

LR
#5

COLLECTION DUE PROCESS AND INNOCENT SPOUSE NOTICES: Amend IRC §§ 6320, 6330, and 6015 to Require That IRS Notices Sent to Taxpayers Include a Specific Date by Which Taxpayers Must File Their Tax Court Petitions, and Provide That a Petition Filed by Such Specified Date Will Be Treated As Timely

TAXPAYER RIGHT(S) IMPACTED¹

- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

PROBLEM

The United States Tax Court plays a “unique and critical role as a prepayment forum,” which taxpayers can access without having to pay the disputed amount of tax in advance.² The Tax Court has jurisdiction over a multitude of issues, including appeals from Collection Due Process (CDP) hearings and relief from joint and several liability.³ The current language in several IRS CDP and innocent spouse notices of determination confuses taxpayers, especially pro se taxpayers, and causes them to misinterpret the deadline to file a petition with the Tax Court.

For example, the IRS notice of determination L3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code*, refers to “a 30-day period beginning the day after the date of this letter” (emphasis added) within which taxpayers may petition the Tax Court for review of the IRS’s determination to proceed with collection by lien or levy.⁴ Several recent court cases demonstrate that the language in various notices confuses taxpayers and cause them to misinterpret the deadline to file a petition with the Tax Court.⁵ If a taxpayer misses the deadline, the Tax Court does not have jurisdiction to review the IRS’s determination and the taxpayers are deprived of

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 Hon. James S. Halpern, *What Has the U.S. Tax Court Been Doing? An Update*, 2016 TNT 106-8, TAX NOTES TODAY (June 2, 2016).

3 See IRC §§ 6320 & 6330 for Collection Due Process (CDP) jurisdiction. See also, IRC § 6015 for jurisdiction on relief from joint and several liability.

4 IRS Letter L3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of The Internal Revenue Code* (Rev. Dec. 2016).

5 In at least four recent cases, taxpayers filed their petitions one day late because they miscalculated the time period for filing their Tax Court petitions. See, e.g., *Duggan v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 4100-15L (2015); *Pottgen v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 1410-15L (2016); *Integrated Event Management, Inc. v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 27674-16SL (2017); *Protter v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 22975-15SL (2017). These cases are not cited for precedent, rather only for the fact patterns showing taxpayers miscalculated the deadline to file.

their CDP rights.⁶ Additionally, taxpayers can be confused about the 30-day deadline to request a CDP hearing with the IRS, which is a prerequisite to petition the Tax Court for judicial review.⁷

Similarly, taxpayers challenging the IRS's determination to deny relief from joint and several liability under Internal Revenue Code (IRC) § 6015 (innocent spouse relief) may also benefit from clearer notices.⁸ For innocent spouse cases, IRS Letter 5086, *Final Determination* (Rev. Feb. 2015), IRS Letter 5087, *Final Determination* (Rev. Feb. 2015), and IRS Letter 5088, *Final Determination* (Rev. Feb. 2015) each state: “*You must file your petition within 90 days from the date of this letter.*”⁹ (emphasis added). In several recent cases, the taxpayers seeking innocent spouse relief missed the 90-day deadline which was fatal for their cases.¹⁰ Courts of Appeals consistently interpreted the deadline as a jurisdictional requirement and held the Tax Court lacks jurisdiction to hear untimely petitions for innocent spouse relief, regardless of whether equitable considerations supporting the extension of the prescribed time period exist.¹¹

Furthermore, U.S. taxpayers residing abroad need to overcome barriers (such as delays in international mail, language differences, time zones, and the lack of access to tax professionals) to meet the deadlines prescribed in the CDP and innocent spouse notices.¹²

The absence of a codified requirement to provide the last date to file a request for a CDP hearing, or to file a CDP or innocent spouse petition with the Tax Court jeopardizes the taxpayers' rights *to be informed, to appeal the IRS's decision in an independent forum, and to a fair and just tax system*. In contrast, the IRC requires the IRS to specify the “last date” for filing a Tax Court petition in a notice of deficiency and provides an additional 60 days to file a petition for taxpayers residing abroad.¹³

6 If the taxpayer does not request a hearing within the 30-day period, the taxpayer may still be entitled to an equivalent hearing with Appeals but will not have any appeal rights allowing the taxpayer to file for judicial review of the equivalency hearing determination. Treas. Reg. § 301.6330-1(i).

