

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-15748
Non-Argument Calendar

Agency No. 002784-15

CATHERINE ANN RIGGINS,

Petitioner - Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee.

Petition for Review of a Decision of the
U.S. Tax Court

(September 10, 2018)

Before JORDAN, ROSENBAUM, and HULL, Circuit Judges.

PER CURIAM:

Catherine Riggins, an attorney proceeding *pro se*¹, appeals the tax court's determination of a federal income-tax deficiency for the year 2012. The tax court determined a deficiency even though the Internal Revenue Service ("IRS") had purported to issue Riggins a refund for that same year based on her belatedly filed tax return. Because the refund issued after Riggins had petitioned the tax court for a redetermination of the asserted deficiency, the tax court found that the refund did not affect its jurisdiction to redetermine the correct amount of the deficiency. Then, in determining the amount of the deficiency, the tax court concluded that Riggins had failed to prove her entitlement to the claimed filing status, deductions, and credits in her 2012 tax return. On appeal, Riggins argues that the tax court lacked the authority to render a decision inconsistent with the IRS's refund decision, that the tax court erred in placing the burden of proof on her, and that the IRS's notice of deficiency was legally insufficient and therefore ineffective. After careful review, we affirm.

I.

The essential facts are straightforward and undisputed. Riggins, an attorney, did not file a timely federal income-tax return for 2012. By notice of deficiency dated October 20, 2014, the IRS determined a deficiency of \$45,310, plus

¹ As a licensed attorney, Riggins is not accorded the liberal construction we normally give *pro se* litigants. *Olivares v. Martin*, 555 F.2d 1192, 1194 n.1 (5th Cir. 1977); see *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) (adopting as binding precedent all Fifth Circuit decisions prior to October 1, 1981).

additional penalties. Two months later, Riggins submitted her 2012 tax return, reporting \$122,356 in gross receipts—which the tax court later adopted—and claiming various exemptions, deductions, and credits—which the tax court did not adopt. According to her tax return, she was owed a refund of \$1,505. The IRS received her tax return on January 7, 2015.

On January 29, 2015, Riggins petitioned the tax court for a redetermination of the assessed deficiency. She disputed the notice of deficiency’s calculations and claimed that she was entitled to a refund. By notice dated February 23, 2015, the IRS stated that it had accepted her return and that she was due a refund of \$1,505. Two days later, the IRS noted on her account, “legal action filed.”

At a bench trial before the tax court, Riggins filed a motion in limine arguing that the IRS had waived reliance on the notice of deficiency by voluntarily accepting her 2012 tax return and redetermining her tax liability, citing *Smaczniak v. Commissioner of Internal Revenue*, 998 F.2d 238 (5th Cir. 1993). She asked the court to prevent the IRS from relying on any evidence inconsistent with the IRS’s determination that she was owed a refund. She further asserted that the court lacked jurisdiction to review her redetermined tax liability, citing 26 U.S.C. § 6514(b)(4) and *Estate of Smith*, 429 F.3d 533, 539 (5th Cir. 2005). The court took the matter under advisement.

The trial went forward with Riggins testifying in support of her petition. She presented evidence relating to her income and an exhibit indicating that the IRS had administratively closed the deficiency on January 15, 2015. And she broadly asserted that her 2012 tax return accurately reflected her exemptions, deductions, and credits, though she did not elaborate on these matters.

Post-trial, the tax court entered its findings of fact and conclusions of law. The tax court first found that the IRS's post-petition processing of Riggins's 2012 tax return did not affect the court's jurisdiction to redetermine her tax liability for the 2012 tax year. The tax court explained that her petition gave the court exclusive jurisdiction to redetermine her tax liability, and that she "ha[d] not established that [the IRS's] processing of her return . . . was anything other than an error." The court distinguished *Smaczniak* and *Estate of Smith*, stating that she relied on legal principles from these cases out of context.

