

## #14 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 otherwise-applicable 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), however, 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. If the taxpayer submits an abatement request within 60 days, the IRS must abate the summary 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, a taxpayer outside the United States who receives a notice of deficiency generally is given 60 additional days to file a petition with the Tax Court. Generally, a taxpayer may file a petition with the Tax Court for a redetermination of a deficiency within 90 days from the date the notice is mailed. When the notice of deficiency “is addressed to a person outside the United States,” however, 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 when a notice of deficiency is mailed to an address outside the United States as well as when a notice of deficiency is mailed to an address within the United States but the taxpayer is located outside the United States.<sup>74</sup>

### Reasons for Change

Approximately nine million U.S. citizens live abroad, along with more than 170,000 U.S. military service personnel.<sup>75</sup> In addition, more than 330,000 U.S. students study overseas.<sup>76</sup> 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 delivery takes longer 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.

74 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).

75 For FY 2017, the Department of State estimates that 9,000,000 U.S. citizens lived abroad. U.S. Department of State, Bureau of Consular Affairs, *CA by the Numbers, Fiscal Year 2017 data*, updated July 2018. See <https://travel.state.gov/content/dam/travel/CA-By-the-Numbers%202018-Q4.pdf>. As of June 30, 2018, about 170,000 U.S. military service personnel were stationed abroad; this number does not include military family members, or civilian military personnel stationed abroad. Defense Manpower Data Center (DMDC), *Location Country Report 1806, Number of Military and DoD Appropriated Fund (APF) Civilian Personnel Permanently Assigned*, Updated June 30, 2018.

76 National Association for Foreign Student Affairs, *Association of International Educators, Study Abroad Participation by State: Academic Year 2016–2017*, [https://www.nafsa.org/\\_/File/\\_/2015-2016\\_study\\_abroad\\_state.pdf](https://www.nafsa.org/_/File/_/2015-2016_study_abroad_state.pdf).

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 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).

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.<sup>77</sup> Giving U.S. taxpayers living abroad the same additional 60-day period to respond to math error notices as the law currently gives them 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.

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<sup>77</sup> 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.*