No. 24-416

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

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether a proceeding under 26 U.S.C. 6330 for a pre-deprivation determination about a levy proposed by the Internal Revenue Service to collect unpaid taxes becomes moot when there is no longer a live dispute over the proposed levy that gave rise to the proceeding.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-39a) is reported at 97 F.4th 81. The decisions of the United States Tax Court and the Internal Revenue Service Independent Office of Appeals (Pet. App. 44a-49a, 50a-60a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 22, 2024. A petition for rehearing was denied on June 26, 2024 (Pet. App. 68a-69a). On September 12, 2024, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including October 11, 2024, and the petition was filed on that date. The petition for a writ of certiorari was granted on January 10, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in an appendix to this brief. App., *infra*, 1a-9a.

INTRODUCTION

The federal tax system operates on a simple default premise: pay now, dispute later. In 1998, Congress enacted a narrow exception to that rule. If the Internal Revenue Service (IRS) seeks to levy on—that is, affirmatively seize and sell—a taxpayer's property, the IRS generally must provide the taxpayer with pre-levy notice and an opportunity for a hearing before the IRS Independent Office of Appeals (Appeals Office). 26 U.S.C. 6330. The Appeals Office makes a "determination" whether the IRS may proceed with "the levy action[] which [is] the subject of the requested hearing." 26 U.S.C. 6330(c)(3) and (e)(1). A taxpayer disappointed with the outcome of the pre-levy hearing may "petition the Tax Court for review of such determination." 26 U.S.C. 6330(d)(1).

This case presents the question whether a Section 6330 proceeding in the Tax Court becomes moot when there is no longer a live controversy over the levy. Here, the IRS initially proposed a levy on respondent's property, and she initiated a Section 6330 proceeding for pre-deprivation review. But before the Tax Court's review concluded, the IRS determined that respondent's intervening, additional payments meant that she no longer owed any additional tax, so the IRS no longer sought to collect by levying on her property.

That development mooted the proceeding for pre-levy review. When the IRS has decided not to pursue its proposed levy, the taxpayer has already received "the very relief [she] ostensibly sought" by requesting a pre-deprivation hearing. *Willson* v. *Commissioner*, 805 F.3d 316, 321 (D.C. Cir. 2015). The Tax Court can pro-

vide no further relief, and the Section 6330 proceeding must end.

The text of Section 6330 makes clear that it provides a narrow path for review of a proposed levy—not a means to circumvent the usual methods of disputing a taxpayer's liability. The decision below thus erred in concluding that the Tax Court could still address whether respondent has any "underlying tax liability"—an issue that may be considered under 26 U.S.C. 6330(c)(2)(B) when evaluating whether a proposed levy may proceed. When there is no proposed levy to adjudicate, the question of tax liability ceases to be an "underlying" one. Nor does the Tax Court have jurisdiction to issue declaratory relief separate from its ability to enjoin the proposed levy that is "the subject of the requested hearing." 26 U.S.C. 6330(e)(1).

That there is no longer review under Section 6330 does not foreclose judicial review of the IRS's handling of respondent's taxes. Rather, as respondent has already acknowledged (Br. in Opp. 2, 4, 13, 16, 25), she can proceed under the general rule and dispute the assessment and collection of her taxes in a refund suit. Because the court of appeals' contrary decision thwarts Congress's distinction between that general rule and the narrow exception for pre-levy review, this Court should reverse.

STATEMENT

A. Legal Background

1. The traditional mechanism for a taxpayer to dispute the assessment or collection of a federal tax is a post-payment suit for a refund. See *CIC Servs., LLC* v. *IRS*, 593 U.S. 209, 212 (2021) ("[A] person can typically challenge a federal tax only after he pays it, by suing for a refund."). To bring a refund suit, a 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; *Flora* v. *United States*, 357 U.S. 63, 64-75 (1958), aff'd on reh'g, 362 U.S. 145 (1960). If the refund is denied, the taxpayer may sue to recover the disputed amount. 28 U.S.C. 1346(a)(1); see 26 U.S.C. 6532, 7422(a); 28 U.S.C. 1491(a)(1); *United States* v. *Clintwood Elkhorn Mining Co.*, 553 U.S. 1, 4 (2008); see also, *e.g.*, *G.M. Leasing Corp.* v. *United States*, 429 U.S. 338, 352 n.18 (1977) (collecting cases for the proposition that post-payment review of a tax liability comports with due process).

For certain taxes, however, Congress has also provided a pre-assessment avenue for judicial review. Specifically, for income, estate, gift, and various other taxes, Congress has directed the IRS to issue a "notice of * * * deficiency" to a taxpayer who has failed to report a tax properly. 26 U.S.C. 6212(a). The taxpayer may then file a petition for redetermination in the Tax Court. 26 U.S.C. 6213. With certain exceptions, the IRS may not attempt to collect the tax at issue before the time for seeking judicial review has expired or while such review is pending. 26 U.S.C. 6213(a).

The Internal Revenue Code and other statutes channel judicial review of challenges to tax assessment and collection to those prescribed mechanisms. The Tax Anti-Injunction Act, 26 U.S.C. 7421(a), and the tax exception to the Declaratory Judgment Act, 28 U.S.C. 2201(a), generally preclude suits for injunctive and declaratory relief regarding the assessment or collection of taxes. And 26 U.S.C. 7422(a) precludes suits to recover taxes alleged to have been assessed or collected unlawfully before a taxpayer has properly sought a refund from the IRS.

2. Following assessment, if a taxpayer who is "liable to pay any tax neglects or refuses to pay," the IRS may generally "collect such tax" by "levy[ing] upon" the taxpayer's property, *i.e.*, seizing and selling it. 26 U.S.C. 6331(a); see 26 U.S.C. 6331(b) (defining "levy" to "include[] the power of distraint and seizure by any means," and permitting the sale of "such property or rights to property"); see also 26 U.S.C. 6321 (providing for tax liens). Certain types of property—including, with some exceptions, residences, welfare and unemployment benefits, and particular pensions—are exempt from levies. See 26 U.S.C. 6334.

Before 1998, the Internal Revenue Code authorized the IRS to levy upon taxpayer property without any prior opportunity for a hearing or other pre-collection process, so long as adequate post-deprivation procedures were available. See *Phillips* v. *Commissioner*, 283 U.S. 589, 595 (1931); 26 U.S.C. 6331(d) (1994). In 1998, however, Congress established procedures that the IRS generally must follow before levying. See Taxpayer Bill of Rights 3 (Taxpayer Bill of Rights), Pub. L. No. 105-206, Tit. III, § 3401(b), 112 Stat. 747-749 (26 U.S.C. 6330); see also *id.* § 3401(a), 112 Stat. 746-747 (26 U.S.C. 6320) (substantially similar framework for IRS filing of a notice of federal tax lien).

Those procedures are codified in Section 6330 of the Code, which is entitled "[n]otice and opportunity for hearing before levy." 26 U.S.C. 6330. Under those procedures, "[n]o levy may be made" unless the IRS provides the taxpayer with 30 days' notice and the opportunity to request a hearing. 26 U.S.C. 6330(a)(1); see 26 U.S.C. 6330(a)(2) and (3).

If the taxpayer makes such a request, an administrative hearing to review the proposed levy—sometimes

called a "collection due process hearing," *Boechler, P.C.* v. *Commissioner*, 596 U.S. 199, 202 (2022)—is conducted by an impartial officer in the Appeals Office. 26 U.S.C. 6330(b). The taxpayer's request for a hearing suspends "the levy actions which are the subject of the requested hearing" as well as the running of specified limitations periods. 26 U.S.C. 6330(e)(1).

