



TC03370

Appeal number: TC/2013/02710

INCOME TAX – 1st and 2nd surcharges and 30 day, 6 month and 12 month penalties totalling £315.68 for failing to pay income tax on time – no reasonable excuse – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ALAN HAMILTON

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE DAVID S PORTER
MS ANN CHRISTIAN**

Sitting in public at Alexandra House, Manchester on 13 February 2014

Mr Alan Hamilton in person

Mrs Susanne Whitley-Bennion, an Inspector, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

DECISION

1. Mr Alan Hamilton (Mr Hamilton) appealed by a Notice of Appeal dated 24 March 2013 against a 1st and 2nd surcharge of £88.84 each for his failure to pay the income tax due for the period 2009/10 and against a 30 day penalty, a 6 month penalty and a 12 month penalty each in the sum of £46 for his failure to pay income tax for the period 2010/11. He considered that the surcharges and penalties were unfair when HMRC knew that he owed in excess of £25,000 to his creditors and that he had been on jobseekers allowance during part of the period. In those circumstances the surcharges and penalties ought, at least, to be reduced. HMRC said that Mr Hamilton accepted that the surcharges and penalties had been correctly calculated and that he had been unable to pay his income tax and the penalties due to a shortage of funds, which did not amount to a reasonable excuse.

The Law

2. The Taxes Management Act 1970 (TMA)

- Section 59B provides that income tax has to be paid by 31 January following the tax year.
- Section 59C provides for a surcharge of 5% for tax paid 28 days after the due date and a second 6 months after the due date. From the tax year 2010/11' late payment penalties are imposed by section 56.
- Schedule 56 of the Finance Act 2009 provides for penalties to be imposed for the late payment of tax due, also for appeal to the Tribunal and reasonable excuse
 - Paragraphs 13 & 15 allow the taxpayer to appeal against the penalty or for its amendment.
 - Paragraph 13.2 TO 15.2 on appeal to the Tribunal, the Tribunal may affirm HMRC's decision or substitute another decision which HMRC could have imposed. If the Tribunal thinks that HMRC's decision in respect of the penalties is 'flawed' (i.e. applying the principles applicable to proceedings for judicial review) it can impose a different penalty.
 - Paragraph 16 provides a defence of a 'reasonable excuse' provided that the excuse is not an insufficiency of funds ; a reliance on a third party; or the excuse is not subsisting and there has not been an unreasonable delay after the excuse ceased, to remedy the failure.

The Facts

3. Mr Hamilton told us that worked for an individual in public life. He lived and worked at his home and worked 24/7. He had become completely absorbed in his work to the detriment of all other concerns. He had filed his 2008/9 tax return late and

accepted that that had been his fault. His closest childhood school friend died of a brain tumour on 24 January 2008. He told us that his great aunt had died in late February 2008. He had been very close to her and he had been extremely upset. The two deaths affected him up to the end of 2009. In November 2010 he learnt that his
5 older cousin had been charged with drug offences and around August 2011 his cousin was sent to prison for 6 years. He had been told that his mother's brother had, unknown to his mother, died in March 2008. When he disclosed this to her and the family there had been great distress. He had also been told in March 2011 that his
10 younger cousin had been sent to prison for 2 years as a result of having indecent photographs of children. In October 2011 his father's elder sister was taken ill and died in the Alexandra Hospital in Redditch.

4. He had been unemployed between April 2011 to the beginning of October 2011 and again, for the period from the end of October 2011 to August 2012. He had found unemployment to be particularly stressful never having been out of work before. He
15 applied for several thousand jobs and when he eventually took one he was too distressed to retain the job. He was either over or under qualified and, as a result, decided to become self-employed.

5. On 10 April 2012 he attended his brother's wedding in Cyprus, as his best man. He could not afford to take his fiancée nor his stepson, who remained at home. The
20 visit cost him his entire savings and he had to leave his lodgings and return home to live with his parents. In early September 2012 his fiancé suffered a miscarriage, which was very distressing and she had taken some time to overcome it. He had also been looking after his mother and father, both of whom suffer from poor health. As a result' he has been very upset and distressed over the periods. He had also been
25 unable to pay his bookkeeper whom he had had to let go.

6. Mr Hamilton produced a letter from Messrs Pannone, solicitors of Manchester, dated 14 April 2011 relating to a copyright action he had brought against his previous
30 business associate. He told us that as he had been unable to fund the action to trial he had had to settle for an out of court payment of £4,250 in spite of the fact that Pannone's fees were £9000. He told us that he had used the £4,250 to pay off some of his debts and to purchase presents for his fiancé and step-son.

7. Mrs Whitley-Bennion provided the Tribunal with copies of HMRC's records of a large number of telephone calls to and from Mr Hamilton. The earlier records reveal
35 that Mr Hamilton was having trouble with his returns and tax for periods 2005/6, 2006/7, 2007/8 and 2008/9. He said that he had been told on several occasions during those contacts that he need not worry about the penalties as they could be resolved later. Mr Hamilton candidly told us that he had been able to pay the surcharges and penalties in earlier years whilst he was in work. As he was without funds now, that was no longer possible.

