

Legislative Recommendation #12**Give Taxpayers Abroad Additional Time to Request Abatement of a Math Error Assessment****SUMMARY**

- *Problem:* U.S. taxpayers abroad generally need more time to respond to IRS notices than taxpayers living within the United States. The tax code gives taxpayers abroad an additional 60 days to respond to a notice of deficiency, but it does not give taxpayers abroad additional time to respond to a math error notice – even though failure to respond to a math error notice within 60 days means the IRS may assess the tax and the taxpayer generally forfeits the right to challenge the IRS’s assessment in the U.S. Tax Court.
- *Solution:* Give taxpayers abroad an additional 60 days to respond to math error notices.

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), thus bypassing otherwise applicable deficiency procedures. Under IRC § 6213(b)(2)(A), however, a taxpayer has 60 days after a math error notice is sent to request that the summary assessment be abated. If the taxpayer makes an abatement request within 60 days, the IRS must abate the summary assessment and then follow deficiency procedures under IRC § 6212 if it wishes to reassess an increase in tax. If the taxpayer does not submit an abatement request within 60 days, the taxpayer generally forfeits the right to dispute the IRS’s assessment by filing a petition in the U.S. Tax Court. No additional time is allowed to request an abatement when the math error notice is addressed to a taxpayer outside the United States.

By contrast, a taxpayer outside the United States who receives a notice of deficiency is given additional time to respond. In general, a taxpayer may file a petition in the Tax Court for a redetermination of a deficiency within 90 days from the date the notice is mailed. However, when the notice of deficiency “is addressed to a person 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 Tax Court has construed this language broadly, concluding among other things that the 150-day period for filing a petition applies not only when a notice of deficiency is mailed to an address outside the United States, but also when a notice of deficiency is mailed to an address within the United States, provided the taxpayer is located outside the United States.¹

REASONS FOR CHANGE

The U.S. State Department has estimated that the number of U.S. citizens residing abroad is about nine million, including students, members of the military, taxpayers working abroad, and retirees.² Taxpayers abroad (either temporarily or permanently) often require more time to respond to IRS notices than

1 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 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 when 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 is 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).

2 See U.S. DEP’T OF STATE, BUREAU OF CONSULAR AFFS., CONSULAR AFFAIRS BY THE NUMBERS (Jan. 2020), <https://travel.state.gov/content/dam/travel/CA-By-the-Number-2020.pdf>. TAS is not aware of a more recent government study.

taxpayers living in the United States. Mail delivery takes longer in both directions – in some cases substantially longer. In addition, persons temporarily abroad often do not have access to their tax or financial records, making it difficult for them to respond immediately.

By giving taxpayers abroad 60 additional days to file a petition in the Tax Court in response to a notice of deficiency, Congress recognized that holding overseas taxpayers to the same deadlines as taxpayers located in the United States would be unreasonable. The same logic applies to math error notices. In fact, the need for additional time is arguably greater 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).

RECOMMENDATION

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