



**TC02804**

**Appeal number: TC/2013/02376**

*INCOME TAX – penalty for late return – paragraph 3 Schedule 55 Finance Act 2009 – alleged late submission of paper tax return followed by timely submission of online return – whether paper tax return a valid return – onus of proof in relation to penalties – no evidence that a valid paper return filed – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**EXECUTOR OF THE ESTATE OF TERESA ROSENBAUM      Appellant  
(DECEASED)**

**- and -**

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

**TRIBUNAL: JUDGE GUY BRANNAN**

**The Tribunal determined the appeal on 8 July 2013 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 25 March 2013 (with enclosures), HMRC's Statement of Case submitted on 8 May 2013 with enclosures) and the Appellant's Reply dated 29 May 2013 (with enclosures).**

**© CROWN COPYRIGHT 2013**

## DECISION

### Introduction

- 5 1. This is an appeal by the executor of the estate of Teresa Rosenbaum (the Appellant) against the imposition of a penalty of £100 in respect of the late submission of a trust tax return for the tax year ended 5 April 2012.

### Facts and background

- 10 2. On 6 April 2012 HMRC issued a tax return to Mr G Jackson as an executor of the above estate.

3. On 14 January 2013, the Appellant's paper tax return was received by HMRC for the tax year ended 5 April 2012. For convenience I refer to this document as a "return", but as I shall explain it is a central issue in this appeal whether this document was a valid return.

- 15 4. Accompanying the return was a letter from the Appellant's agent dated 9 January 2013 stating:

"Please find enclosed the tax return of the above-named estate for the year ended 5 April 2012.

20 The estate disposed of its final investment in 2011, which resulted in a £nil gain due to losses brought forward.

There is no further income and the final distributions have been made.

Please confirm no other returns are required."

- 25 5. A £100 penalty was issued by HMRC on 15 January 2013 under paragraph 3 Schedule 55 Finance Act 2009. The penalty was issued on the basis that, under section 8A Taxes Management Act 1970, where a paper return ("a non-electronic return") is submitted the return must be submitted by 31 October 2012 (in relation to the tax year ended 5 April 2012).

6. On 24 January 2013, the Appellant's tax return for the year ended 5 April 2012 was filed online.

- 30 7. Also, on 24 January 2013, the Appellant's agent wrote to HMRC as follows:

35 "We are in receipt of your letter dated 15 January 2013 with a £100 late filing penalty. This return was submitted online on 24 January 2013. The copy sent in with our covering letter was merely to confirm that that was the last return and no further income or tax return would be due.

Please confirm as the return was submitted on-line within the required due date of 31 January 2013, that no penalty is due in the penalty of £100 issued has been cancelled."

8. A copy of the non-electronic return filed on 14 January 2013 was not provided to the Tribunal.

9. The Appellant's Notice of Appeal dated 25 March 2013 stated:

5 "The final tax return for the estate was submitted online on 24/01/2013 within the filing deadline.

A letter was sent to HMRC attaching a paper copy of the return, noting for administrative purposes that the final return had been sent and to shut our system, unfortunately the return hadn't successfully gone through online and the paper copy breached HMRC office first around 10/01/2013.

The estate had already been fully distributed and bank accounts shut and has no further funds.

15 This was a timing error between online filing and notifying HMRC that no further returns [sic] and not a deliberate late filing of a £nil return."

10. In their reply to HMRC's Statement of Case the Appellant's agent stated:

"1. Our intention was to submit the tax return online by 31 January 2013.

20 2. We wished to notify HM Revenue & Customs that this nil return for 5 April 2012 would be the last return and sent a paper copy with the letter.

3. HMRC treated the copy received as a tax return for filing, therefore treating [sic] as being late as post 31 October 2013.

25 4. When contacted by HMRC regarding the late filing, we made it clear what the Trustees intentions were and the return was filed online immediately, which was prior to 31 January 2013 deadline.

5. We also notified HMRC that the Estate was distributed in the course of that year and there were no further funds.

30 6. The Trustees did complete a tax return and submit online by 31 January 2013, however HMRC took the paper copy to be the submission copy and therefore registered it on the system, which was never the trustees intention."

### Discussion

35 11. HMRC argued in their Statement of Case that the return was issued on 6 April 2011 and that the guidance on the front of the return advised the trustee that it should either file a paper return by 31 October 2012 (six months after it was issued) or alternatively file a return online by 31 January 2013. The Statement of Case continued:

40 "... A paper file return was registered first on 14 January 2013. The online return was filed on 24 January 2013 after the penalty notice had already been issued....

The agent advises that it was never the intention for the return to be treated as [a] submission copy. The agent's covering letter sent with the paper return did not make any reference to an online return nor did it advise that the returning close was not to be treated as a return.

5 HMRC guidance at SAM 120530 states that if a paper return is filed late, it is not possible to avoid a penalty by filing a further tax return online before 31 January. The first return to be registered on the SA computer system will be treated as the original return. Only in  
10 exceptional circumstances where the online return reaches our systems before the paper return will a penalty not be charged. In this case the penalty notice had already been received by the agent as per the letter dated 25 January 2013 from the agent."

12. I agree with HMRC's basic proposition that if a taxpayer files a valid paper return after 31 October even if he or she subsequently files online before the  
15 following 31 January, an automatic £100 penalty arises under paragraph 3 Schedule 55 Finance Act 2009. Thus a paper (i.e. non-electronic) return automatically gives rise to a £100 penalty under paragraphs 1 and 3 Schedule 55 Finance Act 2009 if it is submitted after 31 October. If no valid paper return is submitted and an online return is submitted before the following 31 January no penalty can arise.

20 13. The issue in this appeal is whether the paper document received by HMRC on 14 January 2013 was a valid tax return.

14. The onus of proof in penalty cases rests on HMRC to establish on the balance of probabilities that the facts fall within the provisions imposing the penalty. To avoid a  
25 penalty, the taxpayer must usually then show that there is a reasonable excuse for the default giving rise to the penalty.

15. HMRC have produced no evidence to the effect of the return filed on 14 January 2013 was a valid return even though this is an appeal where it was clear that the nature or status of the paper document sent to HMRC was in dispute. The document itself has not been produced and there is no evidence that this document  
30 (which the Appellant described as a "copy" of the online return) was signed by the Appellant. HMRC's consistent practice (which in my view is correct) has been that a paper tax return must be signed by the taxpayer in order to be valid.

16. In this case, the penalty arises where a paper return is filed late (i.e. after 31 October). It is, however, inherent in the statute (paragraph 1 Schedule 55 Finance Act  
35 2009) that the return which has been submitted must be a valid return. If the document, which does not fulfil the requirements for a valid paper return, is filed with HMRC no return within the meaning of the statute has been filed and no penalty for the late submission of the return can arise. However, the onus is on HMRC to show that the paper document filed by the Appellant was a valid return for the purposes of  
40 section 8A Taxes Management Act 1970, but they have failed to do this. As I have said, a copy of the document filed on 14 January has not been supplied and no other evidence about its contents or form has been provided by HMRC. I accept that the covering letter from the Appellant's agent dated 9 January 2013 refers to a "return", but I do not consider this to be sufficiently clear evidence that the document satisfied

the requirements to be a valid return for the purposes of Section 8A Taxes Management Act 1970 -particularly in a case where the status of the document is in dispute.

**Decision**

5 17. For the reasons given above, I have decided that HMRC have failed to discharge the burden of proof that a penalty was chargeable on the facts of this case. I therefore allow this appeal.

10 18. 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.

15

20

**GUY BRANNAN  
TRIBUNAL JUDGE**

**RELEASE DATE: 26 July 2013**

25