

No. 24-416

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In the Supreme Court of the United States

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

JENNIFER ZUCH

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

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**BRIEF FOR RESPONDENT**

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### QUESTION PRESENTED

The Internal Revenue Code authorizes the IRS to levy—that is, seize—a taxpayer’s property to collect unpaid taxes, but only after providing the taxpayer with notice and an opportunity for an administrative hearing before the IRS Independent Office of Appeals (Appeals Office). *See* I.R.C. § 6330. At the hearing, the taxpayer may raise “any relevant issue relating to the unpaid tax or the proposed levy.” I.R.C. § 6330(c)(2)(A). The taxpayer may also challenge her underlying tax liability if she did not previously have an opportunity to do so. I.R.C. § 6330(c)(2)(B). The Appeals Office issues a “determination,” which “shall take into consideration” “the issues raised under paragraph (2),” including any challenge relating to the unpaid tax or the taxpayer’s liability. I.R.C. § 6330(c)(3). After the Appeals Office renders its determination, the taxpayer may “petition the Tax Court for review of such determination,” “and the Tax Court shall have jurisdiction with respect to such matter.” I.R.C. § 6330(d)(1).

The question presented is whether the Tax Court retains jurisdiction under I.R.C. § 6330 to review the Appeals Office’s determination of the taxpayer’s unpaid tax or underlying liability when, despite the parties’ live dispute about that issue, the IRS stops pursuing the levy, because it instead keeps the taxpayer’s overpayments for later tax years.

**PARTIES TO THE PROCEEDINGS AND  
RELATED PROCEEDINGS**

Petitioner's lists of the parties to the proceeding and directly related proceedings are complete and correct.

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## INTRODUCTION

This case is about whether the Tax Court retains jurisdiction to review an IRS administrative decision determining a taxpayer's disputed liability or unpaid tax after the IRS unilaterally tries to moot the challenge by terminating its efforts to levy the taxpayer's property. The answer is yes. The Tax Court has jurisdiction under Internal Revenue Code § 6330(d)(1) to review the Appeals Office's determination and the matters and issues that determination resolves, and nothing in § 6330 conditions that jurisdiction on the IRS's continuing pursuit of a levy. I.R.C. § 6330(d)(1); *see* I.R.C. § 6330(c). The Tax Court's jurisdiction to review the Appeals Office's determination thus gives the court authority to rule on the taxpayer's unpaid tax or underlying liability. And because the government is expected to abide by judicial rulings, those rulings would redress Zuch's pocketbook injury. This case is not moot.

Jennifer Zuch owed about \$27,000 for the 2010 tax year. But she and her ex-husband had already made \$50,000 in estimated payments to the IRS for the 2010 tax year, and Zuch asked the IRS to apply those payments to her tax bill. Zuch's ex-husband agreed that those tax payments should be applied to Zuch's tax bill. But the IRS refused. Instead, it applied the full \$50,000 in estimated payments to Zuch's ex-husband's balance. It then threatened to seize Zuch's property to collect her 2010 tax assessment.

Zuch exercised her right to a hearing under § 6330, which provides taxpayers with procedural protections before the IRS may levy their property to collect taxes. Congress enacted § 6330 as part of the Internal Revenue Service Restructuring and Reform

Act in response to abusive IRS collections practices that forced some taxpayers to spend their life's savings on taxes the IRS or courts later determined they never even owed. *Practices & Procedures of the Internal Revenue Service: Hearings Before the Committee on Finance*, 105th Cong., S. Hrg. 105-190 at 75-82 (1997) [hereinafter *Hearings Before the Committee on Finance*] (statement of Katherine Lund Hicks). Section 6330 ensures that taxpayers can dispute their tax bill *before* having to pay. The provision allows taxpayers threatened with a levy to initiate administrative hearings before the Appeals Office and to raise “any relevant issue relating to the unpaid tax” or challenge their liability if they haven’t yet had a chance to do so. I.R.C. § 6330(c)(2). Section 6330 also grants taxpayers an opportunity for meaningful judicial review by granting the Tax Court jurisdiction to review the Appeals Office’s determination. I.R.C. § 6330(d)(1).

At her administrative hearing, Zuch argued that the IRS should have credited her with the \$50,000 in estimated payments that she and her ex-husband had made. Those payments would have covered her 2010 tax bill and entitled her to a refund. The Appeals Office disagreed, concluding that Zuch was not entitled to any portion of the estimated payments and upholding the proposed levy. Zuch petitioned the Tax Court for review of the Appeals Office’s determination. But during the course of the Tax Court proceedings, the IRS kept overpayments that Zuch made for later tax years and used them to offset her disputed 2010 liability. By 2019, after six years of litigation, the IRS claimed that Zuch had satisfied the disputed liability, and it moved to dismiss the Tax Court proceedings as moot.

The Tax Court agreed and dismissed the petition. According to the court, because there was no unpaid liability and no levy, the case was moot. Pet. App. 43a.

The court of appeals vacated and remanded. In a part of the opinion joined by two panel members, the court held that the case was not moot because the Tax Court had jurisdiction to review the Appeals Office's determination of and declare Zuch's liability. Pet. App. 25a-26a; *see* Pet. App. 25a-38a. And a declaratory judgment, the court concluded, would redress Zuch's injury. Pet. App. 37a-38a.

The court of appeals correctly recognized that the Tax Court had jurisdiction to review the Appeals Office's determination and that this case is not moot. This Court should affirm.

**1. a.** The Tax Court had, and retained, jurisdiction to review the Appeals Office's determination. Section 6330's plain text states that the Tax Court "shall have jurisdiction" to "review" the Appeals Office's "determination," including its resolution of "any relevant issue relating to the unpaid tax," or the taxpayer's "underlying tax liability." I.R.C. § 6330(c)(2), (c)(3), (d)(1). Nothing in that language, or anything else in § 6330, requires an ongoing attempt to levy the taxpayer's property. Thus, the Tax Court retains jurisdiction to review the Appeals Office's determination, even if the IRS stops pursuing a levy, so long as the taxpayer continues to dispute her unpaid tax or underlying liability. That makes sense, given that the whole point of § 6330 is to make sure that levy proceedings are fair and that a taxpayer can challenge her liability if she had no prior opportunity to do so. Indeed, the very design of § 6330 seeks to ensure that the government is "turn[ing] square corners



in dealing with the people,” *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 24 (2020).

**b.** This case is not moot. The Tax Court had authority to determine Zuch’s entitlement to the prepayments. See I.R.C. § 6330(d)(1). A case is moot only when the parties no longer retain any interest in the outcome of the proceedings. But here, both parties have a concrete interest in the outcome of the litigation: If Zuch wins, the IRS will likely refund her money. If the IRS wins, it will keep her money. Either way, the Tax Court’s ruling will be preclusive in a refund suit—which the government has invited Zuch to file—so the stakes are real. And Zuch has now filed a refund suit in the District of New Jersey seeking to recover some of her overpayments.

**2.** The IRS’s counterarguments are meritless. The IRS claims that the Tax Court’s jurisdiction to review the Appeals Office’s determination vanished, and that the case is moot, because the IRS decided it no longer needed a levy after it took Zuch’s money another way. The government’s arguments fail.

*First*, the Tax Court’s jurisdiction to review whether Zuch was entitled to the prepayments didn’t disappear once the IRS stopped pursuing the levy. Plain text makes that clear. Although the term “levy” appears throughout § 6330, the provision that grants the Tax Court jurisdiction over the Appeals Office’s determination—§ 6330(d)(1)—doesn’t condition jurisdiction on a levy. History and purpose don’t help the government, either. Congress enacted § 6330 to remedy IRS abuses and give taxpayers a fair shot at disputing what they owe before collection, underscoring why Congress likely wanted the Tax Court to

retain jurisdiction to resolve disputes over unpaid tax and liability. Section 6330 must be construed in light of that remedial purpose.

Invoking *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22 (2025), the government claims that the Tax Court lost jurisdiction because the IRS fundamentally altered the basis of the suit when it decided not to seek the levy. But again, § 6330 gave the Tax Court jurisdiction to review an Appeals Office determination and nothing in the provision requires a levy. *See* I.R.C. § 6330(d)(1). Put differently, § 6330(d) gives the Tax Court jurisdiction so long as the taxpayer challenges an Appeals Office determination. The Court recently made clear in the § 6330 context that a procedural requirement is jurisdictional only if Congress “clearly states” that it is. *Boechler, P.C. v. Commissioner*, 596 U.S. 199, 203 (2022). But the word “levy” doesn’t even appear in § 6330(d). In any event, even if § 6330 required a levy, the requirement would look to the time of filing, and there *was* a proposed levy when Zuch petitioned the Tax Court.

