

No. 20-1472

In the
Supreme Court of the United States

BOECHLER, P.C.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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

JOINT APPENDIX

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* The Solicitor General is no longer recused in this case.

PETITION FOR CERTIORARI FILED APRIL 16, 2021

CERTIORARI GRANTED SEPTEMBER 30, 2021

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In accordance with Supreme Court Rule 26.1, the following items have been omitted in printing this joint appendix because they appear on the following pages of the appendix to the Petition for a Writ of Certiorari (April 16, 2021):

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RELEVANT DOCKET ENTRIES

**U.S. Court of Appeals for the Eighth Circuit
Case No. 19-2003**

Date Filed	Docket Text
05/17/2019	Agency case docketed [4788532] [19-2003] (AEV) [Entered: 05/17/2019 09:23 AM]
05/17/2019	Originating court document filed consisting of notice of appeal, Order of Dismissal 2/15/19, [4788533] [19-2003] (AEV) [Entered: 05/17/2019 09:27 AM]
05/17/2019	RECORD FILED - TAX COURT RECORD electronically filed. [4788539] [19-2003] (RU) [Entered: 05/17/2019 09:31 AM]
	* * *
07/19/2019	APPELLANT brief of Boechler, P.C. submitted for review. The time for filing the subsequent brief (if any) does not begin to run until the brief has been approved and filed. To open/view this brief, you must first login to CM/ECF and then open the document link in your Notice of Docket Activity. Only direct recipients on accounts can open this document. [4809997] [19-2003] (DCT) [Entered: 07/19/2019 02:37 PM]
07/19/2019	Addendum of APPELLANT submitted for review by Boechler, P.C.. To open/view this addendum, you must

Date Filed	Docket Text
	first login to CM/ECF and then open the document link in your Notice of Docket Activity. [4810001] [19-2003] (DCT) [Entered: 07/19/2019 02:40 PM]
07/19/2019	ADDENDUM of APPELLANT FILED by Appellant Boechler, P.C., w/service 07/19/2019 [4810021] [19-2003] (YML) [Entered: 07/19/2019 03:05 PM]
07/19/2019	BRIEF FILED - APPELLANT BRIEF filed by Boechler, P.C.. w/service 07/19/2019, Length: 11,371 words 10 COPIES OF PAPER BRIEFS (WITHOUT THE APPELLATE PDF FOOTER) FROM Boechler, P.C. due 07/24/2019 WITH certificate of service for paper briefs. Brief of Commissioner of Internal Revenue due on 08/19/2019 [4810029] [19-2003] (YML) [Entered: 07/19/2019 03:13 PM]
07/22/2019	AMICUS/INTERVENOR brief of The Federal Tax Clinic of the Legal Services Center of Harvard Law School submitted for review. The time for filing the subsequent brief (if any) does not begin to run until the brief has been approved and filed. [4810130] [19-2003] (CMS) [Entered: 07/22/2019 06:24 AM]
07/23/2019	BRIEF FILED - AMICUS BRIEF filed by Federal Tax Clinic of the Legal Services Center of Harvard Law School w/service 07/23/2019, Length: 5,947 words

Date Filed	Docket Text
	10 COPIES OF PAPER BRIEFS (WITHOUT THE APPELLATE PDF FOOTER) FROM Federal Tax Clinic of the Legal Services Center of Harvard Law School due 07/29/2019 WITH certificate of service for paper briefs [4810784] [19-2003] (YML) [Entered: 07/23/2019 10:30 AM] * * *
07/29/2019	Paper copies Appellant/Petitioner Brief, [4810029-2] filed by Boechler, P.C. 10 paper copies received. w/Addendum attached [4813226] [19-2003] (YML) [Entered: 07/29/2019 03:19 PM]
07/29/2019	RECORD FILED - APLNT/PET APPENDIX, 1 volumes, Location STL, Comments: 3 Copies [4813229] [19-2003] (YML) [Entered: 07/29/2019 03:21 PM]
07/29/2019	Paper copies Amicus Brief, [4810784-2] filed by Federal Tax Clinic of the Legal Services Center of Harvard Law School, 10 paper copies received. [4813257] [19-2003] (YML) [Entered: 07/29/2019 03:42 PM] * * *
09/27/2019	APPELLEE brief of CIR submitted for review. The time for filing the subsequent brief (if any) does not begin

Date Filed Docket Text

to run until the brief has been approved and filed. To open/view this brief, you must first login to CM/ECF and then open the document link in your Notice of Docket Activity. Only direct recipients on accounts can open this document. [4835474] [19-2003] (JAB) [Entered: 09/27/2019 11:45 AM]

09/27/2019 **BRIEF FILED - APPELLEE BRIEF** filed by CIR, w/service 09/27/2019 , Length: 10,340 words
10 COPIES OF PAPER BRIEFS (WITHOUT THE APPELLATE PDF FOOTER) FROM Commissioner of Internal Revenue due 10/02/2019 WITH certificate of service for paper briefs. Reply brief of Boechler, P.C. due on 10/18/2019. [4835658] [19-2003] (JPP) [Entered: 09/27/2019 03:34 PM]

10/02/2019 Paper copies Appellee/Respondent brief, [4835658-2] filed by CIR 10 paper copies received. [4837827] [19-2003] (JPP) [Entered: 10/03/2019 03:05 PM]

