

IMPROVE ASSESSMENT AND COLLECTION PROCEDURES

Legislative Recommendation #7

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 Mail

SUMMARY

- *Problem:* Each year, the IRS sends millions of “math error” notices to taxpayers that propose to adjust their tax liabilities. These notices often do not explain the reason for the adjustments, are never received by the taxpayer, and/or do not state that the taxpayer must dispute the adjustments within 60 days or generally forfeit the right to do so.
- *Solution:* Require that all math error notices provide a clear explanation of the error alleged, be sent via certified or registered mail, and inform taxpayers they have 60 days from the date of the notice to request that the math error adjustment be abated or the adjustment generally will become final.

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). Summary assessment is often referred to as “math error” authority. When the IRS makes a math error adjustment, IRC § 6213(b)(1) requires it to 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 becomes 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 the IRS 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 that the failure to respond to an IRS math error notice within 60 days means they have conceded the adjustment and, except in limited circumstances, have 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 statutory 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 the IRS to send a math error notice by certified or registered mail.²

Although the statute requires the IRS to “set forth 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

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.”).

them uncertain which error, if any, was committed. Other notices indicate that a taxpayer understated his or her adjusted gross income but do not specify which item of gross income was understated. Further, during calendar year 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.

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, as 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 by either 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.

RECOMMENDATIONS

- 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 by either certified 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/>.