



TC02023

Appeal number: TC/2011/9165

INCOME TAX – PENALTIES FOR LATE FILING OF PARTNERSHIP RETURNS – *Whether Appellant had reasonable excuse for default – No – Appeal dismissed.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROBERT FABRE

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE

The Tribunal determined the appeal on 8 May 2012 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 1 November 2011 and HMRC's Statement of Case submitted on 11 January 2012. The Appellant did not make a reply to the statement of case.

DECISION

1. The Appellant appeals against the imposition of fixed penalties in the sum of £200 each for the late filing of partnership tax returns for the years ending 5 April 2007, 2008, 2009 and 2010.

2. HMRC agreed to the Tribunal in hearing the appeals in respect of the first three years despite not having carried out reviews of its decisions for those years.

3. The Tribunal finds the following facts:

(1) The Appellant was the nominated partner for the partnership (PRC Property Investors).

(2) HMRC issued on 6 April a full partnership return for each year in question with a filing date of 31 October or if filed online 31 January after the end of the tax year to which the returns related.

(3) HMRC has received no partnership return since the business commenced on 27 September 2006.

(4) For each tax year a fixed penalty of £100 was issued for failing to comply with the filing date, and a second fixed penalty of £100 for the return being outstanding for six months.

(5) The Appellant's assertion that he had completed all his tax returns as at 11 July 2011 and sent them to HMRC in Glasgow was correct only in so far as his personal tax returns. HMRC had not received the returns for the partnership.

4. The Appellant stated that he had experienced difficulties in obtaining the necessary information to complete the tax returns. The relevant paperwork was kept in his brother's office to which he had no access. The Appellant pointed out that the partnership business had suffered from major financial difficulties and various other problems which diverted attention away from completing the tax returns. The Appellant had now been unemployed for two years and in receipt of weekly benefits to the value of £67.50. He was already under severe financial hardship and unable to pay the penalties.

5. The Tribunal has limited jurisdiction in penalty Appeals which reflects the purpose of the legislation of ensuring that tax payers file their returns on time. The Tribunal has no power to mitigate the penalty. The Tribunal can either confirm the penalty or quash it if satisfied that the Appellant has a reasonable excuse for his failure. If there is a reasonable excuse it must exist throughout the period of default. The Appellant has the obligation of satisfying the Tribunal on a balance of probabilities that he has a reasonable excuse for not filing the returns on time

6. The statute provides no definition of reasonable excuse except that inability to pay the tax shall not be regarded as an excuse. 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 proper regard for her responsibilities under the Taxes Acts.

7. The Appellant's reasons for not filing the returns on time did not constitute a reasonable excuse. The guidance issued with the returns makes it clear that a taxpayer can provide estimated figures and an explanation for the estimates in the white space on the return if he was unable to access the current information. If the Appellant had
5 been acting as a prudent tax payer he would be aware of such guidance and completed the forms accordingly despite his inability to obtain the necessary information from his brother's office. The Appellant did not explain how the difficulties encountered by the partnership prevented him from sending the partnership returns. The Appellant's precarious financial position cannot in law amount to a reasonable excuse. The
10 Tribunal has no power to mitigate the penalty.

8. The Tribunal, therefore, finds that the Appellant did not have a reasonable excuse for not filing the returns on time. The Tribunal dismisses the Appeal and upholds the penalties in the sum of £800.

9. This document contains full findings of fact and reasons for the decision. Any
15 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)"
20 which accompanies and forms part of this decision notice.

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**MICHAEL TILDESLEY OBE
TRIBUNAL JUDGE**

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RELEASE DATE: 15 May 2012