

LR
#7

INTERNATIONAL DUE DATES: Amend Internal Revenue Code § 6213(b)(2)(A) to Provide Additional Time to Request Abatement of a Mathematical or Clerical Error Assessment to Taxpayers Living Abroad Similar to the Timeframe Afforded to Taxpayers to Respond to a Notice of Deficiency

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

PROBLEM

Approximately nine million U.S. citizens live abroad,² along with over 170,000 U.S. military service personnel and their families,³ and hundreds of thousands of students and foreign taxpayers with U.S. tax obligations.⁴ Taxpayers abroad face unique challenges in complying with complex international tax obligations that may result in inadvertent errors and mistakes.⁵ These errors can cause the IRS to make a summary assessment of tax based on a mathematical or clerical error, bypassing regular deficiency procedures.⁶

While Internal Revenue Code (IRC) § 6213(a) allows international taxpayers (taxpayers living or traveling abroad) an additional 60 days to file a petition in the Tax Court in response to a statutory notice of deficiency (SNOD) (for a total of 150 days compared to 90 days allowed to domestic taxpayers), taxpayers abroad have only 60 days to file a request with the IRS for an abatement of the mathematical or clerical error assessment (the same time frame as is allowed to domestic taxpayers) pursuant to IRC § 6213(b).⁷ As a cost saving measure, the IRS eliminated all face-to-face assistance and interactive help for taxpayers

- 1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).
- 2 The Department of State estimates that nine million U.S. citizens live abroad and more than 70 million U.S. citizens travel abroad annually. U.S. Department of State, Bureau of Consular Affairs, CA by the Numbers, Fiscal Year 2015 data, updated June 2016.
- 3 U.S. Department of Defense, Defense Manpower Data Center, Ref. No. DRS #54601, *Total Military Personnel and Dependent End Strength By Service, Regional Area, and Country - Military* (as of Sept. 30, 2015), https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp (last visited on Mar. 7, 2016).
- 4 National Taxpayer Advocate 2015 Annual Report to Congress 81. See also National Taxpayer Advocate 2013 Annual Report to Congress 213; National Taxpayer Advocate 2009 Annual Report to Congress 183.
- 5 See, e.g., National Taxpayer Advocate 2015 Annual Report to Congress 72-81 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*). See also Foreign Account Tax Compliance Act (FATCA) codified as §§ 1471-1474 & 6038D; Foreign Bank and Financial Accounts (FBAR) reporting rules, 31 U.S.C. §§ 5314, 5321; 31 C.F.R. §§ 1010.350, 1010.306(c); the Affordable Care Act (ACA), Pub. L. No. 111-148, 124 Stat. 119 (2010).
- 6 IRC § 6213(b). See also IRC §§ 6212, 6213(a).
- 7 See IRC § 6213(b)(1) and (b)(2).

abroad.⁸ These taxpayers are left with the options of obtaining information from irs.gov web pages or calling the IRS International Call Center (not toll-free).⁹

The difficulty of taxpayers in accessing IRS services from abroad, combined with international mail delays, makes 60 days to respond to an IRS math error notice an insufficient time, and undermines these taxpayers' right to *challenge the IRS's decision in an independent forum*, because if the taxpayer fails to timely respond to a math error notice, he or she may not petition the Tax Court, the only prepayment judicial forum. Given the complexity of the international tax rules and reporting requirements, and the potentially devastating penalties for even inadvertent noncompliance, increasing the response time to 120 days similar to the framework for extending the time to respond to a SNOD, would provide these taxpayers parity with domestic taxpayers and enhance their *rights to challenge the IRS position, to pay no more than the correct amount of tax, and to a fair and just tax system*.

