolling does not apply to "a garden variety claim of excusable neglect." *Irwin*, 498 U.S. at 96 (refusing to extend equitable tolling where a petitioner failed to file timely "because his lawyer was absent from his office at the time that the [agency] notice was received, and that he thereafter filed within 30 days of the day on which he personally received notice").

Although the courts below did not address whether equitable tolling would be appropriate in this case, Pet. Br. 11; cf. Pet. App. 8a n.3, 15a, petitioner's request for equitable tolling in the circumstances here suggests a much broader exception than this Court has approved. The notice of determination was issued on July 28, 2017. Petitioner, a law firm, received the notice three days later, on July 31. Petitioner had 30 days to file a petition for review, and petitioner did prepare and file a petition. But it submitted (and apparently completed) its petition one day after the filing period expired. Pet. App. 2a.

Petitioner has never identified any "external obstacle" that was "both extraordinary *and* beyond [petitioner's] control" that "stood in [petitioner's] way and prevented timely filing." *Menominee*, 577 U.S. at 255-257 (citations omitted); cf. *Holland*, 560 U.S. at 652-653 (suggesting, without definitively concluding, that an incarcerated death-row inmate had shown an extraordinary circumstance where his lawyer repeatedly refused his request to file a habeas petition before the deadline and failed to inform the inmate of a state-court decision triggering a limitations period). In the court of

appeals, petitioner asserted that it was entitled to an equitable exception because the notice of determination "took three (3) days" to reach petitioner, such that petitioner was not "afforded" a full 30-day period. Pet. C.A. Br. 39. But in Section 6330(d)(1), as in other similar Code provisions, Congress keyed the filing period to the date of the determination, not the date it is received. 26 U.S.C. 6330(d)(1); see 26 C.F.R. 301.6330-1(e)(3) (A-E10); cf., *e.g.*, 26 U.S.C. 6213(a), 6015(e)(1)(A), 6404(h)(1)(A). The three-day period that the notice spent in transit does not constitute an extraordinary circumstance. If the Court concludes that equitable tolling of Section 6330(d)(1)'s deadline is ever available, it should reaffirm that a taxpayer requesting tolling must clear a high bar.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 26 U.S.C. 6015(e) provides in pertinent part:

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 against whom a deficiency has been asserted and who elects to have subsection (b) or (c) apply, or in the case of an individual who requests equitable relief under subsection (f)—

(A) In general

In addition to any other remedy provided by law, 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—

(i) at any time after the earlier of—

(I) the date the Secretary mails, by certified or registered mail to the taxpayer's last known address, notice of the Secretary's final determination of relief available to the individual, or

(II) the date which is 6 months after the date such election is filed or request is made with the Secretary, and

(ii) not later than the close of the 90th day after the date described in clause (i)(I).

(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) or requesting equitable relief under subsection (f) for collection of any assessment to which such election or request relates until the close of the 90th day referred to in subparagraph (A)(ii), or, if a petition has been filed with the Tax Court under subparagraph (A), 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 or to which the request under subsection (f) relates.

(2) Suspension of running of period of limitations

The running of the period of limitations in section 6502 on the collection of the assessment to which the petition under paragraph (1)(A) relates shall be suspended—

(A) for the period during which the Secretary is prohibited by paragraph (1)(B) from collecting by levy or a proceeding in court and for 60 days thereafter, and

(B) if a waiver under paragraph (5) is made, from the date the claim for relief was filed until 60 days after the waiver is filed with the Secretary.

(3) Limitation on Tax Court jurisdiction

If a suit for refund is begun by either individual filing the joint return pursuant to section 6532—

(A) the Tax Court shall lose jurisdiction of the individual's action under this section to whatever extent jurisdiction is acquired by the district court or the United States Court of Federal Claims over the taxable years that are the subject of the suit for refund, and

(B) the court acquiring jurisdiction shall have jurisdiction over the petition filed under this subsection.

