

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MARK T. ELLIS and
SUSAN D. ELLIS,

Civ. No. 09-6067-HO

ORDER

Plaintiffs,

v.

RON ROBINSON,
INTERNAL REVENUE SERVICE,
and UNITED STATES
DEPARTMENT OF JUSTICE

_____ Defendants.

Defendants filed a motion to dismiss for lack of subject matter jurisdiction, failure to state a claim, and insufficient service of process. Plaintiffs filed a motion to strike and a conditional motion to dismiss. Defendants filed a response to the conditional motion and argued that the United States is the only proper defendant.

To the extent that plaintiffs' action is "with respect to federal taxes," the action is barred by the Declaratory Judgment

Act and the Anti-Injunction Act. O'Brien v. Evans, 560 F. Supp. 228, 230 (D. Or. 1983).

In addition, plaintiffs fail to state a claim upon which relief can be granted. Plaintiffs cannot rely on the Fourteenth Amendment Due Process Clause because defendants are not state actors. U.S. CONST. Amend. XIV, § 1. Plaintiffs do not cite any action by the I.R.S. that violates the Fifth Amendment Due Process Clause. See United States v. Tanoue, 94 F.3d 1342, 1345-6 (9th Cir. 1996). Plaintiffs' due process claim fails. Plaintiffs do not allege that the I.R.S. discriminated against them because they were residents of another state. Zobel v. Williams, 457 U.S. 55, 59 n.5 (1982). Plaintiffs' claim under the Privileges and Immunities Clause of Article IV, § 2 fails.

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Last, plaintiffs' "ultra vires" claim fails because they do not cite any unauthorized actions by defendants.

Conclusion

Based on the foregoing, defendants' motion to dismiss [#4] is granted; plaintiffs' motion to strike [#6] is denied; and plaintiffs' motion to dismiss [#7] is denied as moot. This action is dismissed.

SO ORDERED.

DATED this 9th day of September, 2009.

s/ Michael R. Hogan
United States District Judge