At the hearing, the taxpayer may raise "any relevant issue relating to the unpaid tax or the proposed levy," including "challenges to the appropriateness of collection actions" and "offers of collection alternatives." 26 U.S.C. 6330(c)(2)(A)(ii) and (iii); see 26 U.S.C. 6330(c)(4) (excluding certain issues that were previously litigated or qualify as frivolous). If the taxpayer "did not receive any statutory notice of deficiency for [the relevant] tax liability or did not otherwise have an opportunity to dispute such tax liability," she also may raise "challenges to the existence or amount of the underlying tax liability." 26 U.S.C. 6330(c)(2)(B).

At the conclusion of a Section 6330 hearing, the Appeals Office issues its "determination," 26 U.S.C. 6330(c)(3), which is "a written notice" reflecting whether "collection by way of levy may proceed." *Lunsford* v. *Commissioner*, 117 T.C. 159, 164-165 (2001). The Appeals Office reaches its determination after considering statutorily delineated factors, including whether the requirements of applicable law or administrative procedure have been met, 26 U.S.C. 6330(c)(1) and (3)(A); the issues raised by the taxpayer, 26 U.S.C. 6330(c)(2) and (3); and "whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the [taxpayer] that any collection action be no more intrusive than necessary," 26 U.S.C. 6330(c)(3)(C).

A taxpayer who is dissatisfied with a determination sustaining a levy may petition the United States Tax Court "for review of such determination (and the Tax Court shall have jurisdiction with respect to such matter)." 26 U.S.C. 6330(d)(1). The Tax Court's decision, in turn, is subject to review by a federal court of appeals. 26 U.S.C. 7482(a)(1).

3. Although a taxpayer's request for a Section 6330 hearing suspends "the levy actions which are the subject of the requested hearing" and certain limitations periods, 26 U.S.C. 6330(e)(1), other mechanisms for tax collection may proceed. Most relevant here, when a taxpayer overpays the tax owed for a particular year, the IRS "may credit the amount of such overpayment" against "any liability in respect of an internal revenue tax on the part of the person who made the overpayment" instead of refunding that amount to the taxpayer. 26 U.S.C. 6402(a).

That application of overpayment credits—sometimes referred to as an "offset"—is an administrative action distinct from the collection of a tax by a levy or lien on the taxpayer's property. See *Belloff* v. *Commissioner*, 996 F.2d 607, 616 (2d Cir. 1993); *Boyd* v. *Commissioner*, 124 T.C. 296, 300 (2005); 26 C.F.R. 301.6330–1(g)(2), Q & A-G3. A taxpayer may challenge the application of credits through the traditional mechanism for disputing the collection of a federal tax: filing a refund claim with the IRS and, if necessary, a refund suit. See 26 U.S.C. 7422(a) and (d).

B. The Present Controversy

1. From 1993 to 2014, respondent was married to Patrick Gennardo. Pet. App. 7a. This case concerns the 2010 tax year, for which respondent and Gennardo ultimately filed separate tax returns. *Ibid.*

a. In 2010 and 2011, respondent and Gennardo made two estimated tax payments, totaling $50,000, to the IRS for tax year 2010. Pet. App. 8a. First, the couple submitted an estimated tax payment of $20,000. *Ibid.* The accompanying Form 1040-ES identified both of their names, but it did not indicate that they would be filing separate returns, and it provided no instructions on how to allocate the payment between them. C.A. App. 274, 314. Second, Gennardo submitted a $30,000 bank check, which identified only Gennardo as the remitter. Pet. App. 8a; see C.A. App. 274, 315. The subject line of the accompanying cover letter identified both respondent and Gennardo, but neither the check nor any accompanying documentation instructed the IRS to allocate any part of that payment to respondent. C.A. App. 275, 315, 633, 638.

b. On September 12, 2012, the couple filed separate (and untimely) 2010 federal income-tax returns. Pet. App. 7a; see C.A. App. 316-381. Respondent did not claim any of the $50,000 in estimated tax payments on her return, while Gennardo claimed $10,000 in estimated tax payments on his return. C.A. App. 317, 331. Respondent's and Gennardo's tax returns were prepared by the same tax preparer. *Id.* at 277.

On the same day that they submitted their separate tax returns, Gennardo made a written compromise offer to the IRS about his outstanding federal tax liabilities for tax years 2007 through 2011. C.A. App. 278, 382. Although the offer covered years in which respondent and Gennardo had filed joint tax returns, Gennardo's offer-in-compromise did not include respondent. C.A. App. 386. Consistent with the terms of the offer and IRS rules governing payments related to pending offers, the IRS applied the full $50,000 in estimated tax

payments to Gennardo's separate account. Pet. App. 8a; see C.A. App. 277-279, 310, 384, 466, 468, 473, 662; I.R.S. Notice 2006-68, 2006-31 I.R.B. 105.

c. In November 2012, respondent filed an amended return for the 2010 tax year showing that she owed an additional $27,682. Pet. App. 9a; see C.A. App. 279, 475, 477. For the first time, respondent's amended return also claimed for herself the full $50,000 in estimated tax payments, yielding a claimed overpayment of $21,918 for the 2010 tax year. Pet. App. 9a; see C.A. App. 280, 475. Because the IRS had already allocated the $50,000 to Gennardo, it declined to apply the estimated payments to respondent's account. C.A. App. 280. Instead, the IRS assessed the tax that respondent had reported on her amended return, along with interest and a late-filing penalty of $7020. *Ibid.*

2. a. In 2013, the IRS sent respondent a notice and demand for payment of her balance due. C.A. App. 280. Respondent failed to pay, and the IRS sent her a notice of its intent to levy on her property to collect the unpaid taxes. Pet. App. 70a-75a; C.A. App. 571-573.

Respondent invoked her right under Section 6330 to challenge the proposed levy in a hearing before the Appeals Office. Pet. App. 10a; C.A. App. 567-570. She contended that the IRS should have applied the full $50,000 in estimated tax payments to her account, which would have satisfied her self-reported underlying tax liability and resulted in a refund. Pet. App. 10a; C.A. App. 567.

In 2014, after a hearing, the Appeals Office issued a determination sustaining the IRS's proposed levy, explaining that the estimated tax payments could not be applied to respondent's account because they had been credited to Gennardo's account. Pet. App. 61a-67a. Respondent petitioned the Tax Court for review, and in

2016, the Tax Court remanded to the Appeals Office for clarification of several issues. C.A. App. 16; Pet. App. 50a-60a. On remand, the Appeals Office reaffirmed its prior determination to sustain the proposed levy, explaining in a 2017 supplemental notice of determination that the estimated tax payments had been properly allocated to Gennardo. Pet. App. 44a-49a.

b. While respondent's pre-levy proceedings were pending before the Appeals Office and the Tax Court, respondent overpaid her taxes for 2013 and subsequent tax years. Pet. App. 12a-13a. The IRS exercised its authority under Section 6402(a) to credit her overpayments in those years against her 2010 tax liability. *Ibid.* By April 15, 2019, the credits transferred from later tax years had reduced the balance due on respondent's 2010 liability to $0. *Id.* at 13a.

In March 2020, the IRS moved to dismiss as moot the pre-levy proceeding before the Tax Court, explaining that respondent's 2010 tax liability had been satisfied and the IRS therefore "no longer intend[ed] to pursue the proposed collection action." Pet. App. 42a; see C.A. Doc. 5-4, at 450 (July 21, 2022) (motion to dismiss).

