



**TC01287**

**Appeal number: TC/2011/01517**

**INCOME TAX – PENALTIES FOR LATE FILING RETURNS – *No reasonable excuse for years ending 5 April 2006 & 2007 – Appeals dismissed – HMRC failed to establish tax due for year ending 5 April 2008 – No tax due for year ending 5 April 2009 – Appeals allowed.***

**INCOME TAX – SURCHARGE FOR NON PAYMENT OF TAX – *No reasonable excuse – Appeals dismissed***

**FIRST-TIER TRIBUNAL**

**TAX**

**MR CARL NEEDS**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: MICHAEL TILDESLEY (TRIBUNAL JUDGE)**

**The Tribunal determined the appeal on 23 May 2011 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 8 November 2010, HMRC's Statement of Case submitted on 14 April 2011 and the Appellant's Reply dated 4 May 2011.**

## DECISION

### **The Year Ending 5 April 2006**

- 5 1. The Appellant was appealing against a penalty of £86.84 for the late filing of the return and surcharges totalling £8.68 for non-payment of the tax due.
2. A tax return for the year ending 5 April 2006 was issued to the Appellant on 6 April 2006 which required the Appellant to file the return by 31 January 2007. The Appellant filed his return on 10 March 2010, 1134 days late. The tax due on the return was £86.84. The Appellant has not paid the outstanding tax.
- 10 3. Under sections 93(2) and 93(4) of the Taxes Management Act 1970 the Appellant was liable to a fixed penalty of £100 for failing to deliver his return by the said date, and a further penalty of £100 if the return remains outstanding six months after the filing date. Under section 93(7) the amount of the penalties cannot exceed the tax liability for the year in question.
- 15 4. Under section 59C of the Taxes Management Act 1970 the Appellant was liable to pay surcharges of five per cent on the outstanding tax on 28 days from the due date, and on the expiry of six months from the due date.
- 20 5. The Tribunal has limited jurisdiction in penalty Appeals which reflects the purpose of the legislation of ensuring that persons file their returns and pay their tax on time. The Tribunal has no power to mitigate the penalty. The Tribunal can either confirm the penalty or quash it if satisfied that the Appellant has a reasonable excuse for his failure. The Appellant has the obligation of satisfying the Tribunal on a balance of probabilities that it has a reasonable excuse for not filing the return on time.
- 25 6. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent tax payer exercising reasonable foresight and due diligence and having proper regard for his responsibilities under the Tax Acts.
- 30 7. The Appellant's reasons for not submitting the return and paying the tax on time were that he ceased being self employed from May 2005, and had been paying his tax under PAYE. The Appellant had been under the self assessment scheme since 2003/2004.
- 35 8. The Tribunal finds that the Appellant has adduced no evidence that he informed HMRC that he ceased self employment from May 2005. In those circumstances he was obliged to complete self assessment tax returns until notified to the contrary by HMRC. The amount of tax due was calculated from the return submitted by the Appellant in March 2010.
9. The Tribunal is satisfied that the Appellant did not have a reasonable excuse for the late filing of the 2005/06 return and the non payment of the outstanding tax in the

sum of £86.84. The Tribunal dismisses the Appeal, and confirms the penalty in the sum of £86.84 and the surcharges in the sum of £8.68.

### **The Year Ending 5 April 2007**

5 10. The Appellant was appealing against a penalty of £200 for the late filing of the return and surcharges totalling £55.78 for non-payment of the tax due.

11. A tax return for the year ending 5 April 2007 was issued to the Appellant on 6 April 2007 which required the Appellant to file the return by 31 January 2008. The Appellant filed his return on 10 March 2010, 769 days late. The tax due on the return was £557.92. The Appellant has not paid the outstanding tax.

10 12. Under sections 93(2) and 93(4) of the Taxes Management Act 1970 the Appellant was liable to a fixed penalty of £100 for failing to deliver his return by the said date, and a further penalty of £100 if the return remains outstanding six months after the filing date. Under section 93(7) the amount of the penalties cannot exceed the tax liability for the year in question.

15 13. Under section 59C of the Taxes Management Act 1970 the Appellant was liable to pay surcharges of 5 per cent on the outstanding tax on 28 days from the due date, and on the expiry of six months from the due date.

20 14. The Tribunal has limited jurisdiction in penalty Appeals which reflects the purpose of the legislation of ensuring that persons file their returns and pay their tax on time. The Tribunal has no power to mitigate the penalty. The Tribunal can either confirm the penalty or quash it if satisfied that the Appellant has a reasonable excuse for his failure. The Appellant has the obligation of satisfying the Tribunal on a balance of probabilities that it has a reasonable excuse for not filing the return on time.

25 15. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent tax payer exercising reasonable foresight and due diligence and having proper regard for his responsibilities under the Tax Acts.

30 16. The Appellant's reasons for not submitting the return and paying the tax on time were that he ceased being self employed from May 2005, and had been paying his tax under PAYE. The Appellant had been under the self assessment scheme since 2003/2004.

35 17. The Tribunal finds that the Appellant has adduced no evidence that he informed HMRC that he ceased self employment from May 2005. In those circumstances he was obliged to complete self assessment tax returns until notified to the contrary by HMRC. The amount of tax due was calculated from the return submitted by the Appellant in March 2010.

18. The Tribunal is satisfied that the Appellant did not have a reasonable excuse for the late filing of the 2006/07 return and the non payment of the outstanding tax in the

sum of £557.92. The Tribunal dismisses the Appeal, and confirms the penalties in the sum of £200 for the late filing of the return and the surcharges in the sum of £55.78.

### **The Year Ending 5 April 2008**

5 19. The Appellant was appealing against a penalty of £200 for the late filing of the return.

20. A tax return for the year ending 5 April 2008 was issued to the Appellant on 6 April 2008 which required the Appellant to file the return by 31 January 2009. The Appellant filed his return on 10 March 2010, 495 days late. HMRC adduced no evidence on the tax due on the return.

10 21. Under sections 93(2) and 93(4) of the Taxes Management Act 1970 the Appellant was liable to a fixed penalty of £100 for failing to deliver his return by the said date, and a further penalty of £100 if the return remains outstanding six months after the filing date. Under section 93(7) the amount of the penalties cannot exceed the tax liability for the year in question.

15 22. The Appellant's reasons for not submitting the return were that he ceased being self employed from May 2005, and had been paying his tax under PAYE. The Appellant had been under the self assessment scheme since 2003/2004.

20 23. The Tribunal notes that HMRC has not issued a surcharge for the outstanding tax unlike the previous years ending 5 April 2006 and 2007. Further HMRC has not provided evidence of the tax calculation in respect of the 2008/09 return submitted on 10 March 2010. The Tribunal finds that HMRC has not disputed the Appellant's assertion that he paid the tax under PAYE for the year ending 5 April 2008. Thus in accordance with section 93(7) TMA 1970 the penalties of £200 should be reduced to nil.

25 24. For the reason given above the Tribunal allows the Appeal, and reduces the penalties to nil for the late filing of the return.

### **The Year Ending 5 April 2009**

25. The Tribunal notes that HMRC has reduced the penalties to nil for the late filing of the return for the year ending 5 April 2009.

30 26. For the reason given above the Tribunal allows the Appeal, and confirms the reduction of the penalties to nil.

35 27. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to

“Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”  
which accompanies and forms part of this decision notice.

*Michael Uddlesley*

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 30 JUNE 2011**

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