



TC01903

Appeal number: TC/2011/06040

Income tax –penalty for late filing of partnership return – agent unable to purchase software to file on line before 31 January – did this amount to reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX**

FROSTY FINGERS

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 3 August 2011, HMRC's Statement of Case submitted on 16 September 2011 and a letter from Beckett and Co on behalf of the Appellants, submitted on 14 October 2011.

DECISION

1. The Appellant was appealing against a penalty of £200 for the late filing of the partnership return for Mr G L Wilson and Mrs C L Wilson trading as Frosty Fingers.
5 The return for 2009-10 was due to be filed by 31 January 2011, if filed on line and it was not filed until 25 February 2011.

The law

2. Section 12AA(4) of the Taxes Management Act 1970 (TMA) provides that for the year ended 5 April 2010 a paper partnership tax return must be filed by 31
10 October 2010 or online by 31 January 2011.

3. Section 93A (2) TMA provides that all partners are liable to a penalty of £100 each if the return is not filed on or before its filing date. The representative partner may appeal against a penalty notice and the penalty may be set aside if 'reasonable excuse' is shown throughout the whole period of default- Section 93A (6) TMA.

The evidence

4. Mr G L Wilson was the nominated partner for Frosty Fingers. He had instructed Beckett & Co, Accountants and Tax Consultants (the agents) to file tax returns for the partnership and all correspondence in connection with this appeal has been written and submitted by the agents in connection with this appeal.

- 20 5. No party had requested an oral hearing of this appeal.

6. A penalty notice was issued against each of the partners on 15 February 2011. The agents agree that the partnership returns were not filed until 25 February 2011. The agents wrote a letter dated 2 March 2011 appealing to the Respondents (HMRC). Further correspondence between the agents and HMRC was available to
25 the Tribunal. This included a three page print out headed 'Partnership Tax returns Software SA 800 HMRC online filing- Andica' which lists various items of software and their purchase price. This print out is undated but the agents state it was printed out by them on 31 January 2011.

Findings

- 30 7. I am satisfied that a paper return was issued to the Appellant on 6 April 2010 and that the notes which accompanied this return clearly stated that returns can be filed using the paper return provided by HMRC or by using the internet. In the latter case the notes warn that "*You will need to use commercial software which you may need to buy.*"

- 35 8. The agents contend that on 29 July 2010 they investigated the possibility of submitting a partnership return for their clients by using the HMRC Gateway site. In a letter dated 2 March 2011 they state that they believed it was going to be possible to use Gateway to file a Partnership Return without the need for them to purchase any commercial software.

9. I find that the agents were mistaken in believing, on 29 July 2010, that commercial software would not be necessary. I further find that the agents have not shown that their mistaken belief was reasonably held. They have given no indication as to what the wording was on 29 July 2010 which might have misled them into believing that commercial software would not be necessary. I do not find that there was an obligation on HMRC to provide software to all taxpayers to enable them to file partnership returns on line. Paper returns had been provided and a warning given about the need for purchasing software for online filing.

10. Was it reasonable for the agents to wait until early January 2011 before taking any practical steps to submit the Partnership Return? Their letter of 2 March 2011 suggests that it only became clear to the agents in January 2011 (I accept they meant 2011 and not 2010 as stated in the letter) that commercial software would be needed. I find no credible evidence that the agents were justified in believing that HMRC would provide software, before 31 January 2011, to allow for the filing of partnership returns though the Gateway site. I find that the notes sent out in April 2010 were clear that commercial software would be needed and by ‘commercial software,’ I find that this note refers to software produced by someone other than the Revenue.

11. I find that the agents in this case were professional agents who knew, from April 2010 that the deadline for filing an online partnership return would be 31 January 2011. They had from April 2010 until 31 January 2011 to purchase the software required and I find that it was not reasonable for them to wait until into January 2011 before making any attempt to purchase the software.

12. The delay in downloading the software after 31 January 2011 does not amount to a reasonable excuse because I have found that the actions of the agents were not reasonable up until that point.

13. Mr Wilson can only have a reasonable excuse if it was reasonable for him to rely on an agent and if the actions of his agent amount to a reasonable excuse. I find that Beckett & Co have not shown that they have a reasonable excuse in this case.

14. There is no provision to mitigate a penalty because the Appellant has never been late before and that there is no loss of tax to the Revenue. Neither of these factors amounts to a reasonable excuse.

15. Is it disproportionate to impose a penalty for a first offence? The legislation provides for penalties to be imposed and there is no provision in the legislation for the waiving of a penalty just because a party has never been late before.

35 **Decision**

16. The Appellant has not shown reasonable excuse for the late filing of a partnership return for the year 2009-10. Penalties of £100 for each partner are confirmed. The appeal is dismissed.

17. 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

5 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.

Barbara J King

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TRIBUNAL JUDGE
RELEASE DATE: 23 February 2012

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