The Tax Court granted the motion and dismissed the case. Pet. App. 40a-43a. The court explained that the "case is moot" "[b]ecause there is no unpaid liability for the determination year upon which a levy could be based, and [the IRS] is no longer pursuing the proposed collection action." *Id.* at 43a (citing *McLane* v. *Commissioner*, 24 F.4th 316 (4th Cir.), cert. denied, 143 S. Ct. 408 (2022); *Greene-Thapedi* v. *Commissioner*, 126 T.C. 1, 7 (2006)). The court acknowledged that respondent continued to argue that the IRS should have credited the estimated payments to her, but the court reasoned that because it did not "have jurisdiction to determine

an overpayment or to order a refund or credit of tax paid in a section 6330 proceeding, this is not the proper forum to determine whether, and the extent to which, if any, the underlying liability has been overpaid." *Ibid.* The court observed that respondent could still "pursue any refund to which she might be entitled through traditional Federal income procedures, including if necessary, initiating a case in a different Federal court." *Ibid.*

3. The court of appeals vacated the Tax Court's order of dismissal and remanded for the Tax Court to determine whether respondent was entitled to the estimated tax payments that the IRS had allocated to Gennardo. Pet. App. 1a-39a.

Although the court of appeals acknowledged that "the Tax Court need not hear a moot case," Pet. App. 16a, the court of appeals held that the proceedings before the Tax Court are "not moot," *id.* at 2a. In a part of the opinion joined by only two members of the panel, the court of appeals concluded that the Tax Court has jurisdiction in a Section 6330 pre-levy proceeding to review a taxpayer's "underlying tax liability," *id.* at 26a (quoting 26 U.S.C. 6330(c)(2)(B)), and that the statute does not "suggest that a taxpayer's right to challenge the existence or amount of her underlying tax becomes moot once the levy is no longer being enforced or the tax is satisfied," *id.* at 26a-27a. The court of appeals reasoned that even though the IRS is no longer seeking to take respondent's property by levy, the Tax Court retains jurisdiction to "declare that [respondent] had a right to the estimated payments." *Id.* at 37a. The court of appeals acknowledged that its holding is contrary to those of the Fourth and D.C. Circuits, which have held that a Section 6330 proceeding in the Tax Court is moot

when the IRS no longer seeks to levy on a taxpayer's property. *Id.* at 27a (citing *McLane*, 24 F.4th at 319 (4th Cir.); *Willson* v. *Commissioner*, 805 F.3d 316, 321 (D.C. Cir. 2015)).

In a part of the opinion joined by all three members of the panel, the court of appeals alternatively concluded that the case is not moot on the theory that the Tax Court has jurisdiction to determine whether the IRS validly exercised its authority under Section 6402 to use respondent's later-year overpayments to offset her 2010 tax liability. Pet. App. 19a-25a. Respondent had made only a passing reference to the validity of the offsets in her reply brief, see Resp. C.A. Reply Br. 16-17, but after oral argument, the court of appeals appointed an amicus to address the question (along with six other issues), C.A. Doc. 45 (June 1, 2023).

In holding that the Tax Court may review the application of credits under Section 6402, the court of appeals relied on "an *implicit* grant" of jurisdiction, observing that "[i]t may be that Congress has not *explicitly* granted the Tax Court such power." Pet. App. 20a. Specifically, the court of appeals reasoned that Section 6402 "carries forward the common law of setoffs," which means that the Tax Court has implicit jurisdiction to review the application of credits in a pre-levy proceeding, even absent a proposed levy. *Id.* at 21a.[1]

The court of appeals then considered the application of Section 6402 credits to respondent's 2010 tax liability in the first instance. Even though Section 6402 allows

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[1] Although the court of appeals used the terms "offset" and "setoff" interchangeably, the statute uses "offset" to refer to an overpayment credit, see 26 U.S.C. 6402, while "setoff" is typically used to describe the common-law principle, see, *e.g.*, *United States* v. *Munsey Trust Co.*, 332 U.S. 234, 239 (1947).

the application of credits to "any liability," 26 U.S.C. 6402(a), the court determined that the offset was "invalid and without legal effect" because common-law setoff principles do not apply to disputed debts, Pet. App. 25a. Having concluded that respondent's "tax obligation was not properly set off," the court determined that her tax liability remains, and she may "challenge the IRS's application of the estimated payments" in a Section 6330 proceeding. *Id.* at 19a.

SUMMARY OF ARGUMENT

A pre-levy proceeding under 26 U.S.C. 6330 is moot when there is no longer a live dispute over the proposed levy that gave rise to the proceeding.

A. The Tax Court is a court of limited jurisdiction, capable of exercising only the jurisdiction expressly conferred on it by Congress. The Tax Court has been granted jurisdiction over a "petition * * * for review" of the Appeals Office's "determination" whether a particular levy may proceed. 26 U.S.C. 6330(d)(1). When the IRS no longer seeks to proceed by levy—such that there is no live dispute over "the levy action[] which [is] the subject of the requested hearing," 26 U.S.C. 6330(e)(1)—the taxpayer's challenge is moot, and the Tax Court lacks jurisdiction to resolve it.

At every step in the Section 6330 process, the statutory text squarely focuses on the question whether a levy may go forward. The statute mandates that the taxpayer receive notice and an opportunity for a hearing "before levy"; it requires that certain levy-related information be conveyed in the notice; and it instructs that the Appeals Office's "determination" must "take into consideration," *inter alia*, "whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the per-

son that any collection action be no more intrusive than necessary." 26 U.S.C. 6330(a) and (c)(3)(C). Once the Appeals Office determines whether the levy may proceed, Section 6330 authorizes the Tax Court to review "such determination." 26 U.S.C. 6330(d)(1). But where there is no longer a live dispute over a levy, there is nothing left for the Tax Court to do, and the case is moot.

B. That understanding is consistent with Section 6330's history and its role in the Internal Revenue Code. Congress enacted Section 6330 to ensure that taxpayers have a pre-deprivation opportunity to contest levies. Section 6330 was not designed to, and did not, provide a broader means for taxpayers to dispute their tax liability untethered from proposed levies.

C. The court of appeals' and respondent's contrary arguments lack merit. Both the court and respondent have suggested that the Tax Court retains jurisdiction absent a live dispute over a levy because, in some circumstances, Section 6330(c)(2)(B) permits a taxpayer to raise at a pre-levy hearing "challenges to the existence or amount of the underlying tax liability." 26 U.S.C. 6330(c)(2)(B); see Pet. App. 19a; Br. in Opp. 14. But, as that text underscores, a taxpayer's "underlying tax liability" must *underlie* the proposed collection action—that is, the levy. The statute thus does not support treating a taxpayer's challenge to her "underlying tax liability" as providing a freestanding basis for Tax Court jurisdiction. 26 U.S.C. 6330(c)(2)(B). Rather, where Section 6330(c)(2)(B) applies, it simply supplies one "consideration" that the Appeals Office must "take into" account when issuing the "determination" whether the proposed levy may proceed. 26 U.S.C. 6330(c)(2)(B) and (3). When there is no live dispute over a proposed levy,

there is no Tax Court jurisdiction to address the "underlying" question. 26 U.S.C. 6330(c)(2)(B).

