Nos. 20-1014 and 20-1031

In the Supreme Court of the United States

ORGANIC CANNABIS FOUNDATION, LLC,
DBA ORGANICANN HEALTH CENTER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

NORTHERN CALIFORNIA
SMALL BUSINESS ASSISTANTS, INC., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

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

2. Whether the court of appeals violated the Fifth Amendment due-process right of petitioner Organic Cannabis Foundation, LLC, by taking judicial notice of certain ZIP code-related information that was published on the U.S. Postal Service's official website.

ADDITIONAL RELATED PROCEEDINGS

United States Tax Court:

Organic Cannabis Found., LLC v. *Commissioner*, No. 10593-15 (July 25, 2017)

Northern Cal. Small Bus. Assistants, Inc. v. *Commissioner*, No. 10594-15 (July 25, 2017)

United States Court of Appeals (9th Cir.):

Organic Cannabis Found., LLC v. *Commissioner*, No. 17-72874 (June 18, 2020)

Northern Cal. Small Bus. Assistants, Inc. v. *Commissioner*, No. 17-72877 (June 18, 2020)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes, regulations, and rules:

Statutes, regulations, and rules—Continued: Page

Miscellaneous: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-28)[1] is reported at 962 F.3d 1082. The orders of the Tax Court (Pet. App. 32-37; 20-1031 Pet. App. 32-36) are not reported.

[1] Unless otherwise indicated, the term "Pet. App." in this brief refers to the appendix to the petition for a writ of certiorari in No. 20-1014.

JURISDICTION

The judgment of the court of appeals was entered on June 18, 2020. Petitions for rehearing were denied on August 28, 2020 (Pet. App. 29; 20-1031 Pet. App. 29). On March 19, 2020, the Court extended the time within which to file any petition for a writ of certiorari due on or after that date to 150 days from the date of the lower-court judgment, order denying discretionary review, or order denying a timely petition for rehearing. The effect of that order was to extend the deadline for filing a petition for a writ of certiorari in these cases to January 25, 2021. The petition for a writ of certiorari in No. 20-1014 was filed on January 22, 2021, and the petition for a writ of certiorari in No. 20-1031 was filed on January 25, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners are two entities (under common ownership and control) that operated medical-marijuana dispensaries in California beginning in 2006. Pet. App. 5; see 20-1014 Pet. iii n.1. Petitioner in No. 20-1014, Organic Cannabis Foundation, LLC, operated a dispensary in Santa Rosa; petitioner in No. 20-1031, Northern California Small Business Assistants, Inc. (NCSBA), owned dispensaries in several other cities. Pet. App. 5.

On January 22, 2015, the Commissioner of Internal Revenue (Commissioner) issued to each petitioner a notice of deficiency under 26 U.S.C. 6212 for tax years 2010 and 2011. Pet. App. 5. The notices stated that Organic Cannabis and three dispensaries owned by NCSBA, respectively, were subject to 26 U.S.C. 280E. Pet. App. 5. Section 280E disallows business-expense deductions by a taxpayer whose "trade or business (or the activities which comprise such trade or business)

consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law." 28 U.S.C. 280E. The deficiency notice issued to Organic Cannabis determined that it owed additional income taxes of $1,129,276 and penalties of $225,855.20. Pet. App. 6. The deficiency notice issued to NCSBA determined that it owed additional income taxes of $531,707 and penalties of $106,341.40. *Ibid.*

The deficiency notices were sent separately, by certified mail, from the San Francisco office of the Internal Revenue Service (IRS) to a single post-office box in Santa Rosa, which was used by petitioners' common owner, Dona Frank. Pet. App. 6; see *id.* at 5. Both notices identified that post-office box as the last known address of each petitioner. *Id.* at 33; 20-1031 Pet. App. 33; see 26 U.S.C. 6212(b)(1) (providing that a notice of deficiency may be sent by mail to a taxpayer's "last known address"). In particular, the notice issued to Organic Cannabis stated its last known address as

> Organic Cannabis Foundation LLC
> Organicann Health Center
> C/O Dona Ruth Frank
> PO Box 5286
> Santa Rosa CA 95402-5286

Pet. App. 33.

The record does not contain the mailing envelope used to send the notice to Organic Cannabis. Pet. App. 35. The IRS records such mailings on a written log, Form 3877 (Certified Mailing List). *Id.* at 33. The Form 3877 for that notice contains a handwritten entry that lists the same address, except that it omits the line denoting the post-office box:

Organic Cannabis Foundation LLC
Organicann Health Center
c/o Dona Ruth Frank
Santa Rosa CA 95402-5286

Ibid. It is undisputed in this Court that the Form 3877 for the notice issued to NCSBA correctly reflected the last known address listed on the notice. *Id.* at 9 n.4.

Certified-mail tracking records reflect that the deficiency notice issued to Organic Cannabis arrived at the post office in Santa Rosa on January 24, 2015, and the notice issued to NCSBA arrived on January 28. Pet. App. 6. Those records further reflect that both notices were retrieved simultaneously on February 3. *Ibid.*

2. a. A taxpayer generally may dispute the assessment or collection of a tax by bringing a refund suit. To do so, the taxpayer must first pay the tax and then request a refund from the IRS. 26 U.S.C. 6402(a), 6511; 26 C.F.R. 301.6402-2; see generally 15 *Mertens Law of Federal Income Taxation* § 58:1 *et seq.* (Scott Shimick ed., Mar. 2021 update) (*Mertens*). If the refund is denied, the taxpayer may then bring suit in district court or the Court of Federal Claims to recover sums "alleged to have been erroneously or illegally assessed or collected." 28 U.S.C. 1346(a)(1); see 26 U.S.C. 6532, 7422(a); *National Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 543 (2012); see generally 15 *Mertens* § 58A:1 *et seq.* (Edward J. Smith ed., Mar. 2021 update). For certain taxes, however, a taxpayer who is issued a notice of deficiency has the additional option of filing a petition for redetermination in the Tax Court. 26 U.S.C. 6213; see 26 U.S.C. 6212, 6214.

