



TC01659

Appeal number:TC/2011/05989

Penalty for late filing of personal tax return – reasonable excuse – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

MR JOCELYN PATRICK

Appellant

- and -

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

Respondents

TRIBUNAL: J. BLEWITT (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 24 November 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 27 July 2011 and HMRC's Statement of Case submitted on 16 September 2011.

DECISION

1. By Notice of Appeal dated 27 July 2011 the Appellant appealed against a penalty of £100 imposed for the late filing of the personal tax return for the year ending 5 April 2010.

2. The return was issued to the Appellant on 6 April 2010. The filing date was 31 October 2010 for a paper return or 31 January 2011 if filed online. The Appellant's paper return was received by HMRC on 31 January 2011. The penalty notice was issued to the Appellant on 15 February 2011 in the sum of £100.

3. The issue for the Tribunal to determine is whether a reasonable excuse existed for the late filing of the return throughout the period of default,

4. The grounds relied upon in support of the appeal can be summarised as follows: HMRC were made aware throughout 2010 that its records differed to the information supplied by the Appellant on his 2009 tax return. The 2009 return was not submitted online and HMRC screen prints are incorrect. This matter has not been resolved despite significant communication by the Appellant. The Appellant was compelled to submit a paper return because of the danger of the previous year's incorrect online copy pages being incorrectly validated by submitting the return online. HMRC were aware of the problem but it was not rectified by the end of January 2011 and so a paper return was submitted to avoid the clear and present danger which HMRC still had not rectified. The penalty should be waived.

5. HMRC's Statement of Case dated 16 September 2011 contends that although the Appellant had outstanding issue with the 2008/2009 return, this would not negate his obligation to file the 2009/2010 return by the due date. The responsibility rests with the taxpayer to fulfil tax obligations. A paper return was acceptable, but the due date for submission of such was 31 October 2010. The Appellant has been registered under Self Assessment since 20 July 1998 and is deemed to be aware of his obligations. The Appellant had received a penalty for the late submission of the 2008/2009 return and was therefore fully aware of the consequences of late submission of a return. It is not accepted by HMRC that a reasonable excuse exists.

Decision

6. Although sympathetic to the problems encountered by the Appellant in relation to the 2008/2009 tax return, the Tribunal found as a fact that the outstanding issues were a separate matter and did not absolve the Appellant from his obligation to file the 2009/2010 return by the due date.

7. The Appellant had the choice as to whether the return was filed by paper return or online. The Tribunal accepts that the Appellant was wary of filing his return online, but having chosen to submit a paper return, the Appellant was obliged to file the return by 31 October 2010.

8. The Tribunal found as a fact that the outstanding concerns relating to the Appellant's 2008/2009 return did not negate the Appellant's responsibility to fulfil his tax obligations in respect of the 2009/2010 return by the due date.

5 9. The burden is on the Appellant to establish a reasonable excuse, on a balance of probabilities. The Tribunal finds that the Appellant has not discharged that burden.

10. The Tribunal confirms the penalty and dismisses the appeal.

10 11. 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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TRIBUNAL JUDGE
RELEASE DATE: 13/12/2011

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