The court of appeals alternatively held that the Tax Court has "*implicit*" jurisdiction to review the IRS's allocation of respondent's later-year overpayments to offset her tax liability. Pet. App. 20a. Respondent has not defended that rationale in this Court, and for good reason. Congress must expressly provide for Tax Court jurisdiction by statute, and no statute grants that court authority to review Section 6402 credits in a Section 6330 proceeding. Even if the Tax Court could conduct such review, it still could not provide meaningful relief.

D. This case is moot. When respondent failed to pay her self-reported 2010 tax debt, the IRS proposed to collect her liability by administrative levy. Respondent then invoked her right to a pre-levy proceeding under Section 6330. But while that proceeding was ongoing, respondent overpaid her taxes for subsequent tax years, and the IRS used its authority under Section 6402 to credit those overpayments against respondent's 2010 tax debt. With no debt remaining, the IRS abandoned the levy that was "the subject of the requested hearing," 26 U.S.C. 6330(e)(1). The Tax Court therefore lacked jurisdiction to review the Appeals Office's "determination" that the levy could proceed. 26 U.S.C. 6330(d)(1).

That does not, however, leave respondent without a judicial remedy: She may dispute the IRS's allocation of the 2010 estimated payments and her subsequent overpayments in a refund suit, the traditional mechanism for such challenges (and the one that she could have used if the IRS had never proposed a levy). But absent a live dispute over a potential levy, Section 6330 has no role to play.

ARGUMENT

A PRE-LEVY PROCEEDING UNDER 26 U.S.C. 6330 IS MOOT WHEN THERE IS NO LONGER A LIVE DISPUTE OVER THE PROPOSED LEVY THAT GAVE RISE TO THE PROCEEDING

The court of appeals held that a pre-levy proceeding under 26 U.S.C. 6330 may continue even when there is no longer a live dispute over the proposed levy that gave rise to the proceeding. Pet. App. 16a-39a. That holding is incorrect. Section 6330 is narrowly trained on the appropriateness of a proposed levy. When the parties no longer dispute the propriety of such a levy, the proceeding becomes moot. This Court should reverse.

A. The Text Of Section 6330 Makes Clear That A Pre-Levy Proceeding Is Moot When The IRS No Longer Seeks To Levy On A Taxpayer's Property

1. The United States Tax Court is "a court of limited jurisdiction." *Commissioner* v. *McCoy*, 484 U.S. 3, 7 (1987) (per curiam). It may exercise "only the power 'expressly conferred by Congress.'" Pet. App. 14a (quoting *Sunoco Inc.* v. *Commissioner*, 663 F.3d 181, 187 (3d Cir. 2011)); see 26 U.S.C. 7442; see, *e.g.*, *Commissioner* v. *Gooch Milling & Elevator Co.*, 320 U.S. 418, 422 (1943) (discussing the Tax Court's predecessor, the Board of Tax Appeals). "Thus, if a case raises a question within the jurisdictional purview of the tax court, and that question is subsequently resolved, the case is moot"—and the Tax Court lacks jurisdiction—"notwithstanding the existence of other live controversies between the taxpayer and the IRS that do *not* fall within the tax court's jurisdiction." *Willson* v. *Commissioner*, 805 F.3d 316, 320 (D.C. Cir. 2015).

Here, it is undisputed that the relevant jurisdiction-conferring provision is 26 U.S.C. 6330(d)(1). See Pet. 8; Br. in Opp. 14; see also Pet. App. 14a. Section 6330 pro-

vides a mechanism for "the taxpayer [to] challenge [a] levy or offer collection alternatives" before a seizure of the taxpayer's property occurs. *Boechler, P.C.* v. *Commissioner*, 596 U.S. 199, 202 (2022). That procedure—along with the similar one for tax liens, 26 U.S.C. 6320—is only necessary when the IRS is attempting to use a lien or levy to enforce collection of a tax liability. If the IRS's Appeals Office issues a "determination" that the proposed levy may proceed, Section 6330(d)(1) grants the Tax Court "jurisdiction" over the taxpayer's petition for review of "such determination." 26 U.S.C. 6330(d)(1); see 26 U.S.C. 6330(c)(3).

The entire point of the Section 6330 proceeding is to determine whether the IRS may go forward with its proposed levy. Thus, at every step, the statutory text is narrowly focused on that question. Congress supplied the title for the section: "Notice and opportunity for hearing before levy." 26 U.S.C. 6330; Taxpayer Bill of Rights § 3401(b), 112 Stat. 747. Section 6330(a)(1) directly ties the right to a hearing to the proposed levy, providing that "[n]o levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made." 26 U.S.C. 6330(a)(1); see *Greene-Thapedi* v. *Commissioner*, 126 T.C. 1, 6, 8 (2006). Notice of the proposed levy must be given "not less than 30 days before the day of the first levy," and it must include a variety of levy-related information, including "the proposed action"; "the provisions of [Title 26] relating to levy and sale of property"; "the procedures applicable to the levy and sale of property under [Title 26]"; "the administrative appeals available to the taxpayer with respect to such levy and sale"; "the alternatives available to taxpayers which

could prevent levy on property"; and "the provisions of [Title 26] and procedures relating to redemption of property and release of liens on property." 26 U.S.C. 6330(a)(2) and (3)(C). The exceptions to Section 6330 also reflect its focus on levies. The pre-levy procedure is unavailable if the Secretary finds that "the collection of tax is in jeopardy," or if the case concerns certain levies imposed on States, "disqualified employment tax lev[ies]," or "Federal contractor lev[ies]." 26 U.S.C. 6330(f). In those instances, "the taxpayer shall be given the opportunity for the hearing described in [Section 6330] within a reasonable period of time after the levy." *Ibid.*

If no exception applies and the taxpayer invokes her statutory right to a pre-levy hearing, "the levy actions which are the subject of the requested hearing" and certain limitations periods "shall be suspended for the period during which such hearing, and appeals therein, are pending." 26 U.S.C. 6330(e)(1); see 26 U.S.C. 6330(e)(2) (providing an exception to this rule). Because the levy is the "subject of the requested hearing," *ibid.*, it would make little sense for the action to continue once the IRS no longer seeks to enforce the levy.

The outcome of the "Collection Due Process" or "CDP hearing" under Section 6330 is a "'determination' regarding the legitimacy of the proposed levy." *Willson*, 805 F.3d 318, 320 (quoting 26 U.S.C. 6330(c)(3)); see *McLane* v. *Commissioner*, 24 F.4th 316, 318-319 (4th Cir.), cert. denied, 143 S. Ct. 408 (2022) (explaining that "the Appeals Office determines in the first instance whether the IRS's collection action may go forward"). At the hearing, the taxpayer 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." 26 U.S.C. 6330(c)(2)(A). The Appeals Office's "determination," in turn, "shall take into consideration * * * whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary." 26 U.S.C. 6330(c)(3)(C).

In certain cases where the taxpayer has not previously had the opportunity to dispute her tax liability, the taxpayer may also raise "challenges to the existence or amount of the underlying tax liability." 26 U.S.C. 6330(c)(2)(B). But like the other issues that the taxpayer may raise, such challenges to the taxpayer's underlying liability are simply "consideration[s]" that feed into the ultimate "determination" whether the levy may proceed. 26 U.S.C. 6330(c)(3)(C).

In this case, for example, the Notice of Determination that the Appeals Office sent respondent recounted the Appeals Office's "determination * * * that the proposed levy * * * balances the need for efficient collection of taxes with [respondent's] legitimate concern that any collection action be no more intrusive than necessary." Pet. App. 63a. And it stated that "the Final Notice of [I]ntent to Levy [was therefore] being sustained." *Ibid.*; see *id.* at 64a ("Appeals has determined to sustain the action (levy).").

