

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 22 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WAYNE ROBERT RISLEY; NANETTE
RISLEY,

Petitioners,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

No. 10-70656

Tax Ct. No. 10857-05s

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted March 8, 2012**
Pasadena, California

Before: FARRIS, CLIFTON, and IKUTA, Circuit Judges.

Because the Risleys elected to bring this case as a small tax case, we lack jurisdiction to review the decision of the Tax Court. *See* 26 U.S.C. § 7463(b); *see*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

also Ballard v. Comm 'r, 639 F.2d 486 (9th Cir. 1980) (per curiam). We need not consider the question whether there are circumstances in which we would have jurisdiction over a due process claim because the Risleys' claim here is based on the assertion that the rules governing small tax cases do not allow for summary judgment, which is incorrect. *See* Tax Ct. R. Prac. & Proc. 121, 170.

DISMISSED.