



**TC02357**

**Appeal number: TC/2011/4221**

*INCOME TAX – late filing penalties – reasonable excuse – no – appeal  
dismissed – section 93 Taxes Management Act 1970*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ANDREW WATSON**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE NICHOLAS ALEKSANDER**

The Tribunal determined the appeal on 16 October 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 20 May 2011 (with enclosures), HMRC's Statement of Case submitted on 30 June 2011 (with enclosures), the Appellant's Reply dated 25 July 2011 (with enclosures), the Appellant's answers dated 16 March 2012 to the Tribunal's questions dated 7 March 2012, and HMRC's answers dated 22 March 2012 to the Tribunal's questions dated 7 March 2012.

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## DECISION

1. This is an appeal against surcharges for failure to file tax returns for the tax years 2006/7, 2007/8 and 2009/10.

### Background

2. I find the background facts to be as follows.

3. Mr Watson used to be a director of MGC Haulage Ltd, and paid tax by deduction from his salary through PAYE. Mr Watson retired in 2005.

4. On 6 April 2007, HMRC issued a tax return to Mr Watson for the tax year 2006/7 to the address then on their records in Motherwell. The filing date for the tax return was 31 January 2008. HMRC have no record of the return being filed. A first penalty notice for £100 was issued shortly after 18 February 2008 and a second penalty notice for £100 was issued shortly after 5 August 2008.

5. On 6 April 2008, HMRC issued a tax return to Mr Watson for the tax year 2007/8 to his address then on their records in Glasgow. The filing date for the tax return was 31 October 2008 (for a paper return) or 31 January 2009 if filed online. HMRC have no record of the return being filed. A first penalty notice for £100 was issued shortly after 17 February 2009 and a second penalty notice for £100 was issued shortly after 4 August 2009.

6. On 31 May 2008, Mr Watson married. His wife is a US citizen and since his marriage he has lived in the USA.

7. On 6 April 2009, HMRC issued a tax return to Mr Watson for the tax year 2008/9 to the address then on their records. The filing date for the tax return was 31 October 2009 (for a paper return) or 31 January 2010 if filed online. Mr Watson successfully filed a tax return for 2008/9 online on 8 February 2010. As the return showed a nil liability, the penalties for filing the return late were capped at nil.

8. On 15 March 2010, Mr Watson wrote to HMRC appealing against the penalties charged in respect of the penalties levied for failure to file the 2006/7 and 2007/8 tax returns. The appeal was rejected by HMRC by letter dated 12 July 2010. In that letter HMRC reminded Mr Watson that the returns for these two years remained outstanding. On 17 August 2010, Mr Watson requested a review, and the conclusion of the review was notified to Mr Watson by letter dated 17 September 2010. The review upheld the penalties. Duplicate returns for the two years were enclosed with the review decision letter. The review letter and the duplicate returns were sent to Mr Watson at his current address in Washington state, USA.

9. On 6 April 2010, HMRC issued a notice to file a tax return to Mr Watson for the tax year 2009/10 to the address then on their records in Motherwell. The filing date for the tax return was 31 October 2010 (for a paper return) or 31 January 2011 if

filed online. HMRC have no record of the return being filed. A first penalty notice for £100 was issued shortly after 15 February 2011.

5 10. Mr Watson wrote to HMRC on 22 November 2010 appealing against the review decision. HMRC replied on 6 December 2010 once again reminding Mr Watson that the returns for 2006/7 and 2007/8 were outstanding.

11. On 20 May 2011 Mr Watson appealed to this Tribunal against the outstanding penalties.

10 12. Because the grounds of his appeal were not entirely clear, the Tribunal wrote to Mr Watson on 7 March 2012 asking a number of questions. Mr Watson replied by letter dated 16 March 2012. The questions and Mr Watson's answers are as follows:

Q1. Is your contention in relation to each year that you did not receive the returns? If not, please state for which years you wish to contend that you did not receive the returns?

15 A1. When I received any enquires From the HMRC I always made sure that they were completed and returned by the due date.

Q2. What was your address at each of the relevant times, i.e. April 2007 for the 2006/7 return, April 2008 for the 2007/8 return and April 2010 for the year 2009/10?

20 A2. April 2007 for the 2006/7 return. During this time I moved from my home at [...] Motherwell to a temporary address in Wishaw. I do not remember the postal address.

April 2008 for the 2007/8 return. I moved from Wishaw to [...] Glasgow. I then left the UK and settled in the USA when I got married on the 31<sup>st</sup>. May 2007.

25 April 2010 for the year 2009/10. Was where I settled in Phoenix USA

Q3. When and how did you notify HMRC of any address change over the whole period including the last time you notified them of your address before April 2007?

30 A3. I have always notified the Tax office of my change of address. Had I not been in constant contact with them HOW would they have my address here in the USA????

Q4. What post redirection arrangements did you put in place if you changed addresses over the period April 2006 to May 2010?

35 A4. It has always been my policy to use the Postal service mail forwarding service for 3 months after moving house.

13. I have assumed that there is a typographical error in marriage date given in the answer to question 2, and the date should be 31 May 2008.

14. On 11 April 2012, the Tribunal wrote again to Mr Watson noting that his answers had not given the specific information requested. Mr Watson was given a further opportunity to reply, and was warned that failure to answer the questions might adversely affect the outcome of this appeal. Mr Watson responded on 28 May 2012 saying that he had “sent on a copy of my answers to the original questions. I trust this will suffice.”

15. Mr Watson notes in correspondence with both HMRC and the Tribunal that his level of income is very low, and that he should therefore not have to pay any tax.

### **Conclusions**

16. On the basis of the evidence before me, I find that HMRC properly sent tax returns (or notices to file tax returns) to Mr Watson. Nothing that Mr Watson has submitted during the course of the appeal suggests that the tax returns or notices to file were not received by him. As none of the returns have been filed by Mr Watson by the due dates, penalties are payable.

17. In the circumstances, the only basis for cancelling the penalties are:

(1) Mr Watson has a reasonable excuse for his failure to file. The fact that Mr Watson’s income is low, and that he may not have any liability to pay UK tax is not such a reasonable excuse. Indeed it is only by filing a tax return that Mr Watson can show how low his income is, and therefore that he may not have a UK tax liability. Mr Watson has not given any other reason as to why he has failed to file the outstanding tax returns. I therefore find that he has no reasonable excuse for failing to file a tax return by the due date.

(2) Mr Watson has no UK taxable income. If Mr Watson files his outstanding tax returns with HMRC, and these show that he has no UK taxable income or gains in excess of his personal allowances, then his penalties will be reduced to nil. This is because the penalties for the years in question cannot exceed his UK income tax liability, and if his tax liability in each of the relevant years is nil, then his penalties will be reduced to nil. In this context I note that although Mr Watson filed his tax return for 2008/9 late, the penalties for late filing were cancelled as the tax due in respect of the tax year in question was nil.

### **Decision**

18. I therefore dismiss the appeal.

19. 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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**NICHOLAS ALEKSANDER  
TRIBUNAL JUDGE**

**RELEASE DATE: 7 November 2012**

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