2. The statutory focus on the appropriateness of a proposed levy follows the case to the Tax Court. Section 6330(d)(1) provides that "within 30 days of a determination under this section"—that is, a determination whether the levy may go forward—the taxpayer may "petition the Tax Court for review of such determination." 26 U.S.C. 6330(d)(1). And crucially, the statute

vests the Tax Court with "jurisdiction with respect to such matter," *ibid.*—*i.e.*, the "petition for review of [the Appeals Office's] determination." *Boechler*, 596 U.S. at 204; see, *e.g.*, *Lunsford* v. *Commissioner*, 117 T.C. 159, 164 (2001) (explaining that the Tax Court's "jurisdiction * * * is established when there is a written notice that embodies a determination to proceed with the collection of the taxes in issue, and a timely filed petition" therefrom). Thus, the Tax Court proceedings—like the earlier Appeals Office proceedings—are squarely focused on whether the IRS may enforce a proposed levy.

3. Once the IRS has determined that it is no longer seeking to levy on the taxpayer's property, there is nothing left for the Tax Court to do. Such a decision *not* to pursue a levy is "the very relief [the taxpayer] ostensibly sought when [she] requested a [Section 6330] hearing to challenge the proposed levy in the first place," and it is "all the relief that section 6330 authorizes the tax court to grant." *Willson*, 805 F.3d at 321. Section 6330(e)(1) provides that if a taxpayer requests a hearing, "the levy actions which are the subject of the requested hearing * * * shall be suspended" during the pendency of the hearing and any appeals. 26 U.S.C. 6330(e)(1). The statute further states that "[n]otwithstanding the provisions of section 7421(a)"—the Tax Anti-Injunction Act—"the beginning of a levy or proceeding during" that period of suspension "may be enjoined by a proceeding in the proper court, including the Tax Court" if an appeal to the Tax Court is timely filed. *Ibid.* But the timely appeal triggers Tax Court jurisdiction to enjoin other actions "only in respect of the unpaid tax or proposed levy to which the determination being appealed relates." *Ibid.* And that power ceases to matter when the IRS has already decided not to pur-

sue the proposed levy because it is satisfied that the tax has been paid.

Thus, when the IRS determines that it no longer needs or intends to take the taxpayer's property by levy, the pre-levy proceeding becomes moot. That is true whether the liability has been "abated," see *Willson*, 805 F.3d at 320 (IRS ceased pursuing levy based on incorrect assessment); *Byers* v. *Commissioner*, 740 F.3d 668, 679 (D.C. Cir. 2014) (similar); or has been satisfied with other taxpayer funds, see *McLane*, 24 F.4th at 319; *Greene-Thapedi*, 126 T.C. at 7.

And the proceeding remains moot regardless of whether the taxpayer contends that the IRS has made an error or continues to owe her money. See *Willson*, 805 F.3d at 320; *McLane*, 24 F.4th at 319 n.*; *Greene-Thapedi*, 126 T.C. at 7. The taxpayer may make those arguments in a *post*-deprivation suit for a refund—the traditional mechanism for disputing the assessment or collection of a federal tax. See 26 U.S.C. 7422(a); 28 U.S.C. 1346(a)(1), 1491(a)(1). But the Section 6330 proceeding is a rare pre-deprivation mechanism for challenging a particular method of a collection: a proposed levy. Once the IRS no longer seeks to deprive the taxpayer of any property by levy, the issue that prompted the Section 6330 proceeding is no longer "'live,'" and the parties have ceased to have any "legally cognizable interest" in a determination regarding the permissibility of the levy. *Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013) (citation omitted).[2]

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[2] Although it is not organized under Article III, the Tax Court has concluded that "[t]he case or controversy requirement under Article III 'presumptively' applies in the Tax Court." Pet. App. 15a (quoting *Battat* v. *Commissioner*, 148 T.C. 32, 46 (2017)). This Court need not determine whether the Tax Court's understanding is cor-

B. Section 6330's History And Function Within The Internal Revenue Code Confirm That A Pre-levy Proceeding Becomes Moot When There Is No Longer A Live Dispute Over A Proposed Levy

1. As discussed above, the default means for a taxpayer to dispute the assessment or collection of a federal tax is a post-payment refund suit. See pp. 3-4, *supra*. Before 1998, the Internal Revenue Code authorized the IRS to levy upon taxpayer property without any prior opportunity for a hearing or other pre-collection process, so long as the taxpayer was given 30 days' notice. See 26 U.S.C. 6331(d) (1994); see, *e.g.*, *Iames* v. *Commissioner*, 850 F.3d 160, 165 (4th Cir. 2017) (describing "the Commissioner's significant and previously unfettered power to levy").

That changed in 1998, when Congress enacted "a procedural protection for taxpayers to oppose IRS *collection* actions" before they occurred. *Jeffers* v. *Commissioner*, 992 F.3d 649, 655 (7th Cir. 2021). In making that change, Congress's "general focus" was "on the Commissioner's collection of a predetermined liability."

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rect. Regardless of whether Article III constraints apply, "the controversy must *also* fall within the [Tax Court's] statutory grant of jurisdiction." *Willson*, 805 F.3d at 320. And once the IRS has determined that it will not pursue a levy, the Tax Court lacks statutory jurisdiction over a Section 6330 proceeding. This Court may resolve the question presented on that basis. See *Sinochem Int'l Co.* v. *Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430-431 (2007).

In any event, assuming that Article III principles do apply, the case is moot. Respondent has no live interest in contesting a withdrawn levy, and the only relief that the Tax Court could provide—a determination that the levy could not go forward, and an injunction against it—would not constitute "effectual relief," *Campbell-Ewald Co.* v. *Gomez*, 577 U.S. 153, 161 (2016) (citation omitted), after the proposed levy has already been withdrawn.

Iames, 850 F.3d at 165. That is, Congress designed Section 6330 to review a proposed levy, not to provide a more general opportunity for a taxpayer to challenge an assessment of tax.

The pre-levy procedures in Section 6330 were understood as "establish[ing] formal procedures designed to insure due process where the IRS seeks to collect taxes by levy." S. Rep. No. 174, 105th Cong., 2d Sess. 67 (1998); see *ibid.* ("[T]he Committee believes that the IRS should afford taxpayers adequate notice of collection activity and a meaningful hearing before the IRS deprives them of their property."); see also H.R. Rep. No. 599, 105th Cong., 2d Sess. 263 (1998) (describing the new provision in similar terms). "[T]he entire purpose behind the creation of [Section 6330] was to provide taxpayers with greater due process to contest the IRS's levy and sale of their property." *Zapara* v. *Commissioner*, 652 F.3d 1042, 1045 (9th Cir. 2011). Nothing in the history of the provision suggests that Congress intended for the pre-levy proceeding to continue where there is no longer a live dispute over a proposed levy.

2. That understanding of Section 6330 is consistent with its important but limited function within the Internal Revenue Code. Challenges to the assessment of a tax are generally the province of post-payment refund suits, and in the case of certain taxes, pre-payment deficiency actions. See pp. 3-4, *supra*. The Internal Revenue Code and other statutes protect that principle through provisions like the Tax Anti-Injunction Act, 26 U.S.C. 7421(a), and the tax exception to the Declaratory Judgment Act, 28 U.S.C. 2201(a), which generally preclude suits for injunctive and declaratory relief regarding the assessment or collection of taxes. Understood against that backdrop, Section 6330 is a limited mecha-

nism to ensure that a taxpayer may "challenge a levy before seizure and sale," Pet. App. 4a—not an additional avenue to seek relief in the absence of a live dispute over a levy.

