



TC03974

Appeal number: TC/2014/02103

Income Tax – Trust & Estate Tax Return filed late – appellant advised HMRC no income anticipated – no subsequent correspondence – paper return filed 40 days after due date showing estate wound up during tax year – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOHN GROVES

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 28 August 2014 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 10 April 2014 (with enclosures) and HMRC's Statement of Case submitted on 3 June 2014 (with enclosures).

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DECISION

1. This is an appeal by John Groves in his capacity as executor of the estate of the late Mrs H A Groves against the imposition of a late filing penalty of £400.00 in connection with the Trust and Estate Tax return for the year 2012/13.

2. Mr Groves was sent a notice by HMRC on 6 April 2013 requiring him to submit a Trust and Estate Tax return for the tax year 2012/13 by 31 October 2013 if filing a paper return or by 31 January 2014 if filing electronically. On 18 February 2014 HMRC sent Mr Groves a notice of penalty assessment of £100.00 for failure to submit the return on time. Mr Groves appealed to HMRC on 4 March 2014 stating that he had written to HMRC on 27 March 2013 making it clear that no further income was expected by the estate. However he submitted the original paper version of the return on 12 March 2014. As a result HMRC issued a further notice of penalty assessment on 18 March 2014 for £400.00 in respect of his late filing of the return. Mr Groves appealed to HMRC on 28 March 2014 against this further penalty on the same grounds as for the £100.00 penalty.

3. By letter dated 25 March 2014 HMRC advised Mr Groves that he must have a reasonable excuse for the failure to send the return on time. HMRC decided that he did not have a reasonable excuse as he had submitted the original paper return issued on 6 April 2013 which clearly stated the due dates for submitting the return.

4. Mr Groves in his Notice of Appeal dated 10 April 2014 reiterates that he had written to HMRC on 27 March 2013 advising that no further income was anticipated. His main contention is that the application of two penalties is not reasonable when a number of written questions were still outstanding, when correspondence had either not been acknowledged or properly responded to in detail and certainly not acted upon, when advice requested resulted in a state of confusion on his part.

5. HMRC contend that the notice to file the return was clear and unambiguous as is the information which appears at the top of the Trust and Estate Tax return. Also HMRC issues notices in late December or early January each year reminding taxpayers that they must file their return electronically by 31 January. Even if Mr Groves was waiting for a reply to his letter dated 27 March 2013 there is no evidence of any subsequent communication from HMRC suggesting that he no longer needed to comply with the notice to file.

6. HMRC further contend that the paper return when filed revealed that the administration period ceased on 22 October 2013.

7. HMRC claim that Mr Groves had previously filed Trust and Estate Tax returns for each of the preceding five tax years so was well aware of the requirements to file although one of the returns was in fact filed late and a late filing penalty was issued but subsequently cancelled.

8. HMRC contend that Mr Groves has not established any reasonable excuse for his late filing.

The Law

5 9. The filing date is determined by Section 8(1D) Taxes Management Act 1970 which states that an electronic return must be submitted on or before 31 January following the end of the tax year.

10. Paragraph 3 of Schedule 55 Finance Act 2009 provides for a penalty of £100.00 if the return is not received by the due date. Paragraph 4 (2) provides a further penalty of £10.00 for each day that the failure continues.

10 11. Paragraph 23(1) of Schedule 55 Finance Act 2009 provides that an appeal against a late filing penalty will be successful where the taxpayer shows that there is reasonable excuse.

The Decision

15 12. There is no statutory definition of reasonable excuse. It is a matter to be considered in the light of all the circumstances of the particular case. The onus is on Mr Groves to demonstrate that he had a reasonable excuse for his late filing of the return.

20 13. The Tribunal has decided that Mr Groves does not have a reasonable excuse. There is no evidence of any subsequent communication between Mr Groves and HMRC following his letter dated 23 March 2013. It would have been a simple matter for Mr Groves to have clarified with HMRC whether or not the return needed to be filed.

25 14. Following the decision of the Upper Tier Tribunal in *The Commissioners for Her Majesty's Revenue and Customs and Hok Ltd* [2012] UKUT 363 TCC the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.

30 15. As HMRC could not know whether Mr Groves would file the return electronically it was not possible for HMRC to issue the initial Notice of penalty assessment for £100.00 until after 31 January 2014. As this Notice clearly stated that daily penalties of £10.00 would be charged for each day the return remained outstanding if the return was more than three months late and as a paper return was ultimately filed HMRC is correct to calculate the daily penalty from 1 February 2014 until receipt on 12 March 2014. No evidence has been produced by Mr Groves as to when he posted the return and there is no evidence of postal delays.

35 16. Accordingly the appeal is rejected and the penalties of £100.00 and £400.00 remain due for payment by Mr Groves.

17. 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

5 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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**ALASTAIR J RANKIN
TRIBUNAL JUDGE**

RELEASE DATE: 2 September 2014