Appealing to policy, the government says that if the Tax Court has jurisdiction to review liability disputes like Zuch’s, the Tax Court will become a forum for general liability claims. For starters, the government hasn’t pointed to any cases showing that taxpayers are invoking § 6330 to bring general liability challenges. Plus, to invoke the Tax Court’s § 6330 jurisdiction, a taxpayer needs an Appeals Office determination. The Tax Court can address unpaid tax or liability issues only if the Appeals Office’s determination resolved them. What’s more, the question presented in this case rarely arises, and when it does, it’s only because the IRS starts levy proceedings, gets the taxpayer’s money another way, and once the Tax

Court is reviewing the determination, decides to abandon the levy midstream. The IRS can easily avoid its self-made problem.

*Second*, the government asserts that the Tax Court lacks authority to declare Zuch's entitlement to the prepayments because the Declaratory Judgment Act (DJA) and Anti-Injunction Act (AIA) generally prohibit courts from issuing declaratory and injunctive relief in federal tax cases. That argument fails. Section 6330(d)(1) authorizes the Tax Court to determine the taxpayer's unpaid tax and underlying liability in § 6330 proceedings. And § 6330(e)(1) confirms that the Tax Court can issue declaratory relief, exempting § 6330 proceedings from the DJA's and AIA's prohibitions on declaratory and injunctive relief in other tax cases.

*Finally*, the government claims it mooted the case by abandoning the levy because the levy gave rise to the proceeding. But that's not how mootness works. The question is whether the parties retain *any* interest in the outcome of the litigation. And here, both Zuch and the IRS have a concrete interest in whether and how the Tax Court adjudicates Zuch's entitlement to the estimated payments.

The Court should affirm the court of appeals' decision and remand so the Tax Court can consider Zuch's merits arguments.

## STATEMENT

### A. Legal background

1. Taxpayers often have various ways to dispute the amount of income taxes and other taxes the IRS claims they owe. If the IRS determines that a taxpayer owes more taxes than she reported on her tax return,

the IRS typically sends her a notice of deficiency. I.R.C. § 6212(a). Within 90 days, the taxpayer may challenge the claimed deficiency in Tax Court. I.R.C. § 6213(a). In the deficiency proceeding, the Tax Court can determine the correct amount of tax owed and whether the taxpayer made overpayments, entitling the taxpayer to a refund or credit. I.R.C. §§ 6214(a), 6512(b)(1). The Tax Court's final decision is reviewable by a court of appeals. I.R.C. § 7482(a)(1). If the taxpayer does not challenge the deficiency, she can pay the disputed amount and seek a refund in district court or the Court of Federal Claims. 28 U.S.C. § 1346(a)(1); *see* I.R.C. § 7422(a).

**2.** This case centers on a third way a taxpayer can challenge the taxes the IRS assesses when the taxpayer has not paid the taxes the IRS claims she owes and the IRS seeks to collect by levying the taxpayer's property. Sometimes, a tax remains unpaid even after a taxpayer receives a notice of deficiency. Or perhaps a taxpayer hasn't paid the amount the IRS claims she owes, but she didn't receive a notice of deficiency or otherwise have an opportunity to dispute her liability. In either situation, the IRS may decide to pursue a levy on the taxpayer's property. I.R.C. § 6331(a), (b).

If the IRS issues a levy notice, the taxpayer has 30 days to request an administrative hearing before the Appeals Office under I.R.C. § 6330, sometimes called a "collection due process" hearing, to challenge the proposed levy and her underlying tax liability. I.R.C. § 6330(b), (c)(2)(B); *see Boechler*, 596 U.S. at 202; *Byers v. Commissioner*, 740 F.3d 668, 671-72 (D.C. Cir. 2014). This case involves a § 6330 proceeding in which the parties dispute the taxpayer's liability and unpaid tax.

a. The issues a taxpayer may raise in a collection due process hearing depend in part on whether the taxpayer received a notice of deficiency or had another opportunity to dispute her liability. If she did not, she may raise “challenges to the existence or amount” of her liability. I.R.C. § 6330(c)(2)(B). A collection due process hearing thus serves as a backstop, ensuring that a taxpayer has an opportunity to dispute her underlying tax liability because she was not able to do so earlier. Liability challenges aside, all taxpayers in collection due process proceedings may raise “any relevant issue relating to the unpaid tax or the proposed levy, including” “appropriate spousal defenses,” “challenges to the appropriateness of collection actions,” and “offers of collection alternatives,” no matter whether they had an earlier opportunity to dispute their liability. I.R.C. § 6330(c)(2)(A). The Appeals Office then makes a “determination” that “shall take into consideration” the taxpayer’s challenge to the unpaid tax, her underlying liability, and any other issues raised. I.R.C. § 6330(c)(3).

Although it is an important backstop, a collection due process hearing “lacks the typical hallmarks of a judicial hearing” and is “far from ... a formal hearing.” *Farhy v. Commissioner*, 100 F.4th 223, 227 (D.C. Cir. 2024). “There are no formal discovery procedures, and the taxpayer has no right to subpoena documents or witnesses.” *Id.* Rather, the hearing “provides the taxpayer ‘an opportunity for an informal oral or written conversation with the IRS.’” *Id.*

After the Appeals Office issues its “determination,” the taxpayer may “petition the Tax Court for review of such determination (and the Tax Court shall have jurisdiction with respect to such matter).” I.R.C.

§ 6330(d)(1). The Tax Court’s final judgment is subject to review in a court of appeals. I.R.C. § 7482(a)(1).

**b.** Congress enacted § 6330 in 1998 to protect taxpayers from the IRS’s abusive tax collection practices. *E.g.*, 144 Cong. Rec. S4027-32 (daily ed. May 1, 1998). Leading up to § 6330’s enactment, Congress held a series of hearings that shed light on those practices. For example, taxpayers couldn’t contest a levy before the IRS seized their property. *See Phillips v. Commissioner*, 283 U.S. 589, 595-96 (1931). And taxpayers were often forced to drain their life’s savings—and their family’s—to pay assessments they never even owed. *Hearings Before the Committee on Finance* at 75-82 (statement of Katherine Lund Hicks). After the hearings, “[m]any people were shocked to learn that a number of the due-process protections Americans take for granted in other legal proceedings do not apply to actions involving the IRS.” 144 Cong. Rec. S4031 (statement of Sen. Enzi). As one member put it, “the problem is, [the IRS] ha[s] too much power, they have no checks and balances.” *Hearings Before the Committee on Finance* at 56 (statement of Sen. Gramm).

In designing § 6330, Congress sought to “ensure that all taxpayers have due process and that the IRS does not abusively use its liens-and-seizure authority.” 143 Cong. Rec. S12231 (daily ed. Nov. 9, 1997) (statement of Sen. Roth). Indeed, the point of § 6330 proceedings is to “increase fairness to taxpayers” before the IRS deprives them of their property. S. Rep. No. 105-174, at 67 (1998). And, as the Tax Court has observed, Congress sought to ensure that the Commissioner would “collect the correct amount of tax, and do so by observing all applicable laws and administrative

procedures.” *Montgomery v. Commissioner*, 122 T.C. 1, 10 (2004).

To that end, § 6330 allows a taxpayer to raise issues relating to the unpaid tax and also challenge her liability if she did not have an earlier opportunity to do so. I.R.C. § 6330(c)(2). Section 6330 also gives the taxpayer a chance “to petition the Tax Court to contest the Appeals [Office’s] decision.” 144 Cong. Rec. S4494 (daily ed. May 7, 1998) (statement of Sen. Hatch). And once a taxpayer has petitioned the Tax Court, that court can enjoin any action or proceeding “in respect of the unpaid tax or proposed levy.” I.R.C. § 6330(e)(1). That makes sense: ensuring that the IRS is collecting the correct amount of tax requires giving taxpayers an opportunity to dispute issues relating to the taxes they haven’t paid and their tax liability, and having the Tax Court weigh in before the IRS can take their money.

### **B. Factual and procedural background**

This case arises from a dispute over whether the IRS properly credited \$50,000 in overpayments from Zuch and her ex-husband, Patrick Gennardo, to Gennardo’s tax bill rather than Zuch’s in the wake of their divorce. Both Zuch and Gennardo maintain that the IRS should have credited Zuch’s account, but the IRS instead credited Gennardo’s, sought to levy Zuch’s property, and unilaterally decided to withhold overpayments Zuch made in later tax years.

1. Zuch and Gennardo were married from 1993 to 2014. Pet. App. 7a. They separated in 2010, and Zuch initiated divorce proceedings in 2012. CA3 App. A118. During that time, the IRS assessed substantial taxes against Zuch and Gennardo, prompting years of litigation.