EXAMPLE

Taxpayer, a U.S. citizen, relocated to China to assist her company in opening an office in Beijing. The taxpayer properly notified the IRS of her new address before moving abroad. She timely filed her U.S. tax return. On June 5, the taxpayer received a math error notice from the IRS; the notice was dated April 18. The taxpayer found the language in the notice very confusing and did not understand what was wrong with her return. The taxpayer attempted to call the IRS over the course of several days. After a lengthy wait on hold every time, however, the taxpayer was disconnected and could not reach an IRS representative. Next, the taxpayer attempted to find an accountant or attorney in Beijing who specialized in U.S. tax law. With only nine days to respond to the notice, however, the taxpayer was not able to find assistance. Her time to request abatement expired and she was assessed additional tax. The taxpayer lacks financial resources to pay the tax and then pursue refund litigation in district court or the court of federal claims.

RECOMMENDATION

The National Taxpayer Advocate recommends that Congress amend IRC § 6213(b)(2)(A) to allow 120 days for taxpayers outside the U.S. to file a request with the IRS for an abatement of an assessment arising from mathematical or clerical errors.

PRESENT LAW

IRC § 6213(b) authorizes the IRS to make a summary assessment of tax arising from mathematical or clerical errors as defined in IRC § 6213(g), bypassing the customary deficiency procedures. Under

8 During late 2014 and 2015, the IRS eliminated the last four tax attaché posts abroad and the Electronic Tax Law Assistance Program (ETLA), and discontinued R-mail, a system that allowed customer service representatives to refer taxpayer questions to employees with specific expertise. See *Internal Revenue Service FY 2017 Budget Request: Hearing Before the S. Subcomm. on Financial Services and S. Comm. on General Government Appropriations*, 100th Cong. (2016) (written statement of Nina E. Olson, National Taxpayer Advocate), <https://www.irs.gov/advocate/national-taxpayeradvocate-congressional-testimony>. See also *The Taxpayer Advocate Annual Report to Congress: Hearing Before the Subcomm. on Gov't Operations of the H. Comm. on Oversight & Gov't Reform*, 114th Cong. (2016) (written statement of Nina E. Olson, National Taxpayer Advocate).

9 Over half of taxpayers may be unable to reach an IRS employee on the toll-free phone lines this year. The Commissioner of Internal Revenue recently estimated the level of service on the toll-free phone lines for the entire filing season would "probably be at or above 65 percent," and the level of service for the full year would be "around 47 percent." John A. Koskinen, Commissioner of Internal Revenue, Address Before the National Press Club (Mar. 24, 2016), <https://www.irs.gov/uac/March-24-2016-Commissioner-Koskinen-Speech-to-National-Press-Club>. See also IRS, *Contact My Local Office Internationally*, <http://www.irs.gov/uac/Contact-My-Local-Office-Internationally>; National Taxpayer Advocate 2013 Annual Report to Congress 205-213.

IRC § 6213(b)(2)(A), a taxpayer has 60 days, after notice is sent, to file with the IRS a request for an abatement of the assessment for mathematical or clerical errors.¹⁰ An assessment made under this section may not be challenged directly in the Tax Court.¹¹ However, if the taxpayer timely requests the assessment be abated, the IRS must abate the assessment and follow normal deficiency procedures under IRC § 6212 to reassess the increase in the tax shown on the return.¹² Requesting an abatement of the assessment is the only way for the taxpayer to preserve the right to prepayment judicial review in the Tax Court.¹³

In contrast, under IRC § 6213(a), taxpayers outside of the United States are allowed a deadline of 150 days to file a petition after a notice of deficiency is mailed.¹⁴ Domestic taxpayers may generally file a petition for a redetermination of the deficiency with the Tax Court within 90 days from the date that the notice is mailed.¹⁵ Thus, the law allows an additional 60 days for international taxpayers to file a petition for redetermination of a deficiency.

