



TC04149

Appeal number: TC/2014/03375

*INCOME TAX – self –assessment return late – business ceased in tax year –
appellant failed to lodge return in time- case dismissed.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MICHAEL CORBETT

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DAVID S PORTER

The Tribunal determined the appeal on 9 October 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 16 June 2014, HMRC's Statement of Case submitted on 22 July 2014 and the Appellant's Accountant's reply dated 6 August 2014.

DECISION

1. Michael Corbett (Mr Corbett) had been running a business for some time when it suffered a catastrophic reversal of fortunes in 2011-2012. As a result, he ceased trading on 29 November 2012. His accountant had died in 2011 and he had found a replacement in 2011-2012 but he had lost touch with him.

2. Mr Corbett's self-assessment return for the year 2013-2014 was sent to him on 6 April 2013. Mr Corbett says that he did not receive the same. The filing date for a paper return was 31 October 2013 and for an electronic return the filing date was 31 January 2014. The Respondents (HMRC) have produced a copy of a telephone record dated 5 December 2012 confirming a telephone call from Mr Corbett, conducted by his wife, in which she advised that the business had ceased. The record also states:

“..ADV to make sure 12/13 rtn completed with self-employment cease date of 29/11/2012 and to call NI Class 2 h/line given to cease payments also advised to complete P46 at new PAYE employer”

3. The telephone record appears in a list of telephone calls commencing 28/8/09 to 19/03/14. In his notice of appeal, Mr Corbett alleges that this call was not in 2012 but in 2013, which made it too late to allow him time to file the return by October of that year. Apart from that observation, there is no evidence of the later telephone call and I am satisfied from HMRC's evidence that a call as above was made on 5 December 2012 advising that a return should be completed.

4. Mr Corbett submitted an Expenses of Employment claim in November 2013, which alerted HMRC to the fact that the self-assessment return had not been filed. As a result Mr Corbett filed a paper return on 14 January 2014 out of time and incurred the £100 penalty. He asked for a review of the decision on 12 March 2014 and the review was issued on 23 May 2014 refusing the appeal. Mr Corbett served his notice of appeal on 16 June 2014 and the case has been allocated as a paper case. Mr Corbett has confirmed that no tax liability has arisen as the business made a loss in its last period of trading.

The Decision

5. I have read the statement of case and Mr Corbett's response and all the correspondence and I dismiss the appeal. I do not find that Mr Corbett had a reasonable excuse. He has completed self-assessment returns in the past and must have been aware that he needed to make a similar return in his last period of trading. I am also satisfied that his wife was so advised on 5 December 2012, not only because of the telephone record, but also because the business ceased on 29 November 2012 and it would have been logical to contact HMRC in the circumstances.

6. It was unfortunate that Mr Corbett's first accountant had died, but as he had appointed another accountant, he should have contacted him again if he was in doubt as to the action to be taken when the business ceased. The fact that no tax arises does not alter the position as it is important for taxpayers to inform HMRC of changes in

their businesses. The penalty legislation is now contained in schedule 55 of the Finance Act 2009 and I therefore dismiss the appeal and confirm the £100 penalty

7. 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: 25 November 2014

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