

**Legislative Recommendation #14****Allow Additional Time for Taxpayers to Request Abatement of a Math Error Assessment Equal to the Additional Time Allowed to Respond to a Notice of Deficiency When the Math Error Notice Is Addressed to a Person Outside the United States****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. A taxpayer has no right to file a petition in the U.S. Tax Court based on a math error notice. However, under IRC § 6213(b)(2)(A) a taxpayer has 60 days after a math error notice is sent to request abatement. 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 forfeits his or her right to file a petition in the Tax Court. No additional time beyond the 60 days 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.<sup>1</sup>

**REASONS FOR CHANGE**

An estimated nine million U.S. citizens live abroad, as well as about 228,000 U.S. military service personnel.<sup>2</sup> In addition, more than 340,000 U.S. students study overseas.<sup>3</sup> Taxpayers living abroad (temporarily or permanently) often require more time to respond to IRS notices than taxpayers living in the United States. Mail delivery takes longer in both directions – in some cases, depending on where the taxpayer is located, 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.

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- 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 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 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 For Fiscal Year (FY) 2019, the Department of State estimates that about nine million U.S. citizens lived abroad. U.S. Department of State, Bureau of Consular Affairs, *Consular Affairs by the Numbers*, FY 2019 data (Jan. 2020), <https://travel.state.gov/content/dam/travel/CA-By-the-Number-2020.pdf>. As of June 30, 2021, about 228,000 U.S. military service personnel were stationed abroad, including military reserve personnel and Department of Defense civilian employees. U.S. Department of Defense, Defense Manpower Data Center (DMDC), *Military and Civilian Personnel by Service/Agency by State/Country*, <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports>.
  - 3 Open Doors, U.S. Study Abroad: All Destinations, <https://opendoorsdata.org/data/us-study-abroad/all-destinations> (last visited Sept. 2, 2020) (showing 341,751 U.S. students studied abroad during the 2017-2018 academic year).

By giving taxpayers living 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 with respect 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.