

MSP #4

Expansion of Math Error Authority and Lack of Notice Clarity Create Unnecessary Burden and Jeopardize Taxpayer Rights

RESPONSIBLE OFFICIALS

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DEFINITION OF PROBLEM

Under Internal Revenue Code (IRC) §§ 6213(b) and (g), the IRS is authorized, in specific instances, to use its math error authority to summarily assess tax without first providing the taxpayer with access to the pre-payment forum of the U.S. Tax Court. Both the Treasury Inspector General for Tax Administration (TIGTA) and the Government Accountability Office (GAO) have recently urged the IRS to increase its use of this authority, stating that it is a cost-effective way to process new items on tax returns, such as the First-Time Homebuyer Credit (FTHBC).¹ The primary driver behind this call for expansion of IRS math error authority is the desire to protect revenue by preventing the payment of tax refunds where a credit, such as the FTHBC, is claimed improperly. In response to TIGTA and GAO's recommendations, the IRS is considering expanding the use of math error authority to other refundable credits (including the small business health care tax credit and the adoption credit).² As these types of refundable tax credits continue to grow, the IRS is more likely to seek expanded math error authority because the dollar amounts at stake become increasingly attractive for both one-time fraud cases and larger schemes.³ However, failure to narrowly craft and implement math error provisions will harm taxpayers who are trying to comply with their tax obligations.⁴

Math error authority can be an effective processing tool when used appropriately in limited circumstances. The early legislative history of math error authority clearly shows that the deviation from deficiency procedures was intended to be limited in scope.⁵ The IRS was to use math error authority only when errors were apparent on the face of the return or from information provided on the return.⁶ Its recent expansion to more complicated and facts-and-circumstances-based provisions comes with a high cost for taxpayers, such as a risk

¹ TIGTA, Ref. No. 2011-40-059, *Some Taxpayer Responses to Math Error Adjustments Were Not Worked Timely and Accurately* (July 7, 2011); GAO, GAO 10-349, *Recovery Act: IRS Quickly Implemented Tax Provisions, but Reporting and Enforcement Improvements Are Needed* (Feb. 2010).

² IRC §§ 45R and 36C, and IRS Briefing, *Overview of the Accelerated Refund Assurance Program (ARAP)* (Oct. 6, 2011). This briefing sets out areas where the IRS is considering requesting congressional expansion of its math error authority.

³ See also TIGTA, Ref. No. 2011-40-128, *The Passage of Late Legislation and Incorrect Computer Programming Delayed Refunds for Some Taxpayers During the 2011 Filing Season* (Sept. 28, 2011).

⁴ For an in-depth discussion of tax expenditures and the challenges to running social benefits through the Code, see National Taxpayer Advocate 2009 Annual Report to Congress vol. 2, 75 (*Running Social Programs Through the Tax System*) and National Taxpayer Advocate 2010 Annual Report to Congress vol. 2, 101 (*Evaluating the Administration of Tax Expenditures*).

⁵ General Explanation of the Tax Reform Act of 1976, 94th Cong., 2d Sess., 372-74 (1976); 1976-3 (Vol. 2) C.B. 1, 384-86.

⁶ H.R. Rep. 94-658, at 183 (Nov. 12, 1979), which defined mathematical or clerical errors as, "Arithmetic" errors, including "errors in addition, subtraction, etc." where "such an error will be apparent and the correct answer will be obvious."

of losing their right to dispute the assessment in Tax Court (the only pre-payment forum available). Inappropriate expansion of math error authority into more complex or fact-intensive areas undermines IRS efficiency by increasing the risk of inaccurate assessments and creating more work downstream for the IRS.

The National Taxpayer Advocate has previously identified problems with the IRS's administration of the math error program and the significant burden it places on millions of taxpayers each year.⁷ Taxpayer protections are eroded by unclear notices, post-processed math error assessments, and reliance on inaccurate third-party data systems. In particular, problems with the IRS use of math error authority include the following:

- Math error notices are still not clearly written despite the IRS's efforts to revise them, making it difficult for taxpayers to determine what specifically has been corrected on their returns and decide if they should accept the adjustment or request an abatement.⁸
- The IRS does not process taxpayer responses to math error notices timely.⁹ This failure not only delays the math error process but may also delay taxpayers' refunds, which in turn will cause more calls and letters to the IRS, and even Taxpayer Advocate Service cases.
- The IRS often does not work taxpayer responses to math error adjustments accurately. A TIGTA review found that 43 out of the 260 responses it reviewed were not worked accurately,¹⁰ which may be the result of using math error authority in situations where a facts-and-circumstances analysis is more appropriate.
- The IRS can resolve some math error discrepancies through internal research, relieving some of the burden on taxpayers. In fact, as discussed in Volume 2 of this report, *Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued on Claimed Dependents*, a TAS research study found that missing or incorrect Taxpayer Identification Numbers (TINs) on a return could be reconciled through prior return

⁷ 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. See also *Hearing on Improper Payments in the Administration of Refundable Tax Credits Before the Subcommittee on Oversight, Committee on Ways and Means*, 112th Cong. (May 25, 2011) (statement of Nina E. Olson, National Taxpayer Advocate); *Hearing on Complexity and the Tax Gap, Making Tax Compliance Easier and Collecting What's Due Before the Committee on Finance*, 112th Cong. (June 28, 2011) (statement of Nina E. Olson, National Taxpayer Advocate).

⁸ TAS study of math error notices conducted by Field Systemic Advocacy, Technical Analysis and Guidance, and Systemic Advocacy Systems (May 22, 2010). Three different technical analysts reviewed more than 500 paragraphs of text explaining problems with the return, IRS changes, and actions required by taxpayers to resolve the problem, and found more than 40 inadequate explanations of IRS changes to the return. Explanations were considered unclear if two of the three analysts found the passages confusing, inaccurate, incomplete, or expansive. This is a conservative estimate since the analysts who conducted the review have extensive experience with IRS documents and likely understood more than the average taxpayer would. The group also reviewed 300 paragraphs for taxpayer notices relating to business returns and did not find any verbiage that multiple analysts thought was inadequate.

⁹ TIGTA, Ref. No. 2011-40-059, *Some Taxpayer Responses to Math Error Adjustments Were Not Worked Timely and Accurately* (July 7, 2011). This TIGTA review showed an estimated 12,232 out of 130,616 responses may not have been resolved timely during the specified period (January 1 to July 23, 2010).

