



TC02672

Appeal number: TC/2012/00417

Penalty. Reasonable care.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DANIEL ROFF

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE GERAINT JONES Q. C.
SONIA GABLE**

Sitting in public at 45 Bedford Square, London WC1 on 01 May 2012.

The Appellant did not appear and was not represented.

**Mrs Gardner, instructed by the General Counsel and Solicitor to HM Revenue and
Customs, for the Respondents**

DECISION

1. By its notice dated 15 April 2011 the respondent charged the appellant a penalty of £623.47 on the basis that in completing his self assessment tax return for the fiscal year ended 5 April 2009 he had carelessly omitted reference to earnings from one of two employers, for whom he had worked during that fiscal year. During that year the appellant had worked for Legal and General Assurance Society Ltd and had been paid £41,257.44 with £13,378 tax being deducted therefrom. The effect of omitting reference to that part of his earnings was that, initially, a tax refund was due to the appellant whereas, had the entirety of his earnings been disclosed, no such repayment would have been due.
2. A penalty of £623.47 was calculated on potential lost revenue of £3125.20.
3. The appellant was aggrieved by the penalty decision and wrote to the respondent on 10 December 2011 asserting that it had "*repeatedly issued incorrect and conflicting documents*" and asserting that there was no fault on his part for the failure to disclose the earnings from Legal and General. In an earlier letter dated 9 September 2011 the appellant had asserted that he had "*made an honest mistake*".
4. The appellant lodged an appeal to this Tribunal against the penalty sum of £623.47, albeit out of time. At the appeal hearing we decided to extend time for appealing and to proceed with the appeal substantively.
5. The appellant did not attend the appeal hearing, nor was he represented. He did not put in any evidence by way of a witness statement or documents for the purpose of the appeal.
6. Without more, there is a strong inference that where one income stream is omitted from a self-assessment return, that omission has arisen as a result of carelessness, that is, a failure to take that degree of care which a reasonably prudent person would take in completing such a document. The inference is a strong one in this case, given that the appellant was plainly a higher rate taxpayer with his earnings falling into the PAYE scheme so that, absent any good reason for his tax code to be changed during the relevant year, he would not ordinarily have expected a significant refund of tax. There is also a strong inference to that effect given that the appellant had worked for two employers during the fiscal year and it seemed wholly improbable to us that that fact would not have been at the forefront of his mind when he completed the self-assessment return.
7. We have already noted that in his letter of 9 September 2011 the appellant asserted that he had "*made an honest mistake*". We cannot discount the possibility of an honest mistake having arisen absent carelessness or negligence on the part of the appellant, but the test that we must apply is that of the balance of probabilities. We have to ask ourselves whether it is more probable than not that the appellant was careless (or negligent) in and about the completion of his self-assessment return for the fiscal year ending 5 April 2009. The appellant is at a disadvantage because he has chosen not to give evidence, either by way of a witness statement and/or orally at the

hearing before us. As we have set out above, there is, in our judgement, a strong inference of carelessness sufficient to warrant the penalty imposed and where such an inference arises, it is for the appellant to lead cogent evidence sufficient to displace that inference.

5 8. In our judgement, there is insufficient evidence to warrant the inference being displaced with the consequence that this appeal must be dismissed.

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.

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**GERAINT JONES Q.C.
TRIBUNAL JUDGE**

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RELEASE DATE: 25 April 2013

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