There are tens of thousands of Section 6330 proceedings each year. See Treasury Inspector Gen. for Tax Admin., U.S. Dep't of the Treasury, Report No. 2023-10-038, *Review of the IRS Independent Office of Appeals Collection Due Process Program* 7 (July 2023), perma.cc/DVL7-9HA8 (reporting 28,349 closed Section 6330 cases in 2023). Allowing those proceedings to continue even when the IRS no longer seeks to levy on a taxpayer's property could convert many of them from a limited opportunity for pre-deprivation review into a more general forum for considering challenges to tax liability. Nothing in the text or history of Section 6330 supports that end-run around the calibrated statutory framework that generally provides for post-payment adjudication of disputes over tax liability.

C. The Contrary Arguments Offered By Respondent And The Court Of Appeals Lack Merit

The court of appeals recognized that "the Tax Court need not hear a moot case." Pet. App. 16a. But the court held that a pre-levy proceeding under Section 6330 does not become moot when the IRS "withdr[aws] its levy." *Id.* at 25a. That was error, and neither the court of appeals nor respondent has offered any persuasive support for the court's holding.

1. The Tax Court lacks jurisdiction to consider a taxpayer's "underlying tax liability" when there is no live dispute over a proposed levy

a. In a portion of its opinion joined by only two members of the panel, the court of appeals held that the Sec-

tion 6330 proceeding in this case is not moot because respondent still disputes whether the IRS "erroneously allocated" the estimated payments to Gennardo rather than respondent. Pet. App. 19a. The court relied on Section 6330(c)(2)(B), which, in certain circumstances, allows a taxpayer to raise at a Section 6330 hearing "the existence or amount of the underlying tax liability." 26 U.S.C. 6330(c)(2)(B). Respondent likewise contends (Br. in Opp. 14) that the Tax Court may "resolve any dispute about the taxpayer's underlying tax liability that the taxpayer properly raised before the Appeals Office"—even if the IRS no longer seeks to enforce the levy that gave rise to the Section 6330 proceeding.[3]

That argument ignores the text and context of Section 6330(c)(2)(B). That provision comes into play

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[3] The parties have disagreed about which subsection of Section 6330 governs respondent's challenge to the IRS's allocation of estimated payments. See Pet. Reply Br. 4 n.2. While respondent relies on Section 6330(c)(2)(B)'s reference to "challenges to the existence or amount of the underlying tax liability," *id.* at 4, the government disputes that characterization because the liability itself—respondent's self-reported 2010 tax—is not in question. See Gov't C.A. Supp. Br. 24-25. Because respondent claims that the agreed-upon liability should have been paid through the estimated payments, the government views that argument as an "issue relating to the unpaid tax." 26 U.S.C. 6330(c)(2)(A); see *Melasky* v. *Commissioner*, 151 T.C. 89, 92 (2018) ("A question about whether the IRS properly credited a payment is not a challenge to a tax liability; *i.e.,* the amount of tax *imposed* by the Code for a particular year. It is instead a question of whether the liability remains *unpaid*."). The Court need not, however, decide this dispute to resolve the question presented. As discussed in the text, even under respondent's characterization, the Section 6330 proceeding in this case is moot because a taxpayer may challenge her "underlying tax liability" only in connection with a determination whether a proposed levy may proceed.

where the taxpayer seeks to dispute an "underlying tax liability." 26 U.S.C. 6330(c)(2)(B). For a "liability" to exist, the taxpayer must still owe a debt to the IRS. See *Webster's Third New International Dictionary of the English Language* 1302 (1993) (*Webster's Third*) (defining "liability" as "an amount that is owed whether payable in money, other property, or services"); see also *Black's Law Dictionary* 1095 (12th ed. 2024) (defining "liability" as "[a] financial or pecuniary obligation in a specificed amount; DEBT <tax liability>").

Crucially, for a taxpayer's liability to be "underlying," it must be "lying under or beneath," "be at the basis of," or "form the foundation of" something else. *Webster's Third* 2489 (definitions of "underlying" and "underlie"). In the context of Section 6330, the tax liability is "underlying" the proposed "levy actions which are the subject of the requested hearing." 26 U.S.C. 6330(c)(2)(B) and (e)(1). When there is not a proposed levy, any dispute about tax liability ceases to be the foundation for something else. There is accordingly no "underlying tax liability" for purposes of 26 U.S.C. 6330(c)(2)(B).

As the Fourth Circuit has correctly explained, the phrase "underlying tax liability" must be understood in "the specific context in which that language is used," and in Section 6330, "the 'specific context' is the IRS's attempt to collect via lien or levy." *McLane*, 24 F.4th at 319 (quoting *Yates* v. *United States*, 574 U.S. 528, 537 (2015)). Where Section 6330(c)(2)(B) applies, a taxpayer may challenge the existence or amount of her "underlying tax liability," 26 U.S.C. 6330(c)(2)(B)—just as she may raise "any relevant issue relating to the unpaid tax," 26 U.S.C. 6330(c)(2)(A). But those challenges are available for purposes of informing the determina-

tion whether the proposed levy may proceed. The statute therefore requires the Appeals Office to "take" those factors "into consideration" in making its "determination" about the levy. 26 U.S.C. 6330(c)(3). And the Tax Court will in turn review "such determination" on appeal. 26 U.S.C. 6330(d)(1). If the Tax Court concludes that a taxpayer owes less than the IRS has calculated, that conclusion will affect the propriety of the proposed collection action because the IRS cannot collect more than is owed.

But that is the extent of the Tax Court's jurisdiction under Section 6330. Section 6330 does not identify a challenge to the taxpayer's "underlying tax liability" as a freestanding issue. When the IRS is not seeking a levy, there is no *underlying* liability, and Section 6330(c)(2)(B) has no role to play. In that instance, the taxpayer cannot use a Section 6330 proceeding as an "independent basis to challenge the existence or amount" of her tax debt, *Greene-Thapedi*, 126 T.C. at 8—just as she could not have used Section 6330 to seek such findings if no levy had been proposed in the first place. See *McLane*, 24 F.4th at 319; *Willson*, 805 F.3d at 320-321; *Byers*, 740 F.3d at 679.

b. Echoing the court of appeals (Pet. App. 33a-36a), respondent has suggested (Br. in Opp. 19) that her case is not moot because the Tax Court "had authority to issue declaratory relief as to [her] underlying liability." But even where declaratory relief is generally available, it "does not 'extend' the 'jurisdiction' of the federal courts." *Medtronic, Inc.* v. *Mirowski Family Ventures, LLC*, 571 U.S. 191, 197 (2014) (quoting *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950)). And here, the Tax Court lacks the authority to provide the declaration that respondent seeks.

Congress has granted only limited powers of declaratory relief with respect to federal taxes. The Declaratory Judgment Act, 28 U.S.C. 2201(a), bars declaratory judgments "with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986." 28 U.S.C. 2201(a); see *ibid.* (excluding certain bankruptcy and duty-related proceedings). Section 7428 grants authority to issue declaratory judgments, but only with respect to tax-exempt status. 26 U.S.C. 7428(a)(1) and (2). Congress has also authorized the Tax Court to issue declaratory relief in certain other contexts. See 26 U.S.C. 7476-7479. But none of those provisions authorizes the Tax Court to issue declaratory judgments in a levy-review proceeding under Section 6330.

