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To: [Ronk Alice L](#)
Cc: [Payne Julie L](#); [Laurie Brooke S](#); [Hyman Mitchel S](#); [Program Manager Technical Assistance Memoranda](#)
Subject: FW: Math Error Authority
Date: Friday, June 29, 2018 11:16:16 AM
Attachments: [Math Error GBC Final Signed Memo 6-29-18.pdf](#)

Alice,

Attached please find a program manager technical assistance memorandum analyzing the use of math error in the circumstances described below and concluding that the Service does not have math error authority. Please let us know if you need anything else from us or if you have any questions.

Regards,
Jason Bremer
CC:PA:B4
202-317-5199

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:PA:04:JBremer
POSTS-115077-18

date: June 28, 2018

to: Julie L. Payne
Assistant Division Counsel (TL)
SB/SE Division Counsel

from: Mitchel S. Hyman
Senior Technician Reviewer
(Procedure & Administration)



subject: TIGTA Audit/General Business Credit and Math Error Authority

You have asked our advice on whether the Service can use math error authority to deny the General Business Credit (GBC) on an individual return when there is no Employer Identification Number (EIN) listed showing ownership in a pass-through entity under two scenarios: (1) when business income is reported on the return through entries on lines 12, 17 or 18 on the Form 1040, but the required Schedules C, E or F to support those entries are not attached to the return, and (2) when no business income is reported on lines 12, 17 or 18 of the return at all.¹

Background

The GBC under Code section 38 is made up of many underlying credits designed to provide incentives for businesses to engage in certain activities considered beneficial to the economy or the public. Each of these individual credits generally requires some kind of business purpose for an individual to claim the credit.² The GBC includes the total amount of these current year underlying business credits plus any carryforward amount of unused credits from prior years. No statute, regulations, or IRS instructions require attachment of any schedules C, E or F to qualify for any of these credits.

¹ This advice addresses the Service's authority to use math error authority to deny the total GBC reported on Form 3800, but does not address any GBC carryforward or carryback scenarios or the use of math error authority for any particular underlying credits listed on Part III of Form 3800.

² For example, the Energy Efficient Home Credit under section 45L is available to eligible contractors for each qualified energy efficient home they sold or leased for use as a residence during the tax year, and the credit is reported on Form 8908. The Credit for Increasing Research Activities under section 41(a) provides incentives for a taxpayer engaged in a trade or business (or with the purpose of engaging in a future trade or business) to spend on qualified research activities and is reported on Form 6765. The Disabled Access Credit under section 44(a) provides certain eligible small businesses with incentives to incur expenditures for the purpose of providing access to persons with disabilities and is claimed on Form 8826.

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To claim the GBC, taxpayers must prepare and attach a Form 3800, *General Business Credit*, to their tax return. Generally, taxpayers must complete and attach the required source credit form (for example, Form 8908, Form 6765, or Form 8826) for each of the underlying business credits claimed on Form 3800, with the exception that a form is not required if the taxpayer's only source for a credit is a pass-through entity. Part III of Form 3800 requires the taxpayer to list the EIN of any pass-through entity for which the GBC is claimed. Taxpayers report the amount of the GBC on line 54 of Form 1040.

In TIGTA Report Reference Number 2013-40-093, *Unsupported and Potentially Erroneous Claims for General Business Credits Are Not Always Identified When Tax Returns Are Processed* (the TIGTA Report), TIGTA reviewed tax year 2011 individual tax returns with GBC claims and concluded that the Service has not established effective processes to identify individuals claiming potentially erroneous GBCs at the time returns are processed. The TIGTA Report recommended that the Service develop processes to identify individuals claiming the GBC on tax returns with no indication of ownership of a business or in a pass-through entity. In response, the Service is considering using math error authority to deny the GBC when individuals claim the GBC on Form 3800, but neither list an EIN on the Form 3800 showing ownership in a pass-through entity, nor provide any other indication on the return of a business purpose for which the GBC can be claimed.

Analysis

Scenario 1: Business Income Reported But No Schedules Attached

Section 6213(b)(1) allows the Service to make assessments without following deficiency procedures if there is a mathematical or clerical error appearing on the return, as defined in section 6213(g)(2). Section 6213(b)(1) requires that the Service provide a notice to the taxpayer that an assessment has been or will be made based on the mathematical or clerical error. The taxpayer then has 60 days to request an abatement of the assessment. If the taxpayer requests abatement, then the Service must abate the assessment, and must follow deficiency procedures before reassessing the tax.

