

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Income Tax

DONNA M. MENDYK,)	
)	
Plaintiff,)	No. 010844D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on its own Motion to Dismiss Plaintiff’s Complaint.

The court has held two case management conferences, October 4, 2001, and January 23, 2002, in the above-entitled matter. At the conclusion of the January conference, the court granted Plaintiff another 30 days to notify the court if she had statutory authority to continue her appeal against Defendant. Plaintiff is seeking to recover the tax refund issued to her former husband arising out of a settlement negotiated by Defendant with federal retirees.

On January 25, 2002, the court received a letter from Mr. Michael G. Hanlon, Attorney at Law. Mr. Hanlon was one of the “class counsel” representing federal retirees in *Vogl, et al. v. Dept. of Rev.*, Tax Court Regular Division Case No. 3605, a coordinated class action. In his letter, Mr. Hanlon wrote:

“Despite your reading of the class definition, in our opinion, you are not a member of the class. A fundamental legal principle is that one cannot recover twice for the same claim. Apparently, your former husband, who was a class member, has already received the benefits flowing from this settlement. It would appear that you may have a valid claim against your former spouse depending upon the terms of your final divorce judgment.

“* * * * *

“As previously observed, you may have a claim against your former

husband and we strongly encourage you to seek legal counsel concerning your right to relief. * * * You should review your divorce judgment and consult with your divorce lawyer concerning this matter immediately to protect your legal rights. If you cannot afford a lawyer, please consider contacting Multnomah County Legal Aid (503) 224-4086.”

At the January case management conference, Plaintiff agreed to contact the court no later than February 25, 2002. As of this date, Plaintiff has not communicated with the court.

Based on the information provided to the court by Mr. Hanlon, the court concludes that Plaintiff’s claim, if any, is against her former husband and not Defendant. Defendant complied with the terms of the settlement agreement, issuing Plaintiff’s former husband a tax refund. Plaintiff appears to have incorrectly identified Defendant in her cause of action. As Mr. Hanlon suggested, Plaintiff should consult an attorney. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this _____ day of March, 2002.

JILL A. TANNER
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE JILL A. TANNER ON MARCH 14, 2002 . THE COURT FILED THIS DOCUMENT ON MARCH 14, 2002.