* * *

11/22/2019 REPLY brief of Boechler, P.C. submitted for review. The time for filing the subsequent brief (if any) does not begin to run until the brief has been approved and filed. To open/view this

Date Filed	Docket Text
	brief, you must first login to CM/ECF and then open the document link in your Notice of Docket Activity. Only direct recipients on accounts can open this document. [4855051] [19-2003] [4855051] [19-2003]--[Edited 11/27/2019 by JPP] (DCT) [Entered: 11/22/2019 12:55 PM]
11/27/2019	BRIEF FILED - PETITIONER REPLY BRIEF filed by Boechler, P.C.. w/service 11/22/2019 , Length: 6,311 words 10 COPIES OF PAPER BRIEFS (WITHOUT THE APPELLATE PDF FOOTER) FROM Boechler, P.C. due 12/02/2019 WITH certificate of service for paper briefs [4856670] [19-2003] (JPP) [Entered: 11/27/2019 01:13 PM]
12/05/2019	Paper copies Reply brief, [4856670-2] filed by Boechler, P.C. 10 paper copies received. [4858841] [19-2003] (JPP) [Entered: 12/05/2019 04:02 PM]
	* * *
05/26/2020	SET FOR ARGUMENT - CASE PLACED ON CALENDAR - <i>for Argument via Tele/Video Conference on Wednesday, June 17, 2020.</i> To be heard before Judges Jane Kelly, Ralph R. Erickson and David R. Stras in Division III. The

Date Filed Docket Text

courtroom deputy will be Jeanette McKee. All attorneys presenting oral argument must complete a Response Form. [Click Here to Complete the Oral Argument Response Form.](#) [Click Here for the Complete Calendar](#)
PLEASE REVIEW THE ENTIRE CALENDAR CAREFULLY, PARTICULARLY THE COUNSEL NOTICE PAGE. [4916539] [19-2003] (MR) [Entered: 05/26/2020 02:20 PM]

* * *

- 06/17/2020 **ARGUED & SUBMITTED via videoconference** to Judges Jane Kelly, Ralph R. Erickson, David R. Stras on 06/17/2020. Ms. Amy M. Feinberg for Appellant Boechler, P.C.; Ms. Janet A. Bradley for Appellee CIR.; Rebuttal by Ms. Amy M. Feinberg for Boechler, P.C. RECORDED. [Click Here To Listen to Oral Argument](#) [4924878] [19-2003] (JMM) [Entered: 06/17/2020 04:52 PM]
- 06/18/2020 28(j) citation filed by Appellee CIR w/service 06/18/2020 - FOR CAL [4925181] [19-2003] (JAB) [Entered: 06/18/2020 02:35 PM]
- 06/23/2020 Response of Appellant Boechler, P.C. to 28(j) citation filed by CIR, [4925181-3], w/service 06/23/2020 - FOR CAL [4926245] [19-2003]--[Edited

Date Filed	Docket Text
	06/23/2020 by MR] (AMF) [Entered: 06/23/2020 09:16 AM]
07/24/2020	OPINION FILED - THE COURT: Jane Kelly, Ralph R. Erickson and David R. Stras AUTHORING JUDGE: Ralph R. Erickson (PUBLISHED), CONCUR BY: Jane Kelly [4937521] [19-2003] (AMT) [Entered: 07/24/2020 07:13 AM]
07/24/2020	JUDGMENT FILED - The judgment of the Originating Court is AFFIRMED in accordance with the opinion. JANE KELLY, RALPH R. ERICKSON and DAVID R. STRAS Hrg June 2020 [4937522] [19-2003] (AMT) [Entered: 07/24/2020 07:21 AM] * * *
09/08/2020	PETITION for en banc rehearing and also for rehearing by panel filed by Appellant Boechler, P.C. w/service 09/08/2020 [4953563] [19-2003] (MAS) [Entered: 09/08/2020 04:07 PM]
09/08/2020	MOTION interested party, Federal Tax Clinic at the Legal Services Center of Harvard Law School, for leave to file amicus brief in support of Boechler, P.C. petition for en banc rehearing, [4953563-2], petition for rehearing by panel, [4953563-3] w/service

Date Filed	Docket Text
	09/08/2020. [4953611] [19-2003] (CMS) [Entered: 09/08/2020 05:28 PM]
09/09/2020	CLERK ORDER:Granting [4953611-2] motion for leave to file amicus brief in support of rehearing. [4954017] [19-2003] (NDG) [Entered: 09/09/2020 03:22 PM]
09/09/2020	BRIEF FILED - AMICUS BRIEF filed by Federal Tax Clinic of the Legal Services Center of Harvard Law School w/service 09/09/2020, Length: 10 pages [4954038] [19-2003] (NDG) [Entered: 09/09/2020 03:49 PM]
09/09/2020	CORRECTED/INITIAL certificate of service for petition for en banc rehearing, Doc No. [4953563-2], petition for rehearing by panel, Doc No. [4953563-3], filed by Appellant Boechler, P.C. [4954115] [19-2003] (MAS) [Entered: 09/09/2020 06:07 PM]
09/25/2020	JUDGE ORDER:A petition for rehearing en banc has been filed by the Appellant Boechler, P.C. in the above case. The court requests a response to the petition for rehearing en banc. The response is limited to 3900 words and must contain a word count certificate. The response should be filed electronically. Response due on 10/05/2020 by Appellee Commissioner of Internal Revenue. Hrg June 2020