The Internal Revenue Code provision that governs petitions for redetermination addresses the time for filing such petitions. 26 U.S.C. 6213(a). That provision states that,

> [w]ithin 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency.

Ibid. It further states that "[a]ny petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed." *Ibid.*

The Code additionally establishes a "mailbox rule," Pet. App. 4, under which a petition that the Tax Court receives after its due date will be treated as timely filed if it is either postmarked in the U.S. mail, or received for transmission by a private delivery service designated by the Secretary of the Treasury, by the deadline for filing the petition. 26 U.S.C. 7502(a). The IRS periodically publishes a list of such designated services. *E.g.*, IRS Notice 2004-83, 2004-2 C.B. 1030 (effective Jan. 1, 2005).

b. Each of the deficiency notices issued to petitioners stated on its cover page that the last day to file a petition for redetermination was April 22, 2015—90 days from the date the notices were sent by certified mail. Pet. App. 7; see *id.* at 6. On April 21, 2015, an employee of a law firm engaged to prepare petitions for redetermination on behalf of both petitioners made arrangements to send a single envelope containing both petitions to the Tax Court, using the "FedEx 'First

Overnight' delivery" service. *Id.* at 7. At that time, the FedEx First Overnight service was not among the private delivery services that the Secretary had designated under 26 U.S.C. 7502(a). See IRS Notice 2004-83, 2004-2 C.B. 1030; Pet. App. 7, 35.[2]

Although the package was tendered to a nearby FedEx office on April 21, 2015, FedEx did not deliver the package to the Tax Court on April 22. Pet. App. 7. On the morning of April 22, the law-firm employee contacted the Tax Court clerk's office and "was told something to the effect that the package had not been received." *Id.* at 8. The law-firm employee then contacted FedEx. *Ibid.* "As the [employee] later described it, the FedEx representative responded that 'the driver's delivery notes stated the driver had tried to deliver but could not because'" either "'he or she could not get to the door for some plausible reason like construction, or some sort of police action (perhaps the representative said the access was blocked off because of a safety threat).'" *Ibid.* The court of appeals observed that "[t]he record does not indicate that the law firm took any further action" on April 22, *ibid.*—such as mailing a second copy of the petitions in a package postmarked that day, see 26 U.S.C. 7502. The FedEx package was delivered to the Tax Court on April 23. Pet. App. 8.

3. The Tax Court dismissed both petitioners' petitions for redetermination for lack of jurisdiction. Those dismissals were set forth in separate decisions in which the court determined that the petitions were untimely. Pet. App. 32-37; 20-1031 Pet. App. 32-36.

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[2] The FedEx First Overnight service was subsequently added to the IRS's list of designated services, but that designation took effect after the events at issue in these cases. Pet. App. 35 (citing IRS Notice 2015-38, 2015-21 I.R.B. 984 (May 26, 2015)).

a. In each case, the Tax Court concluded that the petition was not timely under Section 6213(a) because it was not delivered within the 90-day period following the mailing of the deficiency notice—which ended on April 22, 2015—and the court lacked "equitable powers to extend th[at] deadline." Pet. App. 35-36; 20-1031 Pet. App. 35-36. The court observed that Section 6213(a)'s proviso extending the deadline where the "last day" of the relevant 90-day period falls on a "Saturday, Sunday, or a legal holiday in the District of Columbia" did not apply because April 22 fell into none of those categories. Pet. App. 35 (quoting 26 U.S.C. 6213(a)); *id.* at 36; 20-1031 Pet. App. 35. The court additionally found that petitioners could not rely on Section 7502's mailbox rule because they had neither sent the petitions by U.S. mail nor used any of the private delivery services then designated by the IRS under Section 7502(a). Pet. App. 35-36; 20-1031 Pet. App. 35-36.

The Tax Court rejected petitioners' contention that their petitions should be deemed timely on the ground that "the Clerk's office was not accessible to the FedEx delivery driver on the last day for filing." Pet. App. 36; 20-1031 Pet. App. 36. The court noted that, in applying a different filing deadline imposed by the Code, it had previously held that, "when the Clerk's office is inaccessible because of inclement weather, government closings or for other reasons, the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday." Pet. App. 36 (citing *Guralnik* v. *Commissioner*, 146 T.C. 230 (2016)); see 20-1031 Pet. App. 36. The court in *Guralnik* had looked for guidance to Federal Rule of Civil Procedure 6(a)(3), which extends the time for filing in civil cases if the clerk's office is inaccessible on the last day for filing. See 146 T.C. at

232-233, 247-251 (invoking Tax Court Rule 1(b), which authorizes the court to fashion a procedure for matters on which "there is no applicable rule," and directing the court to "giv[e] particular weight to the Federal Rules of Civil Procedure to the extent that they are suitably adaptable to govern the matter at hand" (quoting T.C. R. 1(b))).

