



TC02185

Appeal number: TC/2012/02823

Self Assessment – fixed penalty for late return – reasonable excuse – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RACHEL CAVES

Appellant

- and -

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

TRIBUNAL: JUDGE ALISON MCKENNA

The Tribunal determined the appeal on 6 August 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 6 February 2012 (with enclosures), HMRC's Statement of Case submitted on 1 May 2012 (with enclosures) and the Appellant not having filed a Reply.

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DECISION

1. This matter concerns the fixed penalty of £100 imposed on Ms Caves due to the late filing of her self assessment tax return for the tax year 2010 – 2011.

The Facts

2. Ms Cave’s return for the 2010 – 11 tax year was due to be filed on 31 October 2011 (if a paper return) or 31 January 2012 (if filed on line). A paper return was received by HMRC on 24 November 2011. The notice of penalty assessment was issued on or a few days after 6 December 2012.

The Law

3. Paragraph 3 of Schedule 55 of the Finance Act 2009 imposed a fixed penalty for late filing of a personal tax return for the tax year ending 2011.

4. Paragraph 23 of the Schedule provides that an appeal may be successful where the Tribunal is satisfied that there is a reasonable excuse for the late filing. A reasonable excuse is generally regarded as one involving events outside the tax payer’s control.

The Grounds of Appeal

5. Ms Cave wrote to HMRC in December 2011 stating that the tax return had “slipped her mind” as she was below the taxation threshold. Further that as she had no tax to pay the penalty of £100 was disproportionate. In further correspondence she stated that not being a tax payer is a reasonable excuse for late filing, that she is no longer required to file tax returns and should not have been asked to file one in the tax year for which the penalty was imposed.

6. In her grounds of appeal to the Tribunal, Ms Caves stated that she had attempted to file an electronic return but this had not been accepted as the paper return had been received late. She asked for the penalty to be cancelled or reduced as she considered it was disproportionate in relation to a zero tax bill.

HMRC’s Response

7. HMRC conducted an internal review of the decision to impose the fixed penalty. It concluded that not being a tax payer was not a reasonable excuse within the terms of the legislation and that Ms Caves had reasonably been required to file a self assessment return because she had previously received income from property.

8. In its Statement of Case, HMRC pointed out that Ms Caves had been completing self assessment returns since 2003-4 and should be regarded as aware of the deadlines. She had not advanced a reasonable excuse and the penalty should therefore stand. Furthermore, the law did not permit a fixed penalty to be cancelled

or reduced on grounds of its proportional relationship to the tax due. It was not possible to avoid a late return penalty for a paper return by filing on line after the paper deadline had expired.

Conclusion

5 9. Having considered the papers carefully in this matter I find that the fixed
penalty was imposed in accordance with the legislation and that Ms Caves has not
advanced a reasonable excuse for her late filing of the return. I am not satisfied that
forgetting to file the return, ceasing to be required in a subsequent year to file a return
or having a nil tax liability for the year for which the return was due constitute
10 reasonable excuses. In all the circumstances, I dismiss this appeal and confirm the
£100 penalty.

10. 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
15 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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**ALISON MCKENNA
TRIBUNAL JUDGE**

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RELEASE DATE: 13 August 2012