Date Filed	Docket Text
	[4959473] [19-2003] (NDG) [Entered: 09/25/2020 10:07 AM]
09/25/2020	RESPONSE with no opposition to judge order request response to petition for rehearing [4959473-2], judge order [4959473-3] filed by Attorney Ms. Joan I. Oppenheimer for Appellee CIR, w/service 09/25/2020. [4959918] [19-2003] Counsel to resubmit using motion filed event in CM/ECF--[Edited 09/28/2020 by LMT] (JIO) [Entered: 09/25/2020 05:04 PM]
	* * *
10/16/2020	PETITION for enbanc rehearing and also for rehearing by panel filed by Appellee CIR w/service 10/16/2020 [4966538] [19-2003]--[Edited 10/16/2020 by NDW] This document has been locked as a corrected document has been filed 10/16/2020 (JAB) [Entered: 10/16/2020 03:43 PM]
10/16/2020	RESPONSE in opposition to petition for enbanc rehearing [4953563-2], petition for rehearing by panel [4953563-3] filed by Attorney Ms. Janet A. Bradley for Appellee CIR , w/service 10/16/2020. [4966548] [19-2003] (JAB) [Entered: 10/16/2020 03:52 PM]
11/17/2020	JUDGE ORDER:The petition for rehearing en banc is denied. The petition for panel rehearing is also

Date Filed	Docket Text
	denied. Judges Loken, Colloton and Kelly would grant the petition for rehearing en banc. [4953563-2] [4953563-3] PUBLISHED ORDER. Hrg June 2020 [4976583] [19-2003] (NDG) [Entered: 11/17/2020 12:31 PM]
11/25/2020	MANDATE ISSUED. [4979340] [19-2003] (HAG) [Entered: 11/25/2020 11:22 AM]
04/21/2021	U.S. Supreme Court Notice of cert filed in the Supreme Court on 04/16/2021, case No. 20-1472 [5028284] [19-2003] (ALK) [Entered: 04/22/2021 02:50 PM]
09/30/2021	SUPREME COURT order filed granting cert petition. Order filed on 09/30/2021 in case No.20-1472. [5082369] [19-2003] (AMT) [Entered: 09/30/2021 02:11 PM]

RELEVANT DOCKET ENTRIES

**United States Tax Court
Case No. 17-18578**

#	Date	Docket Text
1	09/01/17	PETITION FILED by Petr. Boechler, P.C.: FEE PAID
2	09/01/17	REQUEST FOR PLACE OF TRIAL AT ST. PAUL, MN by Petr. Boechler, P.C. * * *
5	09/12/17	OWNERSHIP DISCLOSURE STATEMENT by Petr. Boechler, P.C.
6	10/04/17	MOTION TO DISMISS FOR LACK OF JURISDICTION by Resp. (C/S 10/04/17) (EXHIBIT) (OBJECTION)
7	10/10/17	ORDER PETR. BY 10/31/17 FILE AN OBJECTION TO MOTION TO DISMISS. * * *
9	11/28/17	OBJECTION TO MOTION TO DISMISS FOR LACK OF JURISDICTION by Petr. Boechler, P.C. (EXHIBITS) * * *
11	12/19/17	RESPONSE TO OBJECTION TO MOTION TO DISMISS FOR LACK OF JURISDICTION by Resp.

JA-12

#	Date	Docket Text
12	01/09/18	ORDER THAT CASE IS ASSIGNED TO S.T. JUDGE CARLUZZO. FOR DISPOSITION.
13	02/15/19	ORDER OF DISMISSAL ENTERED, S.T. JUDGE CARLUZZO. RESP. MOTION TO DISMISS IS GRANTED, AND CASE IS DISMISSED FOR LACK OF JURISDICTION.
14	05/15/19	NOTICE OF APPEAL BY PETR(S). TO U.S.C.A. 8TH CIR. (COA DOCKET NO. 19-2003) * * *
17	05/17/19	RECORD ON APPEAL E-FILED CLERK, U.S.C.A. 8TH CIR.
18	11/25/20	U.S.C.A 8th Circuit mandate issued 11/25/2020 decision affirmed.


JA-13

[emblem omitted]

[barcode omitted]

Department of
the Treasury
Internal Revenue
Service
Cincinnati, OH
45999-0030

5B

Notice	CP5048
Tax Period	2012
Form Number	CIVPEN
Notice date	July 18, 2016
Employer ID Number	
To contact us	Phone 1-800- 829-0115
Your Caller ID	736987

BOECHLER PC
c/o JEANETTE T BOECHLER PRES
300 NP AVE N STE 101
FARGO, ND 58102-4871266

[barcode omitted]

Notice of intent to seize (“levy”) your property or
rights to property

Amount due immediately: \$19,779.12

As we notified you
before, our records
show you have
unpaid taxes for
the tax period
ending December
31, 2012 (Form

Billing Summary	
Tax you owe	\$19,250.37
Interest Charges	528.75
Amount due immediately	\$19,779.12

CIVPEN). If you don't call us immediately or pay the amount due by July 28, 2016, we may seize ("levy") your property or rights to property and apply it to the \$19,779.12 you owe.