**a.** In 2010 and 2011, Zuch and Gennardo submitted \$50,000 in prepayments to the IRS for what they estimated would be their 2010 tax liability. Pet. App. 8a. In particular, in June 2010, they submitted an estimated payment of \$20,000 using a check drawn from a bank account listing both their names. Pet. App. 8a & n.11. The form accompanying the check also listed both names. Pet. App. 8a n.11, 51a. In January 2011, Gennardo sent the IRS a check for \$30,000. Pet. App. 8a. The subject line of the letter accompanying the check read “Re: Patrick J. Gennardo and Jennifer Zuch,” and although the check was from Zuch and Gennardo’s joint bank account, the check listed only Gennardo’s name. Pet. App. 8a n.12, 51a. At the time, Zuch and Gennardo didn’t tell the IRS how to allocate the payments. Pet. App. 8a.

**b.** In 2012 and 2013, Zuch and Gennardo filed untimely, and later amended, tax returns for 2010, and the IRS applied the \$50,000 in prepayments to Gennardo’s, rather than Zuch’s, tax bill. Pet. App. 7a-8a. The IRS’s decision gave rise to the parties’ dispute over Zuch’s 2010 tax balance.

In September 2012, Zuch and Gennardo each filed a married-filing-separately income tax return. Pet. App. 7a. Zuch’s return showed an adjusted gross income of \$74,493 and a \$731 overpayment, and didn’t mention the prepayments from 2010 and 2011. Pet. App. 7a-8a & n.9. Gennardo’s return showed an adjusted gross income of \$1,077,213, indicated that he owed \$385,393 in taxes, and reported \$10,000 in estimated payments. Pet. App. 8a-9a, 52a. The same day that Gennardo filed his return, he also filed an offer-in-compromise, seeking to settle his accumulated tax debts at less than the amount due. *Id.*; see I.R.C. § 7122(a). The IRS later notified him that it had



applied the \$50,000 in prepayments towards the \$385,393 in taxes he owed. Pet. App. 8a.

In November 2012, Zuch filed an amended return for 2010 to report \$71,000 in additional income from a retirement account distribution. Pet. App. 9a. Zuch's amended return showed that she owed the IRS \$27,682. *Id.* She explained that the \$50,000 in prepayments should be credited to her and requested a refund of \$21,918. *Id.* In February 2013, the IRS assessed the additional \$27,682 in taxes that Zuch reported, but it refused to credit her for the \$50,000 or issue any refund. *Id.*

Gennardo also filed an amended return for 2010 in November 2012. Pet. App. 52a-53a. On that amended return, he reported \$0 in prepayments. *Id.* Subsequently, in March 2013, while his offer-in-compromise was pending, Gennardo filed a second amended return for 2010. Pet. App. 9a. He indicated on that second amended return that the \$50,000 in prepayments should be credited to Zuch, but the IRS still refused to allocate it to her tax bill. Pet. App. 9a-10a; *see* Pet. App. 55a.

c. Gennardo later submitted an amended offer-in-compromise in which he offered the IRS a significantly larger payment of tax, which the IRS accepted. Pet. App. 10a. Even though Gennardo had asked the IRS to credit the \$50,000 to Zuch, the IRS credited the entire sum to him. *Id.*

2. Zuch never received a notice of deficiency from the IRS. Pet. App. 9a n.13. But in August 2013, the IRS notified her that it intended to levy her property because she had failed to pay her 2010 tax assessment and explained that she had 30 days to request a

collection due process hearing before the Appeals Office. Pet. App. 10a.

3. Zuch timely requested a hearing. *Id.* At the hearing, Zuch challenged her “underlying tax liability” because she did not receive a notice of deficiency or otherwise have an opportunity to dispute it. I.R.C. § 6330(c)(2)(B); Pet. App. 10a. Zuch argued that the \$50,000 in prepayments should have been credited to her, reducing her tax liability to \$0 and entitling her to a refund. Pet. App. 10a.

In September 2014, the Appeals Office rejected Zuch’s “[c]hallenges to [her] [l]iability,” Pet. App. 66a, and sustained the proposed levy. It told Zuch that it was “not in a position” to credit her for the \$50,000 because the IRS had credited the money to Gennardo. Pet. App. 11a.

4. Zuch petitioned the Tax Court to review the Appeals Office’s determination. *Id.* In particular, she sought a ruling that the \$50,000 should have been applied to her individual tax balance. *Id.* After the IRS moved for summary judgment, the Tax Court remanded to the Appeals Office because it wasn’t clear why the IRS had applied the \$50,000 towards Gennardo’s liability rather than Zuch’s. Pet. App. 11a-12a.

5. In June 2017, the Appeals Office again ruled against Zuch on the “[i]ssues relating to [her] unpaid [underlying] liability,” Pet. App. 48a, and sustained the proposed levy, Pet. App. 12a. It reasoned that the levy “balance[d] the need for efficient collection of taxes with the taxpayer’s legitimate concern that any collection action be no more intrusive than necessary.” CA3 App. A270.

6. The case returned to the Tax Court. Pet. App. 12a. Meanwhile, over the course of the six years the § 6330 proceedings had been pending, Zuch kept paying her taxes for later years. In fact, she overpaid. But rather than issuing her refunds, the IRS kept Zuch's overpayments and used them to offset her claimed 2010 liability. Pet. App. 12a-13a. The IRS did so six times, "once each in 2013, 2014, 2015, and 2019, and twice in 2016." *Id.* And in April 2019, after the case had returned to the Tax Court, the IRS kept Zuch's money a final time to offset the rest of her claimed 2010 tax balance, reducing it to \$0. Pet. App. 13a.

The IRS then moved to dismiss the Tax Court proceedings as moot. *Id.* The Tax Court granted the motion. *Id.* The Tax Court concluded that it lacked jurisdiction over the case and that the case was moot because "there [was] no unpaid liability ... upon which a levy could be based," and the IRS was no longer seeking to levy Zuch's property. Pet. App. 43a.

7. The Third Circuit vacated the Tax Court's decision, held that the Tax Court had jurisdiction under § 6330 to decide Zuch's challenge to her tax liability or unpaid tax, held that the case wasn't moot, and remanded for proceedings on the merits. Pet. App. 1a-39a.

The court first held that the Tax Court had jurisdiction to review the Appeals Office's determination of Zuch's liability. Because Zuch had neither received a notice of deficiency nor had an opportunity to contest her liability before her collection due process hearing, Zuch could challenge "the existence or amount of [her] underlying tax liability" during the hearing. Pet. App. 14a-15a; (quoting I.R.C. § 6330(c)(2)(B)). And,

the court explained, “Zuch’s argument that her estimated tax payments were erroneously allocated to her ex-husband is a challenge to her underlying tax liability under § 6330(c)(2)(B).” Pet. App. 19a.

The court of appeals then held that the Tax Court had jurisdiction over Zuch’s challenge, and that Zuch’s challenge was not moot, for two independent reasons. Pet. App. 19a-38a. *First*, the court held that Zuch could continue challenging her underlying liability because the IRS unlawfully offset it using her overpayments in later years. Pet. App. 19a-25a. The IRS’s unilateral, illegal actions, the court held, could not moot the case. Pet. App. 25a. *Second*, in a part of the opinion joined by two panel members, the court held that the Tax Court had jurisdiction to review the Appeals Office’s determination of Zuch’s liability and issue a declaratory judgment because the parties continued to dispute Zuch’s tax liability. Pet. App. 25a-26a; *see* Pet. App. 25a-38a. And a declaratory judgment, the court concluded, would redress Zuch’s injuries. Pet. App. 37a-38a.

**8.** The IRS sought rehearing en banc, which the court of appeals denied. Pet. App. 68a-69a. It then sought a writ of certiorari, which this Court granted on January 10, 2025.

**9.** On March 14, 2025, Zuch filed a suit in the U.S. District Court for the District of New Jersey seeking refunds for the 2010, 2012, 2013, and 2018 tax years pursuant to 28 U.S.C. § 1346(a)(1) and I.R.C. § 7422(a). Compl., *Zuch v. United States*, No. 2:25-cv-01900 (D.N.J. Mar. 14, 2025). If successful, Zuch will recover approximately two-thirds of the taxes the IRS collected after it refused to credit her for the estimated payments. *See* Compl. ¶¶ 108-09. But Zuch is unable

to request the return of approximately \$20,000 in overpayments the IRS kept from the 2014 and 2015 tax years, due to the onerous jurisdictional prerequisites to filing a refund suit. Compl. ¶ 109.

### SUMMARY OF ARGUMENT

**I.** The Tax Court had jurisdiction to review Zuch's challenge relating to her unpaid tax or underlying tax liability, and to adjudicate her entitlement to the estimated payments. The Tax Court retained that jurisdiction and authority to issue a binding ruling even after the IRS stopped pursuing the levy. This case isn't moot.

