



TC02451

Appeal number: TC/2012/05834

INCOME TAX - Fixed Penalty –late filing – reasonable excuse - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JULIEN BURCHER

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE DR K KHAN
MR NICHOLAS DEE**

Sitting in public in London at Bedford Square on 16 November 2012

The Appellant represented himself

Gloria Orimoloye, Higher Officer, represented the Respondents

DECISION

INTRODUCTION

- 5 1. This is an appeal against a late filing fixed penalty which was levied in accordance with Paragraph 3 of Schedule 55 Finance Act 2009, in respect of a personal tax return for the year ending 5 April 2011.

Relevant Facts

2. The facts are not disputed and are as follows :
- 10 3. The Appellant is unemployed and receives Job Seeker Allowance. For the year ending 2011 the allowance totalled £2,533.85. He also receives maintenance payments from his wife after their divorce. During the day he looks after the couple's three children. His other income is extremely low and below the personal allowance. As part of his divorce settlement, he purchased his own flat.
- 15 4. A Notice to File was sent to the Appellant on 5 April 2011 for the year 2010/11.
5. The filing date for the 2010/11 tax return was either 31 October 2011, if submitting a paper return, or 31 January 2012, if filing electronically.
6. The Appellant had filed returns electronically for a number of years. His first filing being for the year 2007/08.
- 20 7. The electronic returns for 2010/11 were filed on 22 February 2012. A penalty notice was issued to the Appellant on or after 14 February 2012.
8. Industrial action had been taken by HMRC staff and a public statement was issued that late filing penalties would not be charged providing electronic returns were filed before midnight on 2 February 2012. This information was published in the
25 media and on the HMRC website.
9. HMRC issued various reminders to taxpayers informing of the deadline for filing.
10. The Appellant in his Notice of Appeal dated 12 March 2012 stated that his
30 2010/11 return was completed online during November 2011 but he required information on building society interest before submitting.

Legislation

- 35 11. Section 8 Taxes Management Act 1970 (TMA) states that where a person has been sent a Notice to File a tax return they are obliged to deliver a return by the filing date. The filing date for electronic returns is the 31 January, after the end of the year to which the return relates.

12. Schedule 55 Finance Act 2009 states that the filing date, in relation to the return, means the date by which it is required to be delivered to HMRC. The penalty date in relation to the return means the date on which the penalty is first payable for failing to make or deliver a return.
- 5 13. The penalty is £100 for failing to deliver the return within the time limits.
14. There are various further increases in the penalty which are outlined in the Schedule.
15. An appeal lies against the penalty determination. Where the Appellant has a reasonable excuse for the failure to file the return then the penalty would be removed.
- 10 16. Paragraph 23(2) Schedule 55 Finance Act 2009 states that a reasonable excuse would not be available where there is an insufficiency of funds or where the Appellant relies on another person to do anything.

The Appellant's submissions

17. In his Notice of Appeal the Appellant makes the following points :
- 15 (1) He was unable to file on time due to HMRC's industrial action.
- (2) There had been a change in the law, and as a consequence, a penalty would be imposed where no liability arose.
- (3) The £100 penalty is excessive.
18. In his oral submission he elaborated on those points to make the following
20 additional points :
- (1) He was not informed of a change in the law imposing a penalty for missing the tax return submission deadline even in cases where the tax payer had no tax to pay. Therefore he had a reasonable expectation that his late submission would be dealt with on the basis that late filers who have no liability
25 to tax would have no penalty for late filing.
- (2) The Respondent's Statement of Case was inaccurate and did not properly inform him of the core issues and so he was unable to properly prepare his case.
- (3) The penalty is excessive for someone who has no tax liability. The penalty for a person who is on Job Seekers Allowance is disproportionate.

30 Submissions of HMRC

- (1) Self assessment is based on voluntary compliance and tax payers must ensure that their returns are filed on time. This is the primary and sole responsibility of the tax payer.
- (2) There is a legal obligation to file a return by a certain date.

(3) The Appellant was informed of the filing dates and his electronic return was filed late.

(4) He does not have an excuse based on industrial action since he was outside of the concessionary time limits allowed by HMRC.

5 (5) The delay in filing was not due to reasonable excuse which is an unexpected or unusual event not unforeseeable and beyond the person's control.