What you need to do immediately • Pay immediately

- Pay the amount due of \$19,779.12 or we may seize ("levy") your property or rights to property (including any employment taxes). If you fail to pay by July 28, 2016, interest will increase and additional penalties may apply. **You can pay online now at www.irs.gov/e-pay.**

Continued on back...

[IRS emblem omitted]

BOECHLER PC	Notice	CP5048
c/o JEANETTE T	Notice date	July 18, 2016
BOECHLER PRES	Employer	██████████
300 NP AVE N	ID Number	
STE 101		
FARGO, ND 58102-		
4871266		

JA-16

[IRS emblem omitted]

Department of the
Treasury

Internal Revenue
Service

657 2ND AVE N
FARGO, ND 58102-
4871266

Date

11/03/2016

Person to contact:

ANDREW R SEAVER

Contact Telephone
number:

(701)237-8322

Employee ID number:

1000991802

BOECHLER PC

c/o JEANETTE T BOECHLER PRES

300 NP AVE N STE 101

FARGO, ND 58102-4871266

We received your Form 12153, Request for a Collection Due Process or Equivalent Hearing, requesting a collection alternative.

Your basis for CDP request for lien filing is premature. Once you receive the lien notice, you may file CDP for Notice of Federal Tax Lien Filing. If you have not received a notice within 10 days, you may request a copy if notice has been mailed.

To be eligible for the collection alternative, you must file all federal tax returns. Our records show that you have not filed the tax returns(s) listed on the next page of this letter. If you've previously filed them, send us signed copies of the return(s). Otherwise, send us original signed return(s) for the tax period listed.

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Provide the requested information by 12/01/2016. After, I receive your information and if you agree, I'll work with you to see if we can resolve your issue.

If we can't resolve your issue, I'll forward your information to Appeals for the hearing you requested. Appeals will use the information you provide to consider your collection alternative.

If you have questions or need additional information, you can contact me at the number listed above.


Thank you for your cooperation.

Sincerely,
s/ Andrew R. Seaver
ANDREW R SEAVER
REVENUE OFFICER

Letter 5139 (Rev. 7-2013)
Catalog Number 61594Z

JA-18

[IRS emblem omitted]

Department of the Treasury	Date JUL 28 2017
Internal Revenue Service	Person to contact:
Appeals Office	Name: Curtis M Megyesi
2415 W. Cornerstone Ct.	Employee ID Number.
Peoria, IL 61614	1000599299
	Phone: 309-621-7205
	Fax: 855-234-1401
	Hours: 7:15 to 3:45
	Re:
	Collection Due Process
	Hearing (Tax Court)
BOECHLER PC	Taxpayer ID number:
802 1st AVENUE	
NORTH	Tax periods ended:
FARGO, ND 58102-4906	Civil Penalty
	12/2012
	Form 940
	12/2014

Certified Mail: 7015 3010 0002 3440 4277

NOTICE OF DETERMINATION
Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code

Dear Taxpayer:

We reviewed the completed or proposed collection actions for the tax period(s) shown above. This letter is your Notice of Determination, as required by law. We attached a summary of our determination below. The attached summary shows, in detail, the matters

we considered at your Appeals hearing and our conclusions.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court within a 30-day period beginning the day after the date of this letter. To obtain a petition form and the rules for filing a petition, write to:

Clerk, United States Tax Court
400 Second Street NW
Washington, DC 20217

You can also visit the Tax Court website at www.ustaxcourt.gov.

The United States Tax Court also has a simplified procedure for an appeal of a collection action if the total unpaid tax (including interest and penalties) for all periods doesn't exceed \$50,000. You can obtain information about this simplified procedure by writing to the Tax Court or visiting their web site as shown above.

The law limits the time for filing your petition to the 30-day period mentioned above. The courts cannot consider your case if you file late. If you file an appeal in an incorrect court (e.g., United States District Court), you won't be able to refile in the United States Tax Court if the period for filing a petition expired.

If you don't petition the court within the period provided by law, we'll return your case to the originating IRS office for action consistent with the determination summarized below and described on the attached pages. If you have questions, please contact the person at the telephone number shown above.

JA-20

Summary of Determination

The Notice of Intent to Levy is sustained. Your request for abatement of the intentional disregard penalty for 2012 could not be considered because you failed to provide sufficient information to establish that you qualified for abatement of the penalty. Collection alternatives to the levy action proposed by the IRS could not be considered because you are not in compliance with all filing requirements and did not provide a Collection Information Statement for businesses so your ability to pay could be determined.

Thank you for your cooperation.

Sincerely,
/s/ Debra A. Dufek
Debra A. Dufek
Appeals Team Manager

Enclosures:
Attachments

Letter 3193 (Rev. 12-2016)
Catalog Number 27215L

Attachment

BOECHLER PC

Type of Tax(es)	Tax Period(s)	Date of CDP Notice	Type of hearing	Date used to determine timeliness
Civil Penalty	201212	10/13/2016	6330	11/01/2016
Form 940	201412	10/13/2016	6330	11/01/2016

SUMMARY AND RECOMMENDATION

The Notice of Intent to Levy is sustained. Your request for abatement of the intentional disregard penalty for 2012 could not be considered because you failed to provide sufficient information to establish that you qualified for abatement of the penalty. Collection alternatives to the levy action proposed by the IRS could not be considered because you are not in compliance with all filing requirements and did not provide a Collection Information Statement for businesses so your ability to pay could be determined.

