



TC02736

Appeal number: TC/2011/00151

INCOME TAX – ASSESSMENT – *Private Hire Driver – Under declared his takings in years ended 5 April 2005, 2006 & 2007 – Adjustment for private mileage determined at 27% of total mileage – average fares reduced – assessments reduced to £1,720 (04/05), £2,155 (05/06) and £2,088 (06/07) – Appeal allowed in part*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR ARMJIT SINGH

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE
MARYVONNE HANDS**

**Sitting in public at The Nottingham MJC, Carrington Street, Nottingham on 11
March 2013**

Rafaqat Ali MBA AFA of A & R Accountants Limited for the Appellant

Nadine Newham of the Appeals and Review Unit for HMRC

DECISION

The Appeal

1. The Appellant appealed against:

5 (1) Closure notice and amendment of the self assessment return for the year ending 5 April 2006 issued on 8 April 2010. The additional tax due was £2,577.60.

(2) Discovery assessment in the sum of £2,080.30 for the tax year ended 5 April 2005 issued on 18 March 2010.

10 (3) Discovery assessment in the sum of £2,510.40 for the tax year ended 5 April 2007 issued on 8 April 2010.

2. On 27 September 2007 HMRC opened an enquiry into the Appellant's tax return for 2005/06. During the years in dispute the Appellant was a self employed private hire driver using his own vehicle and obtaining work from Western Cars. The Appellant's vehicle was registered with Derby City Council as a private hire vehicle.
15 The Council issued the Appellant with annual certificates of compliance in respect of his vehicle. The certificates of compliance recorded the mileage of the vehicle as at 16 June of each year. HMRC had relied on the mileage records which were not disputed by the Appellant to demonstrate that the Appellant had under declared his profits for the years in question.

20 3. The Appellant argued that HMRC had used excessive, inaccurate and inflated figures in calculating the additional turnover for the years ended 5 April 2005, 2006 and 2007. The principal area of dispute was the allowance given for private mileage. The Appellant contended that the private mileage represented 37 per cent of the total annual mileage. In an attempt to reach a compromise HMRC accepted a figure of 26
25 per cent for private mileage and reduced the level of tips from five per cent to one per cent of the assessed takings. The Appellant was only prepared to offer £3,000 in full and final settlement which was refused by HMRC on 3 June 2010.

4. The hearing was held on 11 March 2013 when the Tribunal heard evidence from the Appellant. An interpreter was present. The Tribunal admitted the bundle of
30 documents into evidence. The notice of appeal was three weeks late. It was not clear from the papers whether permission to extend the time limit for service of the notice of appeal had been previously granted. HMRC did not pursue the question of permission at the hearing. The Tribunal formally extended the time limit to the date when the notice of appeal was lodged with the Tribunal, namely, the 31 December
35 2010.

The Disputed Assessments

5. The starting point for the assessments was the adjusted annual mileage for each of the tax years in question, which was 38,144 (04/05), 43,450 (05/06) and 39,755

(06/07)¹. The Appellant did not challenge the accuracy of the adjusted mileage for each tax year.

6. The Appellant accepted that he used the vehicle for both business, and private use. The Appellant did not keep a record of the mileage undertaken.

5 7. The Appellant in his 2005/06 tax return had applied a 10 per cent adjustment for private use, which was used by his accountants following advice given by a former HMRC compliance officer. At the 18 November 2008 meeting the Appellant stated that the 10 per cent adjustment was inaccurate and did not include the mileage for local journeys, trips with his sister to Birmingham, Hounslow, Woolwich and Hitchin
10 and journeys to the Asian Games tournaments which in total amounted to 13,618 private miles. The Appellant then added a further 10 per cent (2,983 miles) to the private mileage which was for the journeys from home to the taxi rank². The total private mileage claimed by the Appellant for 2005/06 was 16,601 miles, 38.2 per cent of the total mileage of 43,450. The 38.2 percentage conflicted with the Appellant's
15 claim of 37 percent in his representative's later letter of 9 October 2006