REASONS FOR CHANGE

Under deficiency procedures introduced in the Revenue Act of 1924, taxpayers had 60 days from the mailing of a notice of deficiency to file a petition for the redetermination of the deficiency with the Tax Court, then known as the Board of Tax Appeals.¹⁶ When Congress enacted the Revenue Act of 1934, it extended the time period to petition the Tax Court to its current period of 90 days.¹⁷ Congress substituted 90 days in lieu of 60 days as “[e]xperience has shown that this (60 days) is not sufficient time in case of involved assessments, or in case of taxpayers living a very great distance from Washington.”¹⁸ The 150 day filing rule was adopted in 1942 to address the hardship created where a taxpayer was in a remote place and experienced delays in receiving mail during the then existing war.¹⁹ After World War II concluded, 150 days to file a petition for the redetermination of the deficiency remained in the IRC. The reasons for granting additional time to taxpayers living “a very great distance from Washington” are no less true in the case of math error notices than in the case of notices of deficiency.

If a taxpayer misses the deadline to contest a math error notice with the IRS, he or she would lose the opportunity for prepayment judicial review of the IRS assessment in the Tax Court.²⁰ This would deprive the taxpayer of the *rights to challenge the IRS’s position in an independent forum and to pay no more than the correct amount of tax.*

According to the Department of State estimates, the number of U.S. citizens abroad has increased from approximately 3.8 million in 1999 to about nine million in 2015 as shown on Figure 2.7.1 below.

10 IRC § 6213(b)(2)(A).

11 IRC § 6213(b)(1).

12 IRC § 6213(b)(2)(A).

13 IRC § 6213(b)(1).

14 *Id.*

15 IRC § 6213(a).

16 Revenue Act of 1924, 43 Stat. 253, 274 (1924).

17 Revenue Act of 1934, 73 Cong. Ch. 277, 501 (1934).

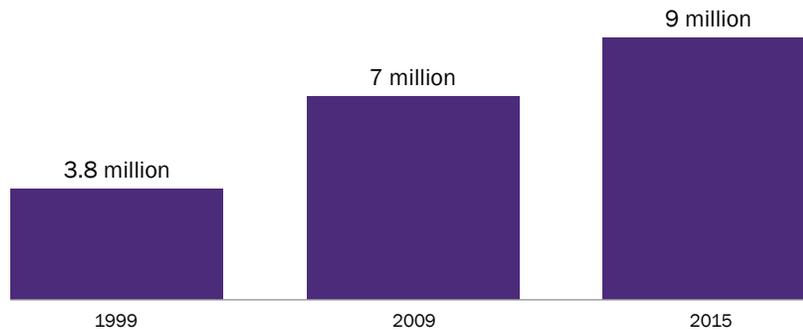
18 *Hamilton v. C.I.R.*, 13 T.C. 747, 750 (1949) (quoting the H. Comm. on Ways and Means committee report).

19 S. REP. No.1631-77, at 154 (2d Sess. 1942). See also *Hamilton v. C.I.R.*, 13 T.C. 747, 750 (1949) (quoting the S. Comm. on Finance committee report).

20 IRC § 6213(b)(1).

FIGURE 2.7.1²¹

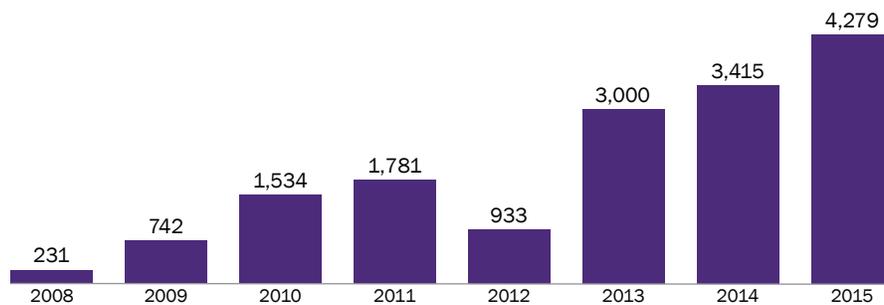
Estimates of U.S. Citizens Living Abroad in 1999-2015



According to some repatriates and practitioners, the tax burden, including reporting obligations and potential penalties, is responsible for the surge in the number of Americans renouncing their citizenship or permanent resident status.²² More renunciations have occurred in 2015 than in any other year on record as shown in Figure 2.7.2.