The Tax Court determined that the approach it had applied in *Guralnik* was inapposite here. Pet. App. 36; 20-1031 Pet. App. 36. It explained that, unlike *Guralnik*, which involved a "snow emergency closing" of the clerk's office for a day, here "the Court's Clerk's office was open during its normal business hours and was not inaccessible the entire day due to inclement weather, government closings, or other reasons." *Ibid.* The court declined to "expand" the rule announced in *Guralnik* to "cover circumstances where an unspecified event may have blocked access for a period of time but the Clerk's office is not inaccessible due to closure for the entire day." *Ibid.*

b. The Tax Court also rejected Organic Cannabis's argument that the notice of deficiency it had received was invalid. Pet. App. 34-35. Organic Cannabis contended that the notice was required to be sent to its last known address, see 26 U.S.C. 6212(b), but that the handwritten entry in the IRS's mail log (Form 3877) indicated that the post-office-box number had been omitted from the address to which the notice was mailed. Pet. App. 34. The court rejected that contention, applying its precedent holding that "an improperly addressed notice actually received by the taxpayer with sufficient time remaining to file a petition for redetermination, without prejudice, is valid under section 6212(a)." *Ibid.*

The Tax Court declined to resolve whether the envelope used to send the notice to Organic Cannabis had included the post-office-box number (as did the notice itself) or had omitted that number (as did the handwritten entry in the Form 3877). Pet. App. 35. Either way, the court explained, "there is no dispute that the notice was received by [Organic Cannabis] on February 3, 2015—78 days before the petition was due on April 22, 2015"—which "allowed sufficient time for petitioner to file its petition without prejudice." *Ibid.*

4. The court of appeals issued a consolidated decision that affirmed both of the Tax Court's rulings. Pet. App. 1-28.

a. The court of appeals agreed with the Tax Court that petitioners' petitions for redetermination were untimely under 26 U.S.C. 6213(a). Pet. App. 10-19. It upheld the Tax Court's conclusion that the petitions should not be deemed timely under the approach applied in *Guralnik*, which borrows the framework of Federal Rule of Civil Procedure 6. Pet. App. 11-15. The court explained that, "for non-electronic filings (such as those at issue here), a clerk's office is 'inaccessible' on the 'last day' of a filing period only if the office cannot practicably be accessed for delivery of documents during a sufficient period of time up to and including the point at which 'the clerk's office is scheduled to close.'" *Id.* at 14-15 (citation omitted). It also observed that petitioners had "presented no evidence to show that the clerk's office could not be accessed during the substantial remaining portion of the day after FedEx's unsuccessful earlier delivery attempt." *Id.* at 15 (emphasis omitted). The court additionally held that petitioners' petitions could not be deemed timely under the mailbox rule of 26 U.S.C. 7502 because they had not been sent

by U.S. mail or by a private delivery service then designated by the IRS. Pet. App. 15-19.

b. The court of appeals also rejected petitioners' contention that the statutory deadline for seeking Tax Court review of the IRS's deficiency determinations "should be subject to equitable exceptions, such as tolling and waiver." Pet. App. 19-26. The court explained that "no such exceptions may be applied if the deadline is jurisdictional," and it "agree[d] with the Tax Court that § 6213(a)'s time limits are jurisdictional." *Id.* at 19.

The court of appeals noted its longstanding position that, under the current statute and its predecessor, the applicable time limit for seeking judicial review of a deficiency determination is jurisdictional. Pet. App. 20 (citing, *inter alia*, *Edward Barron Estate Co.* v. *Commissioner*, 93 F.2d 751 (9th Cir. 1937)). The court also observed that other circuits had reached the same conclusion, "some of them for even longer periods of time." *Ibid.* (citing, *inter alia*, *Lewis-Hall Iron Works* v. *Blair*, 23 F.2d 972 (D.C. Cir.), cert. denied, 277 U.S. 592 (1928)).

The court of appeals rejected petitioners' contention that its settled view had been undermined by recent decisions of this Court addressing other statutes. Pet. App. 20-26. It recognized that, "[i]n a series of recent cases," this Court has "clarified that 'procedural rules, including time bars, cabin a court's power only if Congress has clearly stated as much.'" *Id.* at 21 (quoting *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 409 (2015)). The court explained that, "[c]onsidering the '"text, context, and relevant historical treatment" of the provision at issue,' * * * Congress has indeed done 'something special' to 'plainly show' that § 6213's time limit is 'imbued . . . with jurisdictional consequences.'"

Ibid. (citations omitted). The court cited "three features of the statute confirm[ing] that" conclusion. *Ibid.*

First, the court of appeals noted that Section 6213(a) "does use the magic word 'jurisdiction' with respect to one aspect of the Tax Court's power concerning deficiency redeterminations, thereby confirming that the provision as a whole should be understood as speaking to the manner in which the Tax Court acquires subject matter jurisdiction in such cases." Pet. App. 22 (emphasis omitted); see *id.* at 22-24. The court explained that, under Section 6213(a), the Tax Court and other courts may enjoin the IRS from commencing efforts to collect a deficiency until any Tax Court proceedings to review the deficiency have been completed, and may order a refund of any amounts collected prematurely. *Id.* at 22. The court noted that the provision further states that "'[t]he Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition.'" *Id.* at 23 (quoting 26 U.S.C. 6213(a)) (emphases omitted). The court "agree[d]" with the Seventh Circuit that the provision "seems clearly to reflect an understanding that the manner in which the Tax Court *acquires* jurisdiction over a deficiency dispute is through the filing of a 'timely petition.'" *Ibid.* (quoting 26 U.S.C. 6213(a) and citing *Tilden* v. *Commissioner*, 846 F.3d 882, 886 (7th Cir. 2017) (Easterbrook, J.)).