8. HMRC pointed out that the Appellant had given contradictory accounts of his private mileage. The Appellant claimed a 10 per cent adjustment in his 2005/06 return. At the meeting on 3 July 2008 the Appellant stated that he visited Birmingham and Hounslow with his sister around 10 to 12 times a year, which was in addition to
20 normal weekly driving. On the 18 November 2008 the Appellant stated that the private use declared on 3 July 2008 was insufficient. The Appellant also visited Hitchin and Woolwich with his sister approximately 12 times a year. Further the Appellant's hobby was weightlifting and he competed in the Asian Games which took place at various venues around the UK on Saturdays or Sundays between May and the
25 end of July. On 18 December 2008 the Appellant supplied a schedule of private mileage³ which gave mileage figures of 3,640 for local journeys, 5,968 for trips with his sister, and 9978 for Asian Games tournaments. The Appellant's representative in a letter dated 12 June 2009 added a further 10 per cent to the private mileage figures given in the schedule for travel from home to work.

30 9. HMRC took the view that the Appellant had only mentioned the additional private mileage when the financial impact of the increased business mileage became apparent. HMRC contended that the Appellant had failed to provide any proof of his attendance at the Asian Games tournaments in 2005. Further there was no evidence that the Games had taken place at the venues cited by the Appellant. At their first
35 meeting in July 2008 the Appellant had stated that he had not taken part in any social activities in 2005/06 and made no mention of the Games. In response to HMRC's request for proof of attendance the Appellant had produced two trophies relating to the Asian Games but these were dated 1983 and 1994, and did not have the Appellant's name on them.

¹ See D28 of the bundle.

² See Appellant's representative letter at E96.

³ See E57 of the bundle.

10. Despite its reservations on the Appellant's claim in respect of private mileage, HMRC was prepared to accept the 3,640 for local journeys and the 5,968 for visits with his sister. In respect of the Asian Games tournaments HMRC indicated that it would allow 1,980 miles for five journeys where the Appellant's records showed that he did not work on the days when he said the tournaments were held. HMRC considered that the Appellant had failed to adduce evidence to corroborate his attendance at the other tournaments in 2005. Thus HMRC accepted a total of 11,588 miles for private mileage or 26.67 per cent of the adjusted annual mileage.⁴

11. HMRC made two adjustments to the business mileage. The first adjustment was to halve it which recognised that the Appellant only carried a fare paying passenger one way. This adjustment produced a figure described as the engaged mileage. A second adjustment was made to the engaged mileage which was divided by three, equating to the average distance of three miles for a fare paying journey.

12. HMRC estimated that the average fare for a journey was £5.04 (04/05), £5.25 (05/06), and £5.57 (06/07). The average fare included an amount for waiting time: £0.24 (04/05), £0.25 (05/06), and £0.27 (06/07). The average fare was derived from the Appellant's admissions at the various meetings with HMRC. On 3 July 2008 the Appellant stated that the fare for a trip from Derby centre to the suburbs was between £5.00 to £6.00. At the 8 November 2008 meeting the Appellant considered that a fare of £5.00 for a three mile journey was inaccurate pointing out that the current rate was £1.80 for the first mile and £1.40 for each mile thereafter. The Appellant estimated a fare of £4.50 to £5.00 for a journey from the train station to Agard Street, and a fare of £5.00 from the City centre to Mickleover. Waiting time was charged at £0.10 and £0.20 for 30 seconds and one minute respectively.

13. At the hearing the Appellant's representative pointed out that Officer Wagg (the assessing Officer) had not provided him with her enquiries of Derby City Council about the charging rates for private hire vehicles. The Appellant, however, did not supply alternative figures for the average fare for a three mile journey. The Appellant disputed the inclusion of an additional amount for waiting time in HMRC's calculation, arguing that a charge for waiting would be incorporated in the average fare.