¹⁰ *Id.* The errors found in the 260 responses reviewed resulted in the IRS paying \$7,988 in erroneous refunds and incorrectly denying \$5,894 in benefits to taxpayers.

information 56 percent of the time.¹¹ However, IRS procedures do not permit employees to conduct this kind of research, which would enable them to easily resolve routine matters, such as incorrect entries of dependent TINs on returns.¹² Conducting this type of preliminary research may prevent rework later on. For example, when the IRS used math error authority to disallow exemptions for dependent children on approximately 330,000 returns for tax year (TY) 2006, the IRS was obliged to fully reverse its adjustments about 50 percent of the time.¹³

- Math error authority includes adjustments to returns “post-processing,” which means a taxpayer who thought his or her return had been accepted as filed may be notified months or even years later that the IRS has assessed additional tax due to a math error. This approach confuses taxpayers and does not protect revenue, since refunds are already processed and paid based on the original return. It also confuses the IRS, which can fail to provide or follow certain statutorily mandated rights or procedures.¹⁴

ANALYSIS OF PROBLEM

Background

What the Use of Math Error Authority Means for Taxpayers

Math error authority enables the IRS to increase its tax return processing capacity by quickly resolving simple mathematical or clerical mistakes and summarily assessing the adjusted tax. If given authority under IRC § 6213(b) or (g), the IRS can make an assessment without filing a statutory notice of deficiency (SNOD).¹⁵ Once the IRS notifies taxpayers of math errors, they have 60 days to request abatement of the additional tax. If the taxpayer makes a timely request, the IRS will abate the assessment and follow formal deficiency procedures to reassess the tax (*i.e.*, send the taxpayer a SNOD).¹⁶ However, if the taxpayer fails to

¹¹ See National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, *infra* (Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued on Claimed Dependents). TAS analysis of data collected (manually using a data collection instrument) in October 2011. The sample of records was selected using IRS Compliance Data Warehouse (CDW) Individual Returns Transaction File (IRTF) and Individual Master File (IMF) TY 2009 data. TAS analyzed data collected from a statistically valid sample of 500 accounts with math error codes 604, 605, or 743. The review showed the IRS abated its math error assessment and had internal data available to resolve 56 percent of code 605 and 743 (incorrect dependent TIN) accounts.

¹² See National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, *infra* (Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued on Claimed Dependents). IRS, IMF Math Error Report (Dec. 24, 2010). In 2010, the IRS issued 10,569,945 IMF math error notices for tax year 2009 returns (and an additional 1,288,746 for prior year returns). In 2010, there were 228,383 notice code 605 (dependent TIN mismatches) reported for TY 2009 (56,014 on prior year returns) and in 2009, 233,558 for TY 2008 (53,712 math errors issued on prior year returns).

¹³ TAS analysis of TY 2006 data from CDW IRTF and IMF (Dec. 2010). The analysis found a full abatement or reversal rate of 49.4 percent for the math error notice 605, for invalid dependent TIN, on adjustments to TY 2006 accounts; this is an indicator that the tax was correctly computed by half of this population. There were 162,013 full reversals of the 327,787 returns with notice 605.

¹⁴ See IRS Servicewide Electronic Research Program (SERP) Alert 110514 (July 27, 2011) (announcing the IRS was reversing FTHBC credits based on third-party information showing taxpayers had an ineligible purchase date). During the week of July 27, 2011, the IRS inappropriately issued 36,000 letters disallowing the FTHBC, and without providing an explanation of the taxpayers' statutory right to contest the math error adjustment within 60 days. See also SERP Alert 100512 (Oct. 6, 2010) (directing the reversal of the FTHBC using math error procedures if the taxpayer did not respond with documentation showing a qualifying purchase date).

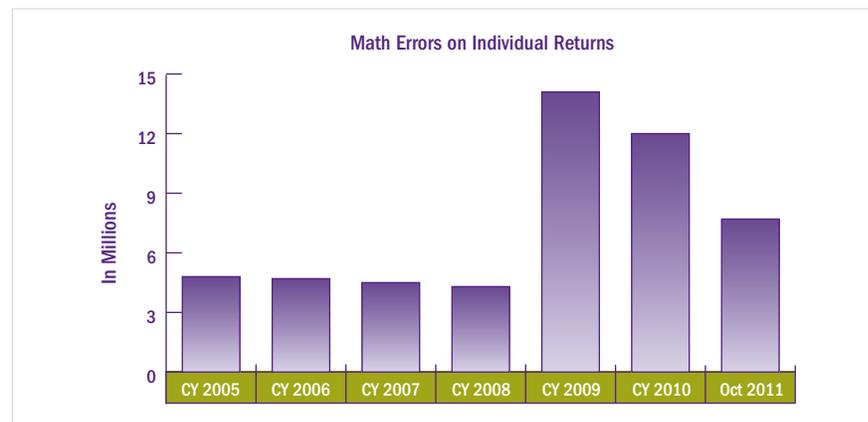
¹⁵ IRC § 6213(b)(2)(A).

¹⁶ *Id.* The ability of a taxpayer to protest a math error assessment, even without substantiating explanation, is addressed in Internal Revenue Manual (IRM) 21.5.4.4.4 (Oct. 1, 2010) and IRM 21.5.4.4.5 (Sept. 9, 2010).

request abatement timely, the IRS may collect the additional tax.¹⁷ At this point, the assessment cannot be appealed in the U.S. Tax Court. This is significant, because the Tax Court is the only pre-payment judicial forum (*i.e.*, the taxpayer does not have to pay the liability to contest the assessment in Tax Court, unlike in Federal District Court or the Court of Federal Claims where the taxpayer has to pay the tax and then file for a refund claim).¹⁸

In 2010, the IRS sent 10.6 million math errors, compared to only four million in 2005.¹⁹

FIGURE 1.4.1, Math Errors on Individual Tax Returns, Calendar Years through 2010²⁰



As illustrated in this chart, the use of math error authority has increased significantly since 2008, as Congress created refundable credits and granted the IRS math error authority to disallow them in an effort to prevent inappropriate payments. Considering the current budget strains on the IRS, and the growing number of large refundable credits, the National Taxpayer Advocate fully expects the number of math error notices to rise even more over the next few years. In fact, the IRS is currently identifying new ways to use its existing authority and exploring areas where new authority could be useful.²¹

Legislative History

The legislative history shows that Congress, when passing this provision, weighed the benefits of allowing IRS to assess tax quickly in the case of a mathematical or clerical error against the costs to taxpayers of the IRS's summarily assessing tax (*i.e.*, not utilizing

¹⁷ IRC §§ 6213(g)(2)(A) through 6213(g)(2)(E).

¹⁸ IRC § 6511.

¹⁹ IRS Databook 2010, 38. There were 10,554,735 IMF math errors for TY 2009 returns (the IRS determined an additional 1,285,706 math errors on TY 2008 and prior year returns in CY 2010, excluding Forms 1040NR).

²⁰ IRS, IMF Math Error Reports (Dec. 2005 through Dec. 2010, and Nov 5, 2011). The totals include all individual tax return math errors in each calendar year. Original figures for 2008 were overstated because a counter was not reset at the end of 2007. For this chart, 2008 figures were revised by subtracting 2007 figures from the reported 2008 figures.