Second, the court of appeals concluded that "the broader statutory 'context' in which § 6213(a) operates confirms that it imposes jurisdictional requirements." Pet. App. 24. The court explained that a taxpayer need not seek Tax Court review and "always has the option

of instead paying the disputed sum" and then seeking a refund. *Ibid.* It further noted that, if a taxpayer elects to seek Tax Court review, a decision dismissing the proceeding "shall be considered as its decision that the deficiency is the amount determined by the IRS," which carries preclusive effect *unless* the "dismissal is for lack of jurisdiction." *Id.* at 24-25 (quoting 26 U.S.C. 7459(d)) (brackets and emphasis omitted). The court reasoned that, under petitioners' "non-jurisdictional reading of § 6213(a), the Tax Court's dismissal of a petition as untimely could potentially have the perverse effect of barring the taxpayer from later challenging the amount in a refund suit—ironically yielding precisely the sort of harsh consequence that" this Court's "recent 'jurisdictional' jurisprudence has sought to avoid." *Id.* at 25 (brackets, citation, and internal quotation marks omitted).

Third, the court of appeals noted that the "'historical treatment'" of Section 6213 "further confirms" that the provision "imposes a jurisdictional time limit." Pet. App. 25 (citation omitted). It explained that "the circuits have uniformly adopted a jurisdictional reading of § 6213(a) [and] its predecessor since at least 1928"—a reading that Congress, "despite multiple amendments to the Code * * * [,] has never seen fit to disturb." *Ibid.* The court further observed that, "by adding in 1988" the language addressing the Tax Court's jurisdiction "to enjoin collection" during the pendency of proceedings to review a deficiency determination, "Congress has confirmed the pre-existing jurisdictional understanding of § 6213(a)." *Id.* at 26 (emphasis omitted).

c. The court of appeals rejected Organic Cannabis's alternative contention that the Commissioner's notice

of deficiency was invalid "because it was improperly addressed." Pet. App. 26; see *id.* at 26-28. The court "agree[d]" with the Tax Court's conclusion that the notice was valid, but "for the simpler reason that it was not misaddressed at all." *Id.* at 26. The court of appeals determined that, "even assuming that the address was listed the same way on the envelope" used to mail the notice "as on the mailing log," it would not have been "misaddressed." *Id.* at 27.

In reaching that conclusion, the court of appeals cited the U.S. Postal Service's website and "t[ook] judicial notice of the fact that the U.S. Postal Service has reserved the five-digit ZIP code '95402' solely for P.O. Boxes in Santa Rosa." Pet. App. 27. The court explained that, "[b]y using the Zip Code '95402,' the IRS thereby designated that the item was addressed *to a P.O. Box* for that Zip Code in Santa Rosa." *Ibid.* It further explained that "the additional four digits that the IRS added to that Zip Code—'5286'—provided the relevant P.O. Box number." *Ibid.* In support of the latter proposition, the court cited another portion of the Postal Service's website stating that "[t]he ZIP+4 Code will likely include the actual PO Box number in the +4 part of the ZIP Code." *Id.* at 27 n.9 (citation omitted). The court held that the IRS had thus "communicated precisely th[e] information" that Organic Cannabis had contended was omitted—that the envelope should be directed to P.O. Box 5286—"to the U.S. Postal Service in the address it used, which was therefore sufficient." *Id.* at 27-28.

5. The court of appeals denied petitioners' petitions for rehearing. Pet. App. 29; 20-1031 Pet. App. 36.

ARGUMENT

The court of appeals correctly held that petitioners' petitions for redetermination were not timely filed under 26 U.S.C. 6213(a). Pet. App. 10-19. Petitioners do not seek this Court's review of that conclusion. Instead, petitioners principally contend (20-1014 Pet. 6-20; 20-1031 Pet. 5-20) that the deadline established by Section 6213(a) is not jurisdictional. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or of another court of appeals. That question also lacks practical significance because the Section 6213(a) deadline would not be subject to equitable exceptions even if it were not jurisdictional. In any event, petitioners would have no sound claim to an equitable exception even if Section 6213(a) permitted that approach.

Petitioner Organic Cannabis separately contends (20-1014 Pet. 21-27) that the court of appeals violated its due-process rights by relying on ZIP code-related information on the U.S. Postal Service's website. The court took judicial notice of that information in addressing Organic Cannabis's argument that its notice of deficiency was misaddressed and therefore invalid. The courts below did not address that due-process issue, and Organic Cannabis's challenge lacks merit. Further review is not warranted.

1. The court of appeals held that the deadline imposed by 26 U.S.C. 6213(a) for seeking Tax Court review of a notice of deficiency is jurisdictional and therefore is not subject to equitable tolling. Pet. App. 19-26. That holding is correct and does not warrant further review.

a. To determine whether a statutory deadline for seeking judicial review is jurisdictional, courts ask whether "traditional tools of statutory construction * * * plainly show that Congress imbued [the] procedural bar with jurisdictional consequences." *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 410 (2015). Although Congress must "speak clearly" to give a deadline jurisdictional significance, it need not "incant magic words." *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013). Instead, courts consider the "context," including longstanding judicial construction, to determine whether a deadline is jurisdictional. *Ibid.* (citation omitted).

