

Legislative Recommendation #10**Continue to Limit the IRS's Use of "Math Error Authority" to Clear-Cut Categories Specified by Statute****SUMMARY**

- *Problem:* The tax law generally requires the IRS to follow "deficiency procedures" when it determines a taxpayer owes additional tax, and deficiency procedures give taxpayers the right to challenge the IRS determination in the U.S. Tax Court. However, the law also gives the IRS the authority to provisionally bypass deficiency procedures and summarily assess tax 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. This change could have the effect of depriving taxpayers of deficiency procedures (and thus the right to challenge the IRS's position in the Tax Court) 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, and it should impose additional safeguards regarding when the IRS may use math error authority.

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 (or 150 days if addressed to a taxpayer outside the United States) to challenge the IRS's position 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 *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) requires that the IRS 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 timely, 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 IRC § 6213(g)(2), subparagraphs A-V, codifies.

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 U.S. Tax Court) before being required to pay additional tax. Congress authorized math error authority, which provides fewer taxpayer protections, 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

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

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 loses the right to Tax Court review before the IRS makes the assessment.

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 – what it refers to as “correctable errors.”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. The National Taxpayer Advocate’s Reports to Congress 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

Math error authority is appropriate for the IRS 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 sole arbiters of that reliability. Rather, Congress should retain the authority to determine whether the administrative “efficiency” of using math error authority in specific instances outweighs the loss of the significant taxpayer protections deficiency procedures provide.

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.

2 See, e.g., STAFF OF J. COMM. ON TAX’N, 116TH CONG., DESCRIPTION OF CERTAIN REVENUE PROVISIONS CONTAINED IN THE PRESIDENT’S FISCAL YEAR 2020 BUDGET PROPOSAL 62, 64, JCS-1-19 (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 The National Taxpayer Advocate also recommends that Congress require the IRS to improve the specificity of math error notices and make them easier to understand. See *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*, *supra*. Bipartisan legislation has recently been introduced that would generally adopt this recommendation. See Internal Revenue Service Math and Taxpayer Help Act, H.R. 8067 & S. 4549, 118th Cong. § 2 (2024). See also 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/>.

- Amend IRC § 6213(b) to 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.⁵

5 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.