²¹ IRS Briefing, *Overview of the Accelerated Refund Assurance Program (ARAP)* (Oct. 6, 2011).

deficiency procedures). Considering these two objectives, Congress (1) mandated that IRS follow deficiency procedures when taxpayers timely contest math error adjustments and (2) made clear the kinds of cases in which the IRS could use its limited summary assessment authority.²² Congress was very specific about the protections given the taxpayer:

The amendment provides that where the Internal Revenue Service uses the summary assessment procedure for mathematical errors ... the taxpayer must be given an explanation of the asserted error... , the taxpayer must be given a period of time during which he or she may require the Service to abate its assessment ... , and the Service is not to proceed to collect on the assessment until the taxpayer has agreed to the assessment or has allowed his or her time for objecting to expire... .²³

Congress went on to describe what it considered a mathematical error or inconsistent treatment on a return by a taxpayer. “Arithmetic” errors include “errors in addition, subtraction, etc.” where “such an error will be apparent and the correct answer will be obvious.”²⁴ Additionally, Congress stated that the inconsistent entries category was intended to “encompass those cases where it is apparent which of the inconsistent entries is correct and which is incorrect.”²⁵ Congress also made it clear that the IRS is not to use summary assessment procedures merely to resolve an uncertainty against the taxpayer.²⁶

The current use of math error notices falls well outside these initial parameters, including situations requiring analyses of facts-and-circumstances.

Expansion of Math Error Authority Far Exceeds Congress’s Original Purpose and Relies Too Heavily on IRS Discretion.

As the IRS has begun administering larger and more complex refundable credits such as the Earned Income Tax Credit (EITC), and the FTHBC, Congress has gradually expanded math error authority.²⁷ It now covers 16 categories of mistakes or omissions.²⁸

The most recent example of the types of problems that can occur when math error authority expands beyond its original intention comes from the FTHBC. The credit permitted taxpayers who purchased a principal residence after April 8, 2008, and before July 1, 2009, to claim a credit equal to ten percent of the purchase price (up to \$7,500).²⁹ The credit operated as an interest-free loan to be paid back over a 15-year period beginning two years after

²² General Explanation of the Tax Reform Act of 1976, 94th Cong., 2d Sess., 372-74 (1976); 1976-3 (Vol. 2) C.B. 1, 384-86.

²³ S. Rep. No. 938, 94th Cong., 2d Sess. 375 (1976); 1976-3 (Vol. 3) C.B. 49, 413.

²⁴ H.R. Rep. 94-658, at 183 (Nov. 12, 1979).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Besides the five “mathematical or clerical” error types listed in IRC § 6213 (g)(2)(A) through (E), math error authority also includes mistakes such as missing TINs for dependency exemptions or EITC, and missing verification of the FTHBC, in IRC § 6213(g)(2)(F) through (P). IRC §§ 6213(g)(2)(F) and (H) through (P).

²⁸ IRC § 6213(g)(2).

²⁹ The credit was established in the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. No. 110-289.

the credit was claimed.³⁰ During its first implementation period, taxpayers made numerous errors when claiming the credit, and its design exposed the IRS to improper claims from taxpayers trying to take advantage of the system. In 2009, Congress extended and expanded the credit, added documentation requirements, and amended IRC § 6213(g) to include math error authority for the FTHBC.³¹

The math error authority provided in IRC § 6213(g)(2)(O) and(P) applies where the taxpayer 1) omitted the increase in tax required by the recapture provisions included in IRC 36(f); 2) was not 18 years old at the time the home was purchased; 3) provided information on a prior return inconsistent with eligibility for the FTHBC; or 4) failed to attach to the return a copy of the settlement statement.³² This last provision placed the IRS in the position of making a facts-and-circumstance determination about whether an attached settlement statement was properly executed. While it would seem to be a relatively simple determination, expanding math error authority to include review of the documentation for the FTHBC has caused problems for both the IRS and taxpayers.

Example: Initially, the IRS determined that a properly executed settlement statement would need to show all parties' names and signatures, the property address, sales price, and date of purchase. Normally, this is the properly executed Form HUD-1, *Settlement Statement*.³³ If this information was not included, the IRS considered the statement to be not properly executed, and disallowed the FTHBC using math error authority. This approach caused problems for many taxpayers because states have many different types of settlement statements and do not require the IRS-mandated information for the statements to be valid under state law. The IRS later found that not all states require complete addresses, and reversed this decision.³⁴ Now, for the settlement statement to be considered valid, it is not necessary for it (*i.e.*, HUD-1 Settlement Statement) to contain the buyer's and seller's signatures.³⁵

Example: In Alaska, people often buy land with cash and build homes, which means there is no financing involved and no settlement statement. This type of case would fall under IRS math error authority, even though a taxpayer may have validly claimed the credit and could document the purchase and construction, but not in the

³⁰ Pub. L. No. 110-289. Congress revised the credit in the American Recovery and Reinvestment Act of 2009. This revision extended the FTHBC to purchases made on or after January 1, 2009, and before December 1, 2009; increased the maximum amount to \$8,000; and eliminated the repayment requirements as long as the taxpayer retains the residence for at least 36 months. Taxpayers qualifying for the revised credit may claim the \$8,000 on tax year 2008 or 2009 individual returns. Pub. L. No. 111-5, 123 Stat. 115 (2009).

³¹ The credit was revised again in the Worker, Homeownership, and Business Assistance Act of 2009. Pub. L. No. 111-92, 123 Stat. 2984 (2009).

³² IRC § 36(d)(4) requires the taxpayer to attach to his or her return a properly executed copy of the settlement statement.

³³ IRS, News Release, New Homebuyer Credit Form Released; Taxpayers Reminded to Attach Settlement Statements and Other Key Documents (Jan. 15, 2010), available at <http://www.irs.gov/newsroom/article/0,,id=218336,00.html> (last visited Nov. 2, 2011).

³⁴ IRS, IR-2010-006, <http://www.irs.gov/newsroom/article/0,,id=218336,00.html> (last visited Oct. 14, 2011). See also IRS SERP Alert 100290 (May 25, 2010).

³⁵ IRM 21.6.3.4.2.11.6 (6) (SERP update Apr. 18, 2011). See also IRS SERP Alert 100066 (Feb. 12, 2010). Mobile home purchasers may submit an executed retail sales contract including the names, address, purchase date and purchase price and signatures of both taxpayers if applicable. If the home was newly constructed, a copy of the occupancy permit is sufficient.

IRS-required form, and certainly not in a form that would easily be attached to an income tax return (*e.g.*, including copies of all receipts for lumber, plumbing, etc.).

These instances show that what at first may appear to be a clear-cut matter (*i.e.*, is documentation attached?) in fact has many variations. In these examples, the IRS is using math error authority to determine the *sufficiency* of documentation, in violation of Congress's original mandate that the IRS not use math error authority to resolve an uncertainty against the taxpayer.

Math Error Provisions Should Be Narrowly Tailored.