Respondent contends (Br. in Opp. 23) that because Section 6330(e)(1) "authorizes" the Tax Court to order "injunctive relief," it "necessarily * * * authorizes declaratory relief" as well. See Pet. App. 35a-36a. But respondent's reasoning fails on its own terms. Where the IRS no longer seeks to enforce a levy, the court has no power to enjoin a levy under Section 6330(e). See, *e.g.*, *Willson*, 805 F.3d at 321. Respondent therefore cannot bootstrap from the Tax Court's authority to issue an injunction the "milder" authority to issue a declaratory judgment. Br. in Opp. 23 (quoting *Steffel* v. *Thompson*, 415 U.S. 452, 466-467 (1974)).

More generally, Section 6330(e)(1)'s limited grant of authority to enjoin a specific collection action during a levy-review proceeding does not provide for Tax Court jurisdiction over any administrative action other than the proposed levy that is "the subject of the requested hearing." 26 U.S.C. 6330(e)(1). That provision simply provides courts with an enforcement mechanism to pre-

vent the use of a particular administrative collection tool—an administrative levy to collect a specific underlying liability—while the taxpayer is provided the opportunity to mount a pre-deprivation challenge to that levy. 26 U.S.C. 6330(c)(2)(A) and (e).

Reading the exception in Section 6330(e) to open the door to more general declaratory and injunctive relief would be at odds with Congress's determination, as a general rule, to "permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund." *Enochs* v. *Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962) (citing 26 U.S.C. 7421(a)); see, *e.g.*, *Phillips* v. *Commissioner*, 283 U.S. 589, 595-597 (1931). Congress's decision to suspend certain collection procedures while levy-review proceedings are pending—and to authorize the Tax Court to enforce that suspension—did not create additional exceptions to the general rule.[4]

c. Respondent suggests that the Tax Court's limited pre-deprivation jurisdiction survives the IRS's aban-

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[4] The court of appeals declined to decide whether the Tax Court has "overpayment or refund jurisdiction in a context like this," Pet. App. 34a n.38, and respondent has not raised that issue in this Court, see Br. in Opp. 21. There is no general grant of refund jurisdiction in the Tax Court. See, *e.g.*, *United States ex rel. Girard Trust Co.* v. *Helvering*, 301 U.S. 540, 542 (1937) (addressing the Tax Court's predecessor); *Empire Ordinance Corp.* v. *Harrington*, 249 F.2d 680, 682 (D.C. Cir. 1957). And while Congress has given the Tax Court jurisdiction to determine an overpayment or refund in certain specific proceedings, see 26 U.S.C. 6015(e) and (g), 6213, 6214(a), 6404(h), 6512(b), it has not done so with respect to pre-levy challenges under Section 6330, see, *e.g.*, *Brown* v. *Commissioner*, 58 F.4th 1064, 1066-1067 (9th Cir. 2023); *McLane*, 24 F.4th at 319; *Willson*, 805 F.3d at 321; *Greene-Thapedi*, 126 T.C. at 8, 12-13.

donment of its proposed levy because, in other contexts, "jurisdiction 'depend[s] upon the state of things at the time of the action brought.'" Br. in Opp. 16 (quoting *Grupo Dataflux* v. *Atlas Global Grp., L.P.*, 541 U.S. 567, 570 (2004)). But as the cases that respondent cites make clear, "that principle is not absolute." *Coba* v. *Ford Motor Co.*, 932 F.3d 114, 119 (3d Cir. 2019). Most "notably, where a case becomes moot in the course of the litigation," a court cannot continue to adjudicate it. *Cunningham Charter Corp.* v. *LearJet, Inc.*, 592 F.3d 805, 810 (7th Cir. 2010). That is the case here: Section 6330 provides the Tax Court with jurisdiction to review a "determination" whether a proposed levy may proceed. 26 U.S.C. 6330(c)(3) and (d)(1). When there is no longer any need for such a determination, there is no need for review of such a determination, and the Section 6330 proceeding is moot.

Even outside of mootness scenarios, this Court has recognized that a court may be deprived of subject-matter jurisdiction by developments that fundamentally alter the basis for a lawsuit, such as "the withdrawal of [the original] allegations" on which jurisdiction was based. *Rockwell Int'l Corp.* v. *United States*, 549 U.S. 457, 473 (2007). The Court recently applied that principle in *Royal Canin U.S.A., Inc.* v. *Wullschleger*, 604 U.S. 22 (2025). There, the plaintiff filed a complaint in state court containing both federal- and state-law claims, and the defendant removed the case to federal court, invoking federal-question jurisdiction (over the federal-law claims) and supplemental jurisdiction (over the state-law claims). *Id.* at 28-29. After the removal, the plaintiff amended her complaint to remove the federal claims. *Id.* at 29. This Court recognized that, at that point, the "changes in claims" had "effec-

tively rema[d]e the suit." *Id.* at 35. Because there were no longer any federal-law claims to which the consideration of state-law claims could be considered supplemental, the district court had ceased to have any "supplemental jurisdiction at all." *Id.* at 34.

The same logic applies here. The fundamental basis for a Section 6330 proceeding is the taxpayer's claim that the IRS should not be allowed to collect a tax liability via levy. See C.A. App. 24 (respondent's petition for review in the Tax Court sought review of the "determination * * * reflected in [the] Notice of Determination Concerning Collection Action[s]" in her case, which "sustained the validity and appropriateness of a Final Notice of Intent to Levy"). Respondent's overpayments of taxes in subsequent years—and the IRS's resulting determination that it "no longer needs nor intends to collect [respondent's] income tax liability" via levy, C.A. Doc. 5-4, at 450—effectively remade the suit, eliminating the need to determine whether the levy could proceed and hence any need to decide the underlying tax liability. The Tax Court accordingly ceased to have jurisdiction under Section 6330.

2. The Tax Court has no "implicit" jurisdiction to review offsets in a Section 6330 proceeding

The court of appeals alternatively held that this case is not moot because the Tax Court could review the IRS's allocation of respondent's later-year overpayments to offset her 2010 tax liability. Pet. App. 20a-25a. In so holding, the court of appeals reasoned that, while "it may be that Congress has not *explicitly* granted the Tax Court such power," there is nevertheless "an *implicit* grant" of jurisdiction that "allows the [Tax] Court to review setoffs in any event." *Id.* at 20a.

Respondent did not defend that aspect of the court of appeals' decision in her brief in opposition. And for good reason. Tax Court jurisdiction must be expressly conferred by statute. See p. 16, *supra*; 26 U.S.C. 7442 ("The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10–87), or by laws enacted subsequent to February 26, 1926."). And no statute grants the Tax Court jurisdiction to review in a Section 6330 proceeding the IRS's exercise of authority under Section 6402(a) to credit (or offset) a taxpayer's overpayments against her tax liability. To the contrary, Section 6330 grants the Tax Court jurisdiction only to review—and, if necessary, enjoin—the "levy action[]" that is the "subject of the requested hearing." 26 U.S.C. 6330(e)(1). It does not affect the IRS's ability to take other enforcement actions, including the authority to credit overpayments against existing liabilities under Section 6402; nor does it grant the Tax Court jurisdiction to review such actions. See 26 C.F.R. 301.6330–1(g)(2), Q & A-G3; see also *Belloff* v. *Commissioner*, 996 F.2d 607, 616 (2d Cir. 1993). Courts have therefore repeatedly held that the Tax Court lacks jurisdiction to review Section 6402(a) credits in a Section 6330 proceeding. See, *e.g.*, *Boyd* v. *Commissioner*, 451 F.3d 8, 10-11 (1st Cir. 2006); *Greene-Thapedi*, 126 T.C. at 7-8.