Next, regarding her 2012 federal income-tax liability, the tax court explained that it was Riggins's burden to substantiate her claimed filing status, deductions, and credits. Because Riggins had not done so, the court found, she was not entitled to those items. Finally, the court sustained two penalties against Riggins for failure to file her return and pay income taxes on time. *See* 26 U.S.C. § 6651(a)(1), (2).

Ultimately, the tax court issued a final decision determining an income-tax deficiency of \$37,357, plus penalties of \$8,405.32 and \$9,339.25. Riggins now appeals.

II.

We review decisions of the tax court “in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury.” 26 U.S.C. § 7482(a)(1). That means we review the tax court’s legal conclusions *de novo* and its factual findings for clear error. *Creel v. Comm’r of Internal Revenue*, 419 F.3d 1135, 1139 (11th Cir. 2005). A factual finding is clearly erroneous if the record as a whole lacks substantial evidence to support it. *Id.* The tax court’s interpretation of the Internal Revenue Code is reviewed *de novo*. *Romano-Murphy v. Comm’r of Internal Revenue*, 816 F.3d 707, 714–15 (11th Cir. 2016).

III.

Riggins’s central claim is that the tax court could not issue a decision contrary to the IRS’s voluntary redetermination of her tax liability, whether because the IRS waived its ability to rely on the notice of deficiency or because the tax court lacked jurisdiction to alter the redetermined figures. For the reasons explained below, we disagree.

A.

We begin by outlining the statutory scheme governing a taxpayer's challenge to a deficiency determination. When a taxpayer receives a notice of deficiency from the IRS, she may petition the tax court for a redetermination of the asserted deficiency.² *See* 26 U.S.C. § 6213(a). A timely filed petition gives the tax court jurisdiction “to redetermine the correct amount of the deficiency.” *Id.* § 6214(a). If instead of a deficiency the tax court finds “an overpayment of income tax,” the court has “jurisdiction to determine the amount of such overpayment.” *Id.* § 6512(b)(1).

Not only does the tax court have jurisdiction to resolve these matters, but its jurisdiction is, broadly speaking, exclusive. When a taxpayer files a timely petition for redetermination, the IRS generally must stay its hand and await a final decision from the tax court. The IRS may not assess a deficiency or seek its collection “until the decision of the Tax Court has become final.” *Id.* § 6213(a). Nor may the IRS “credit or refund . . . income tax for the same taxable year” at issue except as determined by a final decision of the tax court. *Id.* § 6512(a).

Once the tax court's decision becomes final, the IRS must assess “the entire amount redetermined as the deficiency,” *id.* § 6215(a), or, if an overpayment of tax

² The tax court's jurisdiction is limited and is defined by statute. *See* 26 U.S.C. § 7442; *Comm'r of Internal Revenue*, 484 U.S. 3, 7 (1987) (“The Tax Court is a court of limited jurisdiction and lacks general equitable powers.”). It has “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.” 26 U.S.C. § 6213(a).

is determined, it must “credit[] or refund[] to the taxpayer” the amount of overpayment, *id.* § 6512(b)(1). After 120 days, the taxpayer may move the tax court to order the IRS to refund the overpayment plus interest. *Id.* § 6512(b)(2).

B.

In light of these provisions, the tax court properly concluded that the IRS’s post-petition processing of Riggins’s 2012 tax return did not deprive the court of jurisdiction to resolve her petition for redetermination. By filing the petition, Riggins invoked the tax court’s jurisdiction “to redetermine the correct amount of the deficiency” and, if appropriate, to determine the amount of any “overpayment of income tax” for the same tax year that was the subject of the petition. *See* 26 U.S.C. §§ 6214(a), 6512(b)(1). Although the IRS subsequently issued a refund based on her 2012 tax return, that action went against the governing statutory scheme. That is, § 6512(a) prohibited the IRS from “credit[ing] or refund[ing] . . . income tax for the same taxable year” while her petition was pending.³ *See id.* § 6512(a). And once the tax court’s decision becomes final, which it will once this appeal has run its course, *see id.* § 7481(a)(2), the IRS must assess “the entire amount redetermined as the deficiency by the tax court,” *id.* § 6215(a), despite its earlier and contrary decision to issue a refund.