**A.** The Tax Court had, and retained, jurisdiction to review the Appeals Office's determination of Zuch's estimated payment dispute.

**1.** Section 6330's plain text makes clear that the Tax Court has authority to review the Appeals Office's determination of a taxpayer's challenge relating to her unpaid tax or underlying liability. Section 6330 provides that a taxpayer may raise "any relevant issue relating to the unpaid tax" at a collection due process hearing, and also may raise a challenge to her "underlying tax liability" when she didn't have an opportunity to do so before. I.R.C. § 6330(c)(2). The Appeals Office's "determination" must "take [those issues] into consideration," I.R.C. § 6330(c)(3), and the Tax Court "shall have jurisdiction" to review that determination, I.R.C. § 6330(d)(1). Nothing in those provisions makes jurisdiction turn on a continuing-levy requirement, much less satisfies the requirement that jurisdictional prerequisites be clearly stated, *see Boechler*, 596 U.S. at 203. The Tax Court's jurisdiction under § 6330 thus doesn't vanish when the IRS stops pursuing a levy.

**2.** Context confirms that Congress gave the Tax Court continuing jurisdiction under § 6330 to review Appeals Office determinations, including their resolution of unpaid tax and tax liability issues. Section 6330(c)(2)(B) ensures that a taxpayer has a chance to challenge the unpaid tax and her underlying liability before she must pay or face a levy, and *without* initiating new litigation against the federal government to seek a refund, *see* 28 U.S.C. § 1346(a)(1); I.R.C. § 7422(a).

**3.** The Tax Court had jurisdiction to review the Appeals Office’s determination, including Zuch’s entitlement to the estimated payments. In proceedings before the Appeals Office, Zuch challenged the IRS’s refusal to apply the estimated payments to her tax bill. The Appeals Office rejected her arguments. Zuch then petitioned the Tax Court for review of the Appeals Office’s determination—including its resolution of the unpaid tax or underlying liability dispute. And the Tax Court had jurisdiction under § 6330 to review the determination of those issues.

**B.** Zuch’s case wasn’t mooted when the IRS decided that it no longer needed the levy. A case is moot only if the parties no longer have a concrete interest in the outcome, and the court can’t issue any relief that would redress a party’s injury. But here, the Tax Court could issue a ruling deciding whether Zuch is entitled to have the \$50,000 in estimated payments applied to her tax bill. So both parties have an interest here. If Zuch prevails, the IRS is likely to issue a refund, and if the government prevails, the IRS will keep her money. And win or lose, a judgment from the Tax Court will be preclusive in the refund suit that Zuch has now filed in the U.S. District Court for the District of New Jersey.

**II.** The government’s counterarguments are unpersuasive.

**A.** The government claims that the Tax Court’s jurisdiction to review a taxpayer’s liability challenge requires a continuing attempt to levy the taxpayer’s property. That is incorrect—the Tax Court’s jurisdiction didn’t disappear once the IRS no longer needed the levy.

**1.** There is no textual basis for the government’s continuing-levy requirement. To be sure, § 6330 mentions the word “levy”—after all, a taxpayer can initiate administrative collection due process proceedings before the Appeals Office only after being notified that the IRS is going to levy her property. *See* I.R.C. § 6330(a)(3)(B), (b)(1). But once the Appeals Office issues a determination, the taxpayer can seek Tax Court review of the determination under § 6330(d)(1). Section 6330(d)(1)’s plain terms impose no continuing-levy requirement, much less a “clearly state[d]” jurisdictional requirement, *Boechler*, 596 U.S. at 203. What’s more, the presumption favoring judicial review of agency actions supports reading § 6330(d)(1) to confer jurisdiction even if the government abandons its levy efforts. *See Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020). In arguing otherwise, what the IRS is really saying is that, in its view, the Tax Court cannot redress a taxpayer’s pocketbook injury when there is no pending levy. But that’s not the case, either, as this case makes plain.

**2.** Section 6330’s history and purpose confirm that the Tax Court retains jurisdiction over an unpaid tax or liability challenge even after the IRS says it doesn’t need a levy anymore. Congress crafted § 6330 as remedial legislation in response to the IRS’s

abusive collection practices as part of a statutory scheme to increase fairness to taxpayers by allowing them to challenge what they owe before they pay or have their property seized. In light of that remedial purpose, § 6330 should be construed to mean what it says—the Tax Court has jurisdiction over the Appeals Office’s “determination.”

3. *Royal Canin* doesn’t suggest otherwise. The government argues that the IRS fundamentally altered the basis of the suit when it decided not to seek the levy. But the basis of the Tax Court’s jurisdiction is the Appeals Office’s determination, not any levy. And decisions holding that jurisdiction depends on the state of play at the time the suit is brought show that even assuming § 6330 contains a pending-levy requirement, that requirement turns on the time of filing and thus is met here: there was a levy pending when Zuch petitioned the Tax Court.

4. Policy can’t salvage the government’s position, either. The government claims that, if the Tax Court has jurisdiction to review a taxpayer’s liability in a § 6330 proceeding after the IRS determines it no longer needs the levy, the floodgates will open and § 6330 proceedings will become a forum for all kinds of liability challenges. But the taxpayer may raise a liability issue in a collection due process proceeding only when she did not have an earlier opportunity to do so. Plus, the Tax Court’s jurisdiction is tied to the issues raised before, and determined by, the Appeals Office in the first place. There’s no risk that the Tax Court will begin exercising free-wheeling jurisdiction over “general” liability disputes. What’s more, the question presented rarely arises, and when it does, it’s only because of “the IRS’s own recalcitrance.” *Boechler*, 596 U.S. at 207. So even if there were a



floodgates problem, it would be the government's own doing.

**B.** The government claims that the Tax Court lacks authority to issue a judgment regarding Zuch's entitlement to the estimated payments. In the government's view, the Tax Court can enjoin only a collection action in a § 6330 proceeding, and can't issue declaratory relief at all. That argument is meritless. Section 6330(d)(1) authorizes the Tax Court to determine the taxpayer's unpaid tax and underlying liability, and issue a judgment about those issues. And § 6330(e)(1), which allows injunctions "in respect of the unpaid tax or proposed levy," confirms that the Tax Court can issue declaratory relief determining a taxpayer's rights in a challenge involving her liability or unpaid tax. The DJA doesn't provide otherwise, because § 6330(e)(1) *exempts* § 6330 from the DJA's prohibition on declaratory relief in most tax cases.

**C.** The government's other mootness arguments fail, too. The government contends that the case is moot because, once the IRS decides not to pursue a levy, "the issue that prompted the Section 6330 proceeding is no longer 'live.'" Br. 21. But the mootness inquiry asks whether the parties retain *any* interest in the outcome of the litigation, and thus whether the court can redress the plaintiff's injury. The parties have a concrete interest here, because the Tax Court can decide whether Zuch or the IRS is entitled to the money.

**D.** Finally, the government mentions in a footnote that Zuch's challenge relates to her unpaid tax, rather than her underlying liability. But the government concedes (Br. 25 n.3) that the dispute is

immaterial. Indeed, as Zuch has explained, the Tax Court had, and retained, jurisdiction either way.

### ARGUMENT

#### **I. The Tax Court had jurisdiction under I.R.C. § 6330 to review and rule on Zuch’s unpaid tax or tax liability, so the case isn’t moot.**

##### **A. The Tax Court had jurisdiction to review the Appeals Office’s determination of Zuch’s entitlement to the estimated payments.**

Section 6330’s text and context make clear that the Tax Court had jurisdiction to review Zuch’s challenge to her unpaid tax or underlying tax liability, even after the IRS stopped pursuing the levy.

##### **1. Section 6330’s plain text states that the Tax Court has jurisdiction to review the Appeals Office’s “determination” of a taxpayer’s challenge to “any relevant issue relating to [her] unpaid tax” or her “underlying liability.”**

**a.** During the collection due process hearing, the Appeals Office can determine “any relevant issue relating to the unpaid tax,” and, if the taxpayer “did not receive any statutory notice of deficiency ... or did not otherwise have an opportunity to dispute” it, the taxpayer may also challenge “the existence or amount of the underlying tax liability.” I.R.C. § 6330(c)(2). A taxpayer challenges her underlying tax liability by disputing “the amounts that the Commissioner assessed for a particular tax period.” *Jeffers v. Commissioner*, 992 F.3d 649, 653 n.4 (7th Cir. 2021); *accord Montgomery*, 122 T.C. at 7-8. For example, the

taxpayer challenges her underlying tax liability when she claims that the IRS misapplied a credit, if properly applying the credit “would eliminate the outstanding tax liability.” *Peoplease, LLC v. Commissioner*, No. 2161-24L, 2025 WL 429626, at \*2 (T.C. Feb. 6, 2025). Similarly, when a taxpayer raises challenges relating to the unpaid portion of the underlying tax liability, she raises an issue related to the unpaid tax. See Internal Revenue Service Chief Counsel Notice CC-2014-002 at 3 (May 5, 2014) (“Unpaid tax’ refers to that part of the underlying tax liability not paid by the taxpayer.”).