Two provisions of section 6213 provisions could potentially support the Service's use of math error authority to deny the GBC when business income is reported but required schedules are not attached. First, section 6213(g)(2)(E) provides that a mathematical error includes:

- (E) an entry on a return of a deduction or credit in an amount which exceeds a statutory limit imposed by subtitle A or B, or chapter 41, 42, 43, or 44, if such limit is expressed—
 - (i) as a specified monetary amount, or
 - (ii) as a percentage, ratio, or fraction,and if the items entering into the application of such limit appear on such return.

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If a taxpayer's failure to substantiate his or her business income with the required schedules establishes the taxpayer's ineligibility for the credit (e.g., the taxpayer is not an eligible contractor for purposes of the energy efficient home credit), resulting in a zero dollar credit, then an argument could be made that the credit claimed exceeds the statutory limit of zero, for purposes of section 6213(g)(2)(E). In general, however, the math error provisions are intended to permit summary assessments when there are clear errors readily apparent on the face of a return. They are not intended to resolve uncertainties against taxpayers. See, e.g., IRS CCA 200250019 (Service could not tell from face of return whether taxpayer was subject to the 10% tax because he may qualify for an exception). The legislative history to section 6213 provides: "In the categories [of math error] cases that the committee has dealt with in this amendment, not only is the error apparent from the face of the return, but the correct amount is determinable with a high degree of probability from the information that appears on the return." S. Rep. No. 638, 94th Cong., 2d Sess. (1976), 1976-3 C.B. at 378.

Section 6213(g)(2)(E) applies to situations in which the Service can readily identify—from the face of the return—that credits claimed exceed the statutory limits. Our office has previously opined that the failure to meet eligibility criteria for a credit could qualify as failing to meet the statutory limit for purposes of section 6213(g)(2)(E) when a valid EIN is required to be, but is not, reported on the return, because it is clear from the face of the return that the taxpayer is not entitled to the credit. Accordingly, we concluded that section 6213(g)(2)(E) applied when a taxpayer omitted from the return the EIN required to claim the Hope Scholarship Credit under section 25(i)(6)(A)(C). Whether a taxpayer is engaged in a particular type of business activity, required for eligibility to claim the GBC, is not, by contrast, something that can be readily determined from the face of the return, even if the failure to attach appropriate schedules raises eligibility concerns. The absence of schedules neither confirms the taxpayer's ineligibility to claim the GBC, nor shows that the taxpayer is not engaged in a business. Accordingly, any concerns regarding the nature of the taxpayer's business activities or eligibility to claim the GBC should be addressed through normal examination and deficiency procedures. See S. Rep. No. 638, 94th Cong., 2d Sess. (1976), 1976-3 C.B. at 378, n.1 ("... disputes as to adequacy of the schedule that the taxpayer submits are to be dealt with under normal administrative procedures and not by use of the extraordinary summary assessment procedure...").

The other potentially relevant provision, section 6213(g)(2)(D), provides that the Service may use math error authority when there is "an omission of information which is required to be supplied on the return to substantiate an entry on the return." We have interpreted this provision narrowly, consistent with its legislative history. In particular, the Senate Report on the Bill containing the current version of this provision states:

The intent of this provision is to deal with situations where items should be supported by schedules which are part of the return. For example, if deductions are itemized (rather than the taxpayer taking the standard deduction), Schedule A should be included with the return. Similarly, Schedule G should be included if the taxpayer claims the benefits of

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income averaging. Also, Form 4726 should be included if the taxpayer claims the benefits of the maximum tax. Where the necessary supporting schedule is omitted from the return, then the Service may proceed under this provision by disallowing the beneficial treatment unless the taxpayer supplies the necessary schedule.

S. Rep. No. 638, 94th Cong., 2d Sess. (1976), 1976-3 C.B. at 377. Based on this legislative history, we identified general guidelines or factors to consider when deciding whether it is appropriate to rely on section 6213(g)(2)(D) to disallow items on a return:

- the line item on the Form 1040 for which the taxpayer omitted a schedule or form provides a tax benefit to the taxpayer;
- the schedule or form substantiates an item contained on the return, it does not calculate an entirely different tax;
- the omission is not on the Form 1040 itself, but rather the omission stems from the taxpayer's failure to attach a schedule or form to substantiate an entry on the Form 1040;
- the schedule or form must be required to be attached to the Form 1040;
- there is an omission of the entire schedule or form, not just information required to be included on the schedule or form; and
- the missing form or schedule must be submitted to the Service by the taxpayer, not by a third party.