(6) The Appellant was familiar with online filing having done so for several years.

10 (7) There are no special circumstances which would give rise to a withdrawal or reduction of the penalty.

Discussion

Industrial Action

15 19. The tax payer does not dispute the returns were filed late but submits that he has a reasonable excuse due to the industrial action taken by HMRC staff . The excuse only related to filers who filed by 2 February. There was therefore a 2 day concessionary period which allows a reasonable excuse to tax payers who filed late in that period. The tax payer actually filed on 22 February which is sometime after the concessionary period.

20 20. In fact, it transpired that the HMRC systems were not affected by industrial action and it was possible to file returns electronically before the January deadline. The Appellant said that while filing the returns electronically on his computer and before the deadline, he was informed by his mother that he should not file since HMRC staff had taken industrial action. He was unaware of this because he did not read newspapers, watch television and there was nothing on the HMRC website
25 informing him of this industrial action. He therefore discontinued his filing. The Tribunal is not convinced by this story. What a reasonable tax payer would have done was to carry on filing until they encountered difficulties and then tried to contact HMRC staff for assistance in resolving any problems with the online filing. He would also have verified what he was told by his mother. In any event the tax payer
30 was outside the concessionary period allowed by HMRC for late filing. The actions of the taxpayer were not those of a reasonable person making all efforts to complete their filing.

21. The Tribunal therefore does not accept this reason.

35 22. Further, the Appellant was familiar with electronic filing having done so for several years. The filing system is automatic with proper helpline facilities and notes to assist tax payers who encountered difficulties. The industrial action did not change the statutory filing date. It simply provided a reasonable excuse to people who filed late. The taxpayer cannot avail himself of the concessionary extended deadline for late filing.

Revised penalty regime

23. The Appellant says that he is disadvantaged by a change in the law which imposed a penalty in cases where the tax payer had no tax liability. The HMRC website made clear the penalty regime for nil returns and the taxpayer should have
5 made himself familiar with the new regime and changes to the old regime. The Notice to File which the Appellant received would have indicated any penalties for late returns.

24. The Tribunal is not convinced that there is a reasonable excuse on the grounds that there has been a change in the law.

10 25. The Appellant makes a further point regarding legitimate expectation. He said he had a legitimate expectation that his case would be dealt with on the basis of the old regime and no penalty was imposed for nil liability late filers. In a situation where a tax payer either knows or should have known of changes in the law, which introduced a new penalty regime, there cannot be a legitimate expectation by the tax
15 payer that his affairs would be dealt with on the basis of the regime which had been replaced. If the tax payer was unsure or received ambiguous advice or conflicting material from HMRC on which he relied then it is possible to make a case based on legitimate expectation. Legitimate expectation is not always easy to establish and has a high threshold to be satisfied. It is normally established in exceptional
20 circumstances and there are no such exceptional circumstances of this case.

26. The Tribunal would add that ignorance of the law is no excuse. The Appellant cannot rely on the Respondents to plead his case.

Proportionality

27. The taxpayer says that the fine of £100 for late filing is a disproportionate
25 penalty on a person who has little or no income. The Tribunal does understand the Appellant's submission on this point. However the role of the Tribunal is simply to decide whether or not the Return was late as a matter of fact and if so whether there was a reasonable excuse for the lateness. While this would appear to be unfair to tax payers especially those on low income, the Tribunal has no power to reduce the
30 statutory amount on grounds of proportionality. The regime has been set by Parliament. The circumstances where proportionality is applied would be exceptional and where the penalty would be wholly disproportionate. The circumstances of this case are not exceptional. The Appellant owns his own flat and was familiar with electronic filings. While the penalty in relation to his income would seem high, it is
35 certainly not beyond his means to pay. It is understandable that the taxpayer would consider it unfair to do so.

28. It should be said in mitigation that the Appellant had agreed a six months extension from the original hearing in July so if any interest charges are to be levied on him, then it seems fair that these should be waived in the circumstances.

Conclusion

29. For the reasons given above, the Tribunal would dismiss this Appeal. The returns in this case were late, this was accepted by the Appellant and there was no reasonable excuse for the delay in submitting the returns. The penalty was correctly charged in accordance with the relevant legislation.

30. 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.

DR K KHAN
TRIBUNAL JUDGE

RELEASE DATE: 8 December 2012