

IMPROVE ASSESSMENT AND COLLECTION PROCEDURES

Legislative Recommendation #11

Require That Math Error Notices Describe the Reason(s) for the Adjustment With Specificity, Inform Taxpayers They May Request Abatement Within 60 Days, and Be Mailed by Certified or Registered Mail

PRESENT LAW

Under IRC § 6213(b) the IRS may make a summary assessment of tax arising from a mathematical or clerical error, as defined in IRC § 6213(g). When it does so, IRC § 6213(b)(1) requires that the IRS send the taxpayer a notice describing “the error alleged and an explanation thereof.” By law, the taxpayer has 60 days from the date of the notice to request that the summary assessment be abated.¹ If the taxpayer does not make an abatement request within 60 days, the assessment is final, and the taxpayer has lost his or her right to challenge the IRS’s position in the Tax Court. If the taxpayer requests an abatement, the IRS must abate the summary assessment. If the IRS continues to believe the taxpayer owes the tax, it may audit the taxpayer and propose an adjustment by issuing a notice of deficiency; if it does so, the taxpayer will have the right to challenge the IRS’s position in the Tax Court.

REASONS FOR CHANGE

Many taxpayers do not understand the significance of “deficiency procedures” and do not understand that the failure to respond to an IRS math error notice within 60 days means they have conceded the adjustment and forfeited their right to challenge the IRS’s position in the Tax Court. Notably, the law does not specify how the IRS must describe the math error or require the IRS to inform taxpayers they have 60 days to request the math error assessment be reversed. Further, unlike a notice of deficiency, which carries consequences similar to that of a math error notice (*i.e.*, assessment of tax that may result in future collection actions), IRC § 6213 does not require a math error notice be sent to a taxpayer by certified or registered mail.²

Although the statute requires the IRS to describe “the error alleged and an explanation thereof” in a notice, the descriptions are often very general. Some notices provide taxpayers with a list of possible errors – leaving them uncertain which error, if any, was committed. Other notices may indicate that a taxpayer understated his or her adjusted gross income but not specify which item of gross income was understated. Further, during calendar year (CY) 2021, the IRS neglected to include language informing taxpayers they have 60 days to request an abatement in about 6.5 million math error notices.³ Although the IRS later corrected this omission by sending taxpayers letters explaining the 60-day period, many taxpayers were left confused about what they needed to do, if anything.

¹ IRC § 6213(b)(2)(A).

² IRC § 6212(a). “If the Secretary determines that there is a deficiency in respect of any tax imposed ... he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.”

³ Erin M. Collins, Math Error, Part II: Math Error Notices Aren’t Just Confusing; Millions of Notices Adjusting the Recovery Rebate Credit Also Omitted Critical Information, NATIONAL TAXPAYER ADVOCATE BLOG (Aug. 3, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-math-error-part-ii-math-error-notices-arent-just-confusing-millions-of-notices-adjusting-the-recovery-rebate-credit-also-omitted-critical-information/>.

It is unclear whether the IRS's explanation of alleged errors satisfies the statutory requirement when it makes a general statement or states that the error is due to one of multiple possible causes, since the statute does not describe the degree of specificity required. However, it is clear that the omission of the 60-day language from math error notices does not invalidate the notices, because IRC § 6213(b) does not require the IRS to tell taxpayers they have 60 days to request an abatement. While the IRS generally does so, the practice should not be discretionary. Amending IRC § 6213(b) to require that the IRS specifically describe the error giving rise to the adjustment and inform taxpayers they have 60 days to request that the summary assessment be abated would help ensure taxpayers understand the adjustment and their rights. Additionally, requiring the notice be sent either by certified or registered mail would underscore the significance of the notice and be yet another safeguard to ensure that taxpayers are receiving this critical information.

RECOMMENDATION

- Amend IRC § 6213(b)(1) to require that:
 - All math error notices provide a detailed explanation of the specific error, including the line number on the return or the line number on the schedule (whichever is more specific) on which the alleged error was made.
 - All math error notices include a statement that the taxpayer has 60 days from the date of the notice to request that the summary assessment be abated, and prominently display at the top of the notice the date on which the 60-day period expires.
 - All such notices will be sent either by certified or registered mail.