



TC01833

Appeal number TC/2011/05129

Penalty for late registration for VAT – section 70 VATA 1994 – whether reliance on advice of accountant a reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX**

ROY SCOTT t/a ROY SCOTT JOINERY

Appellant

- and -

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

Respondents

**TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)
ANN CHRISTIAN (MEMBER)**

**Sitting in public at 4th Floor City Exchange 11 Albion Street Leeds SL1 5ES on 07
October 2011**

For the Appellant Mr Roy Scott

For the Respondents Ms W Newham, Officer of HM Revenue and Customs.

DECISION

The Appeal

- 5 1. This is an appeal by Mr Roy Scott ('the Appellant') against a late registration penalty imposed by an assessment dated 06 May 2011 at the rate of 15%. The original penalty was calculated at £4,706.00. Mitigation was allowed for the Appellant's cooperation in registering voluntarily and promptly discharging his liability, reducing the penalty payable to £2,353.00.
- 10 2. The Appellant does not dispute that he failed to notify his liability to be registered at the proper time, that being 01.03.09, and that the relevant default period is from that date to 20.09.10, the Appellant having registered for VAT on 21.09.10. The net tax for the period was £31,380.82 which the Appellant discharged shortly after the notice of assessment.
- 15 3. The Appellant's grounds of appeal are that he was not aware he was liable to be registered for VAT because, so far as he was aware, his turnover did not exceed the then relevant threshold of £70,000.00. He says he was not aware that a 12-month rolling turnover calculation showed that his effective date of registration for VAT should have been 01.03.09 as he had exceeded the VAT registration threshold in
- 20 January 2009. The Appellant says that his former accountant, a Mr R Tennett, had prepared his accounts for the year ended 05.04.09 which had shown that the Appellant's turnover had exceeded the VAT registration threshold and that accordingly he should have been advised by his accountant to register for VAT. The Appellant says that he is a joiner/carpenter by trade and relied upon his accountant to
- 25 guide him on VAT matters. Had he been aware of the necessity to register, he would have done so.

Applicable Law

- 30 4. The penalty assessed on the Appellant was imposed under s67(1) Value Added Tax Act 1994 ('VATA') which provides that a person who fails to notify HMRC of their liability to register for VAT shall be liable to a penalty equal to the specified percentage of the 'relevant VAT'. The 'relevant VAT' is defined under s67(3) as the VAT due for the period from when the taxpayer should have been registered to when he did in fact notify HMRC of his liability to register. Under s67(4)(c) the specified
- 35 percentage penalty is 15% of the relevant VAT payable in any case where the time between the date on which the taxpayer ought to have registered for VAT and notified HMRC of his liability to register is greater than 18 months.
- 40 5. Section 68(8) provides that a failure to register under s67(1) shall not give rise to a penalty if the Tribunal is satisfied that there is a reasonable excuse for the failure to register. Section 70(1)(b) provides that, where reliance is placed on any other person to perform any task, neither the fact of that reliance nor any dilatoriness or inaccuracy on the part of the person relied upon is a reasonable excuse.

Factual Background

6. The parties were not in dispute as to the facts. The Appellant accepted that his rolling turnover had exceeded the VAT threshold from 01.03.09 and the net tax for the period was £31,380.00.

5 7. The Appellant argued that he had acted in good faith and relied upon his
accountant, Mr R Tennett, for guidance and advice with regard to taxation and VAT
matters. Mr Tennett had passed away in May 2010 and had completed the
Appellant's tax return for the year to 04.09 and the Appellant says he was not advised
10 of the need to register for VAT. It was not until he was contacted by HMRC in July
2010 that he contacted his new accountants and it became clear that he should have
registered for VAT from March 2009.

8. HMRC submit that reliance upon his accountant did not amount to reasonable
excuse under s71(1)(b) as set out above, which provides that neither reliance upon
another person nor that another person's inadequacies in discharging their
15 responsibilities may amount to reasonable excuse.

Decision

9. The Tribunal finds that the Appellant does not have a reasonable excuse for his
late registration. Ignorance of the law and reliance upon another for advice is not a
reasonable excuse. Under s 70(4)(c) VATA 1994 the fact that the tax-payer or person
20 acting on his behalf has acted in good faith cannot be taken into account by the
Tribunal in any exercise of its powers to mitigate or cancel the penalty. In this
instance HMRC had mitigated the penalty by 50% because of the Appellant's co-
operation in registering for VAT voluntarily and promptly discharging the outstanding
VAT. We regard the amount of mitigation applied by HMRC as correct.

25 10. For the above reasons we find that the Appellant does not have a reasonable
excuse for late registration for VAT. We confirm the penalty of £2,353.00 and dismiss
the appeal.

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
30 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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MICHAEL S CONNELL
TRIBUNAL JUDGE
RELEASE DATE: 17 February 2012

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