The National Taxpayer Advocate understands that a credit such as the FTHBC has substantial amounts of money at stake, making it attractive to individuals who want to abuse the system and get a quick, large refund for which they are not eligible.³⁶ The IRS uses math error authority as a low-cost way to protect revenue by preventing these returns from being processed and the refunds from going out. However, as noted above, failure to narrowly craft and implement math error provisions will harm taxpayers who are trying to comply with their tax obligations.³⁷

Further, the continued expansion of math error authority into FTHBC-type facts-and-circumstances determinations could prevent eligible taxpayers from receiving a credit, undermine the policies for which the tax benefit was enacted, and cause a taxpayer to lose his or her right to dispute the IRS's determination in Tax Court.³⁸ In an effort to prevent these types of problems, where the IRS is seeking or Congress has enacted additional math error authority, the IRS should, as the GAO has recommended, develop a report to Congress in conjunction with the National Taxpayer Advocate on how math error authority expansion would meet the standards and criteria set forth by Congress and how it might impact taxpayer protections.³⁹ The National Taxpayer Advocate believes this report should be submitted to Congress at least six months before implementation of the proposed math error authority.⁴⁰

³⁶ IRC § 36. See also TIGTA, Ref. No. 2011-40-128, *The Passage of Late Legislation and Incorrect Computer Programming Delayed Refunds for Some Taxpayers During the 2011 Filing Season* (Sept. 28, 2011).

³⁷ For an in-depth discussion of tax expenditures and the challenges of running social benefits through the Code, see National Taxpayer Advocate 2009 Annual Report to Congress vol. 2, 75 (*Running Social Programs Through the Tax System*) and National Taxpayer Advocate 2010 Annual Report to Congress vol. 2, 101 (*Evaluating the Administration of Tax Expenditures*).

³⁸ See Legislative Recommendation: *Mandate That the IRS, In Conjunction with the National Taxpayer Advocate, Review Any Proposed Expanded Math Error Authority to Protect Taxpayer Rights*, *infra*.

³⁹ GAO, GAO-11-691T, *Enhanced Prerefund Compliance Checks Could Yield Significant Benefits* (May 25, 2011). The National Taxpayer Advocate believes this report would be most effective if it was sent to Congress several months before implementation. If the provision has immediate effect, then the report should be submitted before the second filing season.

⁴⁰ See Legislative Recommendation: *Mandate That the IRS, In Conjunction with the National Taxpayer Advocate, Review Any Proposed Expanded Math Error Authority to Protect Taxpayer Rights*, *infra*.

Current Problems with the Administration of Math Error Authority

Math Error Notices Are Still Confusing.

The lack of clarity in math error notices makes it difficult for taxpayers to decide if they should accept the adjustment or request reversal.⁴¹ For example, the IRS issued nearly 100,000 more self-employment tax math error notices in the first six months of calendar year (CY) 2011 than in CY 2010, but did so for reasons that the notice did not explain.⁴² In many cases, the IRS mistakenly recomputed the tax without explanation, leaving taxpayers and preparers guessing why the IRS assessed additional tax.⁴³ Providing taxpayers with a clear explanation of why they are receiving the notice and what mathematical or clerical error has been identified helps make the process understandable so taxpayers can address the notice accordingly. The following example, taken from legislative history, demonstrates that in exchange for granting the IRS expanded math error authority, Congress expected the IRS to provide taxpayers with clear notice of the changes made to the return:

Example: A notice regarding an inconsistency in the number of dependents listed on the taxpayer's return might read as follows: "You entered six dependents on line x but listed a total of seven dependents on line y. We are using six. If there is one more, please provide corrected information."⁴⁴

If notices are not simple and clear taxpayers cannot understand the rationale for the change to their returns, they may fail to request abatement within the 60-day period, thereby forfeiting their opportunity to contest the assessment in Tax Court and instead face IRS collection action.

The IRS has improved some math error notices, but others are still inadequate. TAS reviewed the verbiage included in more than 500 types of notices sent to taxpayers for problems with individual tax returns and found more than 40 inadequate explanations of IRS changes to the returns.⁴⁵ A common explanation given to taxpayers is that IRS adjusted the income reported on the return, without describing the item of income adjusted.

⁴¹ A TAS study of math error notices conducted by Field Systemic Advocacy, Technical Analysis and Guidance, and Systemic Advocacy Systems (May 22, 2010) identified over 40 math error notice types for individual tax returns that lacked clarity or failed to explain taxpayer rights. Taxpayer Notice Codes (TPNC) may sometimes be referred to herein as math error notice types, identified by the notice number.

⁴² IRS, IMF Math Error Reports 480-62-11 (July 2, 2011) and (July 3, 2010). By mid-2011 the IRS had issued 142,524 math error notices 268, increased from 43,841 at mid-2010.

⁴³ See Systemic Advocacy Management System (SAMS) Issues 20620 and 20973; IRS SERP Alert 110434 (June 10, 2011) (acknowledging the processing errors).

⁴⁴ H.R. Rep. No. 94-658, 94th Cong., 2nd Sess. (1976).

⁴⁵ TAS study of math error notices conducted by Field Systemic Advocacy, Technical Analysis and Guidance, and Systemic Advocacy Systems (May 22, 2010). Three different technical analysts reviewed more than 500 paragraphs of text explaining problems with the return, IRS changes, and actions required by taxpayers to resolve the problem on the individual tax return. Explanations were considered unclear if two of the three analysts found the passages confusing, inaccurate, incomplete, or expansive. This is a conservative estimate since the analysts who conducted the review have extensive experience with IRS documents and likely understood the notice more readily than an average taxpayer would. The group also reviewed 300 paragraphs for taxpayer notices relating to business returns and did not find any verbiage that multiple analysts thought was inadequate.

Easy-to-understand math error notices are essential, because taxpayers need to know what was changed so they can decide whether they agree, and, if not, what steps they should take.⁴⁶

The IRS Does Not Process Taxpayer Responses to Math Error Notices Timely or Accurately.

Not only are some math error notices unclear and fail to explain why the taxpayer is receiving the notice and what to do next, but when taxpayers do understand the notices and respond, the IRS may not handle their responses timely or correctly. A TIGTA review of IRS processing such responses between January 1 and July 23, 2010, found that 40 percent (104 of 260) of the responses were not worked timely.⁴⁷ Based on this review, about 12,000 of 131,000 responses may not have been resolved timely during the specified period (January 1 to July 23, 2010).⁴⁸ These delays could result in taxpayers not receiving benefits timely. An untimely response rate will only increase the number of taxpayer calls to the IRS and potentially add to TAS's case inventory.

Additionally, in the same review TIGTA found that 43 of the 260 responses were not worked accurately. These errors resulted in the IRS paying about \$8,000 in erroneous refunds and incorrectly denying \$6,000 in benefits to taxpayers.⁴⁹ TIGTA estimated about 18,000 of 131,000 taxpayers may not have had their responses accurately resolved during this period. TIGTA further estimated that inaccuracies in resolving responses to math error notices could cost the federal government approximately \$39.5 million in lost revenue and cost taxpayers about \$29.2 million over the next five years. One possible explanation of this inaccuracy rate is the use of math error authority in more complex situations, such as the FTHBC examples illustrated above.

Math Error Authority May Not Always Be the Best Way to Resolve Cases.