BRIEF BACKGROUND

The IRS issue a Notice of Intent to Levy for the periods listed above on October 13, 2016 to advise you that they intended to begin levy action to secure payment of your outstanding liability for the periods listed above. You responded on November 1, 2016 by requesting a Collection Due Process Levy Hearing. You indicated on your request that disagreed with the proposed levy action because you disagreed with

being assessed a penalty for failing to file W-3/W-2's. You indicated that you previously provided the missing forms and information over a year ago. You further indicated that you believe the penalty and interest are excessive and will cause a significant hardship to your small business.

A letter was sent to you on January 19, 2017 to advise you that your request for a Collection Due Process Levy Hearing was assigned to the Peoria, Illinois Appeals Office and to schedule a telephone conference call with you on February 28, 2017 at 10:00 AM CST. The letter advised you that if the scheduled conference date or time was inconvenient for you or if you preferred another type of conference (face-to-face or correspondence) to please advise the Appeals Office within 14 days from the date of the letter. You did not advise that the scheduled conference date or time was inconvenient for you. The letter asked you to provide the following information:

If you want to discuss collection alternatives to the levy action proposed by the IRS:

1. Completed Collection Information Statement for businesses, Form 433-B.
2. Information to verify your Completed Collection Information Statement for businesses, Form 433-B; bank statements for the past six months for all accounts, profit and loss statement for 2016, and verification of all expenses.
3. Signed tax return, Form 941, for 2nd quarter of 2016, 3rd quarter of 2016, and 4th quarter of 2016.
4. Signed tax return, Form 1120, for 2015.

5. Proof of timely deposit of all federal employment taxes for the current quarter.

None of this information was provided in advance of the scheduled conference call as request. The Appeals Office assumes that you did not wish to discuss collection alternatives but rather use the Collection Due Process Levy Hearing to challenge the assessment of the Intentional Disregard Penalty assessed against you for 2012.

If you want to discuss your liability for the Intentional Disregard Penalty assessed against you for 2012:

Attached to your letter was an explanation of the Intention Disregard Penalty. Internal Revenue Code section 6721(a)(2) authorizes a penalty for failure to file an information return with the Secretary on or before the required filing date and any failure to include all information required to be shown on the return or the inclusion of incorrect information.

Internal Revenue Code section 6721(e) authorizes a penalty in the case of intentional disregard. If one or more failure described in subsection (a)(2) are due to intentional disregard of the filing requirement (or the correct information reporting requirement) then, with respect to each such failure-

- the penalty imposed under subsection (a), failure to file an information return with the Secretary on or before the required filing date, shall be \$100.00, or
- 10 percent of the aggregate amount of the items required to be reported correctly.

Under the authority of the Internal Revenue Code sections listed above, you were assessed an intentional disregard penalty in the amount of 10% of the amount of wages the business paid in 2012. The total wages paid by the business in 2012 was \$192,503.76. 10% of this amount is \$19,250.37. This is the amount of the penalty assessed against you.

Why were you assessed this penalty?

IRM section 4.19.4.3.1 discusses how the penalty originates. The Service assesses penalties for cases referred by the Social Security Administration (SSA) when there is a discrepancy between wages reported on Forms W2 and what is reported to the Service on Form 941. SSA will make **two** attempts to contact the employer to resolve the discrepancy.

- If SSA is unable to resolve the discrepancy, the cases are sent to the Service. A SSA discrepancy is identified when the employer reports more Social Security wages to the Service than to SSA. An SSA discrepancy is resolved when the employer provided missing Forms W2, amends their Form 941, or submits other information to resolve the discrepancy.
- An agreement between the Service and SSA requires the Service to correspond with the employer in an effort to secure missing Forms W2 from the employer. SSA does not have the authority to assess penalties or enforce collection of the Form W2. SSA refers these cases to the IRS which reviews information on your account. If a discrepancy exists between employment tax returns and W2's/W3 (a discrepancy exists if W2s are missing as wages reported to Social Security Administration will

be zero), a 98C letter is issued to the employer requesting the information necessary to resolve the discrepancy. Review of your account shows that the IRS issued this letter to you on June 5, 2015. You were given 45 days to answer the Letter 98C. If you do not respond to the letter within in 45 days and the discrepancy is not resolved by either the filing of the missing Forms W2, an amended Form 941, or by providing an explanation of the discrepancy, the Service is directed to assess a penalty. The IRS indicates that it did not receive a response to Letter 98C dated June 5, 2015. You were assessed a penalty of \$19,250.37 on September 28, 2015.

What do you need to do to qualify for abatement or partial abatement of this penalty?

To establish that you didn't intentionally disregard your requirement to timely file W3/W2s and thus qualify for abatement or partial abatement of the penalty you will need to provide the following:

1. Provide a copy of the W2s/W3 filed in 2012.
2. Proof that you timely filed W2s with the SSA. Most are now filed electronically. You may have a confirmation of delivery from them with electronic filing. Was filing completed by an accountant? He may be able to provide a confirmation of filing to show that they were electronically filed.
3. Provide any correspondence between you and your accountant to confirm that W2s was timely prepared for you so that you could give them to your employees.

