



TC01857

Appeal number TC/2011/03107

*Inland Revenue penalty appeal – Appeal dismissed – Short form
Decision given - Out of time Application for full statement of
reasons for Decision – No prospect of any further appeal succeeding
– Application refused*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KEVIN NORVILLE

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JILL C. GORT

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DECISION

On 5 October 2010 the Tribunal released its Decision in the case unaccompanied by reasons for that Decision. At the foot of the Decision was a paragraph informing the Appellant that if he wished for a full statement of reasons for that Decision he must apply to the Tribunal within 28 days. A document informing the Appellant of this accompanied the Decision. The Decision was one which disposes of the proceedings. Rule 35(5) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“The Rules”) provides that such an application ‘must’ be sent or delivered to the Tribunal so that it is received within 28 days after the date that the Tribunal sent or otherwise provided the Decision notice. No application was received by the Tribunal within that time limit, the application not being received until 30 January 2012, the reason given for the late submission being that it was ‘due to the downloading of the incorrect First-tier Tribunal Application for Permission to Appeal to Upper Tribunal....’

1. The Tribunal has, under the provisions of Rule 2 of the Rules, considered whether it is in the interests of justice to accept the late submission of the application but has concluded that it is not for the following reasons.

(i) The principal ground of appeal at the hearing was that the penalty was excessive as HMRC had already received commercial restitution through settlement of the tax, interest and surcharges. This is not a ground which is capable of succeeding, given that the purpose of the penalty regime is not restitution but to encourage compliance. It was also the case that at the hearing the Tribunal was informed by Mr Williams that the surcharges had been cancelled, a fact which was previously known to the Appellant.

(ii) At the hearing it was put forward by the Appellant that he had a reasonable excuse for failing to inform HMRC of his liability to UK tax on income from an overseas source within the statutory time limits, that excuse being that he had been suffering from stress and he was busy attending to the affairs of a friend’s widow at the time. The principle reason for the Tribunal not finding that the Appellant had a reasonable excuse was that he was by profession a Chartered Accountant and therefore would be expected to know and to comply with HMRC’s requirements regarding the submission of his tax returns, and, more particularly, he had said in evidence that he was fully aware that he had to pay the tax but had considered it a minor matter. He had made no attempt to notify HMRC of his inability to submit the returns despite being aware of his obligations.

(iii) Before sending in the correct application, those representing the Appellant had sent in an Application for Permission to Appeal to the Upper Tribunal in which they gave as grounds for seeking permission firstly that factually incorrect information given at the hearing by Mr Colin Williams on behalf of HMRC had ‘dictated the whole tenure (sic) of the proceedings’, and secondly that, as the

5 Appellant had paid all interest and surcharge costs, full commercial restitution had been made and therefore the penalty should be reduced to nil. At the hearing the Appellant himself was able to correct the misinformation provided by Mr. Williams. The Tribunal accepted his correction and it had no bearing on its Decision. There is no merit in his second point – see (i) above.

10 (iv) As the purpose of giving full reasons for the Decision is for the Appellant to be in a position to seek permission to appeal to the Upper Tribunal, as was clear from the documents accompanying the application, and as, for the reasons given in (iii) above, there is no prospect of an appeal to the Upper Tribunal succeeding, it would not be in the interests of the administration of justice to allow the Appellant's out of time application for full written findings of fact and reasons for the Decision.

15 2. The out of time application for full written reasons for the Decision in this case is refused.

20 3. 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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**JILL C. GORT
TRIBUNAL JUDGE**

RELEASE DATE: 27 February 2012

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