Third-Party Databases Are Not Always Reliable.

Over the years, Congress has expanded math error authority to apply where comparison of tax return entries to information in non-IRS governmental databases indicates an error on the return. An appropriate example of this expanded authority is the use of the Social Security Administration's (SSA) NUMIDENT database.⁵⁰ Use of external data, a traditional audit indicator, is not justified for *summary* denial where the underlying database is inaccurate or incomplete or when reconciling the discrepancy involves the use of judgment or involves complex or evolving fact situations. For this reason, the National Taxpayer

⁴⁶ S. Rep. No. 938, 94th Cong., 2d Sess. 375 (1976); 1976-3 (Vol. 3) C.B. 49, 413.

⁴⁷ TIGTA, Ref. No. 2011-40-059, *Some Taxpayer Responses to Math Error Adjustments Were Not Worked Timely and Accurately* (July 7, 2011).

⁴⁸ *Id.* TIGTA estimated 12,232 of 130,616 responses may not have been timely resolved.

⁴⁹ *Id.* TIGTA estimated the IRS may not have accurately resolved 17,627 of 130,616 taxpayers' responses. TIGTA found IRS incorrectly denied \$5,894 in benefits and improperly paid \$7,988 to taxpayers.

⁵⁰ See IRM 2.3.32.8 (July 1, 2008); IRM 2.3.32.17 (Jan. 1, 2005). NUMIDENT information is a complete history of changes, such as name changes, as reported to SSA by the user of the SSA account number.

Advocate previously recommended repealing the use of the Federal Case Registry of Child Support Orders (FCR) under math error authority for summary assessment because this database does not accurately verify a child's residence.⁵¹ This reasoning would apply equally to proposals to use certain state databases to determine eligibility, especially with respect to an individual's status as a qualifying child for EITC purposes, which is a complicated determination that requires an evaluation of facts-and-circumstances. Even if virtually all of the entries in a directory are accurate when entered, they were compiled for a different purpose, do not disprove eligibility under the tax law, were compiled at a prior date and may not be current, and should not deprive a taxpayer of a due process right to present his or her own facts. These databases would be used best as an indicator that the IRS should look more closely at the return in an examination — not math error — context.

The IRS's Own Internal Records May Be More Useful for Checking Taxpayers' Returns.

As mentioned above, the audit findings of GAO and TIGTA have called for increasing, not limiting, the use of math error authority.⁵² But as discussed, this expansion may come at a high price, entailing increased complexity, confusion, inaccuracy, and burden. This is why it is imperative that the IRS move carefully when considering math error expansion.

Last year, the IRS addressed return processing errors, most of which are due to taxpayer mistakes in paper return preparation, by sending out 10.6 million math error notices.⁵³ However, by using its own internal records to glean specific information, such as TINs for dependents used on prior tax returns and Social Security numbers (SSNs) provided to the IRS by SSA,⁵⁴ and to analyze discrepancies between the taxpayer's return and third-party information, the IRS would reduce taxpayer burden, and potential IRS rework (*i.e.*, if the third-party information turns out to be inaccurate and the taxpayer disputes the summary assessment).

This internal research may be highly effective in preventing unnecessary math error adjustments and notices. For example, the IRS reversed about 50 percent of the math error disallowances of personal exemptions for dependent children in tax year 2006. TAS analyzed tax account data for 341,000 math errors issued in TY 2009 disallowing dependency exemptions and tax credits tied to dependents and found the IRS later reversed

⁵¹ See National Taxpayer Advocate 2002 Annual Report to Congress 189 (Legislative Recommendation: *Math Error Authority*). Congress mandated that the IRS complete a study in conjunction with the National Taxpayer Advocate before implementing the use of the FCR; the study demonstrated that the FCR was unreliable and the IRS did not implement that math error authority. See IRS, Federal Case Registry Final Report, Project 5-02-12-3-005 (CR-39) (Sept. 2003). See also *Hearing on Improper Payments in the Administration of Refundable Tax Credits Before the Subcommittee on Oversight, Committee on Ways and Means* 26, 112th Cong. (May 25, 2011) (statement of Nina E. Olson, National Taxpayer Advocate).

⁵² The IRS has established a task force to identify areas where the IRS could expand its use of math error authority. In this report, the National Taxpayer Advocate has made a legislative recommendation as to what type of expansions Congress should consider. See Legislative Recommendation: *Mandate That the IRS, In Conjunction with the National Taxpayer Advocate, Review Any Proposed Expanded Math Error Authority to Protect Taxpayer Rights*, *infra*.

⁵³ IRS, *IMF Math Error Report* (Dec. 24, 2010). The IRS issued 10,569,945 Individual Master File math error notices for TY 2009 returns.

⁵⁴ See IRM 2.3.1 (Jan. 1, 2008) for Integrated Data Retrieval System (IDRS) command code RTVUE.

184,000 — or about 55 percent — of the disallowances.⁵⁵ Further, a recent TAS study of a statistically valid sample of the same 184,000 reversals showed the IRS had internal data to immediately resolve 56 percent of those reversals, rather than deny the taxpayers their dependency exemptions and related tax credits and their tax refunds.

FIGURE 1.4.2, TY 2009 Data Shows Opportunity for IRS to Resolve Incorrect Dependent TINs and Avoid Math Error Adjustments⁵⁶

| Sample Results Using Internal IRS Data | Incorrect Dependent TINs, with credits other than EITC | Incorrect Dependent TINs with EITC | Total Incorrect Dependent TINs |
|---|--|------------------------------------|--------------------------------|
| Resolved All TINs Completely | 51% | 50% | 50% |
| Resolved Some TINs | 6% | 5% | 6% |
| Total Completely and Partially Resolved | 57% | 55% | 56% |

This high abatement rate indicates that additional screening and internal research should be required before imposing on taxpayers the burdens of replying to the math error notices and waiting an average of 13.4 weeks for their refunds.⁵⁷

The IRS should examine its math error abatement rates after each filing season to identify high abatement areas and then adjust procedures accordingly, considering alternatives such as not using math error authority or developing a pre-screening system using internal IRS information.

At the same time that the IRS requests additional math error authority to summarily deny tax benefits based on third-party information, it neglects to use readily available third-party information to resolve routine discrepancies such as incorrect or missing dependent TINs. Researching the accuracy of the information on a taxpayer’s return through internal records may help the IRS ensure that its math error assessments are correct and not used indiscriminately.⁵⁸

⁵⁵ See National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, *infra* (Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued on Claimed Dependents). TAS Research (Sept. 2011). TAS analysis of TY 2006 and 2009 data from CDW IRTF and IMF (Dec. 2010). For tax year 2009 Notice Code 604 (missing TIN), 47 percent, or 36,000 of the notice assessments, were resolved fully or partially; for Notice Code 605 (incorrect TIN), 55 percent, or 114,000 were resolved fully or partially; and for Notice Code 743 (incorrect TIN for EITC), 61 percent, or 35,000 were resolved fully or partially. Although the IRS later reversed 47 percent of math errors with missing TIN data (Notice Code 604), these math errors are often associated with Individual Taxpayer Identification Number (ITIN) returns, and the IRS does not have the information needed to fill in missing TINs. Consequently, the analysis was narrowed to include only returns with math errors 605 or 743.