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4. As indicated above, the Social Security Administrative sent you two notices requesting the missing W2s/W3. Please provide a copy of this correspondence and proof that you responded to them.
5. As indicated above, the IRS sent you letter 98C. Please provide a copy of the letter and proof of your response to the letter.
6. Any other information that you feel might be helpful.

None of this requested information was provided to the Appeals Office in advance of the scheduled conference call.

No one called at the scheduled conference call date and time on February 28, 2017 at 10:00 AM CST.

A follow up letter was sent to you on March 1, 2017 to advise you that no one called at the scheduled conference call date and time nor was any of the information requested from you received. The letter advised you that the Appeals Office was preparing to make a determination in your case. Any information that you wanted the Appeals Office to consider when making this determination must be provided within 14 days from the date of the letter.

No response was received to the follow up letter sent on March 1, 2017.

Due to concerns about delivery of the letters sent to you by the Appeals Office, a telephone call was made to Jeanette Boechler on May 19, 2017. A Collection Due Process Levy Hearing was conducted. You explained that you were a small law firm and that the filing of W3/W2s was handled in-house. An explanation of the intentional disregard penalty was

explained to you. You indicated that you responded to the attempts at contact with you by the Social Security Administration and to notices sent to you by the IRS concerning the matter. You indicated that you did not intentionally disregard your responsibilities to file W3/W2s and should not have been assessed the Intentional Disregard Penalty. To help you understand why and how the penalty was assessed and what information was needed to consider abatement of the penalty, I faxed you a copy of the letter that was sent to you on January 19, 2017 along with the attachment.

You were advised that to qualify for abatement of the Intentional Disregard Penalty you would have to establish that you didn't intentionally disregard the attempts by the Social Security Administration and the IRS to secure the W3/W2s. This can be done by establishing that you responded to inquiry's. You could also establish that the W3/W2s was timely filed.

On June 6, 2017, the Appeals Office received correspondence from you containing copies of the W3/W2s that were filed for 2012. Your letter indicated that you were providing copies of the W3/W2s that were filed for 2012 along with correspondence you previously sent to the Social Security Administration concerning the matter. I assume the correspondence to the Social Security Administration will establish that you didn't intentionally disregard their attempts at securing the W3/W2s information. Unfortunately, this correspondence to the Social Security Administration was not included with the information provided to me. I made a telephone call to you on June 6, 2017. I left a message on your voice mail to advise you that the

correspondence to the Social Security Administration that you referenced in your letter was not attached as stated. I asked you to provide this correspondence. Submission of the W3/W2s alone is not sufficient to qualify for abatement of the Intentional Disregard Penalty. You have to establish that the W3/W2s was either timely filed or that you responded to inquiries to provide the information. No further response was received from you.

LEGAL AND ADMINISTRATIVE REVIEW

I, Curtis M Megyesi, verified the requirements of any applicable law or administrative procedure were met. IRS records confirmed the proper issuance of the notice and demand, Notice of Intent to Levy and/or Notice of Federal Tax Lien (NFTL) filing, and notice of a right to a Collection Due Process (CDP) hearing.

An assessment was properly made for each tax and period listed on the CDP notice.

Notice and demand for payment was mailed to your last known address.

There was a balance due when the Notice of Intent to Levy was issued or when the NFTL filing was requested.

I had no prior involvement with respect to the specific tax periods either in Appeals or Compliance.

I reviewed the Collection file, IRS records and information you provided. My review confirmed that the IRS followed all legal and procedural requirements, and the actions taken or proposed were appropriate under the circumstances.

ISSUES YOU RAISED

Collection Alternatives Requested

You offered no alternatives to collection. You were asked to file delinquent returns and provide a completed Collection Information Statement for businesses, Form 433-B if you wanted to discuss collection alternatives during the hearing. Collection alternatives to the levy actions proposed by the IRS could not be considered as you did not provide this information.

Challenges to the Liability

You indicated that you shouldn't have been assessed the Intentional Disregard Penalty for failing to file W3/W2s for 2012. You indicated that you filed the W3/W2s timely and responded to inquiries from the Social Security Administration and the IRS when the W3/W2s were requested from you. During your Collection Due Process Levy Hearing you were provided with the opportunity to provide information to establish that you responded to inquiries from the Social Security Administration and/or the IRS. You didn't provide this information. You were also given the opportunity to establish that you timely filed W3/W2s. Again you didn't provide this information. Accordingly, your request for abatement of the penalty cannot be considered.

You raised no other issues.

BALANCING ANALYSIS

Your request for abatement of the Intentional Disregard Penalty for 2012 could not be granted because you failed to provide information to establish that you qualified for abatement of the penalty. The Appeals Office was also unable to consider collection

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alternatives to the levy actions proposed by the IRS because you are not in compliance with all filing requirements and failed to provide a Collection Information Statement so your ability to pay could be determined. In light of these two facts, the proposed levy action balances the need for efficient collection of taxes with your legitimate concern that any collection action be no more intrusive than necessary.

[file-stamps omitted]

UNITED STATES TAX COURT

www.ustaxcourt.gov

(FIRST) (MIDDLE) (LAST)

BOECHLER, P.C.

