

#24 CONTINUE TO LIMIT THE IRS'S USE OF "MATH ERROR AUTHORITY" TO CLEAR-CUT CATEGORIES SPECIFIED BY STATUTE

Present Law

Before assessing a deficiency, the IRS is ordinarily required by IRC § 6213(a) to send the taxpayer a statutory notice of deficiency that gives the taxpayer 90 days (150 days if addressed to a taxpayer outside the U.S.) to contest it by filing a petition with the U.S. Tax Court (known as "deficiency procedures"). The taxpayer's ability to appeal a deficiency determination to the Tax Court before paying is central to the taxpayer's right to appeal an IRS decision in an independent forum. As an exception to that requirement, IRC § 6213(b)(1) authorizes the IRS to summarily assess and collect tax after 60 days, without first providing the taxpayer with a statutory notice of deficiency or access to the Tax Court, to correct "mathematical and clerical" errors (known as "math error authority"). Taxpayers who do not contest a proposed deficiency within this shorter period lose the opportunity to do so in court before paying. Under current law, the IRS may summarily assess 17 types of "mathematical or clerical error," which are codified at IRC § 6213(g)(2) (in subparagraphs A-Q).

Reasons for Change

Congress established and required the IRS to follow deficiency procedures to provide taxpayers with notice and a reasonable opportunity to challenge an adverse IRS tax adjustment. Math error authority, which provides fewer taxpayer protections, was authorized as a limited exception to regular deficiency procedures. It allows the IRS to make adjustments in cases of clear taxpayer error, such as where a taxpayer incorrectly adds numbers or incorrectly transcribes a number from one form to another. Because taxpayers have fewer protections under math error procedures, the procedures are not intended to be used where a substantive disagreement may exist. When Congress has expanded the IRS's math error authority, it has done so only where it has been convinced that taxpayer error is relatively clear-cut and no substantive disagreement is likely to exist.

Because math error procedures are cheaper and simpler for the IRS than standard deficiency procedures, the Department of the Treasury on several recent occasions has requested that Congress grant it the authority to add certain categories of "correctable errors" by regulation.¹⁰²

The National Taxpayer Advocate understands the administrative simplicity of math error procedures, but is concerned about the impact of a broad grant of regulatory authority on taxpayer rights. In her reports to Congress, she has documented circumstances in which the IRS has used math error authority to address discrepancies and mismatches that go beyond simple arithmetic mistakes and have undermined taxpayer rights.¹⁰³

If the IRS uses math error authority to address complex issues that require additional fact finding, the assessments are more likely to be wrong, and the IRS's computer-generated notices, which confuse many taxpayers in the simplest of circumstances, are likely to become even more difficult to understand. Shorter

¹⁰² See Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals*, 245-246 (Feb. 2015), <https://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf> (last visited Dec. 20, 2017).

¹⁰³ See, e.g., National Taxpayer Advocate 2015 Annual Report to Congress 329-339; National Taxpayer Advocate 2014 Annual Report to Congress 163-171; National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 5, 91-92; National Taxpayer Advocate 2011 Annual Report to Congress 74-92; National Taxpayer Advocate 2006 Annual Report to Congress 311; National Taxpayer Advocate 2003 Annual Report to Congress 113; National Taxpayer Advocate 2002 Annual Report to Congress 25, 186; National Taxpayer Advocate 2001 Annual Report to Congress 33.

deadlines and confusing notices will prevent some taxpayers from responding timely. As a result, these taxpayers will lose the opportunity to challenge the adjustments in court before paying. The IRS may also waste resources responding to calls and letters, reviewing additional documentation, and processing abatement requests from taxpayers whose returns were correct as filed. It may even seek to collect inaccurate assessments from them. Thus, expanding math error authority into more complicated areas will burden taxpayers unnecessarily, erode taxpayer rights, and sometimes waste IRS resources.

Math error authority may be appropriate to use in instances where required schedules are omitted, or annual or lifetime dollar caps have been exceeded. It also may be appropriate to use where there is a discrepancy between a return entry and data available to the IRS from a reliable government database, such as records maintained by the Social Security Administration. But the IRS alone should not be the arbiter of that reliability. Rather, Congress should retain full authority to determine whether the administrative “efficiency” of using math error authority in these instances outweighs the loss of the significant taxpayer protections that deficiency procedures provide.

Recommendation

Continue to limit the IRS’s use of “math error authority” to clear-cut categories specified by statute. Because the standard deficiency procedures created by Congress provide important taxpayer protections, the IRS should not be authorized to add new categories by regulation.

Instead, amend IRC § 6213(g) to authorize the IRS to summarily assess a deficiency due to “clerical errors” only pursuant to Congressional authorization and where: (1) there is a discrepancy between a return entry and reliable government data; (2) the IRS’s notice clearly describes the discrepancy and how to contest it; (3) the IRS has researched all information in its possession that could help reconcile the discrepancy; (4) the IRS does not have to evaluate documentation to make a determination; and (5) there is a low abatement rate for taxpayers who respond. In addition, amend IRC § 6213(g) to provide that the IRS is not authorized to use any new criteria or data to make summary assessments unless the Department of the Treasury, in conjunction with the National Taxpayer Advocate, has evaluated and publicly reported on the reliability of the criteria or data for that intended use.¹⁰⁴

¹⁰⁴ For a more limited recommendation, see National Taxpayer Advocate 2015 Annual Report to Congress 329-339 (Legislative Recommendation: *Authorize the IRS to Summarily Assess Math and “Correctable” Errors Only in Appropriate Circumstances*).