⁵⁶ See National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, *infra* (Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued on Claimed Dependents). TAS analysis of TY 2009 data from CDW IRTF and IMF (Oct. 2011). A sample of about 400 accounts in which the IRS abated its math error assessment showed that the IRS had internal data to resolve 56 percent of code 605 and 743 accounts. The column titled Incorrect Dependent TINs, with credits other than EITC reflects TPNC 605 accounts; the column titled Incorrect Dependent TINs with EITC reflects TPNC 743 accounts.

⁵⁷ TAS analysis of TY 2006 data from CDW IRTF and IMF (Dec. 2010). See also National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, *infra* (Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued on Claimed Dependents).

⁵⁸ The principal math error notices for disallowed dependent exemptions are TPNC 605 and 743.

The Use of Math Error Authority Post-Processing Is Not a Revenue Protector.

The IRS, in October 2010, instructed employees to disallow the FTHBC on taxpayers' TY 2008 returns, even though the refunds had already been processed and paid based on the original returns, because the purchase date entered on Form 5405, *First-Time Homebuyer Credit and the Repayment of the Credit*, for the identified returns fell outside the time for which the credit was available, and therefore was inconsistent with another item on the return (*i.e.*, the claiming of the credit).⁵⁹ However, it is not clear that this issue falls within math error authority.

The IRS relies on IRC § 6213(g)(2)(C), which refers to “an entry on a return of an item which is inconsistent with another entry of the same or another item on such return.” The IRS views the inconsistency as arising between the Form 1040 and Form 5405 (*i.e.*, it is inconsistent for the taxpayer to enter a date of purchase prior to April 8, 2008 on Form 5405, which would be before the credit is available, and then claim the credit on Form 1040). In the view of the National Taxpayer Advocate, it is uncertain that this explanation falls within IRC § 6213(g)(2)(C). Although the taxpayer does put the date of purchase on the Form 5405, nowhere on the face of the Form 1040 or Form 5405 is the taxpayer required to state that he or she has acquired a home during the eligible time periods. Thus, there is no item on the return that can create an inconsistency. A better way to ensure that the inconsistency clearly falls within math error authority would be for the IRS to ask on Form 5405 “Did you purchase your home within the eligibility period from x date to y date? (answer checkbox yes or no). If no, you are not eligible. If yes, enter date of purchase.” This example, answering yes on the form, but then entering an ineligible date, is clearly an inconsistent entry and would fall within IRC § 6213(g)(2)(C). *It is essential that the IRS make it clear to the taxpayer what it considers inconsistent, so if there is an inconsistency, it will be more likely to be a genuine mathematical or clerical error.*

Notably, in this situation, the IRS made these adjustments to taxpayer's returns “post-processing.” Thus, a taxpayer may be notified months or even years later that the IRS is making an assessment under its math error authority.⁶⁰ The IRS also used math error authority post-processing to assess additional tax on taxpayers who did not pay the FTHBC recapture amount.⁶¹ Using math error authority in fact-specific situations may lead to improper assessments, such as in the following example:

Example: A taxpayer purchases a principal residence in May of 2008 and receives a \$7,500 FTHBC for tax year 2008, which generally will be repaid by imposing a \$500 increase in his tax liability for 15 taxable years beginning in 2010. In 2010, the taxpayer

⁵⁹ IRS SERP Alert 100512 (Oct. 6, 2010). After initially accepting the returns as filed the prior year, the IRS made math error post-processing adjustments determining that the date of purchase of the house listed on the Form 5405 was incorrect (*i.e.*, the date of purchase was before April 8, 2008).

⁶⁰ See *id.* This alert instructed IRS employees to use math error procedures when a taxpayer entered a purchase date on Form 5405 that was outside the time period for which the credit was available, and directed the FTHBC to be reversed using math error procedures if the taxpayer did not respond with documentation showing a qualified purchase date.

⁶¹ IRS SERP Alert 110515 (July 25, 2011) (announcing that the \$500 FTHBC recapture will be automatically assessed on some accounts).

sells the house at a loss, which means he is not required to pay any further recapture amount,⁶² but he does not file Form 5405 with his 2010 tax return to report the loss on the sale. Therefore, through its math error authority under IRC § 6213(g)(2)(P), the IRS retroactively (*i.e.*, after issuing the full refund shown on the return) makes a summary assessment for omitting the recapture payment, even though no such payment was required. The taxpayer then faces the burden of explaining the facts and circumstances of his situation to avoid math error assessments for multiple years.

This example illustrates how difficult it is to apply math error authority to a facts-and-circumstances situation and the harm that can come to the taxpayer (*i.e.*, a summary assessment on a credit already received). Using math error authority this way (after processing a taxpayer's return) confuses taxpayers and may not achieve the IRS's desired result of revenue protection. Deficiency procedures may be more effective in these situations and give the taxpayer at least 90 days, as opposed to 60 days, to gather documents and communicate with the IRS. Especially where time has elapsed since the filing of the return, it makes sense to grant taxpayers that additional time.

Math error authority was designed to streamline IRS processing for simple mistakes, and was created *before* there were significant refundable credits, such as the FTHBC. However, with the growth of these credits, math error authority has also become important as a revenue protection strategy. Applying math error authority post-processing does little to protect revenue because the IRS has already paid the refund based on the original return. The confusion caused by such an adjustment after the return has been processed can cause a good deal of IRS rework and taxpayer burden.

CONCLUSION

Tax return changes designated as math errors carry significant consequences that can harm taxpayer rights. It is therefore essential that the IRS proceed carefully before using this broad authority. Rather than issuing math error notices whenever it is authorized to do so, the IRS should carefully consider its ability to address the error through its own research. Additionally, several math error notices remain unclear. The expansion of math error authority adds complexity to the notices, confuses taxpayers, and may result in their failing to protest the assessments and losing their appeal rights. For these reasons, it is imperative that the IRS carefully consider all other means of correcting the error before exercising its authority. It should make sure that math error notices, and the process for contesting assessments, are clear.

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Direct employees to conduct internal research to resolve clerical errors, such as incorrect entries of the dependents' TINs or surnames.

⁶² IRC § 36(f)(3).

2. Examine math error abatement rates after each filing season to identify high abatement areas and adjust procedures accordingly, including avoiding use of math error authority or developing a pre-screening system using internal IRS information.
3. Revise the descriptive paragraphs (TPNCs) in math error notices to identify precisely the reason for a tax return change and which entries are inconsistent.
4. Conduct a study in collaboration with the National Taxpayer Advocate before implementing any new math error authority to evaluate whether the application of the new authority is accurate, negatively impacts taxpayers, or has a high abatement rate, and whether the IRS can resolve the cases through existing data.

