

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DWIGHT-WINDFRED: TROYER  
SUSAN-K.: TROYER,

Plaintiffs,

v.

SCOTT McCALLUM  
AKA: Scott McCallum (*in his personal  
capacity*)DBA: Governor for THE STATE  
OF WISCONSIN (CORPORATION)

WISCONSIN DEPARTMENT OF  
REVENUE, et. al., (CORPORATION),

Defendants.  
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ORDER

02-C-0143-C

Plaintiffs Dwight-Windfred: Troyer and Susan-K.: Troyer have filed a suit in this court seeking to enforce the provisions of 5 U.S.C. § 552 against defendants. Plaintiffs allege that they have served requests for documentation under § 552, the Freedom of Information Act, and have not received the documents they requested. They contend that under the Uniform Commercial Code, § 3-505, defendant Wisconsin Department of Revenue's failure to produce the documents invalidates its assessment of taxes against

plaintiffs and operates as a tacit agreement that plaintiffs do not owe the state taxes that have been assessed against them. Plaintiffs seek injunctive relief (the immediate disclosure of the requested documents) and damages for their litigation costs and mental anguish suffered as a direct result of defendants' breach of duty in the form of public humiliation, wounded pride and shame. Plaintiffs have paid the filing fee.

Although plaintiffs have not yet served defendants, I conclude that this suit must be dismissed without waiting for service upon defendants and the filing of responsive pleadings because the complaint is so insubstantial and devoid of merit as not to involve a federal controversy, or indeed, any controversy at all. Oneida Indian Nation of New York State v. Oneida County, New York, 414 U.S. 661 (1974); Bell v. Hood, 327 U.S. 678 (1946). Plaintiffs are seeking to enforce a law that by its own terms has no application to the state agency plaintiff is suing. Section 552 is directed to the operations of federal agencies; it creates no obligations for state agencies. It is true that the statute refers to "each agency," but the definitions statute, 5 U.S.C. § 551, explains that "'agency' means each authority of the Government of the United States" (with certain exceptions, none of which is relevant in this case). Plaintiffs cannot force an agency of the state of Wisconsin (or the governor) to comply with a law to which it is not subject.

In addition, plaintiffs' suit is an attempt to enjoin the assessment, levy or collection of a state tax. Federal courts are prohibited from taking any action to enjoin, suspend or

restrain the assessment, levy or collection of state taxes in the absence of a showing that a “plain, speedy and efficient remedy [is not available] in the courts of [the] State.” 28 U.S.C. § 1341. The Wisconsin state courts provide adequate remedies for persons contesting the validity of tax assessments.

ORDER

IT IS ORDERED that the complaint filed by plaintiffs Dwight-Windfred: Troyer and Susan-K.: Troyer is DISMISSED on the court’s own motion for lack of subject matter jurisdiction.

Entered this 14th day of March, 2002.

BY THE COURT:

BARBARA B. CRABB  
District Judge