



**TC01373**

**Appeal number TC/2009/14480**

*Income tax – Whether expenditure was incurred wholly and exclusively for the purpose of a trade – Identification of the trade – Appeal allowed in part – Section 34 Income Tax (Trading and Other Income) Act 2005*

**FIRST-TIER TRIBUNAL**

**TAX**

**TIMOTHY JAMES MOORE**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JOHN BROOKS (TRIBUNAL JUDGE)  
CHRISTOPHER JENKINS (MEMBER)**

**Sitting in public at Vintry House, Wine Street, Bristol BS1 on 5 July 2011**

**The Appellant in person**

**Simon Bates of HM Revenue and Customs, for the Respondents**

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## DECISION

1. Mr Timothy Moore is a musician who, for much of the 1980's and 1990's toured and worked with some established names in the music business. His work took him on tour throughout Europe, the USA, Australia and Japan and in 1985 he performed with Nik Kershaw at "Live Aid" in Wembley Stadium. However, from around 2000 there was a significant reduction in his touring and session work and he sought and found additional sources of income. By 2006-07 Mr Moore was employed at a private school in Taunton where his earnings were taxed under PAYE. He also played (and still does) in a band, "The Man From Funkle" which is a partnership and his share of the profits were and are taxed accordingly.

2. In addition Mr Moore worked as a self-employed peripatetic guitar teacher at a local state school, an activity he described as "Music Tuition" in his 2006-07 self-assessment tax return. This return shows that in 2006-07 although Mr Moore received £7,924 from this activity he suffered a loss of £6,181 as a result of having incurred expenditure and claimed capital allowances which together amount to £14,105.

3. On 22 July 2008 Mr John Laity, HM Inspector of Taxes, wrote to Mr Moore to enquire into his self-employment income from "Music Tuition". Mr Moore provided information to Mr Laity from which it became apparent that 94% of the income came from teaching and that the remaining 6% was derived from other music related activities. Mr Moore also provided further details of the expenditure incurred and explained that he had apportioned this between business and private costs on the basis of advice given to him by the accountants who had acted for him in the 1980's and 1990's. The amount (and percentage) of the expenditure claimed as a deduction from his income is as follows:

- (1) Bank charges (80%) - £166
- (2) Motoring costs (80%) - £3,522
- (3) Telephone/communication costs (80%) - £645
- (4) Electricity and gas (50%) - £545
- (5) Rent and other household costs (15%) - £690
- (6) Loan repayments (50%) - £3,692
- (7) Travel - £144
- (8) Subsistence - £357

4. Given that almost all of the income against which these expenses were claimed was derived from teaching at a local school the amount of expenditure incurred was challenged by Mr Laity and, following what Mr Bates, who appeared before us for HMRC, described as "a robust exchange of correspondence" Mr Laity brought his enquiry to a conclusion by amending Mr Moore's 2006-07 self-assessment return restricting the expenses to 10% of the income in recognition of the fact that Mr Moore would have incurred some expenditure in relation to the music tuition.

5. This decision was given effect by the issue of a Closure Notice under s 28A of the Taxes Management Act 1970 (“TMA”) on 24 April 2009.

6. In addition to the Closure Notice Mr Laity, who had concluded that it was likely that Mr Moore’s business expenditure had been overstated in previous years, issued discovery assessments restricting expenditure to 10% of turnover for 2004-05 and 2005-06 but did not do so for earlier years as both 2002-03 and 2003-04 had been the subject of an enquiry by a different officer.

7. At the commencement of the hearing (and to the clear and obvious dissatisfaction of Mr Laity who was present) Mr Bates, quite properly in our view, conceded that the discovery assessments for 2004-05 and 2005-06 were unsound in the light of the decision of the Tribunal in *Agnew v HMRC* [2010] UKFTT 272 (TC). Therefore, insofar as these assessments have not been withdrawn, we allow those appeals and turn to the appeal against the Closure Notice for 2006-07 and the issue of whether the business expenditure was overstated in that return.