(PLEASE TYPE OR PRINT) Petitioner(s)

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket
No.
18578-
17 "L"

PETITION

1. Please check the appropriate box(es) to show which IRS NOTICE(s) you dispute:

- Notice of Deficiency
- Notice of Determination Concerning Collection Action
- Notice of Final Determination Not to Abate Interest*
- Determination of Worker Classification*
- Notice of Determination Concerning Your Request for Relief From Joint and Several Liability*

*Please see the Court's Web site, www.ustaxcourt.gov, or information booklet for additional information if (1) you filed a claim for interest abatement or requested relief from joint and several liability, and

the IRS has not made a determination, or (2) the petition involves a worker classification case.

2. Provide the date(s) the IRS issued the NOTICE(S) checked above and the city and State of the IRS office(s) issuing the NOTICE(S): July 28, 2017

3. Provide the year(s) or period(s) for which the NOTICE(S) was/were issued: 12/2012

4. SELECT ONE OF THE FOLLOWING:

If you want your case conducted under small tax case procedures, **(CHECK ONE**
check here: **BOX)**

If you want your case conducted under regular tax case procedures, check here:

NOTE: A decision in a “small tax case” cannot be appealed to a Court of Appeals by the taxpayer or the IRS. If you do not check either box, the Court will file your case as a regular tax case.

5. Explain why you disagree with the IRS determination in this case (please list each point separately):

The entire record of the Collection Due Process (CDP) Hearing and the underlying record contains no evidence that that Petitioner Boechler, P.C. intentionally disregarded the requirement that it timely file W-2 and W-3 forms for the period 12/2012. The W-2 and W-3 forms for the subject period were timely filed when the payroll taxes were timely paid by Boechler, P.C. and being indisputably timely

collected by the Internal Revenue Service. The Appeals Officer erroneously concluded that the record demonstrated that Petitioner had intentionally disregarded the requirement that it timely file W2 and W3 Forms for the period 12/2012. Correspondingly, the Appeals Officer erred by discrediting Petitioner's request for abatement of the "intentional disregard" penalty, where the record clearly showed:

6. State the facts upon which you rely (please list each point separately):

1. That there was no evidence in the record that the W-2 and W-3 forms had not been timely filed in the first instance; 2. That there was no evidence in the record that Petitioner did not cooperate to re-supply these forms, once Petitioner became aware of the fact that the Social Security Administration did not have these W-2 and W-3 documents on file; 3. Nowhere in the record is there any evidence to show that any payroll withholding taxes were not timely paid; and 4. There exists no evidence in the record that Petitioner had either failed to timely file W-2 and W-3 forms for any other quarterly pay periods, or that Petitioner had failed to timely remit payroll taxes to the Internal Revenue Service for any pay period, at any time. The \$19,000.00 penalty is about two forms relative to payroll taxes which were paid.

You may use additional pages to explain why you disagree with the IRS determination or to state additional facts. Please do not submit tax forms, receipts, or other types of evidence with this petition.

ENCLOSURES:

Please check the appropriate boxes to show that you have enclosed the following items with this petition:

- A copy of any NOTICE(S) the IRS issued to you
- Statement of Taxpayer Identification Number (Form 4) (See PRIVACY NOTICE below)
- The Request for Place of Trial (Form 5) The filing fee

*PRIVACY NOTICE: Form 4 (Statement of Taxpayer Identification Number) will not be part of the Court's public files. All other documents filed with the Court, including this Petition and any IRS Notice that you enclose with this Petition, will become part of the Court's public files. To protect your privacy, you are strongly encouraged to omit or remove from this Petition, from any enclosed IRS Notice, and from any other document (other than Form 4) your taxpayer identification number (e.g., your Social Security number) and certain other confidential information as specified in the Tax Court's "Notice Regarding Privacy and Public Access to Case Files", available at www.ustaxcourt.gov.

_____ SIGNATURE	_____ DATE	_____ (701) 237-3071 (AREA CODE)
802 First Avenue North		Fargo, North Dakota, 58201
_____ MAILING ADDRESS		_____ CITY, STATE, ZIP CODE

Address Used By Court

State of legal residence E-mail address (if any):
(if different from the _____
mailing address): _____

SIGNATURE DATE (AREA CODE)
OF PETITIONER TELEPHONE NO.
(e.g., SPOUSE)

MAILING ADDRESS CITY, STATE, ZIP CODE

State of legal residence E-mail address (if any):
(if different from the _____
mailing address): _____

ADMITTED

/s/ David Clark Thompson David Clark Thompson
SIGNATURE OF NAME OF COUNSEL
COUNSEL, IF
RETAINED BY
PETITIONER(S)

TD0188
TAX COURT BAR NO.

321 Kittson Avenue,
Grand Forks,
North Dakota 58201 August 29, 2017
MAILING ADDRESS, DATE
CITY, STATE, ZIP CODE

JA-36

dct@rrv.net
E-MAIL ADDRESS

(701 775-7012
(AREA CODE)
TELEPHONE NO.