³ Riggins points to IRS records which suggest the IRS administratively closed the deficiency determination on January 15, 2015, before she filed her petition. But the record is clear that no refund or credit was made until after the petition was filed, and at that point the IRS could not issue a refund except as determined by a final decision of the tax court.

Though the circumstances are unusual since Riggins may have received a refund had she not filed the petition, we cannot conclude, based on the statutory scheme set out above, that the IRS's post-petition refund divested the tax court of its jurisdiction to redetermine the correct amount of the deficiency or to determine the existence of any overpayment. *See id.* § 6214. The tax court, therefore, did not err in deciding the merits of Riggins's petition.

C.

Riggins responds with two arguments. First, citing *Estate of Smith*, she says that another statutory provision, 26 U.S.C. § 6512(b)(4), deprived the tax court of jurisdiction to redetermine the IRS's decision on her 2012 tax return. Second, citing *Smaczniak*, she maintains that when the IRS voluntarily redetermines a taxpayer's tax liability, like it did here, it waives its right to rely on a notice of deficiency that is inconsistent with that redetermination. We address each argument in turn.

1. 26 U.S.C § 6512(b)(4)

Section 6512(b) governs the tax court's jurisdiction to determine overpayments in the context of resolving a petition for redetermination. As explained above, § 6512(b)(1) grants the tax court jurisdiction to determine the amount of overpayment and to order a credit or refund.

Section § 6512(b)(4), on the other hand, denies jurisdiction to the tax court “to restrain or review any credit or reduction made by [the IRS] under section 6402.” 26 U.S.C. § 6512(b)(4). Section 6402, in turn, allows the IRS to credit overpayments against a taxpayer’s tax liability and refund any balance.⁴ 26 U.S.C. § 6402(a). So, for example, § 6402 allows the IRS to credit overpayments from one tax year to liabilities for another year. *E.g., Williams v. Comm’r of Internal Revenue*, 114 T.C.M. (CCH) 325, 2017 WL 4158706, *2 (2017). Section 6402, in other words, allows “offset” decisions by the IRS. And it is those decisions that the tax court may not “restrain or review” under § 6512(b)(4).

Riggins maintains that when the IRS redetermined her tax liability based on her belated tax return, it made a determination under § 6402(a) that the tax court lacked jurisdiction to review or change under § 6512(b)(4). But § 6512(b)(4) has no application here because this case is not about an offset decision under § 6402. What Riggins seeks to shield from the tax court is the IRS’s determination that she had no 2012 income-tax deficiency and was, in fact, entitled to a refund due to certain tax credits. *See* 26 U.S.C. § 6401(b)(1) (providing that “overpayment” can result if the amount of allowable refundable credits exceeds the tax imposed). In other words, Riggins wishes to preserve the IRS’s finding of an overpayment, not a

⁴ Section 6402 states, “In the case of any overpayment, the [IRS] . . . may credit the amount of such overpayment . . . against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall . . . refund any balance to such person.” 26 U.S.C. § 6402. The word “overpayment” generally means “any payment in excess of that which is properly due.” *Jones v. Liberty Glass Co.*, 332 U.S. 524, 531 (1947).

subsequent decision to apply that overpayment to another tax liability. But § 6512(b)(1) expressly gives the tax court jurisdiction to make that overpayment determination and to order a credit or refund, and § 6512(a) prevents the IRS from taking those same actions while a petition is pending before the tax court. Section 6514(b)(4) does not apply in these circumstances.