* * * * *

2. 26 U.S.C. 6212(a) provides:

Notice of deficiency

(a) In general

If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

3. 26 U.S.C. 6213 provides in pertinent part:

Restrictions applicable to deficiencies; petition to Tax Court

(a) Time for filing petition and restriction on assessment

Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case

may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection. The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection 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. Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

* * * * *

(c) Failure to file petition

If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary.

* * * * *

4. 26 U.S.C. 6320 provides:

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 Independent 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.

5. 26 U.S.C. 6321 provides:

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.

6. 26 U.S.C. 6330 provides:

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 Independent 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 Independent Office of Appeals

The Internal Revenue Service Independent 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.

7. 26 U.S.C. 6330(d)-(e) (Supp. IV 1998) provides:

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.

(2) 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.

(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.

8. 26 U.S.C. 6331 provides in pertinent part:

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).

* * * * *

(d) Requirement of notice before levy

(1) In general

Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.

(2) 30-day requirement

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 persons's last known address, no less than 30 days before the day of the levy.

(3) Jeopardy

Paragraph (1) shall not apply to a levy if the Secretary has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy.

(4) Information included with notice

The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms—

(A) the provisions of this title relating to levy and sale of property,

(B) the procedures applicable to the levy and sale of property under this title,

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

(D) the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),

(E) the provisions of this title relating to redemption of property and release of liens on property,

(F) the procedures applicable to the redemption of property and the release of a lien on property under this title, and

(G) 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.

* * * * *

(f) Uneconomical levy

No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the

time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.

* * * * *

(j) No levy before investigation of status of property

(1) In general

For purposes of applying the provisions of this subchapter, no levy may be made on any property or right to property which is to be sold under section 6335 until a thorough investigation of the status of such property has been completed.

(2) Elements in investigation

For purposes of paragraph (1), an investigation of the status of any property shall include—

(A) a verification of the taxpayer's liability;

(B) the completion of an analysis under subsection (f);

(C) the determination that the equity in such property is sufficient to yield net proceeds from the sale of such property to apply to such liability; and

(D) a thorough consideration of alternative collection methods.

* * * * *

9. 26 U.S.C. 6502 provides:

Collection after assessment

(a) Length of period

Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) within 10 years after the assessment of the tax, or

(2) if—

(A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into; or

(B) there is a release of levy under section 6343 after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.

If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

(b) Date when levy is considered made

The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in section 6335(a) is given.

10. 26 U.S.C. 6511(a)-(b) provides:

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.

11. 26 U.S.C. 6531 provides:

Periods of limitation on criminal prosecutions

No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws unless the indictment is found or the information instituted within 3 years next after the commission of the offense, except that the period of limitation shall be 6 years—

(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner;

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof;

(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document);

(4) for the offense of willfully failing to pay any tax, or make any return (other than a return required under authority of part III of subchapter A of chapter 61) at the time or times required by law or regulations;

(5) for offenses described in sections 7206(1) and 7207 (relating to false statements and fraudulent documents);

(6) for the offense described in section 7212(a) (relating to intimidation of officers and employees of the United States);

(7) for offenses described in section 7214(a) committed by officers and employees of the United States; and

(8) for offenses arising under section 371 of Title 18 of the United States Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof.

The time during which the person committing any of the various offenses arising under the internal revenue laws is outside the United States or is a fugitive from justice within the meaning of section 3290 of Title 18 of the United States Code, shall not be taken as any part of the time limited by law for the commencement of such proceedings. (The preceding sentence shall also be deemed an amendment to section 3748(a) of the Internal Revenue Code of 1939, and shall apply in lieu of the sentence in section 3748(a) which relates to the time during which a person committing an offense is absent from the district wherein the same is committed, except that such amendment shall apply only if the period of limitations under section 3748 would, without the application of such amendment, expire more than 3 years after the date of enactment of this title, and except that such period shall not, with the application of this amendment, expire prior to the date which is 3 years after the date

of enactment of this title.) Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the date which is 9 months after the date of the making of the complaint before the commissioner of the United States. For the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable.