The court of appeals properly applied those principles in determining—in accord with a longstanding lower-court consensus—that Section 6213(a) establishes a jurisdictional deadline. Pet. App. 19-26. That deadline appears in a provision that expressly conditions the Tax Court's "jurisdiction" to grant specified relief—an injunction barring the collection of a deficiency while Tax Court proceedings are ongoing, or an order directing a refund of any money collected during that period—on the filing of "a timely petition for a redetermination of the deficiency." 26 U.S.C. 6213(a). It would be incongruous for Congress to make the filing of a timely petition a jurisdictional prerequisite to those particular remedies, but not a jurisdictional prerequisite to the proceeding itself. Pet. App. 23 (citing *Tilden* v. *Commissioner*, 846 F.3d 882, 886 (7th Cir. 2017)). Instead, by "specifying that the Tax Court lacks 'jurisdiction' to issue such an injunction 'unless' a petition has been filed (and then only if the petition is 'timely')," Section 6213(a) "seems clearly to reflect an understanding

that the manner in which the Tax Court acquires jurisdiction over a deficiency dispute is through the filing of a 'timely petition.'" *Ibid.* (citation and emphases omitted).

The statutory context reinforces that understanding. Pet. App. 23-25. If Section 6213(a)'s deadline allowed the Tax Court to exercise jurisdiction over untimely petitions, the ban on IRS actions to collect the deficiency until the time for seeking Tax Court review has expired or during the pendency of such review "would *lapse* at the end of the 90-day period" for seeking such review, "but would then *revive* if the Tax Court subsequently decides to accept a late-filed petition." *Id.* at 23-24. "Nothing in the statute suggests that such a discontinuity was contemplated." *Id.* at 24. In addition, if Section 6213(a)'s deadline were non-jurisdictional, a dismissal of a petition for redetermination as untimely would have a preclusive effect as to the deficiency that, under the Code's terms, a dismissal "for lack of jurisdiction" would not possess. *Id.* at 25 (quoting 26 U.S.C. 7459(d)) (emphasis omitted). That approach "could potentially have the perverse effect of barring the taxpayer from later challenging the amount in a refund suit—ironically yielding precisely the sort of 'harsh consequence' that [this] Court's recent 'jurisdictional' jurisprudence has sought to avoid." *Ibid.* (quoting *Kwai Fun Wong*, 575 U.S. at 409) (brackets omitted).

Finally, longstanding judicial interpretation of Section 6213(a) confirms that its deadline for filing a petition for redetermination is jurisdictional. Although this Court has not previously confronted that precise question, it has described the issuance of a notice of deficiency as "a jurisdictional prerequisite to a taxpayer's suit in the Tax Court for redetermination of his tax liability." *Laing* v. *United States*, 423 U.S. 161, 165 n.4 (1976).

Lower courts have long and consistently applied the same understanding to the statutory deadline itself. Since that deadline was first enacted, the Tax Court and its precursor have treated it as jurisdictional. See *Guralnik* v. *Commissioner*, 146 T.C. 230, 238 (2016) ("In cases too numerous to mention, dating back to 1924, we have held that the statutorily-prescribed filing period in deficiency cases is jurisdictional."); see, *e.g.*, *Appeal of Satovsky*, 1 B.T.A. 22, 24 (1924); see also Dana Latham, *Jurisdiction of the United States Board of Tax Appeals Under the Revenue Act of 1926*, 15 Calif. L. Rev. 199, 222 (1927); Walter W. Hammond, *The United States Board of Tax Appeals*, 11 Marq. L. Rev. 1, 7-8 (1926). The Ninth Circuit has maintained that interpretation "for more than 80 years," Pet. App. 20 (citing cases), and other courts of appeals have shared that view for decades, *ibid.*; see, *e.g.*, *Tadros* v. *Commissioner*, 763 F.2d 89, 91 (2d Cir. 1985); *Garrett* v. *Commissioner*, 798 Fed. Appx. 731, 733 (3d Cir. 2019); *Briley* v. *Commissioner*, 622 Fed. Appx. 305, 305 (4th Cir. 2015) (per curiam); *Keado* v. *United States*, 853 F.2d 1209, 1212, 1218-1219 (5th Cir. 1988); *Patmon & Young Prof'l Corp.* v. *Commissioner*, 55 F.3d 216, 217 (6th Cir. 1995); *Tilden*, 846 F.3d at 886-887; *Andrews* v. *Commissioner*, 563 F.2d 365, 366 (8th Cir. 1977) (per curiam); *Mabbett* v. *Commissioner*, 610 Fed. Appx. 760, 762 (10th Cir. 2015) (per curiam); *Pugsley* v. *Commissioner*, 749 F.2d 691, 692 (11th Cir. 1985); *Edwards* v. *Commissioner*, 791 F.3d 1, 5 (D.C. Cir. 2015).

That settled body of precedent also puts the Tax Court on "equal footing" with a similar Article I court, the Court of Federal Claims (CFC). *Tilden*, 846 F.3d at 887. Based on the history and purpose of the statutory

deadline for filing suit in the CFC, this Court has construed that timing requirement as a jurisdictional rule. *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130, 133-139 (2008). The court of appeals correctly held that Section 6213(a)'s deadline for seeking Tax Court review is likewise jurisdictional.

b. Petitioners' contrary arguments lack merit.