14. HMRC in its assessment had included an amount for tips which was calculated at one per cent of turnover. The Appellant agreed to the one per cent after HMRC had reduced the amount for tips from five per cent to one per cent. HMRC considered that the one per cent concession also took regard of unpaid fares arising from passengers making off without payment.

15. HMRC deducted the following costs from the assessed turnover for each year: fuel, general administration (rank & radio, and licence fee), motor expenses

⁴ HMRC's letter of 31 July 2009 contained an arithmetical error of 11,548 which should read 11,588. In its assessment HMRC has allowed a 26 per cent adjustment for private mileage, in so doing HMRC has adopted a figure of 11,297 for private mileage, which conflicts with its agreement to allow 11,588 for private mileage.

(insurance & tax, wash & clean, and repairs & maintenance), and professional fees (accountancy). In its assessments HMRC used higher figures for the fuel costs from the figures declared by the Appellant in his tax returns. The higher figures ensured that the Appellant received the appropriate deductions for the increased mileage applied by HMRC in its assessments. HMRC used rates of £3.72 (04/05), £4.08 (05/06), and £4.12 (06/07) per gallon at 25 miles per gallon to calculate the cost of the additional fuel⁵.

16. The Appellant did not object to HMRC's calculation of the additional fuel costs. The Appellant, however, argued that the other costs (general administration, motor expenses and professional fees) should be similarly up-rated. HMRC disagreed, pointing out that they were fixed costs taken direct from the Appellant's tax returns.

17. HMRC's tax computations for the disputed years were based on a 26 per cent adjustment for private use. In addition HMRC supplied tax computations using a 37 per cent private use adjustment which was the figure argued for by the Appellant. Both sets of computations showed that the Appellant had under declared his taxable income for the years in question.

Reasons

18. The Tribunal on appeal can either reduce or increase the assessment if it considers the assessment to be excessive or insufficient. If the Tribunal decides not to exercise its powers of increase or reduction, the assessment stands good (see section 50 of the Taxes Management Act 1970). HMRC has the obligation of proving on the balance of probabilities that the requirements for a discovery assessment have been met. The Appellant, on the other hand, has the burden of proving on the balance of probabilities that the assessments were excessive.

19. HMRC asserted that it was entitled to issue discovery assessments for the years 2004/05 and 2006/07. HMRC pointed out that it only became aware of the potential tax losses in 2004/05 and 2006/07 following the enquiry into the Appellant's 2005/06 return and the receipt of mileage figures from Derby City Council. The Tribunal is satisfied that there was a discovery within the meaning of section 29(1) of TMA 1970.

20. The Appellant submitted tax returns for 2004/05 and 2006/07. The Tribunal considers that both conditions as set out in sections 29(4) and (5) TMA 1970 applied to the Appellant's circumstances. The Appellant put forward no argument on whether the requirements for discovery assessments had been met. The Tribunal finds that the assessments for 2004/05 and 2006/07 complied with the provisions of section 29 TMA 1970, and were issued within the requisite time limit of six years and four years respectively⁶.

⁵ See E86 of the bundle.

⁶ The time limit of 6 years was changed to 4 years on 1 April 2010 with the implementation of schedule 39 of the Finance Act 2008.

21. The Appellant asserted that HMRC used excessive, inaccurate and inflated figures for the assessments in respect of the tax years ended 5 April 2005, 2006 and 2007.

5 22. The starting point for the Tribunal's enquiry is whether the Appellant under declared his income from his self employment as a private hire driver for the years in question. The Appellant accepted that the annual mileage figures derived from the information provided by Derby City Council were accurate. These mileage figures undermined the reliability of the Appellant's business records for 2005/06 which comprised the daily record book of takings and petrol receipts for the year in question.
10 In respect of the latter, the Appellant recorded that he had spent £2,888.74 on diesel and petrol in 2005/06 which translated to 17,831 business miles⁷. The figure of 17,831 was considerably lower than the business mileage of 27,373 used in the Appellant's 2005/06 tax computation based on a 37 per cent adjustment for private use.