IRS CCA 019477440 (March 24, 2017). Form 1040 requires taxpayers to enter business income on Line 12, rental income on Line 17, and farm income on Line 18, and instructs taxpayers to attach Schedules C or C-EZ, E and F, respectively. Although Form 1040 directs that the schedules be attached, these schedules do not “substantiate” the GBC as required by the literal language of section 6213(2)(D). Section 38 does not require a taxpayer to file a Schedule C, E, or F to claim the credit, nor does Form 3800 and its instructions. Neither the Code nor the underlying regulations for the various GBC credits require taxpayers to file these schedules to claim the credits. Accordingly, we do not believe that the omission of Schedules C, E or F constitutes an “an omission of information which is required to be supplied on the return to substantiate an entry on the return” as required by the language of the statute.³

This conclusion is consistent with our previous advice interpreting this provision of section 6213. For example, in GCM 37219, we addressed whether the Service could use math error authority to assess self-employment tax when the taxpayer reported self-employment income on Schedule C or F, but not on Form 1040 (line 58) and without a Schedule SE. We concluded that the taxpayer did not make “an omission of information” because the Schedule SE, rather than substantiating amounts computed on Schedules C and F, computes an entirely separate amount.

³ Similarly, failure to list the EIN of a pass-through entity is not an omission of information for purposes of this provision.

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Scenario 2: No Business Income Reported

The argument for using math error authority under section 6213(g)(2)(E) is stronger when a taxpayer reports no business income on the return.⁴ When no EIN is reported showing ownership in a pass-through entity and no business income is reported on either Line 12, 17, or 18 of Form 1040,⁵ there may be an even stronger likelihood that the taxpayer is ineligible for the credit because the taxpayer is not engaged in a required business activity. And, again, if the statutory limit for the credit is zero, then the credit claimed would exceed the statutory limit. Nevertheless, even a great likelihood of ineligibility provides an insufficient basis for the use of math error authority.

As discussed, the math error provisions permit summary assessments to correct clear errors readily apparent on the face of a return. They do not permit the Service to resolve uncertainties against a taxpayer. In some cases, individuals may not report any business income, yet may still be eligible to claim the GBC. For example, a taxpayer with no net business income may still be entitled to apply the GBC against a tax liability. The GBC reported on Form 3800 and Line 54 of the Form 1040 is added with all other credits to which an individual is entitled, and reduces the taxpayer's total income tax, not just business-related tax. Moreover, taxpayers may be eligible for credits, including for example the section 41(b)(4) research credit for start-up ventures and the section 45D new markets tax credit, even without current business income, in some cases. Accordingly, we cannot definitively state that the absence of any business-related income reported on a return establishes that the statutory limit of the GBC is zero.⁶

Conclusion

We conclude that the Service cannot rely on math error authority to deny the GBC in either scenario, above. In each case, it will not be clear from the face of the return that the taxpayer is not eligible for the credit. Accordingly, issues regarding the taxpayer's eligibility must be resolved through regular examination and deficiency procedures.

CC: Jennifer Records, Assistant to the Branch Chief (CC:PSI:6)
Sue-Jean Kim, Special Counsel (CC:WI)

⁴ We also considered whether section 6213(g)(2)(C) may provide math error authority in this scenario. That section provides that a mathematical error includes "an entry on a return of an item which is inconsistent with another entry of the same or another item on such return." Arguably, the claim of the GBC is inconsistent with the failure to report business income. However, for the same reasons discussed with respect to section 6213(g)(2)(E), there is insufficient clarity to justify the use of math error authority.

⁵ We presume that if no income is reported on these lines, then no schedules C, E and F are attached.

⁶ A special rule for the research credit under section 41(g) limits the amount an individual may claim to the amount of tax attributable to the individual's taxable income from the trade or business that generated the credit. While there might be an arguable basis for a math error assessment with respect to this particular underlying credit provision in certain scenarios, we doubt that there would be sufficient clarity from the return to make a math error assessment based on the principles discussed above.