



TC02060

Appeal number: TC/2011/07933

Late filing of partnership tax return; penalties; section 12AA(2) and (93A(2) TMA; need for third party software for on-line filing not appreciated; “reasonable excuse” under s.118(2) TMA not found.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CAROLINE McKENDRICK

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE CHRISTOPHER HACKING

The Tribunal determined the appeal on 28 February 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 Appellant’s letter of appeal received on 4 October 2011 (with enclosures), HMRC’s Statement of Case submitted on 9 November 2011 and the Appellant’s Reply received on 28 November 2011.

DECISION

The appeal

1. This was an appeal against the imposition of a fixed penalty of £200 (£100 for each partner) imposed on the Appellant as the nominated partner of a partnership business carried on by the Appellant and Mr D A J Mills under the name or style Tutorwise by reason of the late submission of the partnership's 2009-2010 tax return.
2. The Partnership Tax Return should have been filed by 31 October 2010 as it was a paper filing. In fact it was not filed until 20 January 2011.

10 *The Appellant's case*

3. The reason advanced by the Appellant in her letter of appeal for the delay was that as a new business she did not fully understand "how the tax form filling operated". The Appellant also states that as no tax was owed then from information gleaned from the radio "up until the financial year 2010-2011, a business that makes a loss, as we have, is exempt from paying the £100 fine"
4. The Appellant also states that she was unaware of the need to use third party software in the case of an electronic filing. Had the Appellant decided to file in this way her return would have been in time.
5. The Appellant's business has, sadly, failed with a first year trading loss of £37,000 and a further loss for the year 2010-2011 of £12,000. It has now ceased to trade. The problems encountered by the Appellant include the poor health of both herself and her partner coupled with what she considers to be the bureaucratic requirements involved in running a business.

The Respondents' case

6. The Respondents state that the Appellant was sent a tax return for the year ending 5 April 2010 on 6 April 2010. The Appellant had the option to file either by way of a paper filing or on-line. A paper filing was received on 20 January 2011 after the 31 October 2010 deadline and in consequence a fixed penalty of £100 for each partner became payable in the absence of any reasonable excuse for the late filing. No explanation was forthcoming for the late filing beyond the fact of the Appellant's late realisation that the electronic filing required third party software. This, the Respondents say, is not a new requirement. Further the filing dates, the consequences for missing them and the need for commercial software if filing on-line are clearly shown on the front of the Partnership Return.
7. Concerning the problems of ill health the Respondents say that no explanation as to how this might have resulted in the delay in filing has been made known to them.
8. The Appellant in suggesting that as no tax was payable no penalty could be imposed is, say the Respondents, simply not correct. The Appellant has referred to a provision which does not apply to partnership returns. It is a provision whereby for

the tax years up to 2009-2010 late filing penalties on personal tax returns will be reduced to the unpaid tax liability of the tax payer at the filing date.

The legislation

5 9. Section 12AA(2) Taxes Management Act 1970 (TMA) provides that where a partnership is sent a return the nominated partner is required to complete it and send it back by the filing date.

10. Section 93A(2) of the same act states that if a representative partner fails to comply with a notice requiring a return all partners are liable to a penalty of £100 each. Accordingly, say the Revenue, the penalty has been correctly charged.

10 11. If within a period of default the Appellant can establish a “reasonable excuse” for the delay in filing, then by section 118(2)TMA the delay will be excused but only for such period as to which the “reasonable excuse” extends.

15 12. What a “reasonable excuse” might be is not defined. The Revenue considers that any such reason would have to be something exceptional or out of the Appellant’s control. These criteria whilst not exhaustive, do in the view of the tribunal, represent a reasonable starting position for considering what is and what is not a “reasonable excuse” The words “reasonable excuse” are however words which in the absence of any special or technical meaning or definition are to be construed according to their usual and ordinary meaning.

20 *The Tribunal’s decision*

25 13. The Tribunal cannot find in any of the matters put forward by the Appellant any reasonable excuse why the partnership tax return was not filed on time. It is unfortunate that the Appellant did not realise that there was a need to use additional software if filing on-line but this fact was made known in the return sent to her on 6 April 2010.

30 14. The fact that the business was a new one with little experience of the tax system cannot of itself provide a reasonable excuse nor, in the absence of any explanation as to how the poor health of both Mr Mills and the Appellant might have led to the delay in filing, can these facts provide such a reasonable excuse for the delay. The reference to the fact that no tax was in fact payable is as the Revenue has stated, mistaken for a similar provision which applied to personal tax returns.

35 15. The Tribunal is not unsympathetic to some of the matters addressed by the Appellant in her appeal. However the requirement to file tax returns on time is common to all businesses and whilst this may be thought to be burdensome it is necessary for the orderly assessment and collection of tax. In the finding of the Tribunal the reasons advanced by the Appellant cannot be considered as exceptional. The due filing of the tax return was at all times within the Appellant’s control.

16. As no reasonable excuse has been established the penalty must be confirmed and this appeal 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 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.

10

**CHRISTOPHER HACKING
TRIBUNAL JUDGE**

RELEASE DATE: 21 May 2012

15