IRS COMMENTS

Math error authority under § 6213 of the Internal Revenue Code provides the IRS with a valuable tool to address mathematical or clerical errors on tax returns in appropriate cases. It allows the IRS to adjust the tax return to reflect the correct tax liability without referring the case to Examination for a resource-intensive audit of the return. Over the years, Congress has incrementally expanded the authority to allow the IRS to automatically correct returns for additional types of mathematical or clerical errors, including instances where the IRS receives reliable third party information. This authority has enabled the IRS to effectively and efficiently adjust returns and stop erroneous refunds from being issued. The IRS recognizes that taxpayer rights are an important consideration in the use of math error authority.

The IRS appreciates the National Taxpayer Advocate's acknowledgment that math error authority can be an effective processing tool. In those instances where math error authority is available, taxpayer errors can be addressed quickly, resulting in less burden and faster refunds to taxpayers as compared to an examination. In addition nearly all returns with similar errors can be treated consistently, thus creating equity between compliant and noncompliant taxpayers. Math error authority is also used to help ensure eligible taxpayers receive tax benefits they underclaimed. Lastly, the IRS is able to use costly Examination resources that would otherwise be spent on math errors to pursue other forms of noncompliance that require facts and circumstances based determinations.

The IRS agrees that the expansion of math error authority should be considered carefully taking into account taxpayer rights issues. The GAO, in its report to Congress dated February 2010, reported that the IRS could benefit from broader math error authority. We are exploring whether there are opportunities for additional authority that would improve tax administration without impacting taxpayer rights. Due to technical advances and increased access to reliable data, the IRS is able to collect information from various sources to verify entries on taxpayers' returns. Even when information in the IRS's possession indicates that a taxpayer's return contains an error, without specific math error authority the IRS cannot adjust the tax return during processing to reflect the correct tax liability. We continue to work with the National Taxpayer Advocate in this effort and will continue

to recognize the importance of respecting taxpayer rights, including assuring that information used in a math error determination is accurate and reliable.

The IRS disagrees with the National Taxpayer Advocate's assertion that the math error program creates significant burden or hardship to taxpayers. The IRS provides taxpayers with their rights provided by law, including administrative appeal and judicial review. The IRS sends a notice to the taxpayer identifying the alleged error with an explanation. The notice also informs the taxpayer that the taxpayer has 60 days to request the IRS abate the assessment. If the taxpayer disagrees with the assessment and requests an abatement of this amount, the IRS is required to abate the tax. If the IRS determines that the deficiency should be assessed, it then follows deficiency procedures that afford the taxpayer additional time to address the issue and the opportunity to obtain judicial review before the tax is reassessed and paid.

With respect to IRS notices, the IRS shares the National Taxpayer Advocate's interest in developing plain language effective notices that help taxpayers take the appropriate action to resolve their tax issues. The IRS received top honors, the Grand ClearMark Award, for the clearest language on notices such as the Additional Child Tax Credit. The IRS continues to review and rewrite notices in plain language. Two redesigned math error notices, CP10 and CP11, went into production in July 2010. Three more, CP12, CP13, and CP16 went into production in January 2011. With the redesign, the IRS incorporated plain language that is easier for the taxpayer to understand and added line numbers from the tax form to assist taxpayers in locating the errors on their own return. We are working with Research to determine effectiveness of the redesigned notices, and will make additional changes based on those results.

The IRS agrees there was an increase in math error notices in 2010 compared to 2005. The increase was primarily due to the Making Work Pay Credit. This credit accounts for 5.6 million of the 10.6 million math error notices issued in 2010. Eighty-five percent of the notices for the MWP credit informed the taxpayer that the IRS had figured the credit for them (because the taxpayer failed to claim the credit). Historically, the error rate and number of notices rise sharply whenever the IRS offers to calculate a credit for taxpayers. The credit was in effect for tax year 2009 and 2010. In 2010, the IRS sent five million math error notices, adjusted for MWP, compared to four million in 2005. Per TIGTA report 2011-40-059, more than 98 percent of the individuals receiving a math error notice between January 1 and July 23, 2010, agreed with the adjustments made to their tax returns.

With respect to the recommendations in the draft report, we note the following:

With respect to the recommendation to direct employees to conduct internal research to resolve errors, the Internal Revenue Manual directs IRS employees to conduct internal research to resolve clerical errors with taxpayer TINs during the processing of math or clerical errors (referred to as math errors). Employees are also instructed to search the return and attachments for dependent TINs. If the information is found during internal research

or from information on the return and attachments, the IRS will perfect the clerical error. If the IRS is unable to perfect the clerical error, a math error notice is issued to the taxpayer explaining the error(s) identified and the amount of any resulting adjustment(s).

An analysis of all math error notice data from four cycles in 2010 (one cycle per quarter) shows an overall reversal rate of 13 percent. The IRS agrees to perform additional analysis to review the data by type of math error to determine whether procedures may need to be adjusted. It should be noted that the top four Taxpayer Notice Codes (TPNCs) in this analysis related to the MWP credit and account for 77.4 percent of the math error notices with the reversal rate for all four being lower than the average.

With respect to notices, although we cannot tailor language to each individual taxpayer's situation, we agree that notices should be clear and understandable to taxpayers. The Return Integrity and Correspondence Services office will continue to review and rewrite notices using plain language.

In addition, the IRS will continue to collaborate cross functionally as we consider potential opportunities for new math error authority. We look forward to continuing work with the National Taxpayer Advocate in this effort.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate agrees that math error authority can be an effective processing tool when used appropriately (*i.e.*, not in situations that require a facts-and-circumstances determination or reliance on unreliable third-party data). The National Taxpayer Advocate further agrees that expansion of math error authority is appropriate in certain limited circumstances and can reduce IRS costs and taxpayer burden.⁶³ We commend the IRS for making some progress in improving the clarity of math error notices and are pleased that the IRS has offered to work with the National Taxpayer Advocate as the IRS determines what type of expansions are appropriate. This sort of collaboration has not occurred in the recent past, so we welcome the opportunity to work with the IRS and have our concerns addressed before proposals are set in stone.

Inappropriate Use of Math Error Authority Can Cause Taxpayer Burden and Hardship.

The National Taxpayer Advocate disagrees with the IRS statement that math error authority does not increase taxpayer burden or hardship, because the inappropriate use of this authority can produce exactly that effect. For example, using math error authority to include review of the documentation for the FTHBC has caused problems for both the IRS and taxpayers. In fact, having the IRS determine whether a taxpayer had attached a properly

⁶³ For a discussion regarding the types of math error expansion the National Taxpayer Advocate agrees with, see Legislative Recommendation: *Mandate that the IRS, in Conjunction with the National Taxpayer Advocate, Review Any Proposed Expanded Math Error Authority to Protect Taxpayer Rights, infra.*

executed settlement statement proved difficult, particularly in states that did not require the same information on the statement as the IRS. This put the IRS in the position of imposing its own judgment for that of the taxpayer, which is precisely the type of determination Congress found inappropriate for math error authority. Making a math error adjustment based on this judgment creates more IRS re-work by requiring the taxpayer to contact the IRS and then provide the necessary documentation before the IRS can finally issue the refund. As discussed, this process alone can take an average of 13.4 weeks.⁶⁴ Additionally, using any math error authority to make this type of judgment risks the taxpayer losing his or her right to go to Tax Court and dispute the IRS determination. In these fact-specific situations, deficiency procedures may be more effective and provide the taxpayer at least 90 days, as opposed to 60 days, to gather documents and communicate with the IRS.