7 See, e.g., *Weiss v. Comm'r*, 147 T.C. 179 (2016), *appeal docketed*, Docket. No. 16-1407 (D.C. Cir. Nov. 23, 2016) (holding that when the date appearing on IRS Letter 1058A was earlier than the date of mailing, the 30-day window was appropriately calculated by date of mailing, rather than the date appearing on the letter).

8 See IRS Form 8857, *Request for Innocent Spouse Relief, Instructions* (Jan. 2014). See also Treas. Reg. § 1.6015-1(a); Internal Revenue Manual (IRM) 25.15.3.10.2, *Final Determination Letters* (July 29, 2014).

9 IRC § 6015(e)(1)(A) provides the taxpayer up to 90 days to petition the U.S. Tax Court from the date the IRS mails the notice of final determination for relief, or the date which is six months after the request for relief is filed.

10 See, e.g., *Vu v. Comm'r*, T.C. Summ. Op. 2016-75; *Naufflett v. Comm'r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 17-1986 (2016).

11 See *Matuszak v. Comm'r*, 862 F.3d 192 (2d Cir. 2017); *Rubel v. Rubel*, 856 F.3d 301 (3d Cir. 2017), *aff'g* No. 16-9183 (T.C. July 11, 2016); *Calvo v. Comm'r*, 117 A.F.T.R.2d (RIA) 2246 (D.C. Cir. 2016). See also Legislative Recommendation: *Equitable Doctrines: Make the Time Limits for Bringing Tax Litigation Subject to the Judicial Doctrines of Forfeiture, Waiver, Estoppel, and Equitable Tolling and Clarify That Dismissal of an Untimely Petition Filed in Response to a Statutory Notice of Deficiency Is Not a Decision on the Merits of a Case, infra*.

12 See, e.g., National Taxpayer Advocate 2015 Annual Report to Congress 72-81 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*); National Taxpayer Advocate 2014 Annual Report to Congress 163-71 (Most Serious Problem: *Math Error Notices: The IRS Does Not Clearly Explain Math Error Adjustments, Making It Difficult for Taxpayers to Understand and Exercise Their Rights*); National Taxpayer Advocate 2010 Annual Report to Congress 221-34 (Most Serious Problem: *The IRS Has Not Studied or Addressed the Impact of the Large Volume of Undelivered Mail on Taxpayers*).

13 See IRC §§ 6320(a), 6330(a), 6015(e) and 6213(a). IRC § 6213(a) provides that “any petition filed with the Tax Court on or before the last date specified for filing such petition by the [IRS] in the notice of deficiency shall be treated as timely filed” and allows international taxpayers (*i.e.*, taxpayers residing or traveling abroad) an additional 60 days to file a petition in the Tax Court in response to a statutory notice of deficiency (for a total of 150 days compared to 90 days allowed to domestic taxpayers).

Example 1

Taxpayer A's daughter received the notice of determination sustaining a levy on Taxpayer A's bank account dated March 28, 2016, via certified mail. Taxpayer A's daughter put away the letter and forgot to inform Taxpayer A of the letter. After a period of time, Taxpayer A noticed the letter from the IRS and decided to appeal to the Tax Court. Taxpayer A mailed his petition for judicial review of the notice of determination via the fastest delivery method on Thursday, April 27, 2016.

Taxpayer A believed that his petition for a hearing was timely because the day he mailed the petition was 30 days from the date on the letter, which was March 28, 2016. The letter read that the 30-day period began "*the day after the date of this letter.*" Thus, Taxpayer A, calculated the date on the letter as day zero and the next day as day one, believing that April 27 would be day 30. The Tax Court, however, disagreed and issued an order stating that it lacked jurisdiction upon receiving a motion for summary judgment from the IRS. Even though the letter read that the 30-day period began "*the day after the date of this letter,*" the IRS calculated the date on the letter as day one, and the next day as day two, thus calculating the 30th day to be April 26, 2016. Based on the IRS's method of calculating, the letter that had been mailed on April 27, 2016, was deemed to be mailed by Taxpayer A on the 31st day. Due to Taxpayer A's hastened mailing and confusion regarding the method of counting, Taxpayer A was denied an opportunity for judicial review of the IRS's determination.