12. 26 U.S.C. 6532 provides in pertinent part:

Periods of limitation on suits

(a) Suits by taxpayers for refund

(1) General rule

No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

(2) Extension of time

The 2-year period prescribed in paragraph (1) shall be extended for such period as may be agreed upon in writing between the taxpayer and the Secretary.

(3) Waiver of notice of disallowance

If any person files a written waiver of the requirement that he be mailed a notice of disallowance, the 2-year period prescribed in paragraph (1) shall begin on the date such waiver is filed.

(4) Reconsideration after mailing of notice

Any consideration, reconsideration, or action by the Secretary with respect to such claim following the mailing of a notice by certified mail or registered mail of disallowance shall not operate to extend the period within which suit may be begun.

(5) Cross reference

For substitution of 120-day period for the 6-month period contained in paragraph (1) in a title 11 case, see section 505(a)(2) of title 11 of the United States Code.

(b) Suits by United States for recovery of erroneous refunds

Recovery of an erroneous refund by suit under section 7405 shall be allowed only if such suit is begun within 2 years after the making of such refund, except that such suit may be brought at any time within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

* * * * *

13. 26 U.S.C. 7442 provides:

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.

14. 26 U.S.C. 7623(a)-(c) provides:

Expenses of detection of underpayments and fraud, etc.

(a) In general

The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for—

(1) detecting underpayments of tax, or

(2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same,

in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts collected by reason of the information provided, and any amount so collected shall be available for such payments.

(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.

(c) Proceeds

For purposes of this section, the term "proceeds" includes—

(1) penalties, interest, additions to tax, and additional amounts provided under the internal revenue laws, and

(2) any proceeds arising from laws for which the Internal Revenue Service is authorized to administer, enforce, or investigate, including—

(A) criminal fines and civil forfeitures, and

(B) violations of reporting requirements.

15. 26 C.F.R. 301.6330-1 provides in pertinent part:

Notice and opportunity for hearing prior to levy.

* * * * *

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals will determine the timeliness of any request for a CDP hearing that is made by a taxpayer. Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, Appeals is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure with respect to the proposed levy have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed levy, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the underlying liability, including a liability reported on a self-filed return, for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute the tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or

judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

* * * * *

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q-E1. What factors will Appeals consider in making its determination?

A-E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the proposed collection action.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q-E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A-E2. A taxpayer is entitled to challenge the existence or amount of the underlying liability for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency determined in the notice of deficiency. An opportunity to dispute the underlying liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability. An opportunity for a conference with Appeals prior to the assessment of a tax subject to deficiency procedures is not a prior opportunity for this purpose.

* * * * *

Q-E6. What collection alternatives are available to the taxpayer?

A-E6. Collection alternatives include, for example, a proposal to withhold the proposed levy or future collection action in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer to compromise, the posting of a bond, or the substitution of other assets. A collection alternative is not available unless the alternative would be available to other taxpayers in similar circumstances. See A-D8 of paragraph (d)(2).

* * * * *

Q-E8. How will Appeals issue its determination?

A-E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the collection action; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the proposed collection action represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination, but the taxpayer can waive in writing Appeals' consideration of some or all of the

matters it would otherwise consider in making its determination.

Q-E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A-E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q-E10. Why is the Notice of Determination and its date important?

A-E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A-El of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

* * * * *

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q-F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A-F1. Subject to the jurisdictional limitations described in A-F2 of this paragraph (f)(2), the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court.

* * * * *

Q-F3. What issue or issues may the taxpayer raise before the Tax Court if the taxpayer disagrees with the Notice of Determination?

A-F3. In seeking Tax Court review of a Notice of Determination, the taxpayer can only ask the court to consider an issue, including a challenge to the underlying tax liability, that was properly raised in the taxpayer's CDP hearing. An issue is not properly raised if the taxpayer fails to request consideration of the issue by Appeals, or if consideration is requested but the taxpayer fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence.

* * * * *