Riggins's reliance on *Estate of Smith* is misplaced. *Estate of Smith* was about the tax court's jurisdiction "to review the Commissioner's offset of unpaid interest" under § 6402 against a "previously determined overpayment of tax." 429 F.3d at 537. That issue, according to the Fifth Circuit, depended on whether the unpaid interest was included in the tax court's original overpayment determination. If it was, the tax court had jurisdiction to order the IRS not to offset the refund against that liability as part of its jurisdiction to enforce its overpayment determination under § 6512(b)(2). *See id.* at 538–39. But if it was not, the tax court lacked such jurisdiction because § 6512(b)(4) otherwise bars review of the IRS's offset decisions. *See id.* at 539. Finding that unpaid interest was not part of the tax court's overpayment determination, the Fifth Circuit held that § 6512(b)(4) barred the tax court from ordering the IRS to refund the amount of overpayment that had been credited against unpaid interest under § 6402(a). *Id.*

Estate of Smith has no application here. As we have explained above, Riggins did not invoke the tax court's review of an offset decision under § 6402,

like the plaintiff in *Estate of Smith* did. Rather, her petition for redetermination invoked the tax court's express jurisdiction to redetermine the amount of deficiency and to identify any overpayment. 26 U.S.C. § 6512(b)(1). Nothing in § 6512(b)(4) prevented the tax court from resolving those issues.

2. Waiver

Riggins next argues that the IRS waived its right to rely on the notice of deficiency when it voluntarily redetermined the amount of her deficiency by accepting her 2012 tax return and issuing a refund. Riggins rests her waiver argument on *Smaczniak*.

In *Smaczniak*, after the tax court dismissed the taxpayer's petition for redetermination of a deficiency, the IRS accepted the taxpayer's belated tax returns and voluntarily "redetermined" his tax liability for those years. 998 F.2d at 240. The IRS, however, later relied on the original deficiency determination to reduce the taxpayer's refund for overpaid taxes in different years, crediting part of the overpayment against prior tax liabilities.⁵ *Id.* at 240–41. The tax court then rejected the taxpayer's attempt to hold the IRS to the "redetermined" figures, finding that the taxpayer was bound by the original determinations. *Id.*

On appeal, the IRS argued that *res judicata* barred the taxpayer from relying on the redetermined figures. The Fifth Circuit disagreed, stating that "common

⁵ Notably, *Smaczniak* was decided before 26 U.S.C. § 6514(b)(4) was enacted in 1997, so the reviewability of the IRS's offset decision under § 6402(a) was not at issue.

sense requires that the IRS may not rely on a prior judgment of a court regarding a taxpayer's deficiency when the IRS has, subsequent to that court's judgment, voluntarily redetermined the amount of the taxpayer's deficiency." 998 F.2d at 242. The court noted that "[r]es judicata is an affirmative defense, which can be waived." *Id.* And it found that, by accepting the taxpayer's tax returns and voluntarily redetermining his tax liability, the IRS had "effected something sufficiently akin to a subsequent modification of the significant facts so as to render res judicata inapplicable." *Id.* at 242–43 (quotation marks omitted). The Fifth Circuit therefore concluded that the tax court should have looked to the redetermined tax liability. *Id.* at 243.

The Fifth Circuit qualified its holding in several ways. As relevant here, it cautioned that it "d[id] not hold that a 'redetermination' by the IRS following a decision by a court in a tax case must be given effect by a subsequent court in all cases." *Id.* at 242 n.14. Rather, it was only "where the IRS and a taxpayer *agree* on a 'redetermination'" that "their agreement should supersede the prior judgment for purposes of res judicata." *Id.*

Smaczniak is distinguishable because Riggins's case is not about *res judicata*. There was no prior decision by a tax court in this case, so we are not asked to decide whether, as in *Smaczniak*, the IRS may "rely on a prior judgment of a court regarding a taxpayer's deficiency" or whether later actions superseded

the prior decision. *Id.* at 242. Nor do we think it wise to extend *Smaczniak* beyond its particular facts, even if it were binding on us, which of course it is not. As the Fifth Circuit explained, the affirmative defense of *res judicata* may be waived, but there is no comparable defense here to be waived. Furthermore, unlike in the circumstances here, the IRS in *Smaczniak* did not redetermine the taxpayer's tax liability while a petition for redetermination was pending, and there was no contention in that case that the IRS lacked the authority to redetermine the taxpayer's tax liability. Here, by contrast, the IRS's post-petition refund was inconsistent with the statutory scheme, as we have explained above. *Smaczniak* is, therefore, inapposite.