Petitioners correctly observe (20-1014 Pet. 6-7; 20-1031 Pet. 6) that "statutory deadlines are presumptively nonjurisdictional" and will be treated as such absent a clear contrary statement from Congress. But even in the context of a "time restriction," *ibid.*, no particular verbal formulation is essential to convey the requisite clear statement. As petitioners elsewhere acknowledge, no specific "magic words" are required to establish a requirement's jurisdictional character. 20-1014 Pet. 8 (citation omitted); see 20-1031 Pet. 7; see also, *e.g.*, *Fort Bend Cnty.* v. *Davis*, 139 S. Ct. 1843, 1850 (2019) (citation omitted); *Patchak* v. *Zinke*, 138 S. Ct. 897, 905 (2018) (plurality opinion) (citation omitted); *Hamer* v. *Neighborhood Hous. Servs.*, 138 S. Ct. 13, 20 n.9 (2017) (citation omitted); *Kwai Fun Wong*, 575 U.S. at 410 (citation omitted); *Auburn Reg'l Med. Ctr.*, 568 U.S. at 153. This Court has construed particular statutory deadlines for seeking review in both Article III and Article I courts as satisfying that standard, even in the absence of explicit statutory references to the courts' "jurisdiction." See *John R. Sand & Gravel Co.*, 552 U.S. at 133-139 (construing 28 U.S.C. 2501, governing time for bringing action in CFC); *Bowles* v. *Russell*, 551 U.S. 205, 208-215 (2007) (construing 28 U.S.C. 2107(a) (2006), governing time for filing notice of appeal in civil cases). That conclusion follows *a fortiori* for Section 6213(a), which explicitly conditions the Tax Court's

"jurisdiction" to grant particular remedies on the timely filing of a petition. 26 U.S.C. 6213(a); see pp. 15-16, *supra*.

Petitioners contend (20-1014 Pet. 10; 20-1031 Pet. 9-10) that Section 6213(a)'s limit on the Tax Court's "jurisdiction" to award those remedies does not suggest that the statutory filing deadline itself is jurisdictional because the remedial restriction was added in 1988, many years after the original statutory deadline was enacted. But as the court of appeals correctly recognized (Pet. App. 26), petitioners' argument has matters backward. The 1988 Congress was presumptively aware of the longstanding judicial consensus that Section 6213(a) imposed a jurisdictional requirement. See, *e.g.*, *Merck & Co.* v. *Reynolds*, 559 U.S. 633, 646-648 (2010). Yet far from abrogating that interpretation, Congress "*confirmed* the pre-existing jurisdictional understanding of § 6213(a)," Pet. App. 26, by stating that the Tax Court lacks "jurisdiction" to award the enumerated forms of relief absent a "timely petition for a redetermination," 26 U.S.C. 6213(a). The 1988 amendment thus is best viewed as ratifying the established, uniform understanding that the filing deadline is jurisdictional.

Petitioners additionally contend (20-1014 Pet. 16-19; 20-1031 Pet. 16-19) that the Court should disregard the longstanding lower-court consensus. But the Court in construing statutes often considers uniform lower-court interpretations, particularly when those interpretations were well-established before Congress amended the relevant provisions. See, *e.g.*, *Merck*, 559 U.S. at 647-648. That approach is particularly appropriate here, where Congress—after many years of judicial decisions treating Section 6213(a)'s deadline as jurisdictional—made

the Tax Court's "jurisdiction" to award particular relief contingent on the filing of a timely petition.

Finally, petitioners contend (20-1014 Pet. 20; 20-1031 Pet. 19-20) that Section 6213(a)'s deadline cannot be jurisdictional because the Tax Court has "equitably tolled" analogous filing periods. That argument lacks merit. As petitioners observe (*ibid.*), and as the courts below recognized (Pet. App. 11-15, 36; 20-1031 Pet. App. 36), the Tax Court has looked to Federal Rule of Civil Procedure 6(a)—as its own rules encourage it to do, see T.C. R. 1(b)—for guidance in interpreting filing deadlines that fall on a date when the clerk's office is inaccessible. See *Guralnik*, 146 T.C. at 247-251. But *Guralnik* and Rule 6(a) concern the proper computation of time under the applicable statutory limitations period, not an equitable departure from it. Cf. *Union Nat'l Bank* v. *Lamb*, 337 U.S. 38, 40-41 (1949) (construing 28 U.S.C. 2101(c) (1946), in light of Federal Rule 6(a), to provide that the period to seek this Court's review, which otherwise would end on a Sunday, instead ended the next day). The Tax Court thus has not disregarded the statutory deadline or fashioned an equitable exception to it, but instead has *interpreted* the deadline in light of its statutory context.

c. Petitioners do not contend that the decision below conflicts with any decision of another court of appeals. Every circuit to date has described the statute in the same terms. See p. 17, *supra*. In *Tilden*, the Seventh Circuit concluded, for substantially the same reasons as the court of appeals here, that treating Section 6213(a)'s deadline as jurisdictional comports with this Court's recent decisions, including the Court's then-most recent guidance in *Kwai Fun Wong*, *supra*. *Tilden*, 846 F.3d at 886-887. The court explained that Section 6213(a)

makes a timely petition a jurisdictional prerequisite to certain remedies and that it "would be very hard to read § 6213(a) as a whole to distinguish these remedies from others." *Id.* at 886. It further explained that "[f]or many decades the Tax Court and multiple courts of appeals have deemed § 6213(a) as a whole to be a jurisdictional limit on the Tax Court's adjudicatory competence," and that "it would be imprudent to reject that body of precedent, which * * * places the Tax Court and the [CFC], two Article I tribunals, on an equal footing." *Id.* at 886-887.

d. Plenary review is unwarranted for the additional reason that the first question presented lacks practical significance. Although petitioners' failure to meet Section 6213(a)'s deadline made Tax Court review unavailable, petitioners can still seek relief in a refund suit. See p. 4, *supra*. And even if Section 6213(a)'s filing deadline were not jurisdictional, no equitable exception to that deadline would be available under the circumstances here.

