



TC02123

Appeal number: TC/2011/05446

*PAYE – late payment – penalty – whether there was a reasonable excuse –
appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KIRMELL LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE J. BLEWITT
T. BAYLISS**

Sitting in public at Birmingham on 11 June 2012

The Appellant did not attend and was not represented

**Ms Taylor, instructed by the General Counsel and Solicitor to HM Revenue and
Customs, for the Respondents**

DECISION

1. This is an appeal against a penalty in the sum of £6,991.62, as amended by
5 HMRC and notified to the Tribunal and Appellant following the Tribunal case of
Agor (TC/2011/04910) by letter dated 11 April 2012.

2. The penalty was imposed in respect of the late payment of PAYE from 5 May
2010 to 5 March 2011 inclusive and was issued to the Appellant on 9 June 2011.

3. The Appellant did not attend the hearing and was not represented. The Tribunal
10 had notified the Appellant of the date of the hearing to the Appellant by letter dated
23 April 2012. Upon contacting the Appellant, the Clerk to the Tribunal was informed
that the person who had intended to attend was ill. No application to adjourn the
appeal was made by the Appellant. The Tribunal was satisfied that there had been
sufficient notification of the hearing and that it was in the interests of justice to
15 proceed in the absence of the Appellant under Rule 33 of the Tribunal Procedure
(First-tier Tribunal)(Tax Chamber) Rules 2009.

4. In the Notice of Appeal dated 12 July 2011 the grounds of appeal relied upon
were:

20 “Not happy with the decision as explanation is not satisfactory. We believe that we
have reasonable excuse why payments were made late. We did not had the money to
pay. Please see attached copy of the letter.”

5. Annexed to the Notice of Appeal was a letter dated 20 June 2011 from the
Appellant to HMRC’s Debt Management Unit, which explained that for the last few
years the Appellant Company had been affected by the recession with reduced orders,
25 non-paying customers and an increasing number of bad debts which had caused the
late PAYE payments.

6. The Appellant further stated that all taxes had been paid and that the Company
had remained in business despite many other similar companies closing. The
Appellant requested that the penalty be removed as the Company cannot afford to pay
30 it.

7. HMRC records showed that the Appellant had made late payments of PAYE
regularly since 2002. Furthermore, the Appellant had not followed the advice set out
in the penalty warning letter issued by HMRC on 28 May 2010 after its first default,
which warned that penalties could be incurred and that assistance with payment could
35 be obtained from HMRC’s Business Payment Support Service.

8. HMRC issued notices under Regulation 78 Income Tax (PAYE) Regulations 2003 which required payment of the outstanding liabilities on the following dates:

Month	
1	27/5/10
2	28/6/10
3	5/8/10
4	31/8/10
5	30/9/10
7	30/11/10
8	7/1/11
9	26/1/11
11	25/3/11

5 9. Logs produced by HMRC showed that 10 attempts were made to contact the Appellant by telephone in the 2010/2011 period, yet the Appellant did not return HMRC's calls in response to the messages left.

10. In addition to the previous late payments, HMRC also submitted that the Appellant had continued to pay late in each of the 4 months in the 2011/2012 period prior to submission of HMRC's Statement of Case.

10 11. The Appellant's grounds of appeal relied upon the effect of the recession, yet the unchallenged evidence of HMRC showed that the Company's poor compliance began as far back as 19 February 2002, prior to the recession, and has continued ever since.

15 12. In the absence of any evidence from the Appellant to support its assertions that non-paying customers and increasing bad debts were the cause of the late payments, or any explanation as to why the Appellant did not avail itself of HMRC's facilities to assist with hardship, such as Time To Pay arrangements or Business Payment Support, we found that the Appellant did not have a reasonable excuse.

13. The appeal is dismissed.

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14. 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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**J. BLEWITT
TRIBUNAL JUDGE**

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RELEASE DATE: 5 July 2012