

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-1267

RONALD E. BYERS,

Petitioner,

v.

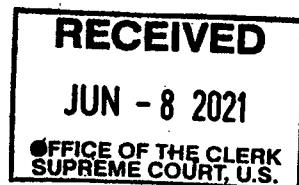
COMMISSIONER OF INTERNAL REVENUE,

Respondent.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

PETITION FOR REHEARING

RONALD E. BYERS
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MATERIAL FACTS THAT SUPPORT REHEARING

In this tax collection due process case, Ronald E. Byers timely petitioned this Court to "to review its own power to render a United States Tax Court decision final" under 26 U.S.C. § 7481(a)(2)(B).

That law provides that the Court's denial of a certiorari petition renders an underlying United States Tax Court decision (affirmed by a United States Court of Appeals judgment) "final."

Mr. Byers' certiorari petition presented the Court with two questions:

1. Is 26 U.S.C. § 7481(a)(2)(B) jurisdictional?
2. Must a party who moves the U.S. Tax Court for post-decision relief—while this Court reviews his certiorari petition—show that he satisfies a "fraud on the court" exception to decision finality?

The Acting United States Solicitor General waived the Commissioner of Internal Revenue's right to respond to Mr. Byers' certiorari petition. On May 3, 2021, the Court (with Justice Kavanaugh taking no part in the consideration or decision) denied the petition.

For cause, Mr. Byers timely petitions the Court for rehearing.

GROUNDS FOR GRANTING REHEARING

1. The jurisdictional questions that Mr. Byers presents here are important enough to warrant this Court's further review. Those questions involve this Court's statutory power to render a United States Tax Court decision final and unreviewable. They implicate this Court's recent jurisdictional jurisprudence.

2. After Mr. Byers had filed his certiorari petition, the U.S. Solicitor General's office filed with this Court a response brief in two cases that presented the same question:

"Whether the statutory deadline for seeking Tax Court review of an income-tax deficiency determination made by the Commissioner of Internal Revenue, 26 U.S.C. 6213(a), is jurisdictional."

See *Organic Cannabis Foundation, LLC, dba Organicann Health Center v. Commissioner of Internal Revenue*, U.S. S. Ct. Case No. 20-1014; *Northern California Small Business Assistants, Inc. v. Commissioner of Internal Revenue*, U.S. S. Ct. Case No. 20-1031.

3. Those recent U.S. Solicitor General response briefs raise a jurisdictional argument that supports Mr. Byers' certiorari bid here. In them, the Solicitor General argues that Congress will be deemed to

500, 515-516 (2006) (footnote and citation omitted). Yet "when Congress does not rank a [procedural bar] as jurisdictional, courts should treat the restriction as non-jurisdictional in character." *Arbaugh* at 515-516.

6. Yes, the Court denied the *Organic Cannabis Foundation* and the *Northern California Small Business Assistants* petitioners a certiorari writ too, also on May 3, 2021. Yet the Solicitor General's opposition to the petitions there supports Mr. Byers' petition here. For 26 U.S.C. § 6213(a) (authorizing in general the filing of a United States Tax Court petition within 90 days) is indeed jurisdictional. But to reach that legal conclusion, the Solicitor General had to rely on arguments that "clearly show" that 26 U.S.C. § 7481(a)(2)(B) is not jurisdictional.

7. So this Court's denial of a certiorari petition does render an underlying United States Tax Court decision, affirmed by a United States Court of Appeals judgment, "final." But it does not also make 26 U.S.C. § 7481(a)(2)(B) jurisdictional. This Court's certiorari denial power therefore does not deprive the Tax Court of the post-decision review power it already possessed.

8. Both the D.C. Circuit Court of Appeals and the Tax Court below, however, held that 26 U.S.C. § 7481(a)(2)(B) is jurisdictional. Both courts held further that the Tax Court loses its jurisdiction to act on a post-decision motion for relief the moment this Court denies the taxpayer's certiorari petition. They concluded that the taxpayer must anticipate this Court's certiorari petition denial.

9. Indeed, each court now requires that a taxpayer's post-decision motion to the Tax Court raise a "fraud on the court" argument. As those courts see it, that preemptive argument would both avoid Tax Court decision finality and preserve the Tax Court's jurisdiction. That is so, each court opined, even when the taxpayer files his post-decision motion with the Tax Court months before this Court denies his certiorari petition.

10. Under this Court's recent jurisdictional jurisprudence, as articulated by the Solicitor General after Mr. Byers filed his certiorari petition, the courts' holdings below were harmful errors. Although the Court has denied Mr. Byers' certiorari petition, it has ample reason to grant his petition now.

CONCLUSION

The Court has here an ideal vehicle it can use to clarify its jurisdictional jurisprudence. It has cautioned the lower courts not to slap the jurisdictional label on each statutory procedural bar. The Court could emphasize that caution if it holds that "this Court's own certiorari denial power, as Congress applies it to United States Tax Court decisions in 26 U.S.C. § 7481(a)(2)(B), is non-jurisdictional."

That holding would send both bench and bar a powerful message: cure your jurisdiction addiction.

For the reasons he states in both petitions he has filed here, Mr. Byers requests that the Court (a) grant this rehearing petition, (b) vacate its order that denies him a certiorari writ, and (c) order the U.S. Solicitor General to respond to his certiorari petition.

Respectfully submitted:

DATE: May 28th, 2021

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**UNITED STATES SUPREME COURT RULE 44.2
CERTIFICATE OF COMPLIANCE**

Petitioner Ronald E. Byers hereby certifies that this Petition For Rehearing complies with S. Ct. R. 44.2 because (a) the petition is limited to substantial circumstances, events, and grounds that arose after this Court filed the certiorari petition, and (b) Mr. Byers presents the petition not for purposes of delay, but rather in a good-faith belief that it is meritorious.

DATE: May 28th, 2021 Ronald E. Byers
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