



TC02449

Appeal number: TC/2012/07006

INCOME TAX - Late filing penalty – reasonable excuse – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ANTHONY OLSEN

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this Appeal on 30 November 2012 without a hearing and under the provisions of Rule 26 of the Tribunal Procedure First-tier Tribunal (Tax Chamber) Rules 2009 (default paper cases) after first having read the Notice of Appeal of 26 April 2012 and the HMRC Statement of Case of 17 August 2012

DECISION

Appeal

- 5 1. A first late payment penalty, imposed under Paragraph 3(2) of Schedule 56 Finance Act 2009, for the late payment of tax for the year ending 5 April 2011.

Relevant Facts

- 10 2. On 6 April 2011 a Notice to File was issued to the Appellant for the year 2010/11. A “screen print” from HMRC’s computer detailing the issue of that return was provided. The filing date for tax is 31 October 2011 for paper returns or 31 January 2012 for electronic returns.

3. The Appellant’s electronic tax return was filed on 12 January 2012. The liability is automatically calculated. The HMRC provided a copy of the tax calculation.

- 15 4. The tax liability for the year was £1,321.20. The tax was due to be paid on or before 31 January 2012 in accordance with Section 59 B (4) TMA 1970. The tax liability was paid on 22 March 2012. A Penalty Notice was generated on 3 March 2012 for the unpaid tax liability at that time.

- 20 5. HMRC issued a notice of Penalty Assessment on 18 April 2012 for £66.00 which is 5% of the tax unpaid at the penalty date.

Legislation

6. The payment of tax is due in accordance with Section 59 B (TMA) 1970 and the due date in this case is 31 January 2012. A taxpayer becomes liable for a late penalty where they are late in paying the tax due.

- 25 7. The penalty is calculated at 5% of all the tax unpaid after the expiration of 30 days from the due date in accordance with paragraph 3(2) Schedule 56 FA 2009.

8. Under paragraph 16 (1) Schedule 56 FA 2009 an appeal against a late payment penalty will be successful where the taxpayer shows where there is a reasonable excuse for paying late.

30 Appellant’s submissions

9. The Appellant’s submission made by Guild Appleton Limited, Chartered Accountants ,who are the Appellant’s advisors, are as follows:

- 35 (1) HMRC have failed in their duty of care to taxpayers by failing to issue a statement and payslips informing taxpayers of their tax liability. Tax was paid when these were issued. The Appellant did not receive a December 2011

statement or any in 2011. HMRC has a duty to taxpayers to collect tax and they failed to issue statements showing the taxpayer's liability.

(2) The Appellant says that he received no online calculations showing the tax due

5 **HMRC's Submission**

10. When a tax return is filed online, the online system automatically calculates the tax liability and displays its payment due date. Therefore on 12 January 2012 the tax liability and the due date for payment were known by the Appellant. However payment was not made until 22 March 2012.

10 11. If the Appellant or his agent required details of his tax liabilities he could have initiated contact with HMRC to obtain further information. The agent, being registered to file online, could have accessed his own Self Assessment account directly at the time.

15 12. The Appellant has been within the Self Assessment system since its inception in 1996 and he has been submitting tax returns since 1996/97 year. As such he would have been an experienced taxpayer familiar with filing responsibilities and payment dates.

20 13. The present Self Assessment places a great deal of responsibility on taxpayers to manage their own affairs. This includes submitting their returns and paying tax by the due date. It is the person's own responsibility to make sure they meet these deadlines.

Discussion and Conclusion

14. This Appeal is dismissed.

25 15. There is nothing to indicate that the taxpayer did not know the payment date of 31 January 2012.

30 16. The Tribunal has seen evidence of a screen printout showing that the taxpayer or their agent would have had, as part of their online service, a calculation of the tax which was due. If they were in any doubt as to the amount due, they could have contacted the HMRC helpline, details of which were given. The taxpayer did not initiate any further contact with HMRC in order to obtain further information about their tax liability or payment date.

17. The agent, being registered to use the online service would have access to the taxpayer's Self-Assessment account directly at any time and could have verified the payment details and figures.

35 18. The taxpayer has been within the self assessment regime for several years and it is no excuse to say they are unfamiliar with payment dates.

19. The Tribunal, while willing to consider cases in the light of special circumstances, does not consider there are circumstances which would give rise to a reasonable excuse.

5 20. 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
10 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

DR K KHAN
TRIBUNAL JUDGE

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RELEASE DATE: 8 December 2012