

## Solo Practitioner, Backed by Latham & Watkins, Wins SCOTUS Tax Ruling

The justices ruled a 30-day limit for filing a petition in the U.S. Tax Court to challenge an IRS decision to seize property is not a jurisdictional limit and can be equitably tolled.

BY MARCIA COYLE

### What You Need to Know

- The U.S. Supreme Court ruled in *Boechler v. IRS* that a 30-day deadline to petition the Tax Court to review an IRS decision to levy against a taxpayer was not jurisdictional and can be equitably tolled.
- Latham handled the case pro bono and drew supporting amicus briefs from a variety of tax clinics, taxpayer rights groups and scholars.
- The decision by Justice Amy Coney Barrett is particularly significant for low-income taxpayers and small businesses.

A Fargo, North Dakota, solo practitioner, with help from Latham & Watkins, scored a unanimous victory in the U.S. Supreme Court on Thursday for herself, and low-income taxpayers and small businesses.

The court, in an opinion by Justice Amy Coney Barrett, ruled in [Boechler v. IRS](#) that the 30-day time limit for filing a petition in the U.S. Tax Court to challenge the IRS's decision to seize property to collect tax debts is not a jurisdictional limit and can be equitably tolled.

Jeanette Boechler of the Boechler Law Firm missed the 30-day filing deadline by one day in 2017.

Barrett wrote that the court treats a procedural requirement as jurisdictional only if Congress clearly states that it is. The case turned on whether Congress had clearly stated the deadline in Section 6330(d) (1) for a petition for review of a collection due process decision is jurisdictional.

"As we see it, the text does not clearly mandate the jurisdictional reading," Barrett said, adding that the "broader statutory context" confirmed the lack of any clear statement.

Boechler, a former Democratic candidate for North Dakota attorney general in 2010, was represented in the high court by Latham partner Melissa Arbus Sherry. In 2015, the IRS notified Boechler of a discrepancy in its tax filings. When Boechler did not respond, the agency assessed an "intentional disregard"



The U.S. Supreme Court building in Washington, D.C.

Photo: Diego M. Radzinski/ALM

penalty of \$19,250 and notified Boechler of its intent to levy—in other words, to seize and sell—Boechler’s property to satisfy the penalty.

Boechler requested a hearing before the agency’s Independent Office of Appeals during which she challenged the penalty, arguing there was no discrepancy in the tax filings and that the penalty was excessive. After she lost her appeal, she had 30 days to petition the Tax Court for review. The deadline was Aug. 28, 2017, but the firm mailed the petition Aug. 29.

Boechler’s case came to Latham through associate Amy Feinberg, who argued it in the circuit court of appeals. Feinberg had been in the tax clinic at Harvard where she

handled a similar case. Her professors reached out to her about Boechler shortly after Feinberg joined Latham.

Sherry took on the case pro bono. Her argument drew amicus support from a number of tax clinics, legal aid groups, taxpayer rights organizations and tax law scholars.

One of those amicus briefs, filed by Shay Dvoretzky of Skadden, Arps, Slate, Meagher & Flom, said the case was particularly important because “low-income taxpayers are more likely to be audited and more likely to petition the U.S. Tax Court than other taxpayers.” A ruling that the deadline was jurisdictional, he wrote, would “deprive these taxpayers of their only opportunity for judicial review before the

IRS seizes their property—sometimes for taxes they do not even owe.”

The high court’s decision is significant for two reasons, Sherry said in an interview.

“It gives taxpayers and especially low-income and pro se taxpayers the opportunity to actually have their day in court,” she explained. “Before this decision, because the tax court treated the 30 days as jurisdictional, it really closed the courthouse door no matter how good a reason a taxpayer had for not getting there on time.”

And, she added, “It’s nice to see a unanimous decision reaffirming the long line of decisions making clear that if Congress wants something to be jurisdictional, it has to say so.”