15 23. The Appellant's declared net profit before adjustments for 2005/06 was £7,258. His only other income at that time was tax credit and child benefit which amounted to £7,569 for that year. From his income the Appellant supported a wife and three young children. In 2005/06 the Appellant moved house and took out a mortgage of £60,000. The Appellant estimated that he spent a total of £8,224 per annum on the mortgage, council tax, utility bills and buildings insurance which left him with some £6,603 per
20 annum or £127 per week to feed and clothe his family and pay other bills.

24. The Tribunal is satisfied that the problematical nature of the Appellant's business records and the disparities between the Appellant's declared income and outgoings for 2005/06 demonstrated that the Appellant had under declared the takings from his self employment in 2005/06 as a private hire driver.

25 25. The Tribunal finds that the Appellant's declared net profit before adjustments of £6,600 (2004/05) and £7,444 (2006/07) was unrealistic when compared with a stated total annual mileage of 38,144 (2004/05) and 39,755 (2006/07). Thus the Tribunal holds that the Appellant also under declared the takings from his self employment in 2004/05 and 2006/07.

30 26. The fact that 37 per cent private mileage adjustment as claimed by the Appellant also resulted in a tax loss was further proof that the Appellant had under declared his takings in the years in question.

35 27. The issue, therefore, is the quantum of the assessments. The Appellant did not dispute the annual mileage figures for each of the years in question and the methodology for the engaged mileage and the number of journeys as applied by HMRC in its business model for the calculation of the correct amount of tax due. The engaged mileage and number of journeys were based on the information provided by the Appellant at his meetings with HMRC. The Appellant explained that he only undertook short journeys from the City centre to the suburbs. He did not carry out

⁷ The Tribunal has applied HMRC's formula of £4.08 (05/06,) per gallon at 25 miles per gallon. Thus £2,888.74/4.05 = 713 gallons x 25 = 17,831.

contract work, such as trips to the airport. Finally the Appellant did not challenge the formula used by HMRC to calculate the cost of the fuel for the additional mileage (see paragraph 15 above) and the one percentage rate for tips.

5 28. The Appellant disputed the allowance given for private mileage, the rate applied for the average fare, and no uplift for motoring expenses other than fuel.

10 29. The Appellant's claim for private mileage equated to 38.2 per cent of the adjusted annual mileage not 37 per cent. The Appellant adduced no documentary evidence to substantiate his claim. He had not kept a record of the mileage undertaken during the years in questions. The Appellant did not produce any information to substantiate his attendance at the Asian Games tournaments. The two trophies supplied by the Appellant did not bear his name and on the face of it did not relate to the tax year under enquiry. The Appellant supplied contradictory accounts of the amount of mileage undertaken for private journeys. Given the above facts the Tribunal is satisfied HMRC's figure of 11,588 miles for private mileage in 2005/06
15 was reasonable and based on information supplied by the Appellant. The figure of 11,588 miles equated to 26.67 per cent not 26 per cent of the adjusted annual mileage⁸. The Tribunal, therefore, decides to apply a 27 per cent (rounded up) adjustment for private mileage in respect of the disputed years.

20 30. The Appellant considered that HMRC's average fares for a journey were too high and should not include an amount for waiting time. The average fares used by HMRC were £5.04 (04/05), £5.25 (05/06), and £5.57 (06/07), which included the following amounts for waiting time: £0.24 (04/05), £0.25 (05/06), and £0.27 (06/07). The Tribunal considers that the overall level for average fares represented a fair reflection of the information given by the Appellant on the fares charged. At the
25 various meetings with HMRC, the Appellant supplied a range of fares from £4.50 to £6.00. The Tribunal, however, agrees with the Appellant's submission that waiting time would be included in the average fare. The Tribunal, therefore, reduces the average fares to £4.80 (04/05), £5.00 (05/06) and £5.30 (06/07).