Once the Appeals Office issues a determination, the taxpayer may “petition the Tax Court for review of [the Appeals Office’s] determination,” “and the Tax Court shall have jurisdiction with respect to such matter.” I.R.C. § 6330(d)(1). That means the Tax Court reviews the “determination” of all “the issues” raised during the hearing. I.R.C. § 6330(c)(2), (c)(3)(B). So when the Tax Court reviews the Appeals Office’s determination, it can resolve any dispute about any issue relating to the unpaid tax or the taxpayer’s underlying tax liability that the taxpayer properly raised before the Appeals Office. *See id.*

**b.** The Tax Court doesn’t lose its jurisdiction to resolve a challenge to the Appeals Office determination just because the IRS decides to stop pursuing the levy. Congress provided that the Tax Court “*shall* have jurisdiction” to review the Appeals Office’s determination. I.R.C. § 6330(d)(1) (emphasis added). That review necessarily reaches all live “issues” involved in the Appeal’s Office’s determination. And those issues expressly include, as relevant here, “any relevant issue relating to the unpaid tax” and any “challenges to the existence or amount of the underlying tax

liability,” I.R.C. § 6330(c)(2), (c)(3)(B). So long as an unpaid tax or liability issue remains disputed, nothing in § 6330 suggests the Tax Court’s jurisdiction to review the question vanishes when the IRS collects the amount due another way and no longer needs the levy. At most, whether there is a pending levy could affect what kind of relief the Tax Court can grant. But it doesn’t present any question about jurisdiction under § 6330(d)(1). As explained below (at 28-29), the Tax Court can rule on a taxpayer’s unpaid tax or underlying liability when there are live disputes about those issues.

**c.** Section 6330’s history confirms that Congress deliberately vested the Tax Court with jurisdiction to resolve disputes over a taxpayer’s underlying liability and wanted the Tax Court to retain that jurisdiction. Before 2006, § 6330 provided that taxpayers could seek review of the Appeals Office’s determination in federal district court “if the Tax Court [did] not have jurisdiction of the underlying tax liability.” I.R.C. § 6330(d)(1) (2000). Practically, that language meant that the Tax Court had jurisdiction to review the Appeals Office’s determination of a liability dispute only if the dispute concerned income, estate, or gift taxes, because the Tax Court already had jurisdiction to review those kinds of disputes in deficiency proceedings. *Moore v. Commissioner*, 114 T.C. 171, 175 (2000). But Congress changed that in 2006 and made clear that the Tax Court “shall” review the taxpayer’s disputed liability in *all* cases. I.R.C. § 6330(d)(1). Thus, Congress ensured that “the Tax Court [has] jurisdiction over issues arising from a collection due process hearing” by “consolidat[ing] all judicial review of ... collection due process determinations,” including a taxpayer’s underlying tax liability, in the Tax Court.

Staff of J. Comm. on Taxation, 109th Cong., *Description of the Revenue Provisions Contained in the President's Fiscal Year 2007 Budget Proposal* 230-31 (Comm. Print 2006); accord Staff of J. Comm. On Taxation, 109th Cong., *Technical Explanation of H.R. 4, The "Pension Protection Act of 2006," as Passed By the House on July 28, 2006, and as Considered by the Senate on August 3, 2006* (Comm. Print. 2006).

**2. Statutory context confirms that Congress gave the Tax Court continuing jurisdiction to resolve issues relating to the unpaid tax and tax liability disputes.**

Statutory context shows why Congress likely gave the Tax Court authority to review the issues underlying the Appeals Office's determination.

As noted (at 6-7), in some circumstances, the IRS issues a notice of deficiency to a taxpayer, who can then challenge her assessed liability in Tax Court before the IRS collects. See I.R.C. §§ 6212(a), 6512(a). But sometimes the taxpayer doesn't receive a notice of deficiency or have another opportunity to dispute the liability before the IRS seeks to levy the taxpayer's property, as in Zuch's case. See I.R.C. § 6330(c)(2)(B). To ensure that taxpayers have that opportunity, Congress gave taxpayers the right to dispute their liability. *Id.* Similarly, Congress gave taxpayers the right to raise "any relevant issue relating to the unpaid tax," no matter whether they received a notice of deficiency or otherwise had the opportunity to challenge the liability. I.R.C. § 6330(c)(2)(A). And Congress directed the Appeals Office and Tax Court to resolve those challenges. I.R.C. § 6330(c)(3), (d)(1).

Even if the IRS is able to terminate the levy after the taxpayer initiates § 6330 proceedings, it makes sense for the Tax Court to finish resolving the unpaid tax or underlying liability dispute if it remains live. After all, if the dispute continues past the levy, closing the Tax Court's doors would simply require the taxpayer to file *another* lawsuit, this time seeking a refund under I.R.C. § 7422 and 28 U.S.C. § 1346(a)(1). And that would undermine the “design[]” of the Tax Code “to insure an orderly administration of the revenue.” *United States v. Clintwood Elkhorn Mining Co.*, 553 U.S. 1, 11 (2008). It also would contravene the government's fundamental obligation to “turn square corners in dealing with the people,” *Regents of the University of California*, 591 U.S. at 24, by pulling the rug out from under a taxpayer who has been litigating against the IRS for years and forcing her to start new litigation in a different forum.

Congress passed § 6330 to avoid heavy-handed IRS tactics, not authorize them in the form of jurisdictional gamesmanship. And in what is known as the Taxpayer Bill of Rights, Congress has also instructed the IRS to “ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title.” I.R.C. § 7803(a)(3); see *Taxpayer Bill of Rights*, IRS, <https://www.irs.gov/taxpayer-bill-of-rights> (last visited March 17, 2025). Those rights include “the right to pay no more than the correct amount of tax”; “the right to challenge the position of the Internal Revenue Service and be heard”; “the right to appeal a decision of the Internal Revenue Service in an independent forum”; and “the right to finality.” I.R.C. § 7803(a)(3)(C)-(F). Those rights underscore that the Tax Court's jurisdiction under § 6330 does not vanish

just because the IRS seeks to cut off the taxpayer's rights to challenge the agency's position. By the same token, nothing in I.R.C. § 6402, which governs offsets, purports to limit the Tax Court's authority to determine the taxpayer's unpaid tax or liability under § 6330, and reading the provisions that way would insert words into the statute and contravene the Taxpayer Bill of Rights.

**3. The Tax Court had jurisdiction under § 6330 to review the Appeals Office's determination, including its resolution of Zuch's entitlement to the estimated payments.**

The Tax Court had jurisdiction under § 6330 to review the Appeals Office's determination that Zuch was not entitled to the estimated payments.

Zuch challenged the IRS's allocation of the estimated tax payments in the collection due process proceedings. In particular, she claimed that she did not owe the IRS the \$27,682 for the 2010 tax year because the estimated payments should have been credited to her. Pet. App. 9a; *see Jeffers*, 992 F.3d at 653 n.4; *Peoplease*, 2025 WL 429626, at \*2. Zuch had a right to dispute that liability (or unpaid tax, if the IRS would prefer to classify it that way). Zuch did not receive a notice of deficiency or otherwise have an opportunity to challenge her claimed liability. Pet. App. 10a. Regardless, Zuch was also entitled to raise her challenge as a "relevant issue relating to the unpaid tax." I.R.C. § 6330(c)(2)(A).

After the Appeals Office made its determination, Zuch timely petitioned the Tax Court for review. CA3 App. A24-A30; *see* CA3 App. A266-270; Pet. App. 41a-42a. The Tax Court then had jurisdiction over the

Appeals Office's decision, including the dispute over the estimated payments. *See* I.R.C. § 6330(c)(2), (c)(3)(B), (d)(1).

To be sure, while the case was before the Tax Court—and after more than six years of litigation—the IRS announced that it was abandoning the levy. But that didn't deprive the Tax Court of jurisdiction under § 6330. Nothing in § 6330 purports to condition the Tax Court's ongoing jurisdiction on the IRS's continued pursuit of a levy.

