

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

VICTORIO C. RIVERA, )  
 )  
 Plaintiff, ) No. 011280E  
 )  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 STATE OF OREGON, and JOHN A. )  
 KITZHABER, M.D., Governor, )  
 )  
 Defendants. ) **DECISION OF DISMISSAL**

This matter is before the court on Defendant's Motion to Dismiss, filed on January 31, 2002. In response, Plaintiff filed a Motion to Strike Defendants' Motion to Dismiss and Motion for Sanctions on February 6, 2002. The court discussed the motions with the parties during the case management conference held March 6, 2002.

Defendants claim the case should be dismissed on three different grounds. First, Defendants argue Plaintiff fails to state a claim for which relief can be granted. Second, Defendants argue the court lacks subject matter jurisdiction over Plaintiff's claims. Finally, Defendants argue Plaintiff's claims are barred by the doctrine of res judicata.

The court has reviewed Plaintiff's Complaint in search of a claim cognizable in this court. Plaintiff alleges various tortious acts committed by government agents. The Tax Court, however, has no jurisdiction over these claims. The jurisdiction of the Tax Court is limited to claims arising under the tax laws of this state. See ORS 305.410.<sup>1</sup>

Plaintiff also appeals the Department of Revenue's (department) refusal to issue a declaratory ruling in response to Plaintiff's request. Plaintiff apparently is seeking a

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<sup>1</sup> All references to the Oregon Revised Statutes are to 2001.

property tax exemption for his property dating back to 1992 based on his inability to pay the property taxes. He sought a declaratory ruling from the department to this effect. The department denied Plaintiff's request for a declaratory ruling and Plaintiff has appealed the department's denial.

The court finds it cannot review Plaintiff's claim that the department erred in not issuing a declaratory ruling because Plaintiff previously appealed a similar denial to this court. Plaintiff has on several occasions petitioned the Department of Revenue for a ruling declaring his property exempt from property taxation. Each time, the department has denied his request. In *Rivera v. Dept. of Rev.*, OTC-MD No. 000594C (August 3, 2000), Plaintiff appealed the department's denial to this court and, as part of the appeal, alleged tortious acts similar to those raised in this appeal. After hearing, the court determined the case should be dismissed. Plaintiff appealed the dismissal to the Regular Division of the Tax Court and eventually to the Oregon Supreme Court. The Oregon Supreme Court affirmed the decision of the Tax Court finding none of Plaintiff's allegations were well taken. See *Rivera v. Dept. of Rev.*, 332 Or 529, 32 P3d 896 (2001).

Plaintiff, once again, is before this court claiming the department erred by not issuing a ruling declaring his property exempt and further claiming state officials committed various torts against him. As noted, Plaintiff presented these issues to the court in earlier litigation and the court determined Plaintiff's claims should be dismissed. Having already exhausted his judicial remedy on the various claims raised in his Complaint, the court finds the doctrine of res judicata bars the court from considering Plaintiff's claims.

Subsequent to the case management conference held March 6, 2002, during which the parties discussed Defendants' Motion to Dismiss, Plaintiff filed a Motion For  
DECISION OF DISMISSAL

Disqualification Of Magistrate Coy Weidner. Defendants filed a response on March 12, 2002. Having considered the arguments, the court finds Plaintiff's Motion For Disqualification Of Magistrate Coy Weidner should be denied. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendants' Motion to Dismiss is granted. The above-entitled matter is dismissed;

IT IS FURTHER DECIDED that Plaintiff's Motion to Strike Defendants' Motion to Dismiss and Motion for Sanctions is denied;

IT IS FURTHER DECIDED that Plaintiff's Motion For Disqualification Of Magistrate Coy Weidner is denied; and

IT IS FURTHER DECIDED that Plaintiff's Motion for Summary Judgment, Motion for Joinder of Claims, and Motion for Default Judgment are denied as moot.

Dated this \_\_\_\_\_ day of March, 2002.

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COYREEN R. WEIDNER  
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 THIS DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON MARCH 21, 2002. THE COURT FILED THIS DOCUMENT ON MARCH 21, 2002.**