Example 2

The IRS denied innocent spouse relief to Taxpayer B, who relocated to Vietnam, under IRC § 6015 and sent her a final notice of determination. Taxpayer B was not represented by an attorney licensed in U.S. law while abroad and had difficulty in preparing her petition. She filed her petition to the Tax Court on the 91st day, having mailed her petition from overseas. However, unlike in a notice of deficiency, taxpayers abroad do not get more time than taxpayers in the United States (*e.g.*, 150 days instead of 90 days) to file a petition. As a result, Taxpayer B had no opportunity to file a timely Tax Court petition and be allowed the opportunity to have judicial review of the IRS's determination.

RECOMMENDATIONS

To increase fairness to taxpayers and to improve the consistency of the Internal Revenue Code, the National Taxpayer Advocate recommends that Congress:

- Amend IRC §§ 6320(a)(3), 6330(a)(3), 6330(d)(1), and 6015(e)(1)(A) to require the IRS to include a specific date, similar to the "last date" to file on the statutory notice of deficiency, by which a taxpayer must file his or her request for CDP hearing with the IRS, and his or her CDP or innocent spouse petition in the U.S. Tax Court.
- Amend IRC § 6330(d)(1) and § 6015(e)(1)(A) to deem CDP and innocent spouse petitions filed by the later of the date on the notice of determination or the last statutory date (if the IRS miscalculates the last date on the notice) as timely filed.
- Amend IRC §§ 6320(a)(3), 6330(a)(3), 6330(d)(1), and 6015(e)(1)(A)(ii) to allow an additional 60 days for taxpayers outside the U.S. to request a CDP hearing, or to file a CDP or innocent spouse petition in the U.S. Tax Court, similar to IRC § 6213(a).

PRESENT LAW

Under IRC §§ 6320 and 6330, taxpayers have the right to an administrative hearing, known as a CDP hearing, with respect to the collection of an assessed deficiency by lien or levy. IRC § 6320(a)(3)(B) requires the IRS to provide a notice to the taxpayer that informs him or her about “the right to request a hearing during the 30-day period beginning on the day after the 5-day period” after the day of the filing of the notice of federal tax lien.¹⁴ Similarly, IRC § 6330(a)(3) requires that the notice to the taxpayer include “the right of the person to request a hearing during the 30-day period” commencing on the day after the date of the CDP notice.¹⁵ At the conclusion of the CDP hearing, the Appeals Officer issues a notice of determination.¹⁶ Taxpayers may then petition the U.S. Tax Court for review of the notice of determination “within 30 days” thereafter.¹⁷

IRC § 6015 provides three ways for a taxpayer to obtain partial or full relief from an IRS debt resulting from a return filed jointly with a spouse or ex-spouse.¹⁸ Taxpayers seeking relief under IRC § 6015 generally file Form 8857, *Request for Innocent Spouse Relief*.¹⁹ The IRS then issues taxpayers a final notice of determination granting or denying relief in whole or in part.²⁰ The taxpayer has 90 days from the date the IRS mails the notice to file a petition with the Tax Court.²¹ Similar to the CDP provisions, IRC § 6015(e)(1)(A) does not require the IRS to specify the date by which a petition the Tax Court must be filed.²²

On the other hand, IRC § 6213(a) provides that “any petition filed with the Tax Court on or before the last date specified for filing such petition by the [IRS] in the notice of deficiency shall be treated as timely filed” and extends the period for filing a petition from 90 days to 150 days for taxpayers residing abroad.²³ Unlike IRC § 6213, CDP and innocent spouse provisions do not have an extended period of time to file a petition, for taxpayers abroad.²⁴

14 IRC § 6320(a)(3)(B). See also Treas. Reg. § 301.6320-1(b)(1).

15 IRC § 6330(a)(3). See also Treas. Reg. § 301.6330-1(b)(1).

16 Treas. Reg. § 301.6330-1(e)(3), Q&A-E8.

17 IRC §§ 6320(c), 6330(d)(1). See also Treas. Reg. § 301.6330-1(f)(1). Treas. Reg. § 301.6330-1(f)(1) clarifies that “the taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court.” However, the Treasury Regulation does not require the notice to calculate that date for taxpayers.