Although a non-jurisdictional time limit is generally subject to traditional rules of waiver and forfeiture, "[t]he mere fact that a time limit lacks jurisdictional force * * * does not render it malleable in every respect." *Nutraceutical Corp.* v. *Lambert*, 139 S. Ct. 710, 714 (2019). Some such limitations, "[t]hough subject to waiver and forfeiture, * * * are 'mandatory'—that is, they are 'unalterable' if properly raised by an opposing party." *Ibid.* (citation omitted); see *id.* at 714-715 (holding that deadline imposed by Federal Rule of Civil Procedure 23(f) for appealing class certification is not jurisdictional but is mandatory and not subject to equitable tolling); *Hallstrom* v. *Tillamook Cnty.*, 493 U.S. 20, 25-31 (1989) (holding that requirement to give notice to

certain entities before suing was mandatory, whether or not it was jurisdictional). Even for time limits established by rule rather than by statute, "[w]hether a rule precludes equitable tolling turns not on its jurisdictional character but rather on whether the text of the rule leaves room for such flexibility." *Nutraceutical*, 139 S. Ct. at 714. And "[w]here the pertinent rule or rules invoked show a clear intent to preclude tolling, courts are without authority to make exceptions merely because a litigant appears to have been diligent, reasonably mistaken, or otherwise deserving." *Ibid.*

Indeed, this Court has previously held that another deadline established by the Internal Revenue Code is not subject to equitable tolling. See *United States* v. *Brockamp*, 519 U.S. 347, 349-354 (1997). The *Brockamp* Court held the "'equitable tolling' doctrine" inapplicable to the deadline imposed by 26 U.S.C. 6511 for the filing of tax-refund claims with the IRS. 519 U.S. at 354. Assuming without deciding that a presumption in favor of equitable tolling applied to that provision, the Court found that presumption rebutted based on "strong reasons" for concluding that Congress did not intend tolling to be available. *Id.* at 350.

The *Brockamp* Court noted that Section 6511 "sets forth its time limitations in unusually emphatic form," by using "highly detailed technical" language that "cannot easily be read as containing implicit exceptions" and by "reiterat[ing] its limitations several times in several different ways." 519 U.S. at 350-351. The *Brockamp* Court also observed that the statute "sets forth several explicit exceptions to its basic time limits, and those very specific exceptions do not include 'equitable tolling.'" *Id.* at 351. Finally, the Court explained that "[t]ax law * * * is not normally characterized by case-

specific exceptions reflecting individualized equities," and that the large volume of claims the IRS must address each year would make it burdensome to consider and possibly litigate "large numbers of late claims[] accompanied by requests for 'equitable tolling.'" *Id.* at 352. The Court concluded that, in enacting that particular time bar, "Congress decided to pay the price of occasional unfairness in individual cases (penalizing a taxpayer whose claim is unavoidably delayed) in order to maintain a more workable tax enforcement system." *Id.* at 352-353.

Very similar considerations support the same conclusion here. Section 6213(a) addresses "tax collection." *Brockamp*, 519 U.S. at 352. Its filing deadline is likewise set forth in detailed and technical language, and the 90-day limit prescribed in its first sentence is "reiterate[d]" (*id.* at 351) several times in the provision. In addition, the deadline is subject to multiple explicit exceptions set forth in Section 6213 itself and in other Code sections, including Section 7502's mailbox rule and other provisions that automatically suspend, or authorize the Secretary of the Treasury to suspend, the deadline in particular circumstances. See 26 U.S.C. 6213(a) (providing that petition is "treated as timely filed" so long as it is filed "on or before the last date specified for filing such petition * * * in the notice of deficiency"); 26 U.S.C. 6213(e) (suspending the filing period with respect to certain taxes where the Secretary has extended the time allowed for making correction under 26 U.S.C. 4963(e)); 26 U.S.C. 6213(f)(1) (providing an exception where a taxpayer "is prohibited by" a pending bankruptcy case "from filing a petition"); 26 U.S.C. 7502 (mailbox rule); 26 U.S.C. 7508(a) (filing period sus-

pended for individuals serving in combat zones or hospitalized because of service in combat zones); 26 U.S.C. 7508A(a) (authorizing Secretary of the Treasury to extend deadlines for taxpayers affected by federally declared disasters, acts of terrorism, or military action).

Even if Section 6213(a)'s filing deadline were not jurisdictional, no equitable exception would apply under the circumstances of this case, where a taxpayer's agent sent a filing before the deadline but the filing did not reach the Tax Court in time. Section 7502's mailbox rule speaks directly to that circumstance and provides a mechanism by which a taxpayer can be certain that a filing sent before the deadline will be treated as timely even if it is delayed in transit. A taxpayer or its agent need only send its filing by mail or through one of multiple private delivery services designated by the Secretary in published guidance, subject to the parameters set forth in Section 7502 and implementing regulations. See 26 U.S.C. 7502; 26 C.F.R. 301.7502-1. Even if Section 6213(a)'s deadline were subject to equitable exceptions in other circumstances, the Code's inclusion of a specific tolling regime for filings timely sent but belatedly received would preclude superimposing an equitable exception addressing the same issue. See *United States* v. *Beggerly*, 524 U.S. 38, 48-49 (1998). These cases would accordingly be an unsuitable vehicle for the Court to consider Section 6213(a)'s susceptibility to equitable exceptions.

