



TC02150

**Appeal number: TC/2011/08115
TC/2011/08121**

***INFORMATION NOTICE – Penalty for failure to comply (FA 2008 Sch 36)
– Reasonable excuse –Appeal dismissed***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JULIE BURTON AND LOUISE BURTON-TAYLOR Appellant

- and -

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

**TRIBUNAL: JUDGE CHRISTOPHER STAKER
SONIA GABLE**

Sitting in public in London on 11 June 2012

No appearance for the Appellant

Mr Brian Morgan for the Respondents

DECISION

Introduction

- 5 1. This is an appeal against the imposition of daily penalties pursuant to Schedule 36 of the Finance Act 2008 (“**Schedule 36**”) for failure to comply with information notices.
2. The penalty notices were issued to each of the Appellants on 24 September 2010. The amount of the penalties are £980 in the case of Julie Burton and £850 in the case of Louise Burton-Taylor.

10 The relevant legislation

3. Paragraph 1 of Schedule 36 provides that:
- (1) An officer of Revenue and Customs may by notice in writing require a person (“the taxpayer”)–
 - 15 (a) to provide information, or
 - (b) to produce a document,if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.
 - (2) In this Schedule, “taxpayer notice” means a notice under this paragraph.
- 20 4. Paragraph 6 of Schedule 36 relevantly provides that:
- (1) In this Schedule, “information notice” means a notice under paragraph 1 ...
5. Paragraph 7 of Schedule 36 relevantly provides that:
- 25 (1) Where a person is required by an information notice to provide information or produce a document, the person must do so–
 - (a) within such period, and
 - (b) at such time, by such means and in such form (if any), as is reasonably specified or described in the notice.
 - ...
- 30 6. Paragraph 29 of Schedule 36 relevantly provides that:
- (1) Where a taxpayer is given a taxpayer notice, the taxpayer may appeal against the notice or any requirement in the notice.
 - (2) Sub-paragraph (1) does not apply to a requirement in a taxpayer notice to provide any information, or produce any document, that
 - 35 forms part of the taxpayer's statutory records.
 - ...
7. Paragraph 39 of Schedule 36 relevantly provides that:

- 5
- (1) This paragraph applies to a person who–
 - (a) fails to comply with an information notice, or
 - (b) deliberately obstructs an officer of Revenue and Customs in the course of an inspection under Part 2 of this Schedule that has been approved by the tribunal.
 - (2) The person is liable to a penalty of £300.

...

8. Paragraph 40 of Schedule 36 relevantly provides that:

- 10
- (1) This paragraph applies if the failure or obstruction mentioned in paragraph 39(1) continues after the date on which a penalty is imposed under that paragraph in respect of the failure or obstruction.
 - (2) The person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure or obstruction continues.
- 15

9. Paragraph 45 of Schedule 36 relevantly provides that:

- (1) Liability to a penalty under paragraph 39 or 40 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure or the obstruction of an officer of Revenue and Customs.
 - (2) For the purposes of this paragraph–
 - (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
 - (b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and
 - (c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.
- 20
- 25
- 30

10. Paragraph 47 of Schedule 36 relevantly provides that:

A person may appeal against any of the following decisions of an officer of Revenue and Customs–

- 35
- (a) a decision that a penalty is payable by that person under paragraph 39 ..., or
 - (b) a decision as to the amount of such a penalty.

11. Paragraph 48 of Schedule 36 relevantly provides that:

...

- 40
- (3) On an appeal under paragraph 47(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.

- (4) On an appeal under paragraph 47(b) that is notified to the tribunal, the tribunal may–
- (a) confirm the decision, or
 - (b) substitute for the decision another decision that the officer of Revenue and Customs had power to make.

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Outline of the facts

12. On 2 June 2010, information notices under paragraph 1 of Schedule 36 were issued to both Appellants. No appeals were lodged against those information notices.

10 13. Initial penalty notices under paragraph 39 of Schedule 36 were issued to Julie Burton on 16 September 2010 and to Louise Burton-Taylor on 29 September 2010.

14. According to the HMRC statement of case, on 15 October 2010, both Appellants lodged appeals against the initial penalties, but these were later withdrawn. The Appellants have not sought to contradict this.

15 15. On 24 December 2010, penalty notices were then issued for daily penalties under paragraph 40 of Schedule 36. In the case of Julie Burton, the amount of the penalty notice was £980, calculated as £10 per day from 17 September 2010 to 23 December 2010 (98 days). In the case of Louise Burton-Taylor, the amount of the penalty notice was £850, calculated as £10 per day from 30 September 2010 to 23 December 2010 (85 days).