18 See IRC § 6015.

19 See IRS Form 8857, *Request for Innocent Spouse Relief, Instructions* (Jan. 2014).

20 See Treas. Reg. § 1.6015-1(a). See also IRM 25.15.3.10.2, *Final Determination Letters* (Rev. July 29, 2014). IRS Letter 5086, *Final Determination* (Feb. 2015), notifies the requesting spouse of the determination to allow relief. Additionally, Letter 5087, *Final Determination* (Feb. 2015), notifies the requesting spouse of the determination to allow partial relief. Finally, Letter 5088, *Final Determination* (Feb. 2015), notifies the requesting spouse of the final determination to disallow relief. All three letters state: “You must file your petition within 90 days from the date of this letter.”

21 IRC § 6015(e)(1)(A)(ii). See also Legislative Recommendation: *Make the Time Limits for Bringing Tax Litigation Subject to the Judicial Doctrines of Forfeiture, Waiver, Estoppel, and Equitable Tolling and Clarify That Dismissal of an Untimely Petition Filed in Response to a Statutory Notice of Deficiency Is Not a Decision on the Merits of a Case*, *infra*.

22 IRC § 6015(e)(1)(A).

23 IRC § 6213(a).

24 Compare IRC §§ 6320, 6330, and 6015 (lacking an extended period of time to file a petition for taxpayers abroad), with IRC § 6213(a) (providing “[w]ithin 90 days, or 150 days if the notice is addressed to a person outside the United States ... the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency.”) (emphasis added).

REASONS FOR CHANGE

The current language in the CDP notices of determination, which follows the language in the regulations, may cause taxpayers, especially *pro se* taxpayers, to misinterpret the filing deadline.²⁵ The deadline to file a Tax Court petition is described in various places as follows:

- IRC § 6330(d)(1) provides that the taxpayer may, “*within 30 days of a determination under this section, petition the Tax Court for review of such determination*” (emphasis added).
- The Treasury regulations under IRC §§ 6320 and 6330 provide that the taxpayer may “appeal such determinations made by Appeals within the 30-day period *commencing the day after the date of the Notice of Determination to the Tax Court*” (emphasis added).²⁶
- IRS Letter 3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code*, issued to taxpayers to advise them of their right to seek Tax Court review after a determination by Appeals, advises “i[f] you want to dispute this determination in court, you must file a petition with the United States Tax Court within a 30-day period *beginning the day after the date of this letter*” (emphasis added).²⁷

The consequence of not filing a timely petition is dire. If a taxpayer misses the deadline, the Tax Court does not have jurisdiction to review the IRS’s determination and taxpayers are deprived of their CDP rights.²⁸

In at least four recent cases,²⁹ taxpayers filed their petitions one day late because they miscalculated the time period for filing their Tax Court petitions which can be specifically related to the current language in the IRS notice of determination referring to “a 30-day period *beginning the day after the date of this letter*” (emphasis added).³⁰ Unsophisticated taxpayers are more likely to rely on the language in the IRS notice and apply a common parlance interpretation of the phrase, rather than read the relevant statute and regulations.

25 See IRS Letter L3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of The Internal Revenue Code* (Dec. 2016); Treas. Reg. § 301.6320-1(f); Treas. Reg. § 301.6330-1(f). TAS has a Notice Team which is currently focusing on developing solutions to this and other identified problems with notices.

26 Treas. Reg. § 301.6320-1(f); Treas. Reg. § 301.6330-1(f).

27 IRS Letter L3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of The Internal Revenue Code* (Dec. 2016).

28 If the taxpayer does not request a hearing within the 30-day period, the taxpayer may still be entitled to an equivalent hearing with Appeals but will not have any appeal rights allowing the taxpayer to file for judicial review of the equivalency hearing determination. Treas. Reg. § 301.6330-1(i).

29 See, e.g., *Duggan v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 4100-15L (2015) (dismissing for lack of jurisdiction where petition was filed “31 days after the mailing of the notices of determination.”); *Pottgen v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 1410-15L (2016) (dismissing for lack of jurisdiction where petition was received by Tax Court one day late); *Integrated Event Management, Inc. v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 27674-16SL (2017) (dismissing for lack of jurisdiction where petition was filed one day late, disagreeing with Taxpayer’s calculation putting the day of the letter as day zero rather than as day one); *Protter v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 22975-15SL (2017) (dismissing for lack of jurisdiction where petition was mailed 31 days after the date on the notice of determination, disagreeing with Taxpayer’s construction of the operative language effectively putting the day of the letter as day zero). These cases are only cited here for the fact patterns showing taxpayers miscalculated the deadline.