2. Petitioner Organic Cannabis contends (20-1014 Pet. 21-27) that the court of appeals violated its due-process rights by relying on ZIP code-related information on the U.S. Postal Service's website. That argument lacks merit and does not warrant this Court's review.

a. Organic Cannabis argued below that the deficiency notice it received was invalid because (it alleged) the notice was not properly directed to its "last known address." 26 U.S.C. 6212(b)(1); see Pet. App. 34-35. The mailing envelope used to send the notice is not in the record. Pet. App. 35. Although the notice itself "properly listed [Organic Cannabis's] last known address," *id.* at 33, Organic Cannabis argued that the mailing was incompletely addressed based on the handwritten entry in the IRS's internal mailing log (Form 3877), which omitted the post-office-box number. *Id.* at 9, 34.

The Tax Court concluded that it need not determine whether the mailing was properly addressed because resolution of that issue would not affect the outcome. Pet. App. 35. The court explained that, under its precedent, "an improperly addressed notice actually received by the taxpayer with sufficient time remaining to file a petition for redetermination, without prejudice, is valid under section 6212(a)." *Id.* at 34. Here "there [wa]s no dispute that the notice was received by [Organic Cannabis] on February 3, 2015—78 days before" the April 22 filing deadline—which provided "sufficient time for [Organic Cannabis] to file its petition without prejudice." *Id.* at 35.

The court of appeals affirmed the Tax Court's judgment on the alternative ground that no defect in the mailing address existed. Pet. App. 26-28. The court explained that, even assuming the mailing envelope had used the address handwritten in the IRS's internal mailing log—which did not specify "P.O. Box 5286"—the envelope still "was not misaddressed" because the full, nine-digit "'ZIP+4'" code of "95402-5286" conveyed that same information. *Id.* at 27 & n.9 (citation omitted). Relying

on two portions of the Postal Service's official website, the court observed that the Postal Service "has reserved the five-digit ZIP code '95402' solely for P.O. Boxes in Santa Rosa," and that "'the ZIP+4 Code will likely include the actual PO Box number in the +4 part of the ZIP Code.'" *Ibid.* (quoting Postal Service website). The court concluded that, even if the notice did not state the post-office-box number on a separate line of the address, the nine-digit ZIP+4 code "communicated precisely that information to the U.S. Postal Service." *Id.* at 27-28.

b. In this Court, Organic Cannabis has not meaningfully disputed the Tax Court's determination that any defect in the address was non-prejudicial and immaterial to the deficiency notice's validity.[3] That effectively uncontested determination provides a fully sufficient basis to affirm this aspect of the court of appeals' judgment, see, *e.g.*, *Dahda* v. *United States*, 138 S. Ct. 1491, 1498 (2018), and a dispositive reason why further review is unwarranted.

Instead, Organic Cannabis contends (Pet. 21-27) that the court of appeals violated its due-process rights by taking judicial notice of, and relying on, the statement

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[3] Organic Cannabis asserts (Pet 21 n.12) that prejudice was "evidenced by the fact that [its] petition for redetermination * * * was deemed to have been filed late and dismissed." But it does not address the Tax Court's finding that actual receipt of the notice 78 days before the filing deadline provided sufficient time to prepare and file a timely petition. Pet. App. 35. Nor does Organic Cannabis address the facts that it was able to prepare a petition before the deadline—which would have been treated as timely if it had been sent by mail or by a designated private delivery service—and that the untimeliness could have been avoided if Organic Cannabis's counsel, upon learning on April 22 that the FedEx package had not been received, had mailed a second copy postmarked that day. See pp. 5-6, *supra*.

on the Postal Service's website that "the ZIP+4 Code will likely include the actual PO Box number in the +4 part of the ZIP Code." Pet. App. 27 n.9. That fact-bound, case-specific question does not warrant this Court's review. Organic Cannabis does not identify a conflict between the Ninth Circuit's approach and any decision of this Court or of another court of appeals.

In any event, Organic Cannabis's argument lacks merit. Organic Cannabis does not appear to suggest that a portion of the Postal Service's official website explaining aspects of the postal system that it administers is categorically unsuitable for judicial notice. See, *e.g.*, *Daniels-Hall* v. *National Educ. Ass'n*, 629 F.3d 992, 998-999 (9th Cir. 2010) (finding it "appropriate to take judicial notice of [certain] information, as it was made publicly available by government entities * * * , and neither party dispute[d] the authenticity of the web sites or the accuracy of the information displayed therein"). Nor does it appear to dispute the veracity of the information contained in the cited portion of the Postal Service's website.

Rather, Organic Cannabis contends (Pet. 23) that the specific language of the Postal Service's website was insufficiently definite to support the court of appeals' conclusion, because the website stated that the ZIP+4 Code will "*likely*"—not "indubitably, unquestionably, or undoubtedly"—reflect the post-office-box number. But it identifies no precedent holding that due-process principles require such certainty before a court may take judicial notice of public information. Organic Cannabis also does not dispute that the nine-digit ZIP+4 code in fact referred to the proper post-office box. That conclusion is reinforced by the other portion of the Postal Service website that the court cited—with which

Organic Cannabis does not appear to take issue—indicating that the particular five-digit ZIP code is used exclusively for post-office boxes in Santa Rosa, diminishing any doubt that the ZIP+4 code "95402-5286" referred to P.O. Box 5286 in Santa Rosa. And it is bolstered by the undisputed fact that the notice was retrieved simultaneously with the NCSBA notice, which was properly addressed to the same box. See pp. 4, 9, *supra*. Further review is not warranted.

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

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