20 16. According to the HMRC statement of case, an alternate dispute resolution pilot was entered into between both parties between February and July 2011, which resulted in the initial penalty being accepted but not the daily penalties. The Appellants have not sought to contradict this.

25 17. On 14 September 2011 and 19 September 2011 in respect of each of the Appellants, HMRC issued review decisions, upholding the decisions to impose daily penalties.

18. The Appellants now appeal against the decisions to impose daily penalties.

The hearing

30 19. The appeal was listed for hearing at Bedford Square in London on 11 June 2012. At the hearing there was no appearance by or on behalf of either Appellant. Mr Morgan appeared for HMRC. He stated that he had spoken to the Appellant's agent approximately 3 weeks previously, and that the agent had said that the hearing should proceed in the Appellants' absence. In the papers was a letter from HM Courts and Tribunals Service to the Appellant's agent at the address given in the notices of appeal, giving notice of the hearing. In the circumstances, the Tribunal was satisfied
35 that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing, and considered that it was in the interests of justice to proceed with the hearing in the Appellants' absence.

The Appellants' submissions

20. The notice of appeal of Julie Burton states as follows. From the beginning the Appellant had stated the belief that the information requested was not relevant to the HMRC investigation as the Appellant had a PAYE job, and that the requests were
5 unreasonable. The Appellant stated throughout that she would not be supplying this material, and the penalty is unjust. After various meetings, the Appellant agreed to provide the information. The Appellant is being penalised for not providing details of bank accounts held jointly with her mother. She has stated that she has no interest in these accounts and that her mother is returnable for all moneys in these accounts and
10 any interest earned on them. The Appellant had some trouble getting information from the company managing the rental of her home, which was something over which she had no control and for which she should not be penalised.

21. The notice of appeal of Louise Burton-Taylor states as follows. The Appellant had gone through a messy divorce and it was only when she ordered items from the
15 bank that she found out that her husband was having any post with his name on it redirected to his address. When she found out about this she had to reorder the items from her bank, and she told the bank that she would collect them in person. HMRC were asking for documents which the Appellant considered from the beginning to be irrelevant.

20 HMRC's submissions

22. HMRC submits as follows. The only issue is whether there was a reasonable excuse for the delay in providing the information. No appeal was issued against the information notices themselves, and therefore the Appellants cannot argue that the information is not relevant. Julie Burton was joint signatory to some of the requested
25 accounts, and no explanation has been provided why she could not obtain and submit the account statements within the required timeframe. In a meeting between the agent and HMRC on 6 January 2011, the agent said that it was not his policy to release private records. Many of the requested documents were clearly withheld because of this policy of the agent. Louise Burton-Taylor's argument that her husband redirected
30 her mail relates to only one bank account whereas there were several bank and credit card statements outstanding. The information notices have not been complied with, and no reasonable excuse for the failure to comply has been provided. The daily penalties could have been as much as £60 per day, but HMRC has imposed penalties of only £10 per day. Most of the information was finally supplied by July 2011.

35 The Tribunal's findings

23. The Appellants' grounds of appeal do not dispute that the information notices were not complied with in full during the period to which the daily penalty notices relate.

24. The Tribunal accepts the HMRC submission that the Appellants cannot challenge
40 the daily penalty notices on the basis that the requested information was irrelevant or that the requests were unreasonable. The Appellants did not appeal against the information notices themselves, and indeed, it appears that the Appellants have accepted the initial penalties of £300 for failing to comply.

25. Furthermore, a belief that the information requested is irrelevant, or a policy of a taxpayer's accountant not to release certain information to HMRC, is not a reasonable excuse for failure to comply with an information notice.

26. The burden of proof is on the Appellant to establish the existence of a reasonable excuse for failure to comply on a balance of probabilities. Furthermore, paragraph 45 of Schedule 36 will not permit a reasonable excuse defence during periods when the reasonable excuse no longer existed. Paragraph 45(2)(c) of Schedule 36 provides that "where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased". Thus, to avoid liability for the whole of the daily penalties, the Appellants would need to establish that the reasonable excuse continued throughout the whole of the period to which the daily penalties relate.

27. The Tribunal does not consider the statements in the grounds of appeal section of the notices of appeal to be evidence capable of establishing the existence of a reasonable excuse on a balance of probabilities. On its consideration of the evidence as a whole, the Tribunal does not find sufficient evidence to establish a reasonable excuse for either of the Appellants.

28. It follows that the appeals must be dismissed.

Conclusion

29. The appeals are dismissed.

30. 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.

CHRISTOPHER STAKER
TRIBUNAL JUDGE

RELEASE DATE: 24 July 2012