JA-37

CERTIFIED MAIL

[barcode omitted]

GRAND FORKS ND AUG 29 2017 UPS 56721
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[emblem omitted]
[bar code omitted]

U.S. POSTAGE
PAID
EAST GRAND
FORKS, MN
56721
AUG 29 17
AMOUNT
\$7.71
R2304W120412-03

David C. Thompson, P.C.
Attorney at Law
321 Kittson Avenue
PO Box 5235
Grand Forks, ND 58201

RETURN RECEIPT
REQUESTED

18578 – 17 “L”

Postmark
AUG 29 2017

Office of the Clerk
United States Tax Court
400 Second Street, N.W.
Washington, D.C., 20217

JA-38

UNITED STATES TAX COURT

www.ustaxcourt.gov

FILED

U.S. Tax Court

[illegible] CLERK

2017 SEP - 1 PM 12:02

BY:s/ [illegible]

DEPUTY CLERK

RECEIVED

UNITED STATES TAX [illegible]

INTAKE [illegible]

2017 SEP 1 AM 11:56

BY:s/ [illegible]

DEPUTY CLERK

BOECHLER, P.C.

Petitioner(s)

v.

Docket No.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

18578 – 17 “L”

REQUEST FOR PLACE OF TRIAL

PLACE AN “X” IN ONLY ONE BOX TO REQUEST THE PLACE OF TRIAL. IF PETITIONER(S) ELECTED TO HAVE THE CASE CONDUCTED AS A SMALL TAX CASE, REQUEST ANY CITY LISTED BELOW; OTHERWISE, REQUEST ANY CITY NOT MARKED WITH AN ASTERISK (*).

ALABAMA	KANSAS	OHIO
<input type="checkbox"/> Birmingham	<input type="checkbox"/> Wichita*	<input type="checkbox"/> Cincinnati
<input type="checkbox"/> Mobile	KENTUCKY	<input type="checkbox"/> Cleveland
ALASKA	<input type="checkbox"/> Louisville	<input type="checkbox"/> Columbus
<input type="checkbox"/> Anchorage	LOUISIANA	OKLAHOMA
ARIZONA	<input type="checkbox"/> New Orleans	<input type="checkbox"/> Oklahoma City
<input type="checkbox"/> Phoenix	<input type="checkbox"/> Shreveport*	OREGON
ARKANSAS	MAINE	<input type="checkbox"/> Portland
<input type="checkbox"/> Little Rock	<input type="checkbox"/> Portland*	PENNSYLVANIA
CALIFORNIA	MARYLAND	<input type="checkbox"/> Philadelphia
<input type="checkbox"/> Fresno*	<input type="checkbox"/> Baltimore	<input type="checkbox"/> Pittsburgh
<input type="checkbox"/> Los Angeles	MASSACHUSETTS	SOUTH
<input type="checkbox"/> San Diego	<input type="checkbox"/> Boston	CAROLINA
<input type="checkbox"/> San Francisco	MICHIGAN	<input type="checkbox"/> Columbia
COLORADO	<input type="checkbox"/> Detroit	SOUTH
<input type="checkbox"/> Denver	MINNESOTA	DAKOTA
CONNECTICUT	<input checked="" type="checkbox"/> St. Paul	<input type="checkbox"/> Aberdeen*
<input type="checkbox"/> Hartford	MISSISSIPPI	TENNESSEE
DISTRICT OF COLUMBIA	<input type="checkbox"/> Jackson	<input type="checkbox"/> Knoxville
<input type="checkbox"/> Washington	MISSOURI	<input type="checkbox"/> Memphis
FLORIDA	<input type="checkbox"/> Kansas City	<input type="checkbox"/> Nashville
<input type="checkbox"/> Jacksonville	<input type="checkbox"/> St. Louis	TEXAS
<input type="checkbox"/> Miami	MONTANA	<input type="checkbox"/> Dallas
<input type="checkbox"/> Tallahassee*	<input type="checkbox"/> Billings*	<input type="checkbox"/> El Paso
<input type="checkbox"/> Tampa	<input type="checkbox"/> Helena	<input type="checkbox"/> Houston
GEORGIA	NEBRASKA	<input type="checkbox"/> Lubbock
<input type="checkbox"/> Atlanta	<input type="checkbox"/> Omaha	<input type="checkbox"/> San Antonio
HAWAII	NEVADA	UTAH
<input type="checkbox"/> Honolulu	<input type="checkbox"/> Las Vegas	<input type="checkbox"/> Salt Lake City
	<input type="checkbox"/> Reno	
	NEW MEXICO	

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IDAHO	<input type="checkbox"/> Albuquerque	VERMONT
<input type="checkbox"/> Boise	NEW YORK	<input type="checkbox"/> Burlington*
<input type="checkbox"/> Pocatello*	<input type="checkbox"/> Albany*	VIRGINIA
ILLINOIS	<input type="checkbox"/> Buffalo	<input type="checkbox"/> Richmond
<input type="checkbox"/> Chicago	<input type="checkbox"/> New York City	<input type="checkbox"/> Roanoke*
<input type="checkbox"/> Peoria*	<input type="checkbox"/> Syracuse*	WASHINGTON
INDIANA	NORTH	<input type="checkbox"/> Seattle
<input type="checkbox"/> Indianapolis	CAROLINA	<input type="checkbox"/> Spokane
IOWA	<input type="checkbox"/> Winston-Salem	WEST
<input type="checkbox"/> Des Moines	NORTH	VIRGINIA
	DAKOTA	<input type="checkbox"/> Charleston
	<input type="checkbox"/> Bismarck*	WISCONSIN
		<input type="checkbox"/> Milwaukee
		WYOMING
		<input type="checkbox"/> Cheyenne*

/s/ David Thompson
Signature of Petitioner(s)
or Counsel

8/29/17
Date