



TC01764

Appeal number: TC/2011/06052

Income tax- appellant previously self-employed then employed and paying tax under PAYE- obligation to file tax return -penalties and surcharge for late filing of Tax return and payment -no reasonable excuse-appeal dismissed

FIRST-TIER TRIBUNAL

TAX

JULIE HAWKINS

Appellant

- and -

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

Respondents

TRIBUNAL: BARBARA J KING (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 25 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 7 August 2011, HMRC's Statement of Case submitted on 27 October 2011 and the Appellant's Reply dated 27 October 2011.

DECISION

1. The Appellant was appealing against a penalty of £200 for the late filing of her tax return for the year ending 5 April 2009 and for surcharges totalling £824.48 for non-payment of the tax due.

The law

2. Under section 93(2) and 93(4) of the Taxes Management Act 1970 a tax payer is liable to a fixed penalty of £100 for failing to deliver a return by the filing date and a further penalty of £100 if the return was not delivered by six months after the filing date.

3. Under section 59 of the Taxes Management Act 1970 any outstanding tax for 2008-09 was due to be paid by 31 January 2010. A surcharge of 5% is liable to be paid on the outstanding tax on 28 days from the due date, and a further surcharge of 5% is liable outstanding tax still due on the expiry of six months from the due date..

4. The Tribunal has limited jurisdiction in penalty appeals which reflects the purpose of the legislation which to ensure that persons file their returns and pay their tax on time. The Tribunal has no power to mitigate the penalty unless it is manifestly unfair. The Tribunal can confirm the penalty or quash it if satisfied that the Appellant had reasonable excuse. The Appellant has the obligation of satisfying the Tribunal on a balance of probabilities that he or she has a reasonable excuse for not filing the return on time or not paying the tax on time.

5. 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 regard for his or her responsibilities under the Tax Acts.

The evidence

6. The Appellant ceased being self-employed in January 2008. She became employed and started to pay tax through PAYE. She submitted a tax return for 2007-08 on 16 January 2009 notifying HMRC that she had ceased to be self employed in January 2008.

7. The Appellant assumed that all tax she might be due to pay in the year ended 5 April 2009 was being collected from her by her Employers through the PAYE scheme. The Appellant assumed she did not need to complete a tax return for the year ended 5 April 2009.

8. HMRC say that the Appellant's tax code could not be set at the required level to collect all tax due from her for several reasons. Firstly because the Tax return for 2007-08 had not been submitted until 19 January 2009 which missed the 'coding out' deadline of 31 October 2008 (for paper returns) or before 31 December 2008 (for returns on line). Secondly because the amount of tax outstanding for the 2008-09 year was over £1999.99 and thirdly because she had income such that she was going to be a higher rate tax payer.

9. The Appellant was required to complete a tax return until she was notified to the contrary by HMRC. The onus was on her to obtain a form and to make an assessment of the tax due unless she submitted the form in sufficient time, in accordance with section 9 Taxes Management Act 1970, for HMRC to calculate the tax due and to inform the Appellant of this by the relevant date when it was due for payment, which in this case was 31 January 2010.

10. The Appellant says she was ignorant of the fact that she needed to complete a tax return for 2008-09 because she had not received the 'notice to file' which was sent out on 6 April 2009. She also appears to have been ignorant of the fact that she had been underpaying tax, through PAYE, for the whole period between January 2008 and 5 April 2009 and she was surprised when more tax started to be deducted from her income in June 2009, for the tax year from 6 April 2009 to 5 April 2010.

11. There is some conflict in the evidence as to when the Appellant completed a tax return for the 2008-09 year. The Appellant says she '*immediately*' telephoned HMRC, after June 2009 when she realised that £5,000 had been taken in tax from her earnings with her new employer and that sometime after that she received a tax return which she completed and returned to HMRC. HMRC say that it was only received by them on 8 October 2010. The Appellant does not give any specific date when she says she sent in the tax return. She has not alleged that she completed one tax return in 2009 and then another in 2010. On balance I find that the tax return to which she is referring is the one which was received by HMRC on 8 October 2010.

12. It does not appear from the evidence that the Appellant has, at any time during 2008-09 or 2009-10, done a calculation for herself to see whether she has been paying the correct amount of tax. Nor has she contacted an accountant to check this. Even when she had a strong indication through the sudden increase in tax deductions she '*didn't know anything was amiss*'.

13. The Appellant had been filing self assessment tax returns since 2000 and in the absence of any communication from HMRC telling that she no longer needed to file a tax return the Appellant was due to file a self assessment tax return for the year ended 5 April 2009.

14. On balance I find that the Appellant has not shown that she received no communication from HMRC after she ceased to be self employed. On balance I find that it is likely that the receipt of the penalty notice dated 3 August 2010 prompted her to make a telephone call to HMRC. HMRC have supplied at Folio 9 a note of a phone call made to them on 14 September 2010. Following this call I find that the Appellant was sent a Tax Return form for 2008-09, which was the one received back by HMRC on 8 October 2010.

Decision

15. I find that the Appellant has not shown reasonable excuse for the late submission of her tax return for the year 2008-09. It was filed on 8 October 2010 but it was due to

be filed by 31 October 2009. I find that her mistaken belief that she did not have to file a tax return was not reasonably held.

5 16. I find that the Appellant has not shown reasonable excuse for failing to pay the outstanding tax until 14 March 2011. It was due to be paid by 31 January 2010. The penalties and surcharges have been applied in accordance with the legislation. I do not find that they are manifestly unfair in this case.

17. 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 £824.48.

10 18. 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
15 “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: 20/01/2012

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