Nor does Riggins argue on appeal that the IRS's actions in processing her 2012 tax return and issuing a refund were the equivalent either of a settlement agreement between herself and the IRS or of a rescission of the notice of deficiency. *See* 26 U.S.C. § 7121 (authorizing the IRS "to enter into an agreement in writing with any person relating to the liability of such person . . . in respect of any internal revenue tax for any taxable period"). The tax court rejected these arguments below. And she asserts in her initial brief on appeal that she "never claimed that she entered into a settlement or a rescission with the IRS." She also does not argue that the IRS was equitably estopped from relying on the notice of deficiency. *See Bokum v. Comm'r of Internal Revenue*, 992 F.2d 1136, 1140–41

(11th Cir. 1993) (holding that the tax court has jurisdiction to consider claims of equitable estoppel). Accordingly, we deem any argument with regard to these issues abandoned. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) (issues not raised on appeal are abandoned)

For all of these reasons, the tax court properly exercised its jurisdiction to resolve Riggins's petition for redetermination and was not required to issue a decision in conformity with the IRS's post-petition refund.

IV.

We next address Riggins's arguments on burdens of proof. The tax court determined a deficiency after finding that Riggins had failed to prove her entitlement to the claimed filing status, deductions, and credits. Riggins responds that the IRS is responsible for the documents it issues and cannot disavow its refund determination, citing *Ragan v. Commissioner of Internal Revenue*, 135 F.3d 329, 335 (5th Cir. 1998) ("The IRS is responsible for the documents it distributes to taxpayers."). She asserts that the IRS had the burden to prove that its refund determination was erroneous and that it did not do so.

"The Commissioner's deficiency assessments are presumptively correct and the burden is on the taxpayer to show that his determination is invalid." *Broadhead's Estate v. Comm'r of Internal Revenue*, 391 F.2d 841, 844 (5th Cir. 1968). The taxpayer therefore has the burden of proving entitlement to deductions

and other reductions to tax liability. *See Goodmon v. Comm’r of Internal Revenue*, 761 F.2d 1522, 1523–24 (11th Cir. 1985) (holding that the petitioner had failed to rebut the presumption of correctness by showing he was entitled to certain deductions); *see* Tax Court Rule 142. “[W]here the taxpayer offers no substantial evidence to overcome the presumption of correctness, the Tax Court’s findings must be affirmed.” *Broadhead’s Estate*, 391 F.2d at 844.

Here, the tax court did not err in holding Riggins to the normal burden of proof. Because we have concluded that the IRS’s post-petition refund did not deprive the tax court of jurisdiction or waive the IRS’s ability to rely on the original notice of deficiency, it follows that the normal rules and presumptions apply. Riggins provides no support for her claim that the IRS needed to raise an “erroneous refund” as a defense in its answer. And as a matter of proof, no evidence was necessary. The erroneous or mistaken nature of the refund follows directly from § 6512(a), which prohibited the IRS from “credit[ing] or refund[ing] . . . income tax” for the year 2012 once she filed her petition for redetermination.⁶

Nor did the tax court clearly err in finding that Riggins had failed to prove her entitlement to her claimed filing status, deductions, and credits. Riggins offered no evidence about these matters beyond asserting, under penalty of perjury,

⁶ The IRS asserts that, notwithstanding the refund, it always intended to contest Riggins’s tax liability. But we need not go so far. It is enough to say that the IRS’s refund was erroneous because it violated § 6512(a).

that her tax return was accurate. The tax court found this testimony insufficient, stating that “[t]he fact that a return is signed under penalty of perjury is not sufficient to substantiate deductions claimed on it.” *See, e.g., Wilkinson v. Comm’r of Internal Revenue*, 71 T.C. 633, 639 (1979).

