

## Legislative Recommendation #13

## Give Taxpayers Abroad Additional Time to Request a Collection Due Process Hearing and to File a Petition Challenging a Notice of Determination in the Tax Court

### SUMMARY

- *Problem:* Taxpayers abroad often experience long delays in receiving mail from the IRS and generally need more time to respond to notices than taxpayers living in the United States. The tax code allows an additional 60 days for taxpayers abroad to challenge a notice of deficiency, but it does not allow additional time to challenge Collection Due Process (CDP) notices. As a result, taxpayers abroad may lose critical administrative, due process, and judicial rights.
- *Solution:* Amend the tax code to allow an additional 60 days for taxpayers abroad to request a CDP hearing and to challenge a CDP notice of determination in the Tax Court.

### PRESENT LAW

IRC § 6320(a) requires the IRS to give taxpayers notice and an opportunity for a hearing after it files a Notice of Federal Tax Lien (CDP lien notice).<sup>1</sup> IRC § 6330(a) generally requires the IRS to give taxpayers notice and an opportunity for a hearing before it issues a levy (CDP levy notice).<sup>2</sup> In both cases, taxpayers have 30 days to request a CDP hearing.<sup>3</sup>

The hearing allows for review of a filed Notice of Federal Tax Lien or a proposed levy and is conducted by an impartial officer of the Independent Office of Appeals (Appeals). It allows a taxpayer the opportunity to raise defenses, challenge the appropriateness of a lien or levy, and propose collection alternatives.<sup>4</sup> A taxpayer may also dispute the existence or amount of the underlying tax liability at a CDP hearing if the taxpayer “did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.”<sup>5</sup> If the parties cannot otherwise resolve the issues, Appeals issues a notice of

<sup>1</sup> A CDP lien notice must be sent not more than five business days after the filing of the notice of lien.

<sup>2</sup> A CDP levy notice must be sent not less than 30 days before the day of the first levy unless an exception under IRC § 6330(f) applies.

<sup>3</sup> IRC §§ 6320(a)(3)(B), 6330(a)(3)(B). Taxpayers will still be allowed an Appeals hearing if the request is late, but it is an “equivalent” hearing, not a CDP hearing, and the taxpayer cannot challenge the Appeals determination in Tax Court. Treas. Reg. §§ 301.6320-(1)(i)(1), 301.6330-1(i)(1). Thus, taxpayers lose the right to judicial review if they miss the 30-day response deadline in IRC §§ 6320(a)(3)(B) and 6330(a)(3)(B). In *Organic Cannabis Found., LLC v. Comm’r*, 161 T.C. 13 (2023), the Tax Court held that the 30-day period for requesting a CDP hearing may be equitably tolled when the circumstances warrant it. However, equitable tolling is applied only sparingly and when taxpayers seeking tolling establish that (i) they pursued their rights diligently and (ii) extraordinary circumstances prevented them from filing timely. See, e.g., *Cunningham v. Comm’r*, 716 F. App’x. 182, 183-184 (4th Cir. 2018) (unpublished) (holding that equitable tolling was not appropriate under the test articulated in *Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250 (2016), when a taxpayer missed the deadline for responding to a CDP levy notice by one day because she misunderstood the letter).

<sup>4</sup> IRC §§ 6320(c), 6330(c)(2)(A).

<sup>5</sup> IRC §§ 6320(c), 6330(c)(2)(B). The phrase “underlying tax liability” includes the tax deficiency, any penalties, additions to tax, and statutory interest. *Katz v. Comm’r*, 115 T.C. 329, 339 (2000).

determination, which allows the taxpayer 30 days to request judicial review of the IRS's determination in the Tax Court.<sup>6</sup> This 30-day period is statutory.<sup>7</sup>

The time periods provided to request a CDP hearing or to challenge a notice of determination in the Tax Court do not allow additional time for taxpayers abroad to complete these actions. By contrast, IRC § 6213(a) gives taxpayers residing outside the United States an additional 60 days (150 days total) to challenge a deficiency determination under IRC § 6213(a).

## REASONS FOR CHANGE

The U.S. State Department has estimated that the number of U.S. citizens residing abroad is about nine million,<sup>8</sup> including students, members of the military, taxpayers working abroad, and retirees. Mail sent from the United States to taxpayers abroad often takes several weeks to arrive, as does mail sent by taxpayers abroad to the United States. Further, taxpayers abroad often do not have ready access to their tax and financial records and often are unable to obtain assistance from advisors or the IRS.<sup>9</sup> For these reasons, taxpayers outside the United States frequently need additional time to respond to IRS notices.

Many IRS notices with significant legal consequences impose tight response deadlines that taxpayers abroad cannot meet easily, if at all. In the deficiency context, Congress recognized that the regular 90-day response period set forth in IRC § 6213(a) is not sufficient for taxpayers outside the United States, and it afforded them an additional 60 days (a total of 150 days) in which to challenge a deficiency determination with the Tax Court. In the CDP context, however, taxpayers are only given 30 days to request a CDP lien or levy hearing or to seek judicial review of an adverse IRS determination with the Tax Court. Such an abbreviated timeframe is prejudicial for these taxpayers.

Consistent with the extra 60 days taxpayers abroad have been given to respond to notices of deficiency, we recommend taxpayers abroad be given an extra 60 days to respond to CDP notices. In practice, the need for extra time for taxpayers abroad is even greater for CDP notices; meeting the standard 90-day response deadline for notices of deficiency is at least plausible, while meeting the standard 30-day response deadline for CDP notices generally is not.

## RECOMMENDATION

- Amend IRC §§ 6320(a)(3)(B), 6330(a)(3)(B), and 6330(d)(1) to allow 90 days (*i.e.*, an additional 60 days) (i) to request a CDP hearing after the issuance of a CDP lien or levy notice and (ii) to file a petition for review in the Tax Court after the issuance of a notice of determination if the notice is addressed to a person outside the United States.

<sup>6</sup> IRC §§ 6320(c), 6330(d)(1).

<sup>7</sup> IRC § 6330(d)(1). In *Boechler, P.C. v. Comm'r*, 596 U.S. 199 (2022), the Supreme Court held that the 30-day time limit is not jurisdictional and may be equitably tolled when the circumstances warrant it. However, equitable tolling is applied only sparingly and when taxpayers seeking tolling establish that (i) they pursued their rights diligently and (ii) extraordinary circumstances prevented them from filing timely. See *Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 255 (2016).

<sup>8</sup> See U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFS., CONSULAR AFFAIRS BY THE NUMBERS (Jan. 2020), <https://travel.state.gov/content/dam/travel/CA-By-the-Number-2020.pdf>. TAS is not aware of a more recent government study.

<sup>9</sup> For a discussion of the challenges faced by taxpayers abroad, see National Taxpayer Advocate 2023 Annual Report to Congress 116 (Most Serious Problem: *Compliance Challenges for Taxpayers Abroad: Taxpayers Abroad Continue to Be Underserved and Face Significant Challenges in Meeting Their U.S. Tax Obligations*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_09\\_Compliance-Aboard.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_09_Compliance-Aboard.pdf).