

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DALE BREWER,)	
)	
Petitioner,)	
)	
v.)	Docket No. 12223-17.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case is scheduled to be tried at the Court’s session in Boston beginning February 26, 2018. On February 12, 2018, petitioner Dale Brewer filed a motion to dismiss. Because of the imminency of the trial session, and because it is clear we should deny the motion, we will not await any response from the Commissioner.

Background

On March 9, 2017, the Internal Revenue Service (“IRS”) issued to Mr. Brewer a notice of deficiency, which determined income tax deficiencies and accuracy-related penalties for the years 2013 and 2014. On May 31, 2017, Mr. Brewer timely filed a petition in this Court, disputing the IRS’s determinations.

On February 12, 2018, Mr. Brewer filed a paper that begins, “I submit a motion for dismissal of my audit for several reasons.” The reasoning that follows argues that the IRS’s determinations were improper and unwarranted.

Discussion

When the IRS determines a deficiency in a taxpayer’s income tax under section 6211 of the Internal Revenue Code, it may issue a notice of deficiency

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under section 6212. If the taxpayer files a timely Tax Court petition under section 6213 disputing that determination, then the IRS is barred from assessing and collecting that deficiency until the Tax Court issues a decision redetermining the deficiency.

Under section 7459(d) of the Code, “If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary.” Thus, a taxpayer cannot halt the IRS’s assessment and collection of income tax by filing a Tax Court suit and then dismiss the suit without obtaining a determination of his liability.

If we were to grant Mr. Brewer’s motion, it would not have the effect that he intends--i.e., to invalidate the IRS’s determination. Rather, it would have the opposite effect: Dismissal of his case would sustain the IRS’s deficiency determination. Since it is clear that this is not what he intends, it is

ORDERED that petitioner’s motion to dismiss is denied. This case will proceed to trial at the Boston session beginning Monday, February 26, 2018. Mr. Brewer cannot prevail in this case by showing defects in the IRS’s audit. Rather, he will prevail by proving that his tax liability is not greater than he reported on his returns. His motion alleges that he possesses “canceled checks and bank statements” that substantiate expenses whose deduction is in dispute in this case. If that is true, then he should immediately provide copies of them to respondent’s counsel (they were in fact due to be exchanged with the IRS no later than February 12, 2018, pursuant to our standing pretrial order issued September 26, 2017, and our order of February 2, 2018, granting respondent’s motions to compel); and he should bring them to trial and offer them into evidence.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
February 13, 2018