



TC02395

Appeal number: TC/2012/05592

*Penalty for late filing of Partnership Return – reasonable excuse –
Appellant did not have software required for online submission – Agent to
blame for not filing a paper return by due date – held: no reasonable excuse
– appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

D & M FLOORING

Appellant

- and -

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

TRIBUNAL: JUDGE J. BLEWITT

The Tribunal determined the appeal on 20 August 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 25 April 2012 (with enclosures) and HMRC's Statement of Case submitted on 6 June 2012 (with enclosures).

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DECISION

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1. By Notice of Appeal dated 25 April 2012, the Appellant's agent, Mr A. Campbell, appealed on behalf of the Appellant against a penalty in the sum of £200 for the late filing of the partnership tax return for the year ending 5 April 2012.

10 *Facts*

2. The representative partner of the Appellant Company is Mr David Nicholls and the other partner is Mr Michael Nicholls.

3. On 21 April 2011 a Notice to File was issued to the Appellant for the tax year 2010/2011. The filing date for that return was 31 October 2011 if a paper return was filed, or 31 January 2012 if filed online.

4. The Appellant's agent filed a paper return on 9 January 2012. A penalty notice was issued to each of the two partners on or about 24 January 2012.

5. On 6 February 2012 the Appellant's agent appealed to HMRC against the penalties on the basis that the return was posted on 5 January as HMRC's computer system could not accommodate partnership returns submitted electronically.

6. By letter dated 29 February 2012 HMRC upheld the decision to impose penalties against each partner as the lack of software required to submit returns electronically was not deemed to be a reasonable excuse.

7. On 18 March 2012 the Appellant requested a formal review of HMRC's decision. The grounds relied upon were stated as being that the Appellant is the only partnership which the accountant represents and it would be unreasonable to expect the accountant to purchase the third party software, the price of which would probably exceed the penalties. The information contained on the Partnership Tax Return was identical to that recorded on the two individual returns submitted by the partners.

8. By letter dated 17 April 2012 HMRC notified the Appellant of the outcome of the review. HMRC maintained that the lack of software required for filing returns online was not a reasonable excuse.

Appeal

9. By Notice of Appeal dated 25 April 2012 the Appellant's agent appealed to the Tribunal. The grounds of appeal relied upon can be summarised as follows:

- The agent is to blame for the late filing as he had the books prior to 31 October 2011 and should have filed a paper return by that date;

- The agent queries why the commercial software is “low cost” and whether the Appellant’s confidentiality is protected by it;
- Due to previous experience the Appellant’s agent does not like to use filing software.

5 ***Discussion and Decision***

10. The Appellant does not dispute that the return was filed after the due date, nor is there any dispute as to the legislation applicable to this case as set out in Section 12AA TMA 1970 and Schedule 55 FA 2009.

10 11. The only issue for the Tribunal to determine is whether the Appellant had a reasonable excuse for the late submission of the return.

15 12. The Notice to File, issued to the Appellant on 21 April 2011, advises that in order to file online, “*low cost commercial software*” is required. HMRC accept that cost is relative. However, there is no obligation on the Appellant/agent to purchase the software as there is an alternative option available, namely to file a paper return. It is clear from the Appellant’s request to HMRC for a review of its decision and the Notice of Appeal to the Tribunal that the Appellant’s agent made a deliberate decision not to purchase or use the software. In those circumstances, the Appellant’s paper return was due to be filed by 31 October 2011. It is also clear from the Notice of Appeal that the Appellant’s agent had all information required in order to submit a paper return by the due date. I found as a fact that in those circumstances there was no reasonable excuse for the late submission of the return.

25 13. The fact that the Appellant’s agent accepts that the blame rests with him for the late submission of the return does not, in my view, amount to a reasonable excuse. The agent confirmed in the Notice of Appeal that he could have submitted a paper return by the due date. No reasons are given for his failure to do so and I found as a fact that no reasonable excuse existed. The onus rested with the Appellant to ensure that the return was filed by the due date. This responsibility to comply with statutory requirements cannot be transferred onto an agent or third party and consequently I found as a fact that the actions of the Appellant’s agent did not provide a reasonable excuse.

35 14. I considered the submissions made in respect of the Appellant’s confidentiality. It is unclear on what basis the Appellant’s agent contends that this may provide a reasonable excuse. Even if the Appellant has such concerns, I found as a fact that it was open to him to submit a paper return. I did not therefore accept that this provided the Appellant with a reasonable excuse.

15. The Notice of Appeal indicates that the agent only became aware that the return could not be filed online after an attempt was made. In my view, information is widely available to ensure that taxpayers and their agents are aware that software is required in order to file online, for example on the notice to file and return itself. I did

not accept that the agent's ignorance of such a fact could amount to a reasonable excuse.

16. The appeal is dismissed.

5 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)"
10 which accompanies and forms part of this decision notice.

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**J. BLEWITT
TRIBUNAL JUDGE**

RELEASE DATE: 30 October 2012