



**TC04082**

**Appeal number: TC/2013/09443**

*Penalty – Late payment of income tax – Whether reasonable excuse – No – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LAURENCE IAN GRAHAM REED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MALACHY CORNWELL-KELLY  
MR CHARLES BAKER FCA**

**Sitting in public at Southampton Appeals Service, Barrack Block, 83-85  
London Road, Southampton on 14 October 2014**

**The taxpayer did not appear and was not represented**

**Ms Anne Rees of HMRC for the Respondents**

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## DECISION

### *Introduction*

5 1. The appellant was not present or represented at the time the appeal was called on for hearing, or within fifteen minutes thereafter. Attempts to contact him by telephone were unsuccessful. We were satisfied that the appellant had received notice of the hearing and we decided that it was in the interest of justice to proceed with the hearing.

10 2. The notification of the appeal to the Tribunal Service was vague. The amount at stake was stated to be £2,854.84. The grounds for appeal were “see previous box” and that read:

15 “The HMRC have not clarified as to how much money is actually owed. The enclosed documents from several tax offices all state different amounts. I have offered to pay any outstanding tax via adjustments of my tax code via “PAYE” and this has been rejected.”

3. We considered striking out the appeal for a lack of proper grounds. Instead we decided to deal with the taxpayer’s complaint as far as we were able.

20 4. We were provided with a large bundle of correspondence. In addition Ms Rees gave evidence of facts recorded on the HMRC computer system.

### *Facts*

5. The disputed amount relates to the tax year 2010-11 and is currently made up as follows:

25 (1) Income tax of £2,359.42. This was an original liability of £2,757.40 calculated directly from the entries on the taxpayer’s 2011 tax return, offset by a refund of £397.98 due from the 2011-12 tax year.

(2) Interest of £177.17 on the late payment of that tax.

(3) Late payment penalties totalling £366.00.

30 6. These total £2,902.59 which differs from the taxpayer’s figure. Presumably that is because of the continued accrual of interest. Ms Rees stated that the HMRC records show that nothing had been paid against these amounts.

7. The chronology of events was as follows:

31 January 2012 Due date for payment of the 2010-11 tax liability.

16 April 2012 Initial receipt by HMRC of the taxpayer’s 2011 tax return. HMRC sent the return back to the taxpayer for correction.

24 July 2012 HMRC processed the corrected return and sent a calculation of the tax liability to the taxpayer dated 26 July 2012 showing tax payable of £2,757.40.

- 9 October 2012 HMRC issued a 30-day late payment penalty notice for £137.00.
- 29 October 2012 HMRC reduced the penalty by £5.00 to £132.00.
- 11 April 2013 HMRC issued a six-month late payment penalty notice for £132.00.
- 9 July 2013 HMRC reduced the six-month late payment penalty by £15 to £117.00.
- 17 October 2013 HMRC issue a twelve-month late payment penalty for £117.00.

8. Ms Rees stated that HMRC's records showed that the taxpayer was employed between August 2011 and November 2012. That was consistent with a statement from Cosham Benefit Centre showing that benefits ceased on 30 August 2011. Forms P60 showed employment income during the tax years 2011-12 and 2012-13. A further statement from Cosham Benefit Centre showed a further period of benefits ceasing on 3 February 2013, though with no benefits paid.

*Legislation*

9. There is no provision in the legislation for an appeal against a self-assessment of income tax. That would lead to the absurdity of a taxpayer appealing against his own figures. Neither is there any right of appeal against interest for late payment of tax. Interest is calculated by means of a fixed formula applying a rate of interest to the amount of tax for the period for which it was outstanding. Therefore we have no jurisdiction to consider those elements of the taxpayer's complaint.

10. Schedule 56 to the Finance Act 2009 provides for penalties for failure to make payment on time. Paragraph 1(5), item 1, provides that the date after which a penalty is incurred for unpaid self-assessed income tax (the penalty date) is 30 days after the normal due date. In the case of self-assessment income tax for 2010-11, that is 30 days after 31 January 2012. Paragraph 3(2) provides that the amount of the 30-day penalty is 5% of the unpaid tax.

11. Paragraph 3(3) provides for a further 5% penalty of the tax unpaid five months after the penalty date. That is approximately six months after the normal due date (the six-month penalty). Paragraph 3(4) provides for another 5% penalty on tax unpaid eleven months after the penalty date (the twelve-month penalty).

12. Paragraph 13 of the schedule gives a right of appeal against the imposition of a penalty or the amount of the penalty or both.

13. Paragraph 16 of the schedule allows a person (designated "P" in the legislation) to claim a reasonable excuse in the following terms:

30                    16(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a payment if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.(2) For the purposes of sub-paragraph (1)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

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(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

10 *Submissions and conclusions*

14. Ms Rees for HMRC contended that the three penalty notices were correctly issued in accordance with the legislation.

15. We noted that the 30-day penalty was initially £137.00. The outstanding tax was £2,757.40 and 5% of that is £137.87. Accordingly, the penalty rounded  
15 down in favour of the taxpayer was correctly calculated. HMRC subsequently reduced the penalty by £5.00 for reasons that are not obvious. By the six-month point the taxpayer had been given the benefit of the offset of the 2011-12 refund to give a net liability of £2,359.42 and 5% of that is £117.97. So the penalty of  
20 £117.00 imposed by HMRC after rounding down in favour of the taxpayer was correctly calculated. Similarly with the twelve-month penalty.

16. The submissions of the taxpayer can be inferred from some of his letters to HMRC. In his letter of 5 January 2013:

25 “... My tax liability for 2010/11 I accept is outstanding and I dispute the sums claimed by HMRC in my previous letters, and am unable to pay any sums outstanding by the 4<sup>th</sup> January due to the fact that I am now unemployed, and living on Income based jobseekers allowance, any sums owing will need to be collected via this payment. ...”

30 17. Paragraph 16(2) of Schedule 56 states that insufficiency of funds is not a reasonable excuse unless attributable to events outside the taxpayer's control. The loss of employment might be an event outside of the taxpayer's control. However, in this case, the taxpayer was employed both on the due date for  
35 payment of the 2010-11 tax and when he was sent a calculation of the amount due. The loss of employment occurred subsequently and so cannot be an excuse.

18. The taxpayer wrote two letters on 23 September 2013. In one of those letters he said:

40 “I also enclose an extract received from the Job centre which indicates that in the tax period 2010-11 I had in fact made a tax payment to the sum of £1352.75. This notice also confirms my earnings in respect of tax as £5044.00 for the year ending 2010, as such believe that the demand for unpaid tax as my self assessment is in fact wrong.”

45 19. No such enclosure was in the bundle and we cannot find a reference to those figures in any other documents. We note the apparent inconsistency between the tax said to be for 2010-11 and the income said to be for the year ending 2010. The taxpayer's letters shows frequent confusion between tax years.

In the absence of other evidence we have to conclude that his statement was due to a misunderstanding.

20. We can find no other basis for an appeal in his letters.

*Decision*

5 21. The late payment penalties were correctly calculated. The taxpayer did not have a reasonable excuse for late payment of his 2010-11 income tax liability. Accordingly his appeal is dismissed.

*Further appeal rights*

10 22 The appellant, not being present or represented at the hearing, is entitled to apply in writing to the tribunal for this decision to be set aside and such application must be received by the tribunal no later than 28 days after the date on which the tribunal has sent notice of this decision to him. The application must indicate the reasons why the appellant was not present or represented at the hearing.

15 23 This document contains the full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply in writing 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 the tribunal no 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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30 **MALACHY CORNWELL-KELLY**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 20 October 2014**

