

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

JESUS RODRIGUEZ & JUANITA)	
RODRIGUEZ,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 1690-15S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case is calendared for trial at the Session of the Court commencing January 11, 2016, in Houston, Texas.

On December 29, 2015, petitioner Jesus Rodriguez made an informal request for a jury trial. It is well established that a taxpayer who elects to bring suit in the Tax Court has no right, statutory or constitutional, to a trial by jury. Phillips v. Commissioner, 238 U.S. 589, 599 (1931); Wickwire v. Reinecke, 275 U.S. 101, 105-106 (1927); Dorl v. Commissioner, 507 F.2d 406, 407 (2d Cir. 1974). The Seventh Amendment preserves the right to jury trial “in suits at common law,” however, because there was no right of action at common law against a sovereign, enforceable by jury trial or otherwise, there is no constitutional right to a jury trial in a suit against the United States. See Mathes v. Commissioner, 576 F.2d 70 (5th Cir. 1979). Thus, there is a right to a jury trial in actions against the United States only if a statute so provides and Congress has not so provided where a taxpayer has elected not to pay the assessment and has sued for a redetermination in the Tax Court. Id. If a taxpayer wishes for a trial by jury, he must pay the tax allegedly owed and sue for a refund in district court. 28 U.S.C. secs 2402 and 1346(a)(1).

Accordingly, petitioner Jesus Rodriguez’s request for a jury trial is denied and it is

ORDERED that the parties are reminded that this case remains set for trial on the January 11, 2016, Houston, Texas Trial Session.

**(Signed) Joseph Robert Goeke
Judge**

Dated: Washington, D.C.
December 29, 2015

SERVED Dec 30 2015