



TC02439

Appeal number: TC/2012/06602

INCOME TAX - Self Assessment – fixed penalty for late return – reasonable excuse - no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LESLEY ANNE JONES

Appellant

- and -

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

TRIBUNAL: JUDGE ALISON MCKENNA

The Tribunal determined the appeal on 10 December 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 June 2012 (with enclosures), HMRC's Statement of Case submitted on 8 August 2012 (with enclosures) and the Appellant's Reply dated 30 August 2012.

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DECISION

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

The Facts

10 2. Ms Jones' 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). In the absence of a return, the notice of penalty assessment was issued on or a few days after 14 February 2012. The Appellant's tax return was filed on line on 21 February 2012. The Appellant's appeal was refused in HMRC's internal review dated 14 May 2012.

The Law

15 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.
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The Grounds of Appeal

5. The grounds of appeal that have been put forward are, firstly, the Appellant's agent had been awaiting a reply from HMRC to previous correspondence, so that filing was delayed; secondly that the agent had attempted to file the return on line on
25 9 November 2011 but that HMRC's computer had not accepted it; thirdly, that three of the agent's other clients had experienced the same difficulty with on line filing, and that HMRC had not taken into account a persistent difficulty with its own computer system; fourthly that, as HMRC had allowed the other clients' appeals, it ought also to allow this appeal for consistency of decision making.

30 HMRC's Response

6. In its Statement of Case, HMRC pointed out that the tax payer has a legal obligation to file on time and that the actions or inactions of a third party (the agent) does not constitute a reasonable excuse in law for late filing.

7. In relation to the grounds of appeal, HMRC submitted that the agent's letter was
35 replied to on 20 December 2011 but that the correspondence related to an earlier year and did not need to delay the filing of this return. Further that the agent's action in attempting to file the return on 11 November 2011 shows that the outstanding correspondence had not been awaited for filing in any event; secondly, that the

Appellant's agent had admitted that, following the unsuccessful attempt to file on line in November 2011 the file had been put away in error without any further attempt to file on line by the deadline; thirdly that the agent would have been aware that a successfully filed return generates an acknowledgement and unique reference number, so that the "incomplete" message on 9 November could not reasonably have been mistaken for a successful filing; and fourthly that each case is decided on its own merits and there are no precedents in administrative decision-making.

Conclusion

8. Having considered the papers carefully in this matter I find that the fixed penalty was imposed in accordance with the legislation and that Ms Jones has not advanced a reasonable excuse, as defined by law, for her late filing of the return. In all the circumstances, I dismiss this appeal and confirm the £100 penalty.

9. 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.

**ALISON MCKENNA
TRIBUNAL JUDGE**

RELEASE DATE: 18 December 2012