



TC01639

Appeal number: TC/2011/06919

Late filing penalty – change in ownership of appellant’s adviser – similar grounds accepted elsewhere – fairness and equality – perpetuation of error

FIRST-TIER TRIBUNAL

TAX

JOHN SCULLION

Appellant

- and -

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

Respondents

TRIBUNAL: ALASTAIR J RANKIN (TRIBUNAL JUDGE)

Sitting in public at Tribunals Unit, 3rd Floor, Bedford House, 16-22 Bedford Street, Belfast, BT2 7DS on 5 December 2011

Mr Paul O’Reilly instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant did not appear.
2. The Clerk to the Tribunal telephoned to the office of McNally & Co (Accountants & Auditors) which firm had lodged the appeal on behalf of the Appellant and was advised that they had lodged eighteen similar appeals and had received a letter indicating that the hearings for three of them had been cancelled. They therefore thought all had been cancelled but were content for this appeal to proceed in their absence.
3. Mr O'Reilly advised the Tribunal that McNally & Co had lodged an appeal on behalf of the Appellant against a penalty notice of £100.00 for the late submission of the Appellant's tax return for the year ended 5 April 2010. The basis for the appeal was that the previous owner of McNally & Co had died on 14 June 2010 and that Mr Raun Hill the current owner of the firm had been unable to ascertain which tax returns had been submitted and which had not been submitted when he took over the firm on 6 September 2010.
4. Mr O'Reilly indicated that the decision of the Respondents to allow the appeal of Mrs M G Price for whom McNally & Co had lodged an appeal on identical terms had been made in error as the grounds upon which the appeal were based did not show a reasonable excuse.
5. Mr O'Reilly referred to the decision of Special Commissioner David Demack in the case of Stubbs v. HMRC Commissioners (SpC638 released on 13 September 2007) where in paragraph 14 the Special Commissioner stated that 'these tribunals are a statutory creation and must apply the law as Parliament enacted it; fairness and equality are not matters they can take into consideration in arriving at their decisions'.
6. Mr O'Reilly submitted that it would be wrong for the Respondents to perpetuate the error made in one appeal by allowing all appeals based on identical circumstances.
7. Mr O'Reilly advised the Tribunal that the tax return for the year ended 5 April 2010 has still not been received by the Respondents.
8. As it is the duty of each taxpayer to ensure his or her tax return is submitted on time and as the current owner of McNally & Co had ample time between his acquisition of the firm and the submission deadline to ascertain which returns were outstanding the Tribunal finds that no reasonable excuse has been submitted by or on behalf of the Appellant.
9. The appeal is therefore dismissed.
10. 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

5 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.

10 **TRIBUNAL JUDGE**
RELEASE DATE: 8 December 2011