



TaxNewsFlash

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Second Circuit: 90-day time limit to file petition is nonjurisdictional, claim-processing rule subject to equitable tolling

The U.S. Court of Appeals for the Second Circuit today held that the 90-day time limit under section 6213(a) to file a petition before the Tax Court is a nonjurisdictional, claim-processing rule subject to equitable tolling.

The case is: *Buller v. Commissioner*, No. 24-1557 (2nd Cir. August 14, 2025). Read the Second Circuit's [decision](#)

Although the court acknowledged it had long described section 6213(a) as jurisdictional in nature, it noted that “[i]n recent years, however, the Supreme Court has sought to ‘bring some discipline’ to the use of the word ‘jurisdiction,’ observing that judicial opinions have often stated that the court was dismissing the case for lack of jurisdiction without explicitly considering whether the procedural rule actually ‘govern[ed] [the] court’s adjudicatory capacity’” (citing *Henderson v. Shinseki*, 562 U.S. 428 (2011); see also *Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006)), and “that such imprecision can have significant consequences for both litigants and courts because jurisdictional provisions ‘cannot be waived or forfeited, must be raised by courts sua sponte, and . . . do not allow for equitable exceptions’” (citing *Boechler P.C. v. Commissioner*, 596 U.S. 199 (2022)).

In light of those recent Supreme Court decisions, and upon a de novo review of the Tax Court’s dismissal of the taxpayer’s petition for lack of jurisdiction because it was filed nine days after the deadline under section 6213(a), as well as the question of whether that deadline is subject to equitable tolling, the court found that section 6213(a) is a nonjurisdictional, claim-processing rule and that the taxpayers are entitled to equitable tolling.

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