30 31. The Appellant argued that there should be an uplift to the costs for general motoring expenses (rank & radio, licence fee, insurance & tax, wash & clean, and repairs & maintenance) so as to reflect the enhanced annual mileage. These costs ranked as business expenses, which were deductible from his gross profits for the purposes of the tax computation. The Tribunal agrees with HMRC's characterisation of these expenses as fixed costs which would not vary with the amount of mileage
35 undertaken. The figures used for the expenses were those given by the Appellant in his tax returns for the years ended 5 April 2005, 2006 and 2007. The Tribunal decides that the figures for general motoring expenses should remain the same.

Decision

32. The Tribunal, therefore, finds the following:

⁸ See paragraph 10 and footnote 4 for the Tribunal's use of 11,588 for private mileage.

- (1) The Appellant had under declared the takings from his self employment as a private hire driver for the tax years 2004/05, 2005/06 and 2006/07.
- (2) The adjusted annual mileage was 38,144 (2004/05), 43,450 (2005/06) and 39,755 (2006/07).
- 5 (3) The engaged mileage was half the annual mileage for each of the disputed years.
- (4) The average journey was three miles.
- (5) The average fares were £4.80 (04/05), £5.00 (05/06) and £5.30 (06/07).
- (6) The tips represented one per cent of the gross takings.
- 10 (7) The adjustment for private mileage and use was 27 per cent.
- (8) The uplift for the fuel costs was £3.72 (04/05), £4.08 (05/06), and £4.12 (06/07) per gallon at 25 miles per gallon.
- (9) There was no uplift for general motoring expenses. The figures adopted for general motoring expenses, professional fees and capital allowances were those declared by the Appellant in his tax returns for the years in question.
- 15 33. The tax computations based on the Tribunal's findings are set out in Appendix one.
34. The Tribunal decides that the amount of tax and class 4 national insurance due from the Appellant was £1,720 (04/05), £2,155 (05/06) and £2,088 (06/07). The Tribunal allows the appeal in part and reduces the assessment in accordance with the figures given above.
- 20 35. 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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MICHAEL TILDESLEY OBE
TRIBUNAL JUDGE

RELEASE DATE: 28 May 2013

Appendix One: Tax Computations for 2004/05, 2005/06 and 2006/07

	2004/05	2005/06	2006/07
Total mileage	38144	43450	39755
Private	10299	11732	10734
Business	27845	31719	29021
Engaged	13923	15859	14511
Journeys	4641	5286	4837
Av Fare	£ 4.80	£ 5.00	£ 5.30
Expected Takings	£ 22,276	£ 26,432	£ 25,635
Tips	£ 223	£ 264	£ 256
Gross	£ 22,499	£ 26,696	£ 25,892
Cost of Sales (fuel)	£ 5,679	£ 7,091	£ 6,550
General Admin	£ 3,757	£ 4,560	£ 4,530
Motor	£ 2,248	£ 2,638	£ 2,186
Legal & Professional	£ 175	£ 190	£ 190
Net Profit	£ 10,640	£ 12,217	£ 12,436
Disallowable Fuel	£ 1,533	£ 1,915	£ 1,769
Disallowable Motor	£ 607	£ 712	£ 590
Add Disallowable Expenses	£ 12,780	£ 14,844	£ 14,794
Capital Allowances	£ 338	£ 563	£ 422
Private Adjustment	£ 91	£ 152	£ 114
Net Taxable Profit	£ 12,533	£ 14,433	£ 14,486
Personal Allowance	£ 4,745	£ 4,895	£ 5,035
Total Taxable Income	£ 7,788	£ 9,538	£ 9,451
Tax @ 10%	£ 202	£ 209	£ 215
Tax @ 22%	£ 1,269	£ 1,638.61	£ 1,606
Income Tax Charged	£ 1,471	£ 1,848	£ 1,821
Class 4 NI	£ 623	£ 763	£ 756
Tax & NI	£ 2,094	£ 2,611	£ 2,577
Tax & NI declared	£ 374	£ 456	£ 489
Assessed Tax due	£ 1,720	£ 2,155	£ 2,088