



TC03690

Appeal number: TC/2013/06624

INCOME TAX – PENALTY FOR MAKING LATE RETURN – WHETHER RETURN SUFFICIENTLY LATE TO RESULT IN PENALTY - YES – WHETHER HMRC INTERPREATION OF LEGISLATION RELEVANT IN REACHING DECISION – NO - APPEAL DISMISSED.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PAUL BURTON

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DAVID DEMACK

Sitting in public at: Manchester on 3 March 2014

Mr Andrew King, Accountant for the Appellant

Mr Taylor of HMRC for the Respondents.

DECISION

1. This is an appeal by Mr Paul Burton against a decision of HMRC to impose a
5 penalty of £100 on him for the late making or service of his income tax return for the
year 2011/12.

2. At the hearing Mr Burton was represented by his accountant, Mr Andrew King,
and HMRC by Mrs Taylor of their staff.
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3. The facts are not in dispute and may be very shortly stated. Mr Burton was
required to file his on-line tax return for 2011/12 with HMRC by 31 January 2013.
He failed to do so, but did file the return at 21.58 on 1 February 2013. HMRC
considered that, in making the late return, Mr Burton rendered himself liable to a
15 penalty of £100. Consequently, they assessed him to a penalty in that sum, relying for
the purpose on the provisions of Schedule 55 to the Finance Act 2009 (Section 106 of
the 2009 Act provides for Schedule 55 thereto).

4. Paragraph 1 of Schedule 55 deals with penalties for failure to make returns in
the following terms:
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- (1) A penalty is payable by a person (“P”) where P fails to make or deliver a
return, or to deliver any other document, specified in the Table below on
or before the filing date.
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Subparagraph 2 states that paragraph 12 to 13 set out the circumstances as
not being in which a penalty is payable. Sub paragraph is not relevant to
this appeal, and I therefore move to subparagraph (4):

(4) In this Schedule –
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“filing date”, in relation to a return or other document, means the date by
which it is required to be made or delivered to HMRC:

35 “penalty date”, in relation to a return or other documents, means the date
on which a penalty is first payable for failing to make or deliver it (that is
to say, the day after the filing date).

40 The “Table below” included at 1. returns for income tax and capital gains
tax required by s8(1)(a) of the Taxes Management Act 1970.

And para 3 of Schedule 55 states that “P is liable to a penalty of £100”.

5. By s.8 of the Taxes Management Act 1970 (as amended by the Finance Act
45 2007)

(1) For the purposes of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, and the amount payable by him by way of income tax for that year, he would be required by a notice given to him by an officer of the Board –

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(a) to make and deliver to the office, on or before the day mentioned in subsection (1A) below, a return containing such information as being reasonably be required in pursuance of the notice, and

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(b) ...

(1A) The day returned to in subsection (1) above is –

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(a) the 31st January next following the year of assessment, or

(b)

6. It is common ground that Mr Burton was required to make a return of his personal income for 2011/12 by an officer of the Board.

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7. In correspondence with HMRC, Mr King set out Mr Burton's reason for claiming that he was not liable to penalty in the following terms:

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“The clear definition of the deadline for filing online returns is “midnight on 31 January”. Crucially, the definition is not simply in terms of the return having to be made by 31 January; it specifies that a taxpayer has until the last possible moment of that day to file the return. It is within that context of the very strict definition of the deadline, that the penalty guidance must also be interpreted. This says that there will be a £100 penalty if the return is one day late. If that guidance is interpreted in the same strict way as the deadline is defined, it can only be logically and consistently interpreted as meaning that you have a full 24 hours, starting from one second after the deadline, to file the return without incurring a penalty. In other words, there is no penalty if the return is filed on 1 February 2013. The return may be late but not sufficiently late, in accordance with HMRC guidance, to trigger a penalty.

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8. I observe that nowhere in the legislation is it said that the return “must reach HMRC by midnight on 31 January”; that is stated in HMRC's guidelines relating to the filing deadline, but nowhere else.

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9. In my judgment, para 1(4) of Schedule 5, 5 states in the clearest of terms that a penalty is payable by a taxpayer for failing to make or deliver a return by the filing date, as statutorily defined. There is no ambiguity in the provisions of the subparagraph in question. And, as I am bound to make my decision on the law, and not on HMRC's interpretation of it, I can only conclude that the penalty assessed on Mr Burton was validly imposed, and dismiss his appeal.

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10. A number of Mr King's other clients were penalised for the same reason as Mr Burton, and appealed to the Tribunal. Their appeals were dealt with along with his. The appeals in question are listed in the Schedule to my decision. I dismiss all the appeals.

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11. 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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THE SCHEDULE

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Ian Bexton	TC/2013/06627
Nicola Binns	TC/2013/06628
Karen Wint	TC/2013/06630
Sidney Kenchington	TC/2013/06631
James Binns	TC/2013/06633
Stuart Rodgers	TC/2013/06634
Derek Kirsopp	TC/2013/06635
David Bargh	TC/2013/06637
Robbie Higginson	TC/2013/06641
Alyson Smith – personal representative of Mr Bryan Smith (Deceased)	TC/2013/06642

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**DAVID DEMACK
TRIBUNAL JUDGE**

RELEASE DATE: 1 April 2014

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