

Supreme Court Undermines Taxpayers' Due Process Rights



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Background and Summary of Zuch Case

On June 12, 2025, the U.S. Supreme Court issued a significant decision in *Commissioner of Internal Revenue v. Zuch*, clarifying the jurisdictional boundaries of the U.S. Tax Court in Collection Due Process (CDP) appeals. The case arose from a dispute between an individual taxpayer, Jennifer Zuch, and the IRS over the allocation of \$50,000 in estimated tax payments made by Zuch and her then-husband for the 2010 tax year. Zuch contended that these payments should have been credited to her account, entitling her to a refund, while the IRS applied them to her ex-husband's account. From there, the IRS sought to collect her alleged unpaid taxes through a proposed levy.

Zuch requested a CDP hearing to contest the levy, arguing the IRS had misapplied the payments and she does not owe the liability. The IRS Appeals Officer rejected her claim and sustained the levy. Zuch then petitioned the Tax Court for review. During the protracted proceedings, IRS took Zuch's tax refunds for subsequent years and applied them to her 2010 liability, eventually reducing her balance to zero. The IRS then moved to dismiss the Tax Court case as moot, asserting that with no outstanding liability, there was no longer a basis for a levy or for the Tax

Court's jurisdiction. The Tax Court, agreeing with IRS, concluded that it lacked "freestanding jurisdiction to determine an overpayment or to order a refund or credit of tax paid in a section 6330 proceeding" and dismissed the case.

Zuch appealed, and the Third Circuit, diverging from the Fourth and D.C. Circuits, vacated the Tax Court's decision. The Third Circuit explained that Section 633(c)(2)(B) authorizes taxpayers to raise challenges to the "existence or amount of the underlying tax liability" and held that IRS's abandonment of the levy did not moot the Tax Court proceedings.

The Supreme Court granted certiorari to resolve the split between the Circuits.

Supreme Court's Holding and Reasoning

The Supreme Court held that the Tax Court's jurisdiction in CDP cases under §6330(d)(1) is limited to reviewing the IRS's determination of whether a levy may proceed. Once the IRS eliminates a taxpayer's liability—here, by applying overpayments and removing the need for a levy—the Tax Court loses jurisdiction to adjudicate the underlying tax dispute. The Court emphasized that the CDP process is designed to provide pre-levy review, not a general forum for resolving tax liability disputes once collection is no longer at issue. The Court maintains that taxpayers' proper recourse in this situation would be to file a suit for refund in the District Courts.

Justice Gorsuch's Dissent is a Warning to Taxpayers

Justice Gorsuch authored a vigorous dissent in the Supreme Court's decision in *Zuch*. The dissent took issue with the majority's narrow interpretation of the Tax Court's jurisdiction in CDP cases, arguing that the Court's approach undermines taxpayer protections and gives the IRS undue power to avoid judicial review of its actions.

Justice Gorsuch argued that the Tax Court's jurisdiction under §6330(d)(1) is tied to the "determination" made by the IRS Office of Appeals, which can include both the decision to sustain a levy and the resolution of underlying tax liability issues. He emphasized that the statute does not condition jurisdiction on the continued existence of a levy, but rather on the presence of a valid determination—one that may address whether a taxpayer actually owes any "unpaid tax" or has any "underlying tax liability." He further contended that the Tax Court's remedial authority under §6330(e)(1) is broader than the majority allowed. He argued that the Tax Court can enjoin "any action or proceeding . . . in respect of the unpaid tax or proposed levy," which could include stopping the IRS from retaining overpayments if the underlying liability is found not to exist.

The dissent warned that allowing the IRS to eliminate Tax Court jurisdiction simply by offsetting a taxpayer's liability (e.g., by applying overpayments) creates a "roadmap for evading Tax Court review." If the IRS senses it may lose a case, it can simply pay off the liability with the taxpayer's own funds, withdraw the levy, and thereby prevent the Tax Court from ruling on the merits of the taxpayer's challenge.

The dissent highlighted the risk that taxpayers will now face. Taxpayers may lose the ability to recover overpayments or challenge IRS errors if IRS unilaterally takes their refunds to pay off the disputed liability and/or withdraws the proposed levy. Taxpayers' only option for judicial review will be to "start over" with a refund suit after potentially years of CDP litigation, the cost of which would certainly be prohibitive for the vast majority of taxpayers. Taxpayers should be particularly cautious to preserve administrative refund claims, as the deadline to

file timely claims may lapse during pending Tax Court proceedings, resulting in the loss of any available remedy.

Practical Takeaways for Tax Professionals

- **Vigilance in Protecting Refund Rights:**

- Practitioners should advise clients to file protective refund claims when disputing underlying liabilities in CDP cases, to avoid being time-barred if the IRS offsets the liability and moots the Tax Court case.

- **Strategic Use of Litigation Pathways:**

- Recognize that the CDP process is now strictly limited to levy-related disputes. For broader challenges to liability or to recover overpayments, be prepared to pursue refund litigation in the appropriate federal court.

- **Documentation and Communication:**

- Maintain thorough records of all IRS communications, offsets, and notices, as these may be critical in subsequent refund litigation or in establishing the timeliness of claims.

Conclusion

The *Zuch* decision underscores the importance of understanding the procedural posture of IRS collection actions and the limitations of Tax Court jurisdiction in CDP cases. Tax professionals should adjust their strategies accordingly to protect clients' rights and ensure access to appropriate judicial review when necessary.

If you're involved in a tax controversy matter and have concerns about how the recent *Zuch* decision may impact your ongoing CDP strategy, contact Lippes Mathias [Tax Controversy Team](#) members Tiffany D. Bell (tbell@lippes.com) or Samantha Gozlan (sgozlan@lippes.com) to ensure your rights are protected and your case is strategically positioned for review.