

#26 PROVIDE ADDITIONAL TIME FOR TAXPAYERS OUTSIDE THE UNITED STATES TO REQUEST ABATEMENT OF A MATH ERROR ASSESSMENT EQUAL TO THE TIME EXTENSION ALLOWED IN RESPONDING TO A NOTICE OF DEFICIENCY

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 deficiency procedures. Thus, a taxpayer has no right to file a petition with the U.S. Tax Court based on a math error notice. Under IRC § 6213(b)(2)(A), a taxpayer has 60 days, after a math error notice is sent, to file a request with the IRS for an abatement of the assessment for mathematical or clerical errors. However, if the taxpayer makes a timely abatement request, the IRS must abate the assessment and follow deficiency procedures under IRC § 6212 to reassess the increase in the tax shown on the return. If the taxpayer does not submit an abatement request within 60 days, the taxpayer forfeits his right to file a petition in the Tax Court. No additional time to request abatement is allotted when the math error notice is addressed to a taxpayer outside the United States.

By contrast, certain taxpayers who receive notices of deficiency from the IRS are given additional time to file petitions in the Tax Court. Taxpayers may generally file a petition with the Tax Court for a redetermination of the deficiency within 90 days from the date the notice is mailed. When the notice of deficiency is addressed to a taxpayer outside the United States, IRC § 6213(a) provides that the taxpayer has 150 days from the date the notice is mailed to file a Tax Court petition. The 150-day period for filing a petition applies to a taxpayer who is located outside the United States even if the notice of deficiency is sent to an address within the United States, as well as to a taxpayer when the notice of deficiency bears an address outside the United States.¹⁰⁵ Thus, the law allows an additional 60 days for taxpayers to file a petition for redetermination of a deficiency when the notice of deficiency is addressed to a taxpayer outside the United States.

Reasons for Change

Approximately nine million U.S. citizens live abroad,¹⁰⁶ along with more than 190,000 U.S. military service personnel and their families, and hundreds of thousands of students and foreign taxpayers with U.S. tax obligations. Taxpayers living (temporarily or permanently) abroad typically require more time to respond to IRS notices than taxpayers living in the United States for several reasons. First, mail takes longer to be delivered in both directions — in some cases, depending on where the taxpayer is located, substantially longer. Second, persons temporarily abroad often do not have access to their tax or financial records, making it impossible for them to respond immediately.

By giving taxpayers living abroad 60 additional days to file a petition with the Tax Court in response to a notice of deficiency, Congress recognized that holding overseas taxpayers to the same deadlines as taxpayers living in the United States would not be fair or realistic. The same considerations apply with respect to the deadline for responding to math error notices. In fact, the need for additional time to respond may be greater

¹⁰⁵ The phrase “addressed to a person outside the United States” is ambiguous, and the Tax Court construes it broadly. See, e.g., *Levy v. Comm’r*, 76 T.C. 228 (1981) (holding that the 150-day rule is applicable to a U.S. resident who is temporarily outside of the country when the notice is mailed and delivered); *Looper v. Comm’r*, 73 T.C. 690 (1980) (holding that the 150-day rule is applicable where a notice is mailed to an address outside the United States); *Lewy v. Comm’r*, 68 T.C. 779 (1977) (holding that the 150-day rule is applicable to a foreign resident who is in the United States when the notice is mailed, but outside the United States when the notice is delivered); *Hamilton v. Comm’r*, 13 T.C. 747 (1949) (holding that the 150-day rule is applicable to a foreign resident who is outside the United States when the notice is mailed and delivered).

¹⁰⁶ The Department of State estimates that 9,000,000 U.S. citizens live abroad. U.S. Department of State, Bureau of Consular Affairs, *CA by the Numbers, Fiscal Year 2015 data*, updated June 2016. See https://web.archive.org/web/20160616233331/https://travel.state.gov/content/dam/travel/CA_By_the_Numbers.pdf.

in the case of math error notices because the standard response deadline is 60 days (as opposed to 90 days for filing a Tax Court petition in response to a notice of deficiency).

The right of a taxpayer to respond to an adverse tax adjustment and have his response fairly considered is central to a fair tax system.¹⁰⁷ Giving taxpayers the same additional 60-day period to respond to math error notices when the notices are addressed to them outside the United States as the law currently provides for these taxpayers to file petitions in response to deficiency notices would help ensure that their rights to challenge adverse IRS tax adjustments are comparable to the rights of U.S. taxpayers who are not absent from the United States.

Recommendation

Amend IRC § 6213(b)(2)(A) to allow 120 days to request abatement when the math error notice is addressed to taxpayers outside the United States.

¹⁰⁷ The following specific taxpayer rights apply in this situation: *the right to pay no more than the correct amount of tax, the right to challenge the IRS's position and be heard, and the right to appeal an IRS decision in an independent forum.*