30 IRS Letter L3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of The Internal Revenue Code* (Dec. 2016).

Furthermore, there have been cases where taxpayers have miscalculated the 30-day deadline to request a CDP hearing with the IRS, which is a prerequisite to petition the Tax Court for judicial review later.³¹ This confirms that even a seemingly easy and straightforward calculation of 30 days confuses some taxpayers.

IRC § 6015(e)(1)(A) provides the taxpayer up to 90 days to petition the U.S. Tax Court from the date the IRS mails the notice of final determination for relief, or the date which is six months after the request for relief is filed.³² For innocent spouse cases, IRS Letter 5086, *Final Determination* (Rev. Feb. 2015), IRS Letter 5087, *Final Determination* (Rev. Feb. 2015), and IRS Letter 5088, *Final Determination* (Rev. Feb. 2015) each state: “*You must file your petition within 90 days from the date of this letter.*” (emphasis added).

In several recent cases, the taxpayers seeking innocent spouse relief missed the 90-day deadline which was fatal for their cases.³³ Courts of Appeals consistently interpreted the deadline as a jurisdictional requirement and held the Tax Court lacks jurisdiction to hear untimely petitions for innocent spouse relief, regardless of whether equitable considerations supporting the extension of the prescribed time period exist.³⁴

The absence of the requirement to provide the last date to file a request for a CDP hearing or to file a CDP or innocent spouse petition with the Tax Court jeopardizes the taxpayers’ rights *to be informed, to appeal the IRS’s decision in an independent forum, and to a fair and just tax system.* It is also inconsistent with the current statutory requirement that the IRS notices of deficiency specify the “last date” for filing a petition and that deems petitions filed by such date as timely filed.³⁵ Therefore, the “last” file-by dates on these notices will help avoid any confusion for taxpayers and prevent instances where taxpayers are denied rights because of misinterpretation of the IRS notices.

Furthermore, U.S. taxpayers residing abroad need to overcome barriers (such as delays in international mail, language differences, time zones, and the lack of access to tax professionals) to meet the deadlines prescribed in the CDP and innocent spouse notices.³⁶ Thus, providing an additional 60 days to these

31 See, e.g., *Weiss v. Comm’r*, 147 T.C. 179 (2016), *appeal docketed*, Docket. No. 16-1407 (D.C. Cir. Nov. 23, 2016) (holding that when date appearing on IRS Letter 1058A was earlier than date of mailing, 30-day window was appropriately calculated by date of mailing, rather than date appearing on letter). In this case, the Revenue Officer (RO) attempted to hand-deliver the levy notice during a field call on February 11, 2009, but was deterred by Mr. Weiss’s dog and mailed that same levy notice by certified mail to the Mr. Weiss’s last known address two days after, on February 13, 2009. The United States Tax Court held that the time period for making a CDP request runs from the date the IRS mails the notice and not from the date of the notice.

32 IRC § 6015(e)(1)(A).

33 See, e.g., *Vu v. Comm’r*, T.C. Summ. Op. 2016-75; *Naufflett v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 17-1986 (2016).

34 See *Matuszak v. Comm’r*, 862 F.3d 192 (2d Cir. 2017); *Rubel v. Rubel*, 856 F.3d 301 (3d Cir. 2017), *aff’g* No. 16-9183 (T.C. July 11, 2016); *Calvo v. Comm’r*, 117 A.F.T.R.2d (RIA) 2246 (D.C. Cir. 2016). See also Legislative Recommendation: *Equitable Doctrines: Make the Time Limits for Bringing Tax Litigation Subject to the Judicial Doctrines of Forfeiture, Waiver, Estoppel, and Equitable Tolling and Clarify That Dismissal of an Untimely Petition Filed in Response to a Statutory Notice of Deficiency Is Not a Decision on the Merits of a Case, infra.*

35 See IRC § 6213(a).

36 See, e.g., National Taxpayer Advocate 2015 Annual Report to Congress 72-81 (Most Serious Problem: *International Taxpayer Service: The IRS’s Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*); National Taxpayer Advocate 2014 Annual Report to Congress 163-71 (Most Serious Problem: *Math Error Notices: The IRS Does Not Clearly Explain Math Error Adjustments, Making It Difficult for Taxpayers to Understand and Exercise Their Rights*); National Taxpayer Advocate 2010 Annual Report to Congress 221-34 (Most Serious Problem: *The IRS Has Not Studied or Addressed the Impact of the Large Volume of Undelivered Mail on Taxpayers*).

