

**UNITED STATES TAX COURT  
WASHINGTON, DC 20217**

STEVEN W. WEBERT & CATHERINE S.	)	
WEBERT,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 15981-17.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER**

The petition in this case was filed on July 26, 2017. Petitioners seek review of (1) the notice of deficiency dated April 25, 2017, issued to Mr. Webert for taxable years 2010, 2011, 2012, 2013, 2014, and 2015, and (2) the notice of deficiency issued to Mrs. Webert for taxable years 2010, 2011, 2012, 2013, 2014, and 2015. On September 13, 2017, respondent filed an Answer to the petition. Among other things, in his Answer respondent prays that "the relief sought in the petition be denied and that respondent's determination, as set forth in the notice of deficiency, be in all respects approved."

On September 6, 2017, petitioners filed a Motion To Restrain Assessment or Collection or To Order Refund of Amount Collected. On September 25, 2017, respondent filed an Objection to petitioners' motion to restrain. On October 18, 2017, respondent filed a First Supplement to his objection. In that Objection, as supplemented, respondent asserts/indicates that: (1) as of April 25, 2017, petitioners had not filed income tax returns for 2010, 2011, 2012, 2013, 2014, and 2015; (2) on April 25, 2017, respondent issued two notices of deficiency to Mr. and Mrs. Webert, one to Mr. Webert for 2010 through 2015 (using married-filing-separately status for him) and one to Mrs. Webert for 2010 through 2015 (using married-filing-separately status for her); (3) on April 27, 2017, petitioners filed delinquent joint returns for 2010 through 2015; (4) petitioners did not submit payment of the taxes which they reported owing on those returns (namely, \$2,235 for 2010; \$1,128 for 2011; \$4,853 for 2012; \$2,306 for 2013; \$1,507 for 2014; and \$1,581 for 2015); (5) on June 26, 2017, respondent processed those returns and assessed the taxes which petitioners had reported they owed on those returns; (6) upon acceptance of petitioners' delinquent 2010 through 2015 returns, respondent issued petitioners revised examination reports reflecting reduced deficiency amounts for those years and allowing married-filing-jointly status to petitioners; and (7) respondent applied a refund for petitioners' 2016 tax year against the 2010 and 2011 tax liabilities assessed against petitioners based on their above delinquent 2010 and 2011 returns. According to respondent, respondent properly assessed

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petitioners' self-reported 2010 through 2015 taxes pursuant to I.R.C. section 6201(a)(1), and that section 6213(a) does not prohibit the Internal Revenue Service from assessing deficiencies based on petitioners' delinquent, post-deficiency-notice 2010 through 2015 returns. In his First Supplement respondent asserts, inter alia:

3. Assessing the tax reflected on petitioners' \* \* \* [post-deficiency-notice] tax returns is not a prohibited assessment of the deficiency, because a deficiency does not include the amount of tax reflected on a return. Section 6213(a) prohibits respondent from assessing or collecting a deficiency until after the issuance of a notice of deficiency and the lapse of the 90-day period for filing a petition. Section 6211(a) defines a deficiency as the amount by which the tax imposed exceeds the sum of the amount of tax shown on the return and the amount of tax previously assessed. Because amounts of tax shown by a taxpayer on an original return are not part of the deficiency, the section 6213(a) prohibition against assessing deficiencies does not prevent the Service from assessing tax on a post-petition return. Thus, the amount shown on the return is not part of the deficiency and is assessed under section 6201(a)(1) without violating section 6213(a).

\* \* \* \* \*

8. As set forth in respondent's Notice of Objection, petitioners' delinquent returns self-assessed tax due in the amounts of \$2,235, \$1,228, \$4,853, \$2,306, \$1,507, \$1,581, for tax years 2010, 2011, 2012, 2013, 2014, and 2015, respectively. Respondent properly assessed these original returns as respondent is compelled to do by section 6201(a)(1).

I.R.C. section 6213(a) provides that respondent generally is precluded from assessing or collecting a deficiency until after the mailing of a notice of deficiency authorized by section 6212 and the expiration of the period for filing a timely petition for redetermination. Meyer v. Commissioner, 97 T.C. 555, 560 (1991). If the taxpayer does file a petition with this Court, respondent is further precluded under section 6213(a) from assessing or collecting the deficiency until the decision of this Court becomes final. Id.; see also I.R.C. sec. 6215(a).

With respect to this Court's jurisdiction to restrain assessment and collection of a deficiency, section 6213(a) provides, in pertinent part:

Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in \* \* \* the Tax Court, and a refund may be ordered \* \* \* of any amount collected within the period during which the Secretary is prohibited from collecting \* \* \* under the provisions of this subsection. The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. [Emphasis added.]

See also Meyer, 97 T.C. at 560-561 (noting that the Court's jurisdiction to enjoin the Commissioner's collection activities therein turned on whether the Commissioner is attempting to collect the same deficiencies that are properly the subject of the timely filed petition in that case).

Upon due consideration, it is

ORDERED that, on or before November 9, 2017, respondent shall file a Second Supplement to his objection. In that Second Supplement respondent shall set forth and discuss fully respondent's position as to: (1) whether the June 26, 2017, assessments made against petitioners for 2010 through 2015 are in respect of deficiencies pending before the Court in this case; (2) whether the Court under I.R.C. section 6213(a) has jurisdiction to enjoin respondent's collection activities here in respect of the 2010 through 2015 tax liabilities reported on petitioners' delinquent returns for those years; and (3) what extent, if any, section 6201(a)(1) applies to respondent's June 26, 2017, post-deficiency-notice assessments of the 2010 through 2015 tax liabilities reported on petitioners' delinquent returns for 2010 through 2015.

**(Signed) L. Paige Marvel  
Chief Judge**

Dated: Washington, D.C.  
October 19, 2017