**B. Zuch's case did not become moot when the IRS decided to stop pursuing the levy, because the parties disputed, and the Tax Court had the power to adjudicate, Zuch's entitlement to the estimated payments.**

Zuch's case isn't moot just because the IRS decided it no longer needed a levy. Mootness comes into play only when the parties no longer have a concrete interest in the outcome. But both Zuch and the IRS have a concrete interest here because the Tax Court can still decide Zuch's challenge to the Appeals Office's underlying liability or unpaid tax determinations and then rule that Zuch is entitled to the estimated payments. If the Tax Court so rules, the IRS is likely to abide by that ruling and issue a refund. But even if the IRS doesn't issue a refund, the Tax Court's judgment would be preclusive in the refund action Zuch has brought in the District of New Jersey.



1. **A case becomes moot only when the parties no longer have a concrete interest in the outcome of the litigation and judicial relief is not likely to redress any injury.**

The mootness inquiry asks whether standing “exists throughout the proceedings.” *Uzuegbunam v. Preczewski*, 592 U.S. 279, 282 (2021). The “irreducible constitutional minimum of standing contains three elements”: (1) injury in fact, (2) causation (*i.e.*, traceability), and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). “As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.” *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 161 (2016). Thus, redressability requires only that judicial relief “likely” will redress an injury, *Federal Election Commission v. Cruz*, 596 U.S. 289, 296 (2022), not that “a favorable decision *will* relieve” “*every* injury,” *Larson v. Valente*, 456 U.S. 228, 243-44 & n.15 (1982) (first emphasis added).

2. **Zuch’s challenge isn’t moot because a favorable Tax Court ruling on underlying liability or unpaid tax would likely redress her pocketbook injury.**

Zuch satisfies all three requirements of standing. She suffered a concrete injury when the IRS applied the \$50,000 in estimated payments to her ex-husband’s balance, rather than her own. *See, e.g., TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). If the IRS had applied the estimated payments to Zuch’s account—as both she and her ex-husband had requested—Zuch would have gotten her

overpayments back in later years. But, having refused to apply the estimated payments to Zuch's tax bill, the IRS kept her overpayments instead. Zuch's monetary injury is thus traceable to the IRS's refusal to apply the \$50,000 in estimated payments to her 2010 tax bill. *See Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976). And the Tax Court can redress Zuch's injury by ruling that the Appeals Office was wrong about her liability or unpaid tax and thus determining that Zuch is entitled to the \$50,000 in estimated payments.

As noted, the Appeals Office's "determination" "shall take into consideration" "the issues raised" at the hearing, I.R.C. § 6330(c)(3)(B), including "any relevant issue relating to the unpaid tax" and "the existence or amount of the underlying tax liability," I.R.C. § 6330(c)(2). And because the Tax Court "shall have jurisdiction" to review "such determination," I.R.C. § 6330(d)(1), the Tax Court can decide a taxpayer's unpaid tax or underlying tax liability, too. *Accord* Michael I. Saltzman & Leslie Book, *IRS Practice & Procedure* § 14B.16[4][a] (updated Oct. 2024). In Zuch's case, that means the Tax Court can rule on whether she is entitled to credit for the estimated payments, underscoring both parties' concrete interest in the outcome of the case. *See* Pet. App. 33a-34a, 42a.

If the Tax Court rules that Zuch is entitled to the estimated payments, the IRS is likely to issue Zuch a refund. That's because "it is substantially likely that [the IRS] would abide by" that "authoritative" holding "by the [Tax] Court." *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992); *accord Reed v. Goertz*, 598 U.S. 230, 234 (2023); Pet. App. 38a. Indeed, it would be quite remarkable for the IRS to simply ignore the Tax Court and decide not to return to Zuch the money that

a court has determined the IRS has no legal right to keep. That is especially true because the Tax Court not only has authority to review and rule on the underlying liability and unpaid tax issues in § 6330(d)(1), but it also has authority to put those rulings into a declaratory judgment under § 6330(e), as explained below (at 40-42). The consequence is that the Tax Court will have “‘ordered a change in a legal status,’ and ‘the practical consequence of that change would amount to a significant increase in the likelihood’” that the IRS will give Zuch her money back. *Reed*, 598 U.S. at 234. The Tax Court’s authority to issue a “definitive determination of the legal rights of the parties,” *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 571 U.S. 191, 200 (2014); see *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023), leaves no doubt that the court has the power to grant effective relief.

Even if the IRS doesn’t issue Zuch a refund, Zuch has filed a refund suit in the District of New Jersey under I.R.C. § 7422, and the Tax Court’s ruling would have preclusive effect in that suit. “Under the doctrine of issue preclusion, ‘a prior judgment forecloses successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment.’” *Herrera v. Wyoming*, 587 U.S. 329, 342 (2019) (alterations adopted). “The idea is straightforward: Once a court has decided an issue, it is ‘forever settled as between the parties.’” *B&B Hardware, Inc. v. Hargis Industries, Inc.*, 575 U.S. 138, 147 (2015). That goes for declaratory relief issued in an earlier case, too. *E.g.*, 18 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4421 (3d ed. updated June 2024). And the doctrine applies “even if the issue recurs in the context

of a different claim.” *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008).

Here, Zuch’s entitlement to the estimated payments is an “issue of ... law” that would be “actually litigated and resolved” in the Tax Court proceeding and “essential to” the Tax Court’s decision on Zuch’s unpaid tax or underlying liability. *Herrera*, 587 U.S. at 342. Thus, the Tax Court’s judgment would be preclusive in the refund suit Zuch has recently filed in the District of New Jersey, and that court likely would order the government to issue a refund. *See, e.g., Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 325, 332-33 (1979).

## **II. The IRS’s counterarguments lack merit.**

### **A. The Tax Court’s jurisdiction to review whether Zuch was entitled to the prepayments didn’t dissolve once the IRS no longer needed the levy.**

The government claims (Br. 16-21), that the Tax Court has jurisdiction under § 6330 to review a taxpayer’s liability only if the IRS continues threatening to levy the taxpayer’s property. In the government’s view, § 6330’s text, history, and “function” show that § 6330 focuses only on whether a levy can proceed, and the Tax Court thus lacks jurisdiction when the IRS decides it no longer needs a levy. The government also warns that allowing the Tax Court to review live disputes about unpaid tax or taxpayer liability when no levy is pending would vastly expand Tax Court jurisdiction. Those arguments fail. Section 6330’s text, history, and remedial purpose, plus time-of-filing rules in other contexts, all confirm that the Tax Court retains jurisdiction under § 6330 to review a taxpayer’s unpaid tax or underlying liability, even when

the IRS abandons its levy. And the government's policy concern is meritless.

**1. There is no textual basis in § 6330 for the government's continuing-levy requirement.**

a. The government contends that without a threatened levy, there is nothing for the "underlying tax liability" to "underlie." Br. 26. So by implication, the government claims, § 6330 jurisdiction turns on a threatened levy. Br. 24-27. That argument fails.

Section 6330(d)(1) makes clear that the Tax Court has jurisdiction in § 6330 proceedings to review the Appeals Office's determination of the issues raised in a collection due process hearing. *Supra* pp. 21-23. It says that "the Tax Court shall have jurisdiction" to review the Appeals Office's "determination"—which includes all the issues the Appeals Office was required to consider during the hearing, not just whether the levy can proceed. I.R.C. § 6330(d)(1); *see* I.R.C. § 6330(c)(2), (c)(3)(B). The "underlying liability" language appears in the provisions of § 6330 listing the matters a taxpayer may raise at the collection due process hearing. I.R.C. § 6330(c)(2)(B). The Appeals Office's determination thus triggers the Tax Court's jurisdiction under § 6330, and the IRS's actions after the Appeals Office issues the determination have no bearing on that jurisdiction.

What's more, even assuming the phrase "underlying tax liability" implies that there must be a proposed levy at the outset of the *collection due process hearing* (and there was here), nothing in § 6330 conditions the *Tax Court's* exercise of § 6330 jurisdiction on the IRS's continued pursuit of a levy. To the contrary, § 6330(d)(1) refers to the Tax Court's review of a

“determination” by the Appeals Office. And even if § 6330 required a pending levy at the outset of Tax Court proceedings, that requirement would be satisfied because there *was* a threatened levy pending when Zuch petitioned the Tax Court. *Infra* pp. 38-39. That makes sense. Zuch continues to be aggrieved by the Appeals Office’s determination upholding the IRS’s liability assessment, even though the IRS claims it no longer needs the levy.

Viewing Zuch’s challenge as one “relating to the unpaid tax” doesn’t mean the Tax Court lost jurisdiction to review the dispute, either. That’s because the \$27,682 the IRS claims Zuch owed for the 2010 tax year was “unpaid” when she petitioned the Tax Court in 2014. *See* Pet. App. 11a.