40 8. Mr Hamilton has produced details of his current business activities which revealed fees paid to him of £12,145 leaving him with a profit of £3,608.50. He has also produced a list of his debts which exceed £32,000. He advised that he had £500 saved and no more.

Submissions

9. Mrs Whitley-Bennion submitted that M Hamilton needed to prove that he had a reasonable excuse for his failure to file his returns on time and to pay the appropriate tax. The legislation does not define 'reasonable excuse'. In Eastwell Manor Ltd the Judge stated:

10 "The test in Steptoe requires the tribunal to take for comparison a person in a similar situation to that of the taxpayer who is relying on a reasonable excuse defence. The tribunal must then ask itself – with that comparable person in mind – whether, notwithstanding that person's exercise of reasonable foresight and of due diligence and a proper regard to the fact the tax would become payable on the particular dates, those factors would not have avoided the insufficiency of funds which led to the failures.

15 The Tribunal thus needs to be persuaded that the reasonable competent businessman would have defaulted when faced with the same or similar predicament, despite exercising reasonable foresight.

10. HMRC assume from the evidence that Mr Hamilton provided, that he had a very responsible job, but she submitted that that was not a reasonable excuse for Mr Hamilton's failure to carry out his legal obligations to submit his tax returns on time or to pay the tax due. Mr Hamilton worked throughout the year 2009/10 and the following year and it is reasonable for HMRC to say that he should have set money aside from his profits to pay his tax bill on the due date. Further, had Mr Hamilton made some attempt to pay some of the liability off out of the monies he did have, the surcharges would have been less.

25 11. Mr Hamilton was aware of the consequences for paying tax late arising from his experiences in the years 2005/6 and 2006/7. Mr Hamilton had been advised each year that he needed to complete appropriate returns. The notice also gave a warning as to the possibility of surcharges and penalties.

30 12. Mrs Whitley-Bennion submitted that Mr Hamilton had not demonstrated a reasonable excuse for his failure to pay the tax by the due dates for payment and respectfully asked the Tribunal to :

- agree that the surcharges as imposed have been correctly charged for the tax year 2009/10
- agree that the penalties as imposed are correct for the tax years 2011/12 and
- 35 • to dismiss the appeal.

13. Mr Hamilton submitted that he had been very involved when working to the extent that he had not had time to deal with his affairs properly. He had also been deeply distressed at the various bereavements and tragedies within his immediate family. He had not been aware that his tax returns were due nor had he expected to

lose his job. He accepted that he owed the tax and he was determined to pay that. He also accepted that the surcharges and penalties had been properly raised. He had been concerned at the lack of help from the HMRC, but agreed that it had now allowed him time to pay the outstanding tax. He submitted that HMRC ought to be able to
5 negotiate a lesser sum for the surcharges and penalties as it seemed peculiar to him that HMRC would seek to receive further payments when it knew of his financial difficulties. Such requests for payments only added to his problems. He asked the Tribunal to reduce the liabilities.

The Decision

10 14. We have considered the law and the facts and have decided that Mr Hamilton does not have a reasonable excuse in failing to pay the tax due on time, either because of his distress or his insufficiency of funds. We appreciate that losing his job must have been traumatic for him. We also understand that the various domestic tragedies must have been distressing. He has not produced any medical evidence to support his
15 allegations as to his level of distress. Whilst we accept he must have been upset, we cannot believe that the distress was such that he could not find time to complete his return and pay the tax.

15. His 2008/9 tax return should have been sent in by 31 January 2010 together with the tax then due. The domestic tragedies he has referred us to had occurred well
20 before that date and do not, in any event, amount to a reason for him failing to pay the tax then due. His 2009/10 return needed to be filed by 31 January 2011 together with the tax then due. The other matters that gave rise to his distress appear to have occurred subsequent to 31 January 2011 and cannot amount to a reasonable excuse for his failure to pay the tax due on time.

25 16. We are also satisfied that Mr Hamilton, from his experience in earlier years, was fully aware as to the ways in which the tax system operates. He frankly admitted at the hearing that he had paid surcharges previously and that the payments had not been a problem whilst he was in work.

30 17. We were also disappointed to be told that he had had sufficient resources subsequent to the failures to discharge his tax liability but that he had preferred to spend the money on other matters which he considered priorities. We have not been given the date that he received the money from Pannones. Had he utilised the money he received from the action to discharge his outstanding tax liability of £3,316.95 then
35 it is probable that the three penalties raised on 10 April 2012, 4 September 2012 and 19 February 2013 would not have arisen. His appeal requested the removal or reduction of a total liability of £315.68. If he had made the payment he would have achieved the reduction he was seeking at the appeal without the need to appeal at all. He has been the author of his own misfortunes.

40 18. We therefore dismiss the appeal and agree that the surcharges as imposed have been correctly charged for the tax year 2009/10 and that the penalties as imposed are correct for the tax years 2010/11.

19. 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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DAVID S PORTER

TRIBUNAL JUDGE

RELEASE DATE: 26 February 2014