

[2012] UKFTT 16 (TC)



TC01715

Appeal number: TC/2011/05105

PAYE – penalties – no reasonable excuse – appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

N SIGN LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: Judge Richard Barlow

Sitting in public at North Shields on 24 November 2011

Mr Pearson, director, for the Appellant

Mrs Oliver of HM Revenue and Customs, for the Respondents

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DECISION

1. The appellant appeals against penalties totalling £2,422.45 for late payment of PAYE during the tax year 2010/11.
- 5 2. Mr Pearson accepted that the payments in question had been paid late and that they had been correctly calculated.
3. Mr Pearson in support of the appeal puts forward the following arguments. The company fell into arrears of various taxes in 2008 because of the difficulty of obtaining credit and because of cash flow problems caused by a move to new
10 premises and HMRC agreed a time to pay agreement which the appellant has been paying. However, those payments made it difficult for the company to pay its current PAYE in 2010/11. Mr Pearson criticised HMRC for what he saw as inadequate warnings that penalties would be incurred if the current PAYE was not paid on time as well as the arrears. He claims that, had that been made clear, he would have
15 arranged for more time to pay the arrears in order to be able to make the current payments.
4. HMRC wrote to the appellant on 28 May 2010 a letter which said a penalty may be imposed if the company paid late more than once in the tax year. That letter also told the company that it needed to pay any overdue PAYE and to pay on time in
20 future failing which “we will take action”. Mr Pearson complained that the reference to the fact that a penalty “may” be incurred was inadequate warning.
5. I hold that there is nothing in that complaint. The word “may” was entirely appropriate because at the time the letter was sent HMRC could not have known that the company would fail to meet its obligations despite the clear wording of the rest of
25 the letter. Also, information about penalties was readily available in other publications and websites which Mrs Oliver referred to. Mr Pearson was wrong to assume that even if he did contact HMRC they would automatically extent the time to pay agreement. Mr Pearson readily admitted that he had failed to reply to several phone calls about the arrears because he thought they came from the Liverpool office
30 which had been dealing with the time to pay arrangements. Had he done so he would have realised sooner than he did that a penalty would be incurred.
6. I find the company has no reasonable excuse for the late payments and the penalties are due and payable. The actual reason for the late payments is in fact a lack of funds. The appeal is dismissed.
- 35 7. 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
40 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

RICHARD BARLOW

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TRIBUNAL JUDGE
RELEASE DATE: 4 January 2012

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