Moreover, even if the Tax Court had jurisdiction to review the application of credits under Section 6402 in a Section 6330 proceeding, the court of appeals' mootness holding would still be erroneous. The court of appeals reasoned that the Tax Court has jurisdiction to review the IRS's use of respondent's overpayments to

offset her tax liability, and that those offsets were invalid, such that respondent should be deemed to have an outstanding tax liability for 2010. Pet. App. 20a-25a. And the court of appeals took the view that the Tax Court therefore has jurisdiction to consider respondent's challenge to "the IRS's application of the estimated payments" to Gennardo rather than respondent. Pet. App. 19a. But the Tax Court would have jurisdiction under Section 6330 to consider such a challenge only in connection with a live dispute over a proposed levy. See pp. 16-31, *supra*. And the IRS has no basis for pursuing a levy so long as respondent's overpayments remain "in the government's pocket." Pet. App. 25a. Nor did the court of appeals conclude that the Tax Court could order the IRS to refund those overpayments. See p. 29 n.4, *supra*. Thus, even if the application of credits was invalid—and it was not[5]—the Section 6330 proceeding would still be moot at this point.

D. The Instant Case Is Moot

Applying the foregoing principles, respondent's case is moot. In 2012, respondent self-reported to the IRS that she owed $21,918 in taxes for tax year 2010. C.A. App. 475. The IRS assessed liability based on respondent's representation. *Id.* at 280; see 26 U.S.C. 6201(a)(1). When the IRS then proposed to collect the liability by

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[5] The court of appeals concluded that the application of credits violated the common-law rule that "a creditor cannot set off a disputed debt with an undisputed one." Pet. App. 22a. But that rule has no application under Section 6402(a), which authorizes the IRS to "credit the amount of [an] overpayment * * * against any liability," undisputed or not. 26 U.S.C. 6402(a). The court also reasoned that the application of credits violated "Article III mootness principles." Pet. App. 25a. But no such principles limit the IRS's exercise of statutory authority under Section 6402(a).

administrative levy, respondent timely requested a pre-deprivation hearing under Section 6330 to argue that certain estimated tax payments should be applied to her account, which would have (more than) satisfied her reported tax liability, such that the proposed levy could not go forward. C.A. App. 566.

During the pendency of her pre-levy proceedings, respondent made overpayments for subsequent tax years, and, under Section 6402(a), the IRS credited those new payments against respondent's 2010 liability. With no unpaid tax remaining on respondent's underlying liability, there is no basis to proceed with the levy that respondent had challenged. In these circumstances, there is no live dispute subject to Section 6330, and the Tax Court can grant no further relief in a Section 6330 proceeding. The case is therefore moot.

Contrary to respondent's suggestion, that result does not violate "the presumption favoring judicial review of administrative action." Br. in Opp. 23 (citation omitted). As respondent has acknowledged (*id.* at 2, 4, 13, 16, 25), a holding that her Section 6330 proceeding is moot will not foreclose her from seeking judicial review because she could file a refund suit—the traditional mechanism for disputing the assessment or collection of a federal tax, and the one that is available regardless of whether the IRS had ever proposed to levy on respondent's property. See 26 U.S.C. 7422(a); 28 U.S.C. 1346(a)(1); see also 26 U.S.C. 7422(d) (deeming overpayment credits to be "payment[s]" for purposes of a refund suit). This Court should hew to Section 6330's plain text, which limits the Tax Court's jurisdiction to a dispute over a proposed levy.

CONCLUSION

This Court should reverse the judgment of the court of appeals.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. 26 U.S.C. 6330 provides:

Notice and opportunity for hearing before levy

(a) Requirement of notice before levy

(1) In general

No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

(2) Time and method for notice

The notice required under paragraph (1) shall be—

(A) given in person;

(B) left at the dwelling or usual place of business of such person; or

(C) sent by certified or registered mail, return receipt requested, to such person's last known address;

not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

(3) Information included with notice

The notice required under paragraph (1) shall include in simple and nontechnical terms—

(A) the amount of unpaid tax;

(B) the right of the person to request a hearing during the 30-day period under paragraph (2); and

(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

(i) the provisions of this title relating to levy and sale of property;

(ii) the procedures applicable to the levy and sale of property under this title;

(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;

(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159); and

(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

(b) Right to fair hearing

(1) In general

If the person requests a hearing in writing under subsection (a)(3)(B) and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Independent Office of Appeals.

(2) One hearing per period

A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

(3) Impartial officer

The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.

(c) Matters considered at hearing

In the case of any hearing conducted under this section—

(1) Requirement of investigation

The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

(2) Issues at hearing

(A) In general

The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—

(i) appropriate spousal defenses;

(ii) challenges to the appropriateness of collection actions; and

(iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

(B) Underlying liability

The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

(3) Basis for the determination

The determination by an appeals officer under this subsection shall take into consideration—

(A) the verification presented under paragraph (1);

(B) the issues raised under paragraph (2); and

(C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

(4) Certain issues precluded

An issue may not be raised at the hearing if—

(A)(i) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and

(ii) the person seeking to raise the issue participated meaningfully in such hearing or proceeding;

(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A); or

(C) a final determination has been made with respect to such issue in a proceeding brought under subchapter C of chapter 63.

This paragraph shall not apply to any issue with respect to which subsection (d)(3)(B) applies.

(d) Proceeding after hearing

(1) Petition for review by Tax Court

The person may, within 30 days of a determination under this section, petition the Tax Court for review of such determination (and the Tax Court shall have jurisdiction with respect to such matter).

(2) Suspension of running of period for filing petition in title 11 cases

In the case of a person who is prohibited by reason of a case under title 11, United States Code, from filing a petition under paragraph (1) with respect to a determination under this section, the running of the period prescribed by such subsection for filing such a petition with respect to such determination shall be suspended for the period during which the person is so prohibited from filing such a petition, and for 30 days thereafter.

(3) Jurisdiction retained at IRS Independent Office of Appeals

The Internal Revenue Service Independent Office of Appeals shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—

(A) collection actions taken or proposed with respect to such determination; and

(B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

(e) Suspension of collections and statute of limitations

(1) In general

Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin

any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates.

(2) Levy upon appeal

Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.

(f) Exceptions

If—

(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy,

(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund,

(3) the Secretary has served a disqualified employment tax levy, or

(4) the Secretary has served a Federal contractor levy,

this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

(g) Frivolous requests for hearing, etc.

Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets

the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.

(h) Definitions related to exceptions

For purposes of subsection (f)—

(1) Disqualified employment tax levy

A disqualified employment tax levy is any levy in connection with the collection of employment taxes for any taxable period if the person subject to the levy (or any predecessor thereof) requested a hearing under this section with respect to unpaid employment taxes arising in the most recent 2-year period before the beginning of the taxable period with respect to which the levy is served. For purposes of the preceding sentence, the term "employment taxes" means any taxes under chapter 21, 22, 23, or 24.

(2) Federal contractor levy

A Federal contractor levy is any levy if the person whose property is subject to the levy (or any predecessor thereof) is a Federal contractor.

2. 26 U.S.C. 6402(a) provides:

Authority to make credits or refunds

(a) General rule

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal

revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), (e), and (f), refund any balance to such person.