taxpayers would improve the fairness of the U.S. tax system and make it consistent with the current notice of deficiency provision.³⁷

EXPLANATION OF RECOMMENDATION

The proposed legislative change would require the IRS to calculate and provide the last date for filing on all notices of determination issued under §§ 6320, 6330, and 6015 to make them consistent with the requirements for statutory notices of deficiency under IRC § 6213(a). These statutory requirements would ensure that notices include an exact date, expressly calculated and stated clearly on the letter, by which the taxpayer must file their petition to the Tax Court or a request for a CDP hearing with the IRS. This would not impose undue burden on the IRS as it currently has procedures to calculate the last date to file-by for the notices of deficiency.³⁸ The IRS can implement such procedures for all notices and letters, including making minor changes to:

- IRS Letter 1058/1058A, *Final Notice of Intent to Levy and Notice of Your Right to a Hearing* (Rev. Jan. 2017);
- IRS Letter 3172, *Notice of Federal Tax Lien and Your Rights to a Hearing Under IRC 6320* (Rev. March 2017);
- IRS Letter 3193, *Notice of Determination: Concerning Collection Action(S) Under Section 6320 and/or 6330 of The Internal Revenue Code* (Rev. Dec. 2016); and
- IRS Letter 5086, *Final Determination* (Rev. Feb. 2015), IRS Letter 5087, *Final Determination* (Rev. Feb. 2015), and IRS Letter 5088, *Final Determination* (Rev. Feb. 2015).

The proposed legislative change would also deem requests for CDP hearing and petitions to the Tax Court to review CDP and innocent spouse determinations as timely filed as long as they are filed by the “last date” listed in the IRS notice. Under this legislative recommendation taxpayers are allowed the later of the date on the notice or the last statutory date, which provides an additional protection if the IRS miscalculates the date on the notice.

The 60-day extension of the deadline to file CDP and innocent spouse petitions for taxpayers abroad is consistent with the current notice of deficiency file-by deadlines and would not create additional administrative burden for the IRS.³⁹ The National Taxpayer Advocate has previously recommended statutory fixes requiring that any final determination letter the IRS issues in connection with a request for innocent spouse relief in a manner similar to that provided by IRC § 6213(a) and reiterates that recommendation.⁴⁰ Similarly, she recommended to allow 120 days for taxpayers outside the U.S. to file

37 IRC § 6213(a) provides taxpayers living outside the United States 150 days to file a petition to respond to a notice of deficiency. IRC § 6213(a).

38 IRM 4.8.9, *Statutory Notices of Deficiency* (Aug. 11, 2016), Exhibit 4.8.9-2, *Computation of Last Day to File a Petition with United States Tax Court and Computation of Default Date*, provides IRS employees a template to follow when calculating the deadline.

39 For example, current instructions to employees provide the following calculation of the last date to file petition with the Tax Court for a redetermination of a deficiency: “the date of Statutory Notice of Deficiency issued + 90/150 days for 90/150 letter + 15 days for notification of Tax Court petition.” IRM 4.8.9, *Statutory Notices of Deficiency* (Aug. 11, 2016), Exhibit 4.8.9-2, *Computation of Last Day to File a Petition with United States Tax Court and Computation of Default Date*.

40 See National Taxpayer Advocate 2006 Annual Report to Congress 535-36 (*Additional Legislative Recommendation: Extend Period for Filing a Tax Court Petition; Improve Final Determination Letters*); National Taxpayer Advocate 2001 Annual Report to Congress 159-65.

a request with the IRS for an abatement of an assessment arising from mathematical or clerical errors to respond to the IRS math error notices for taxpayers abroad.⁴¹

41 See National Taxpayer Advocate 2016 Annual Report to Congress 393-97 (Legislative Recommendation: *International Due Dates: Amend Internal Revenue Code § 6213(b)(2)(A) to Provide Additional Time to Request Abatement of a Mathematical or Clerical Error Assessment to Taxpayers Living Abroad Similar to the Timeframe Afforded to Taxpayers to Respond to a Notice of Deficiency*).