FIGURE 2.7.2²³

Renunciations of U.S. Citizenship in 2008-2015



Taxpayers abroad lack access to face-to-face service and must contend with international calling costs and delays in the IRS answering the phone. These concerns coupled with delays in international mail, language differences, time zones, unclear language in math error notices, and access to tax professionals all

21 U.S. Department of State, Bureau of Consular Affairs, *Private American Citizens Residing Abroad*, July 1999. See also U.S. Department of State, Bureau of Consular Affairs, *CA by the Numbers*, Fiscal Year 2015 data, updated June 2016.

22 National Taxpayer Advocate 2013 Annual Report to Congress 238-48 (Most Serious Problem: *Reporting Requirements: The Foreign Account Tax Compliance Act Has the Potential to be Burdensome, Overly Broad, and Detrimental to Taxpayer Rights*). See also CNN Money, Jethro Mullen, *Record number of Americans dump U.S. passports*, Feb. 8, 2016, <http://money.cnn.com/2016/02/08/news/americans-citizenship-renunciation/>; Jeff John Roberts, *Bye-bye, USA: Record Number Give Up Citizenship for Third Year in a Row*, *FORTUNE* (Feb. 8, 2016), <http://fortune.com/2016/02/08/renounce-us-citizenship/>.

23 Federal Register, IRS, Quarterly Publication of Individuals, Who Have Chosen to Expatriate As Required by Section 6039G, <https://www.federalregister.gov/quarterly-publication-of-individuals-who-have-chosen-to-expatriate>. See also Tom Kasprzak, *U.S. Expatriations Return to Near-Record Levels*, *TAX NOTES TODAY* (Nov. 10, 2016).

present significant barriers to compliance for taxpayers living or traveling abroad.²⁴ The failure to provide extended time frames for response to notices in the same section of the IRC is confusing and prejudicial to taxpayers abroad. Remedying this discrepancy by providing the same 60-day extension for both types of notices would protect taxpayers' rights *to pay no more than the correct amount of tax due, to appeal an IRS decision in an independent forum, to challenge the IRS's position and be heard, and to a fair and just tax system.*

EXPLANATION OF RECOMMENDATION

Amending IRC § 6213(b)(2)(A) to provide additional time for taxpayers outside the United States would bring parity with IRC § 6213(a). With both subsections providing for the same extension of time to respond, *i.e.*, 60 additional days, taxpayers will not be prevented from contesting IRS math error notices and subsequently requesting judicial review of the deficiency in the Tax Court. IRC § 6213(a) provides 150 days for taxpayers outside of the United States to file a petition after the SNOD is mailed compared to domestic taxpayers who may file a petition for a redetermination of the deficiency with the Tax Court within 90 days from the date that the notice is mailed. Similarly, the proposed legislative change will allow an additional 60 days for international taxpayers to request an abatement in response to an IRS math error notice. This legislative change will eliminate confusion of international taxpayers about their responsibilities and adjust the length of time to respond, addressing issues with international mail, access to the IRS, and access to competent tax assistance as well as protect taxpayer rights. This would not be prejudicial to the IRS's ability to enforce its math error authority while improving the fairness of the tax system.

24 See National Taxpayer Advocate 2015 Annual Report to Congress 72 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*); National Taxpayer Advocate 2014 Annual Report to Congress 163 (Most Serious Problem: *Math Error Notices: The IRS Does Not Clearly Explain Math Error Adjustments, Making It Difficult for Taxpayers to Understand and Exercise Their Rights*); National Taxpayer Advocate 2010 Annual Report to Congress 221 (Most Serious Problem: *The IRS Has Not Studied or Addressed the Impact of the Large Volume of Undelivered Mail on Taxpayers*).