

Legislative Recommendation #9**Continue to Limit the IRS's Use of "Math Error Authority" to Clear-Cut Categories Specified by Statute****SUMMARY**

- *Problem:* The tax law provides taxpayers with "deficiency procedures" that generally give them the right to challenge an IRS determination that they owe tax in the U.S. Tax Court, but the law also gives the IRS the authority to provisionally bypass deficiency procedures and summarily assess tax without issuing a notice of deficiency when a tax return contains one of 22 categories of "mathematical or clerical errors" (often referred to as "math errors"). On several occasions, the Department of the Treasury (Treasury) has requested that Congress grant it the authority to add new categories of math errors by regulation. As a practical matter, this change could have the effect of depriving taxpayers of deficiency procedures in a wider range of circumstances.
- *Solution:* Congress should retain the sole authority to revise categories of math errors and not give Treasury the authority to add new categories of math errors by regulation.

PRESENT LAW

Before the IRS may assess a deficiency, IRC § 6213(a) ordinarily requires that it send the taxpayer a "notice of deficiency" that gives the taxpayer 90 days (150 days if addressed to a taxpayer outside the United States) to contest it by filing a petition with the U.S. Tax Court (known as "deficiency procedures"). The taxpayer's ability to appeal a deficiency determination to the Tax Court before paying the tax is central to the taxpayer's *right to appeal an IRS decision in an independent forum*.¹

As an exception to standard deficiency procedures, IRC § 6213(b)(1) authorizes the IRS to summarily assess and collect tax without first providing the taxpayer with a notice of deficiency or access to the Tax Court when addressing "mathematical and clerical" errors (known as "math error authority"). If a taxpayer contests a math error notice within 60 days, IRC § 6213(b)(2)(A) provides that the IRS must abate the assessment. If the IRS abates the assessment, it must follow deficiency procedures if it wishes to reassess the tax. If taxpayers fail to respond to a math error notice, they lose their right to challenge the liability in court prior to assessment. The IRS may summarily assess deficiencies arising from 22 types of mathematical or clerical errors, which are codified at IRC § 6213(g)(2), subparagraphs A-V.

REASONS FOR CHANGE

Congress generally requires the IRS to follow deficiency procedures, which provide taxpayers with notice and a reasonable opportunity to challenge the IRS's tax adjustment, most importantly by giving them an opportunity to dispute an adverse IRS determination in an independent judicial forum (*i.e.*, the Tax Court) before being required to pay additional tax. Math error authority, which provides fewer taxpayer protections, was authorized as a limited exception to regular deficiency procedures. It allows the IRS to make adjustments in cases of clear taxpayer error, such as where a taxpayer incorrectly adds numbers or incorrectly transcribes a number from one form to another. If a taxpayer who receives a math error notice does not ask the IRS to abate the tax within 60 days, the taxpayer will lose the right to Tax Court review before the assessment is made.

¹ See IRC § 7803(a)(3)(E) (identifying the *right to appeal an IRS decision in an independent forum* as a taxpayer right).

Math error procedures are cheaper and simpler for the IRS than deficiency procedures. For that reason, Treasury has previously requested that Congress grant it the authority to assess tax without issuing a statutory notice of deficiency where the information provided by the taxpayer does not match the information contained in government databases or other third party databases Treasury specifies in regulations.²

The National Taxpayer Advocate is concerned about the impact on taxpayer rights of giving Treasury broad authority to add new categories of math error by regulation. In our reports to Congress, we have documented numerous circumstances in which the IRS has used math error authority to address discrepancies that have undermined taxpayer rights.³

If the IRS uses math error authority to address more complex issues that require additional fact finding, its assessments are more likely to be wrong, and the IRS's computer-generated notices, which confuse many taxpayers in the simplest of circumstances, are likely to become even more difficult to understand.⁴

Many taxpayers do not understand the consequences of failing to respond to the notice within 60 days. The law does not require the IRS to explain these consequences, although it generally does so. In 2021, however, in connection with the adjustment of taxpayers' Recovery Rebate Credits, the IRS issued about 6.5 million math error notices that omitted the 60-day time period language for requesting an abatement of the tax.⁵ At the request of the National Taxpayer Advocate, it later reissued letters to these taxpayers informing them of their right to request an abatement, and it restarted the 60-day time period from the date of these new letters. In light of the consequences of failing to respond to a math error notice, the decision whether to explain the consequences should not be discretionary.