**b.** The government also claims that the text of § 6330 is “narrowly focused” on “whether the IRS may go forward with its proposed levy,” from the title for the section to the provisions describing the beginning of collection due process proceedings and granting the Tax Court jurisdiction. Br. 17; *see* Br. 17-20. Not so.

For starters, the title of a provision is “not meant to take the place of the detailed provisions of the text”; nor is it “necessarily designed to be a reference guide or a synopsis.” *Brotherhood of Railroad Trainmen v. Baltimore & Ohio Railroad Co.*, 331 U.S. 519, 528 (1947). What’s more, even though a taxpayer can initiate collection due process proceedings with the Appeals Office when the IRS seeks to levy, *see* I.R.C. § 6330(a)(1), the provisions that authorize the *Tax Court* to review a taxpayer’s liability challenge—§ 6330(c)(2)(B) and (d)(1)—do *not* “focus[] on” a levy. Section 6330(c)(2)(B), for instance, allows taxpayers in some situations to “raise at the hearing challenges to

the existence or amount of the underlying tax liability.” And § 6330(c)(2)(A) differentiates “relevant issue[s] relating to the unpaid tax” from issues about “the proposed levy.” Section 6330(d)(1), moreover, states that the taxpayer may “petition the Tax Court for review of such determination (and the Tax Court shall have jurisdiction with respect to such matter).” No continuing-levy requirement there.

c. Next, the government says that § 6330(d)(1)’s reference to the Appeals Office’s “determination” implies that Tax Court jurisdiction hinges on a threatened levy because the “determination” is about only “whether the levy may go forward.” Br. 19-20. That’s wrong, too. Section 6330(d)(1) authorizes the Tax Court to review that “determination,” which necessarily involves reviewing the Appeals Office’s resolution of each issue raised at the collection due process hearing. *Supra* pp. 21-23. That includes, where relevant, the taxpayer’s unpaid tax or underlying liability, *see* I.R.C. § 6330(c)(2), (c)(3)(B)—determinations, as this very case shows, with significance beyond whether a levy may proceed. Those rulings determine who keeps the money both parties claim is legally theirs. And as the government admits (Br. 19-20), the Tax Court’s resolution of those issues is part and parcel of the determination. Nothing in § 6330(d)(1) conditions the Tax Court’s review of that determination—and all the issues it resolves—on a continuing levy.

d. The government’s atextual continuing-levy requirement fails for another reason: “the presumption favoring judicial review of administrative action,” *Guerrero-Lasprilla*, 589 U.S. at 229, weighs in favor of Tax Court jurisdiction. The “strong presumption” of judicial review directs that “when a statutory

provision ‘is reasonably susceptible to divergent interpretation,’” courts must “adopt the reading that accords with traditional understandings and basic principles: that executive determinations generally are subject to judicial review.” *Id.* And where applicable, the “presumption can only be overcome by ‘clear and convincing evidence’ of congressional intent to preclude judicial review.” *Id.* Those principles also align with this Court’s recent recognition *in the § 6330 context* that jurisdictional requirements must be “clearly state[d].” *Boechler*, 596 U.S. at 203.

Here, § 6330 is susceptible to one interpretation: the Tax Court retains jurisdiction to review a determination even if the IRS says it no longer needs the levy. *Supra* pp. 21-26. Section 6330(d)(1) doesn’t mention levies, much less contain a clear continuing-levy requirement. But even if another reasonable interpretation were possible, it is far from clear that Congress intended to insulate the Appeals Office’s unpaid tax and liability determinations when the IRS stops pursuing a levy. *See* Pet. Br. 34.

The presumption doesn’t become irrelevant here just because Zuch can file a refund suit and obtain judicial review of her entitlement to the estimated payments that way, as the government contends (*id.*). The “administrative action” at issue here is the Appeals Office’s determination. *Guerrero-Lasprilla*, 589 U.S. at 229. So the question is whether *that* determination is reviewable in the Tax Court under § 6330—not whether Zuch may obtain review of another action, in a different court, and under a different Code provision. The presumption applies in answering the former question. And the answer is that the Tax Court retains jurisdiction.



**2. The government misconstrues § 6330's history and downplays its remedial purpose, which both support the Tax Court's § 6330 jurisdiction to review unpaid tax and liability disputes even if the IRS no longer pursues the levy.**

The government claims (Br. 22-23) that because Congress added § 6330 in 1998 to allow taxpayers to challenge levies *before* the IRS seized their property, that somehow shows that the Tax Court has jurisdiction only if a levy is pending. But that argument cannot trump plain text. And in any event, § 6330's history and purpose confirm that Congress wanted the Tax Court to retain jurisdiction over a live unpaid tax or liability dispute even if the IRS no longer needs a levy.

Congress enacted § 6330 to protect taxpayers from the IRS's abusive collection practices and to rein in the IRS's unchecked power to act as “judge, jury, and executioner, answerable to none.” *Hearings Before the Committee on Finance* at 56, 82; *see supra* pp. 9-10. And in designing § 6330's scheme, Congress sought to “ensure that all taxpayers have due process and that the IRS does not abusively use its liens-and-seizure authority.” 143 Cong. Rec. S12231 (statement of Sen. Roth). Indeed, the point of § 6330 proceedings is to “increase fairness to taxpayers” before the IRS deprives them of their property. S. Rep. No. 105-174, at 67; *accord Katz v. Commissioner*, 115 T.C. 329, 333 n.8 (2000) (explaining that Congress enacted § 6330 “to provide new protections for taxpayers”).

Section 6330 did just that. It gave taxpayers a chance to challenge their liability before paying it

when the taxpayer did not already have an opportunity to challenge the liability, and ensured taxpayers may *always* raise “any relevant issue relating to the unpaid tax.” I.R.C. § 6330(c)(2). Section 6330 thus gave taxpayers an opportunity for IRS Appeals to reach a “determination” on their unpaid tax or liability, and granted taxpayers the right “to petition the Tax Court to contest the Appeals [Office’s] decision,” 144 Cong. Rec. S4494 (statement of Sen. Hatch). Put simply, history shows that Congress did not intend to enable the IRS to unilaterally deprive the Tax Court of jurisdiction to review unpaid tax or liability disputes by finding another way to take the taxpayer’s money and then claiming it no longer seeks the levy. And given § 6330’s history, the Court should construe the statute “broadly to effectuate its purposes.” *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967); see *Piedmont & Northern Railway. v. Interstate Commerce Commission*, 286 U.S. 299, 311 (1932).

### **3. *Royal Canin* doesn’t help the government.**

Pointing to this Court’s decision in *Royal Canin*, the government argues that § 6330 contains a continuing-levy requirement because the IRS “alter[s]” “[t]he fundamental basis” of the suit when it decides to no longer seek the levy. Br. 29-31. That argument fails.

In *Royal Canin*, the Court held that, if a plaintiff amends her complaint to “eliminate[] the federal-law claims that enabled removal, leaving only state-law claims behind, the court’s power to decide the dispute dissolves.” 604 U.S. at 30. That makes sense, given the basic idea that “[i]f a plaintiff amends her complaint, the new pleading ‘supersedes’ the old one.” *Id.* at 35

(citing 6 Charles Alan Wright et al., *Federal Practice and Procedure* § 1476 (3d ed. 2010)). And in *Royal Canin*, the plaintiff altered the basis for the federal court’s federal question jurisdiction by amending her complaint to withdraw her federal claims.

None of those principles shows that the Tax Court lost jurisdiction under § 6330 to review the Appeals Office’s determination when the IRS stopped pursuing the levy. The basis of the Tax Court’s jurisdiction under § 6330(d)(1) is the Appeals Office’s determination—not the proposed levy. The IRS did not change the basis of the Tax Court’s jurisdiction by dropping the levy, because once the Appeals Office issues a “determination,” the Tax Court has jurisdiction to review it. *See* I.R.C. § 6330(d)(1) (“the Tax Court shall have jurisdiction” to “review” the “determination”). And unlike the plaintiff in *Royal Canin*, Zuch didn’t file an amended pleading changing the basis of the Tax Court’s jurisdiction. When Zuch filed her Tax Court petition, she challenged the Appeals Office’s determination that she was not entitled to the estimated payments. That’s still her challenge today, and the IRS’s decision to stop pursuing the levy is irrelevant.

But even assuming the Tax Court’s jurisdiction under § 6330 was somehow contingent on a levy, time-of-filing rules show that any levy requirement was met because there *was* a pending levy when Zuch petitioned the Tax Court. Time-of-filing rules generally provide that jurisdiction “depends upon the state of things at the time” the plaintiff brings the action, *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 570 (2004); *see, e.g., Conolly v. Taylor*, 27 U.S. (2 Pet.) 556, 565 (1829)—here, when the taxpayer petitions the Tax Court. So, if § 6330 did require a pending levy, that levy requirement would be assessed at the

time the taxpayer files her Tax Court petition. And here, there *was* a pending levy when Zuch petitioned the Tax Court. Pet. App. 11a, 13a. The IRS's decision to stop pursuing the levy thus does not destroy the Tax Court's jurisdiction to review the Appeals Office's determination, even if § 6330 contains a levy-based jurisdictional requirement.

