

UNITED STATES TAX COURT
WASHINGTON, DC 20217

BRADLEY JEROME MITCHELL,)	
)	
Petitioner,)	
)	
v.)	Docket No. 14147-18.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

On July 18, 2018, petitioner filed a petition seeking review of a notice of deficiency issued to him for his 2014 tax year. On November 14, 2018, petitioner filed a Motion To Restrain Assessment or Collection or To Order Refund of Amount Collected, in which he states that he received Notice CP503H and Notice CP503 seeking to collect amounts for tax year 2014.

On December 17, 2018, respondent filed an Objection to petitioner’s motion. Respondent asserts that the notice of deficiency upon which this case is based was based upon a substitute for return which respondent prepared under I.R.C. section 6020(b). On July 18, 2018, the same date petitioner filed the petition in this case, petitioner also filed a delinquent return for tax year 2014, reporting tax owed in the amount of \$33,169, but was not accompanied by full payment. On August 20, 2018, respondent assessed the amount of tax shown on the delinquent return as well as associated additions to tax for failure to timely file the return and failure to timely pay the amount shown as tax on the return. Respondent also stated that he has asked for a voluntary administrative hold to be placed on collection activity for the duration of the current litigation.

I.R.C. section 6213(a) provides that the Commissioner generally is precluded from assessing or collecting a deficiency until a notice of deficiency authorized under I.R.C. section 6212(a) is mailed to the taxpayer with respect to the deficiency and until the expiration of the 90-day or 150-day period for filing a timely petition for redetermination with this Court. Upon the filing of a petition for redetermination contesting the notice of deficiency, the Commissioner is further precluded from assessing or collecting the deficiency until the decision of the Court becomes final. Powerstein v. Commissioner, 99 T.C. 466, 471 (1992); Powell v. Commissioner, 96 T.C. 707, 710-711 (1991). The term “deficiency” is defined 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. I.R.C. section 6211(a).

Conversely, as explained in Meyer v. Commissioner, 97 T.C. 555, 559 (1991), the Commissioner is authorized to immediately “assess and collect the amount of taxes that are computed and shown due on a taxpayer’s original return, as well as the amount of any additional taxes computed and shown due on a subsequently filed amended income tax return.” The Commissioner is likewise authorized to immediately assess and collect the additions to tax under sections I.R.C. sections 6651(a)(1), 6651(a)(2), and 6654, if such additions are measured by the amount of tax shown on the taxpayer’s return. Id. at 559 - 560. Such summary assessments are not subject to the normal deficiency procedures. Id. at 560. In addition, the penultimate sentence of I.R.C. section 6213(a) states, “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 a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition.”

Given the foregoing, it is apparent that respondent’s actions here are in accordance with Meyer v. Commissioner, 97 T.C. 555 (1991). The liability that respondent has assessed and is attempting to collect is composed of the tax petitioner reported on his self-filed return, plus statutory additions and interest thereon. Such amount is not a deficiency, need not be collected through deficiency procedures, and does not comprise a part of this case.

The premises considered, it is

ORDERED that petitioner’s Motion To Restrain Assessment or Collection or To Order Refund of Amount Collected is denied.

(Signed) Maurice B. Foley
Chief Judge

ENTERED: **MAR 29 2019**