

IN THE OREGON TAX COURT
REGULAR DIVISION
Income Tax

DANIEL ERBLING,)
)
 Plaintiff,) **TC 5124**
 v.)
)
 DEPARTMENT OF REVENUE,)
 State of Oregon,)
)
 Defendant.) **ORDER GRANTING DISMISSAL**

This matter comes before the court on Defendant’s Motion to Dismiss, filed on October 31, 2012, and Plaintiff’s response to the motion, filed December 14, 2012. Plaintiff filed his complaint on October 4, 2012. At that time, Plaintiff had not paid the taxes, associated penalties and interest for tax years 2007, 2008 and 2009 as required by ORS 305.419(1).¹ Nor had Plaintiff filed a motion for stay of payment of taxes with proof that doing so would create an undue hardship, as required by ORS 305.419(3).

Pursuant to ORS 305.419(1) “in any appeal from an order, act, omission or determination of the Department of Revenue involving a deficiency of taxes imposed upon or measured by net income, the tax assessed, and all penalties and interest due, *shall* be paid to the department *on or before* the filing of a complaint with the regular division of the Oregon Tax Court.” (Emphases added.)

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¹ All references to the Oregon Revised Statutes (ORS) are to 2011.

Pursuant to ORS 305.419(3) “Where payment of the tax, penalties and interest would be an undue hardship, plaintiff may file an affidavit alleging undue hardship *with* the complaint.” (Emphasis added.)

Failure to pay the tax assessed, and all penalties and interest due, or failure to file a motion for stay of payment with proof of undue hardship at the time a complaint is filed, creates a jurisdictional defect that is fatal to a taxpayer’s appeal. *Curtis v. Department of Revenue*, 19 OTR 123 (2006).

After reviewing the motion and response and being fully advised of the premises, the court finds that Defendant’s Motion to Dismiss should be granted. Now, therefore,

IT IS ORDERED that Defendant’s Motion to Dismiss is granted.

Dated this ___ day of January, 2013.

Henry C. Breithaupt
Judge

THIS DOCUMENT WAS SIGNED BY JUDGE HENRY C. BREITHAUPT ON JANUARY 10, 2013, AND FILED THE SAME DAY. THIS IS A PUBLISHED DOCUMENT.