We see no error in this regard. After all, “[d]eductions and credits are matters of legislative grace,” *Packard v. Comm’r of Internal Revenue*, 746 F.3d 1219, 1222 (11th Cir. 2014), and a taxpayer must “clearly establish” her entitlement to particular deductions or credits. *Anselmo v. Comm’r of Internal Revenue*, 757 F.2d 1208, 1211 n.2 (11th Cir. 1985). The tax court reasonably determined that Riggins’s general assertion that her tax return was accurate was insufficient to “clearly establish” the specific facts and claims made therein. *See Lee v. Comm’r of Internal Revenue*, 91 T.C.M. (CCH) 999, 2006 WL 931925, *4 (2006) (“[I]ncome tax returns merely reflect taxpayers’ claims. They do not establish the facts reflected therein.”).

Riggins’s argument that the IRS stipulated to her tax return during tax-court litigation is misguided. The IRS stipulated that the document was her 2012 tax return; it did not stipulate to the truth of the facts asserted in that document. As for the evidentiary value of the IRS’s refund decision, Riggins does not point us to any authority indicating that such a decision, whether generally or under the specific facts here, is probative of the truth of the facts asserted in the tax return. *Cf. Lerch*

v. Comm’r of Internal Revenue, 877 F.2d 624, 627 n.6 (7th Cir. 1989) (the IRS is not bound in any given year to allow the same treatment permitted in a previous year). Without more, we cannot conclude that the IRS’s refund sufficiently rebutted the notice of deficiency so as to render the tax court’s decision clearly erroneous.

Finally, *Ragan* does not support Riggins’s claim that the IRS may not disavow the refund. The part of *Ragan* on which Riggins relies concerns a dispute over attorney’s fees. 135 F.3d at 334–35. The appeals court found that, contrary to the decision of the tax court, the petitioner did not unreasonably protract proceedings because she could not be held responsible for failing to disclose to the IRS attorney handling her case a “letter the IRS had drafted, mailed, and possessed.” *Id.* at 335. The court stated that it was not reasonable to place that legal responsibility on the petitioner because “[t]he IRS is responsible for the documents it distributes to taxpayers.” *Id.* Beyond repeating that quote, Riggins fails to explain how *Ragan*’s holding applies here.

Because Riggins did not offer “substantial evidence to overcome the presumption of correctness,” we affirm the tax court’s findings as to her tax liability for the year 2012. *See Broadhead’s Estate*, 391 F.2d at 844. Riggins also does not challenge the penalties imposed under 26 U.S.C. § 6651(a)(1) and (2), so we affirm these penalties as well. *See Sapuppo*, 739 F.3d at 680–81.

V.

Finally, Riggins maintains that the notice of deficiency was legally insufficient because it was patently erroneous and arose from a deficient process. On the latter point, she asserts that the IRS violated her due-process rights when it issued the notice after failing to mail to her correct address a notice containing the IRS's proposed assessment and directing her to file her return within 30 days.

“An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (quotation marks omitted). When the IRS determines a deficiency, it is authorized to send notice of such deficiency to the taxpayer. 26 U.S.C. § 6212(a). A notice of deficiency, while essential, serves largely as the taxpayers' “ticket to the Tax Court.” *Bokum v. Comm’r of Internal Revenue*, 992 F.2d 1136, 1139 (11th Cir. 1993). A notice of deficiency is sufficient if it states that the IRS has determined that a deficiency exists for a particular year and specifies the amount of the deficiency. *Id.*

Here, no due-process violation occurred. It is undisputed that Riggins received the notice of deficiency, which specified the amount of the deficiency determined by the IRS, and that she had an opportunity to be heard before the tax court redetermined the deficiency. *See Loudermill*, 470 U.S. at 542. It is certainly

possible that, had Riggins's received the IRS's earlier notice, she would have filed her tax return earlier and avoided the tax-court proceeding. But her failure to receive this notice did not prevent her from contesting the deficiency determination. And because she had notice and a full and fair opportunity to contest the deficiency by the IRS, whether it was erroneous or not, Riggins's due-process rights were not violated.

VI.

For all of these reasons, we affirm the tax court's determination of a federal income tax deficiency for the year 2012 in the amount of \$37,357 and its imposition of late-filing and late-payment penalties of \$8,405.32 and \$9,339.25, respectively.

AFFIRMED.