**4. The government's policy argument is meritless.**

The government claims that, if it cannot deprive the Tax Court of jurisdiction to review a liability challenge by no longer seeking the levy, § 6330 will turn into a "general forum for considering challenges to tax liability." Br. 24. That argument lacks merit.

There's no risk of the Tax Court wading into general liability determinations in § 6330 proceedings. Section 6330 specifies the issues taxpayers may raise in collection due process hearings. I.R.C. § 6330(c)(2)(A). And only taxpayers who did not have an earlier opportunity to challenge their assessed liability can challenge that claimed liability in collection due process proceedings. I.R.C. § 6330(c)(2)(B). The Tax Court's jurisdiction to review the taxpayer's liability (or issue relating to the unpaid tax), in turn, is tied to the Appeals Office's liability determination. I.R.C. § 6330(d)(1). The sky isn't falling, and the government hasn't pointed to any § 6330 cases pending before the Appeals Office or the Tax Court that would suggest otherwise.

What's more, the question presented in this case arises rarely, and when it does, it's only as a result of "the IRS's own recalcitrance." *Boechler*, 596 U.S. at 207. The question arises only when the IRS initiates a levy, but during § 6330 proceedings, finds a way to

take the taxpayer's money another way, and drops the levy during the Tax Court's review. But there's no reason to think the issue comes up with any frequency.

**B. The Tax Court's authority is not limited to approving or rejecting a proposed levy, but includes the power to issue binding judgments.**

The government argues that the Tax Court doesn't have the power to declare Zuch's entitlement to the estimated payments. In the government's view, § 6330 doesn't authorize that relief, the DJA's prohibition on declaratory relief in most tax cases bars binding relief here, and § 6330 is a "limited mechanism" for either allowing or disallowing a levy. Br. 23-24, 27-29. Those arguments are meritless.

*First*, § 6330(d)(1) authorizes the Tax Court to determine whether the estimated payments should have covered the amount the IRS assessed for the 2010 tax year, no matter whether there is a pending levy. That's because the Tax Court "shall have jurisdiction" to "review" the Appeals Office's determination of the taxpayer's underlying liability or issues relating to her unpaid tax. I.R.C. § 6330(c)(2)(B), (d)(1). And that means the Tax Court can issue a ruling resolving Zuch's liability or issues relating to the unpaid tax. The IRS is expected to abide by that ruling, and indeed, that ruling will have preclusive effect. *Supra* pp. 28-31.

*Second*, § 6330(e)(1) confirms that the Tax Court can issue its ruling in the form of declaratory relief. That provision authorizes injunctive relief in § 6330 proceedings, which necessarily means it also authorizes declaratory relief. That's because an injunction necessarily rests on a declaration. Indeed, an

injunction prohibiting an act incorporates “a judicial declaration that [the act] is illegal,” Pet. App. 36a. And as this Court has recognized, declaratory relief is a “milder” alternative to an injunction. *Steffel v. Thompson*, 415 U.S. 452, 466-67 (1974). Thus, the Tax Court’s authority to issue an injunction under § 6330(e)(1) includes the authority to issue declaratory relief.

Resisting that conclusion, the government asserts that § 6330(e)(1) can’t authorize declaratory relief because it limits injunctive authority to “a specific collection action.” Br. 28-29. Not so. Section 6330(e)(1) authorizes the Tax Court to enjoin “any action or proceeding” if: (1) “a timely appeal has been filed under subsection (d)(1),” and (2) the injunction is “in respect of the unpaid tax or proposed levy to which the determination being appealed relates.” I.R.C. § 6330(e)(1); see I.R.C. § 7421(a). And if the Tax Court can issue an injunction “in respect of the unpaid tax or proposed levy,” it can also decide the taxpayer’s liability that gave rise to both the unpaid tax and the proposed levy.

*Third*, the DJA doesn’t withdraw the Tax Court’s authority to issue declaratory relief. That statute authorizes federal courts to “declare the rights and other legal relations of any interested party seeking such declaration,” “except with respect to Federal taxes.” 28 U.S.C. § 2201(a). But courts have uniformly held that the DJA must be read together with the Tax Code and the AIA, I.R.C. § 7421(a). And that means the DJA does not prohibit declaratory relief where those other provisions permit injunctions. *E.g.*, *Cohen v. United States*, 650 F.3d 717, 727-28 (D.C. Cir. 2011) (en banc); *CIC Services, LLC v. Internal Revenue Service*, 925 F.3d 247, 250 n.3 (6th Cir. 2019), *rev’d on other grounds* 593 U.S. 209 (2021); see *Bob Jones University*

*v. Simon*, 416 U.S. 725, 732 n.7 (1974). Both the plain text of § 6330(d)(1) and (e)(1) and the AIA, I.R.C. § 7421(a), authorize injunctions in § 6330 proceedings, so declaratory relief is authorized as well.

*Finally*, as explained (at 32-35), § 6330 isn't just about whether a levy can proceed or not, so the Tax Court's authority is not limited to deciding whether or not a levy can proceed, either. Instead, Congress enacted § 6330 to create a meaningful exception to what the government says is the Tax Code's historical "pay now, dispute later" framework. *See* Pet. Br. 2. It did so by allowing taxpayers to challenge the unpaid tax and their liability before they decide to pay or the IRS levies their property. And as § 6330's history confirms, the Tax Court retains jurisdiction under § 6330 to review the Appeals Office's determination of her unpaid tax or tax liability, so it can issue binding relief resolving those issues, too. *Supra* pp. 23-24, 36-37.

**C. The government's claim that the parties lack a legally cognizable interest in the case once the IRS decides not to move forward with the levy is incorrect.**

Unable to show that its actions deprived the Tax Court of § 6330 jurisdiction, the IRS next contends (Br. 21), that the case is moot because once the IRS decides it doesn't need a levy, the parties lack a legally cognizable interest. That is so, the IRS says, because even if "the IRS has made an error or continues to owe [the taxpayer] money," there's no threatened levy, and the levy is "the issue that prompted" the collection due process hearing. *Id.* That argument fails.

The question isn't whether "the issue that prompted" a collection due process hearing is live. Rather, "[a]s long as the parties have a concrete interest,

however small, in the outcome of the litigation,” the case is not moot. *Campbell-Ewald Co.*, 577 U.S. at 161. And as explained, Zuch has a concrete interest in the outcome of the litigation because the Tax Court can adjudicate her unpaid tax or underlying liability by determining her right to the estimated payments, and therefore to a refund. *Accord* Saltzman & Book, *supra*, § 14B.16[4][a]. That ruling would also be preclusive in the refund action Zuch has brought in the District of New Jersey under I.R.C. § 7422. The IRS has a concrete interest, too: if the Tax Court decides that Zuch is not entitled to the estimated payments, the IRS keeps her money. It is thus not “impossible for a court to grant any effectual relief what[so]ever” to whomever prevails. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013).

**D. Whether Zuch’s challenge is a dispute about an unpaid tax or underlying liability is immaterial.**

In a footnote, the government claims that Zuch’s challenge presents “an issue relating to [her] unpaid tax,” rather than her tax liability. Br. 25 n.3. But, as the government concedes, whether Zuch’s challenge is about an unpaid tax or underlying liability is immaterial. *Id.* (“The Court need not ... decide this dispute to resolve the question presented.”). The difference doesn’t matter because, as explained (at 26-27), even if Zuch’s challenge is one related to an “unpaid tax,” the Tax Court still had jurisdiction. That’s because Zuch’s challenge to her unpaid tax would still have been part of the Appeals Office’s “determination” that was reviewable by the Tax Court. *Id.*

In any event, the Appeals Office itself considered Zuch to be challenging her underlying tax liability.



Pet. App. 48a, 66a. Indeed, she disputed whether she owed “the amounts that the Commissioner assessed for [the 2010] tax period,” *Jeffers*, 992 F.3d at 653 n.4, because she argued the estimated payments should have been applied to her, *see Peoplease*, 2025 WL 429626, at \*2. *Supra* p. 26. And, in the IRS’s own view, “unpaid tax” is just the unpaid portion of the “underlying tax liability” anyway. Internal Revenue Service Chief Counsel Notice CC-2014-002 at 3.

### CONCLUSION

The Court should affirm the judgment of the court of appeals and remand for further proceedings.

Respectfully submitted.

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