Information from Third-Party Sources to Verify a Taxpayer's Return Must Be Reliable.

The National Taxpayer Advocate agrees that expansion of math error authority may be appropriate where reliable, accurate third-party information is available to verify the information on a taxpayer's return. The real issue then becomes: what is reliable information? As noted above, one example of reliable external data is the SSA NUMIDENT database.⁶⁵ Conversely, the Federal Child Support Registry is an example of an unreliable database that was compiled for a different purpose entirely and should not be used to make summary denials. This is why the National Taxpayer Advocate agrees with the GAO's recommendation that where the IRS is seeking (or Congress has enacted) additional math error authority, the IRS and the National Taxpayer Advocate should report to Congress on how the expansion would meet the standards and criteria set forth by Congress and might impact taxpayer protections.⁶⁶

Math Error Notice Clarity Is Critical.

The National Taxpayer Advocate commends the IRS for its continued efforts to provide taxpayers with clear, easy-to-understand notices. She is encouraged that the IRS has recently taken steps to improve some math error notices and hopes this effort continues with TAS playing a role. It is essential that the IRS provide clear, simple notices so taxpayers can understand the rationale for the changes to their returns and their right to request abatement within 60 days, preserving their opportunity to contest the adjustment in Tax Court.

The Number of Math Error Notices Sent to Taxpayers Has Recently Increased.

The National Taxpayer Advocate understands that a significant portion of the increase in math error notices is the result of Congress granting the IRS new math error authority,

⁶⁴ TAS analysis of TY 2006 data from CDW IRTF and IMF (Dec. 2010). See also National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, *infra*.

⁶⁵ See IRM 2.3.32.8 (July 1, 2008); IRM 2.3.32.17 (Jan. 1, 2005). NUMIDENT information is a complete history of changes, such as name changes, as reported to SSA by the user of the SSA account number.

⁶⁶ GAO, GAO-11-691T, *Enhanced Prerefund Compliance Checks Could Yield Significant Benefits* (May 25, 2011). The National Taxpayer Advocate believes this report would be most effective if it was sent to Congress several months before implementation. If the provision has immediate effect, then the report should be submitted before the second filing season.

such as the Making Work Pay credit and the FTHBC.⁶⁷ However, it may not be appropriate to use math error authority where the IRS is disbursing tax credits. In the legislative recommendation section of this report, the National Taxpayer Advocate provides criteria to be considered to determine if using math error in these circumstances is appropriate.⁶⁸

The TIGTA report referenced in the IRS response proclaims that more than 98 percent of the individuals receiving a math error notice between January 1 and July 23, 2010, agreed with the adjustments to their returns.⁶⁹ However, this figure includes taxpayers who received a math error notice and did not respond to the notice within the 60-day timeframe. The National Taxpayer Advocate does not believe that the lack of a response from the taxpayer regarding the math error notice can be equated to an agreement as to the adjustment. In fact, there may be a number of reasons why the taxpayer did not respond (e.g., he or she did not understand the notice). Further, the report most certainly does not mean that the adjustments were right. For example, as described in Volume 2, *Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued on Claimed Dependents*, of this report, TAS analyzed tax account data for 341,000 math errors issued in TY 2009, disallowing dependency exemptions and tax credits tied to dependents and found the IRS later reversed 184,000 — or about 55 percent — of the disallowances.⁷⁰

IRS Internal Research to Fix Taxpayer Errors Does Not Go Far Enough.

Although IRS employees are instructed to conduct internal research to correct taxpayer mistakes, this only includes checking the return and any attached documents.⁷¹ TAS proposes that the IRS use internal records such as TINs for dependents used on prior tax returns and SSNs provided by SSA.⁷² In other words, the IRS should use the same information to fix taxpayer errors as it does to make math error adjustments. In the TAS research study mentioned above, a statistically valid sample of the 184,000 reversed disallowances showed the IRS had internal data to immediately resolve 56 percent of those reversals, rather than deny the taxpayers their exemptions, credits, and refunds. Revising IRS procedures to require more internal research could prevent many unnecessary math error notices from being sent to taxpayers.

⁶⁷ IRC §§ 36A and 36.

⁶⁸ See Legislative Recommendation: *Mandate that the IRS, in Conjunction with the National Taxpayer Advocate, Review Any Proposed Expanded Math Error Authority to Protect Taxpayer Rights*, *infra*.

⁶⁹ TIGTA, Ref. No. 2011-40-059, *Some Taxpayer Responses to Math Error Adjustments Were Not Worked Timely and Accurately* (July 7, 2011).

⁷⁰ See National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, *infra* (*Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued on Claimed Dependents*). TAS analysis of TY 2006 and 2009 data from CDW IRTF and IMF (Dec. 2010). For tax year 2009, Notice Code 604 (missing TIN), 47 percent, or 36,000 of the notice assessments were resolved fully or partially; for Notice Code 605 (incorrect TIN), 55 percent, or 114,000 were resolved fully or partially; and for Notice Code 743 (incorrect TIN for EITC), 61 percent, or 35,000 were resolved fully or partially. Although the IRS later reversed 47 percent of math errors with missing TIN data (Notice Code 604), these math errors are often associated with ITIN returns, and the IRS does not have the information needed to fill in missing TINs. Consequently, the analysis was narrowed to include only returns with math errors 605 or 743.

⁷¹ IRM 3.12.3.4.3.18 (Jan. 1, 2011).

⁷² See IRM 2.3.1 (Jan. 1, 2008) for IDRS command code RTVUE.

In regard to the math error adjustments that the IRS does abate, the National Taxpayer Advocate is pleased that the IRS has agreed to examine its abatement rates after each filing season to identify high abatement areas and change its procedures accordingly.

Recommendations

The National Taxpayer Advocate recommends that the IRS:

1. Direct employees to conduct internal research to resolve clerical errors, including incorrect entries of the dependents' TINs or surnames.
2. Examine math error abatement rates after each filing season to identify high abatement areas and adjust procedures accordingly, including avoiding the use of math error authority and developing a pre-screening system using internal IRS information to minimize improper math error adjustments.
3. Revise the descriptive paragraphs (TPNCs) in math error notices to identify precisely the reason for a tax return change and which entries are inconsistent.
4. Conduct a study in collaboration with the National Taxpayer Advocate before implementing any new math error authority to evaluate whether the application of the new authority is accurate, negatively impacts taxpayers, or has a high abatement rate, and whether the IRS can resolve the cases through existing data.