

VERMONT SUPERIOR COURT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 567-9-12 Wrcv

Tyler P. Harwell
Plaintiff

v.

Mary N. Peterson, Comm.
Department of Taxes
Defendant

DECISION ON MOTION TO DISMISS

Defendant has filed a motion to dismiss the instant claim by Plaintiff seeking judicial review of Vermont's Education Property Tax. Plaintiff claims he is being taxed at the non-residential rate concerning his property in Bethel, Vt. However, as Defendant argues, and Plaintiff concedes in his opposition filing, Plaintiff has been taxed at the resident rate for the tax year 2012-2013. The appropriate tax classification is established as of April 1 of each year and Plaintiff was residing at his home in Bethel at that time.

Plaintiff raises a number of challenges to the two tax classifications under the Education Property Tax. At this point, however, he has been taxed only at the lower of those rates. His arguments concerning the disparate treatment afforded non-residents under the tax will only become ripe when he has been taxed at a non-resident rate. Plaintiff's suggestion that he will soon be taxed at a non-resident rate does not make this case ripe now.

Vermont courts may only decide actual cases or controversies, not controversies which may arise in the future. *In re Constitutionality of House Bill 88*, 115 Vt. 524, 529 (1949) ("The judicial power, as conferred by the Constitution of this State upon this Court, is the same as that given to the Federal Supreme Court by the United States Constitution; that is, 'the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction.' " (quoting *Muskrat v. United States*, 219 U.S. 346, 361 (1911)(emphasis added)). An element of the case-or-controversy requirement is that a plaintiff must have standing-that is, "must have suffered a particular injury that is attributable to the defendant and that can be redressed by a court of law." *Parker v. Town of Milton*, 169 Vt. 74, 77(1998). To bring a case, a plaintiff must show (1) injury in fact, (2) causation, and (3) redressability. *Franklin County Sheriff's Office v. St. Albans City Police Department*, 2012 Vt. 62.

An injury for standing purposes means the invasion of a legally protected interest, not a generalized harm to the public. *Parker*, 169 Vt. at 78. At present, Plaintiff has suffered no such invasion as he has not incurred the non-resident tax rate. It may be that in the future Plaintiff will

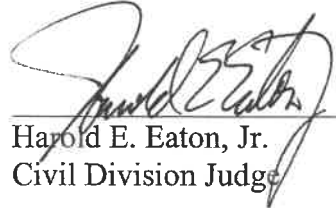
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have standing to pursue his claims concerning the Education Property Tax, however he lacks standing at this time because he has not suffered any injury for standing purposes.

Because this Court may only address actual controversies, not prospective ones, the Court must grant this motion to dismiss. Defendant's motion to dismiss is, therefore, **GRANTED**.

Dated at Woodstock this 29th day of November, 2012.



Harold E. Eaton, Jr.
Civil Division Judge

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