8. Section 34(1)(a) of the Income Tax (Trading and Other Income) Act 2005 provides that “*in calculating the profits of a trade, no deduction is allowed for expenses not incurred wholly and exclusively for the purpose of the trade.*”

9. Mr Laity considered Mr Moore’s trade from this activity to be “music tuition” (as distinct from “Musician”) as stated in the return relying on the assertion by Mr Moore in his letter of 26 January 2009 that by the end of 2001 the work as a musician had “dried up”. However, Mr Moore contended that teaching was but one aspect of his business as a musician and that despite a downturn in his fortunes it was still necessary for him to incur the expenditure claimed as part of a continuing, albeit volatile, business. As Mr Moore put it in his letter of 16 July 2009 to Mr Laity:

“It seems to me that the bottom line of all this is that I view myself as a musician (something I have been all my life) who is presently teaching as part of my musical activity and you view me as a teacher who had been a musician and maybe will again.”

10. Having heard from Mr Moore, although we understand why Mr Laity amended the self-assessment return, we accept that during 2006-07, despite the significant fall in his income, he had not ceased to be a musician and become a teacher. We find some support for our view from the decision of the Special Commissioner (T H K Everett) in *Delian Enterprises v Ellis (HM Inspector of Taxes)* [1999] STC (SCD) 103. In that case an unemployed man who took up trade as a saw doctor in 1981 made small profits for 5 or 6 years (until 1986 or 1987), then traded at a loss (initially on his own and later in partnership with his wife) for some 11 or 12 years before returning to small profits (in 1998). The Inland Revenue (as it then was) sought to disallow the relief claimed for the partnership’s losses from 1990-91 to 1996-97 on the basis that there was trade was not being carried out on a commercial basis but the Special Commissioner allowed the appeal, finding on the facts that the partnership had been trading on a commercial basis.

11. Having found that Mr Moore continued to trade as a “musician” and not solely as a “music teacher” during 2006-07 it is necessary to consider whether he has established that the expenditure, described in paragraph 3, above, was incurred wholly and exclusively for the purposes of that trade.

5 12. Taking each of the items of expenditure in turn:

(1) Bank charges – Mr Moore explained, and we accept, that these arise from his “Gold Service” account which provides additional facilities such as AA breakdown cover, travel insurance, purchase protection and free mobile phone insurance which are relevant to his business.

10 (2) Motoring costs – We were told by Mr Moore that he travelled extensively to attend functions and events where he could meet contacts in the music industry and that he did obtain work as a result. Although to someone who was not a musician attending these events may appear to be leisure or entertainment activities we accept that it was very much a business activity for Mr Moore.

15 (3) Communications – In his letter of 26 January 2009 to Mr Laity, Mr Moore explains that he is “not a great social phone user”. Although he did not expand on this during the hearing we accept that this is the case and the 80% of the costs relate to business expenditure.

20 (4) Electricity and gas – Mr Moore said that he has a recording studio at his home and that this requires a lot of power to run and that is why he claimed 50% of the total costs as a business expenses.

25 (5) Rent and other household costs – this equates to a claim for the “use of home as office” which he had been advised to include by his former accountants on the basis that some rent and household expenditure would be attributable to the costs of the business.

(6) Loan repayment – This appears to include repayment of capital in addition to interest of a loan which was taken out to cover a large overdraft which has arisen on the prospect of an impending tour with the Bee Gees which was subsequently cancelled.

30 (7) Travel and Subsistence – These expenses were incurred in connection with Mr Moore’s business activities as a musician and included a trip to Latvia to consider a potential role as a producer of a new girl band; a trip to France for a meeting with a musician he had previously worked with on a Johnny Hallyday tour; and a trip to the USA for a meeting in Miami where the Bee Gees had their studio.

35 13. With the exception of the loan repayment we find that the expenditure claimed by Mr Moore was wholly and exclusively incurred for the purposes of his trade or business as a musician. We also accept that Mr Moore’s explanation (in his letter of 26 January 2009 to Mr Laity) regarding the capital allowances relating to  
40 “equipment” and in view of our findings in respect of his motoring costs the capital allowances claimed should not be restricted and, as such, Mr Moore’s appeal succeeds in part.

14. Section 50(6) TMA provides that if, on an appeal, it appears to the Tribunal that an appellant is overcharged by an assessment the assessment shall be reduced accordingly. We therefore reduce the assessment to take account of our findings as follows:

5                           Income (as a musician) **£ 7,924**  
                              Allowable Expenditure **£ 10,413**  
                              Loss                               **£ (2,489)**

15. 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.

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**JOHN BROOKS**

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 2 AUGUST 2011**

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