Math error authority is appropriate to use where required schedules are omitted or where annual or lifetime dollar caps have been exceeded. It is also appropriate to use where there is a discrepancy between a return entry and data available to the IRS from certain reliable government databases, such as records maintained by the Social Security Administration. But Treasury and the IRS should not be the arbiters of that reliability. Rather, Congress should retain full authority to determine whether the administrative "efficiency" of using math error authority in these instances outweighs the loss of the significant taxpayer protections that deficiency procedures provide.

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- 2 See, e.g., Joint Comm. on Taxation, JCS-1-19, Description of Certain Revenue Provisions Contained in the President's Fiscal Year 2020 Budget Proposal 62, 64 (July 8, 2019), <https://www.jct.gov/CMSPages/GetFile.aspx?guid=7375e9d9-b13c-4692-a667-7e66ec7234e9>; Dep't of the Treasury, General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals 245-246 (Feb. 2015), <https://home.treasury.gov/system/files/131/General-Explanations-FY2016.pdf>.
 - 3 See, e.g., National Taxpayer Advocate 2018 Annual Report to Congress 164 (Most Serious Problem: Post-Processing Math Error Authority: The IRS Has Failed to Exercise Self-Restraint in Its Use of Math Error Authority, Thereby Harming Taxpayers), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MSP_11_PostProcessing.pdf; National Taxpayer Advocate 2018 Annual Report to Congress 174 (Most Serious Problem: Math Error Notices: Although the IRS Has Made Some Improvements, Math Error Notices Continue to Be Unclear and Confusing, Thereby Undermining Taxpayer Rights and Increasing Taxpayer Burden), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MSP_12_MathError.pdf.
 - 4 Erin M. Collins, Math Error, Part I, NATIONAL TAXPAYER ADVOCATE BLOG (July 28, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-math-error-part-i/>; 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/>.
 - 5 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/>.

RECOMMENDATIONS

- Refrain from giving Treasury the authority to add new categories of “correctable errors” by regulation. Because the deficiency procedures created by Congress provide important taxpayer protections, Congress should retain the sole authority to determine whether and when to create exceptions to deficiency procedures by adding categories of mathematical or clerical errors.
- Amend IRC § 6213(b) to (i) strengthen mathematical or clerical error notification requirements to mandate that the IRS’s notice clearly describes the discrepancy; how to contest it; that an abatement request must be made within 60 days; and the consequences of failing to meet the 60-day abatement request deadline and (ii) permit an assessment arising out of mathematical or clerical errors only when the IRS has researched all information in its possession that could help reconcile the discrepancy.
- Amend IRC § 6213(g) to authorize the IRS to exercise its existing (and any new) authority to summarily assess a deficiency due to “clerical errors” only where: (i) there is a discrepancy between a return entry and reliable government data; (ii) the IRS’s notice clearly describes the discrepancy and how to contest it; (iii) the IRS has researched all information in its possession that could help reconcile the discrepancy; and (iv) the IRS does not have to evaluate documentation to make a determination.
- Amend IRC § 6213 to provide that the IRS is not authorized to use any new criteria or data to make summary assessments unless Treasury, in consultation with the National Taxpayer Advocate, has evaluated and publicly reported on the reliability of the criteria or data for that intended use.⁶

6 For a more limited recommendation, see National Taxpayer Advocate 2015 Annual Report to Congress 329 (Legislative Recommendation: *Math Error Authority: Authorize the IRS to Summarily Assess Math and “Correctable” Errors Only in Appropriate Circumstances*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_LR_02_Math-Error-Authority.pdf.