



TC04355

Appeal number: TC/2014/06497

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INCOME TAX – late submission of individual tax return – Whether reasonable excuse for late submission of return - No.

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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ISA M. CAHOON

Appellant

- and -

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

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA
AIIT**

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The Tribunal determined the appeal on 1 April 2015 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 19 November 2014, and HMRC's Statement of Case submitted on 23 January 2015 with enclosures. The Tribunal wrote to the Appellant on 27 January 2015 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.

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DECISION

1. Introduction

5 This considers an appeal against three penalties each of £100 (Total £300) levied by the respondents (HMRC) for the late filing by the Appellant of its individual tax returns for the tax years 2010-2011, 2011 – 2012, and 2012-2013.

2. Preliminary Matter.

10 There is dispute in the papers over the date on which the penalties were issued. HMRC say “on or around 17 June 2014” whereas the Appellant says 24 July 2014. A copy of each of the three notices of penalty was not included in the bundle before the Tribunal. HMRC refused to consider the appeal by the appellant because it was received more than 30 days after the decision. The appeal dated 5 September 2014 is more than 30 days after either of the above dates and so is late irrespective of which date is accurate. The Tribunal has therefore considered whether or not to allow the
15 late appeal. In view of the bereavement leave and illness of the Appellant’s accountant in the period from 23 July 2014 to 3 September 2014 and in the interests of fairness the Tribunal has accepted the late appeal and has considered the various submissions.

3. Legislation

20 Finance Act 2009 (FA2009) Schedule 55
Taxes Management Act 1970, (TMA 1970) in particular Section 8(1D)

4. Case law

25 Rowland v HMRC [2006] STC (SCD)536
Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC) TC 001010

5. Facts

30 The filing date for an individual tax return is determined by Section 8 (1D) of TMA 1970. For example ordinarily for the period ended 5 April 2010 an electronic return must be filed by 31 January 2011

35 However in this case notices to file the three returns for the years ended 5 April 2011, 2012 and 2013 were not issued to the Appellant until 6 March 2014. Section 8 (1G) TMA 1970 has the effect that if a notice to file a return is given after 31 October a return (whether electronic or not) must be delivered during the period of 3 months beginning with the date of the notice. Under the terms of Section 8(1H) HMRC sometimes allow an additional 7 days for provision of the return as they did in this case. The date for submission of each the returns was therefore 13 June 2014.

40 6. In respect of all three returns the appellant failed to submit them until the returns were submitted electronically on 7 July 2014. As the returns were not submitted by the filing date of 13 June 2014 HMRC issued a notice of penalty assessment in the

amount of £100 for each return, total £300. HMRC say the notices were issued “on or around 17 June 2014”

5 7. On 5 September 2014 the Appellant’s agent R.J.Burton & Company, chartered accountants appealed to HMRC against all three of the late return penalty assessments. They state

10 “Mrs. Cahoon did not have any self-assessment income for these years and was initially not required to complete a tax return for these years. Due to a query which HMRC had in relation to the receipt of a pension where tax had been deducted at source a request to complete a tax return for each of these years was made by HMRC on 6 March 2014. Therefore, it would have been impossible for Mrs. Cahoon to complete her tax return on time.”

8. In three letters all dated 19 September 2014 HMRC refused to consider each of the three appeals as they were made outside of the 30 day time limit to appeal

15 9. In three letters all dated 1 October 2014 Ruddell & Company incorporating R.J.Burton & Company appealed again stating that the accountant responsible for the Appellants affairs had been ill and on bereavement leave between the date the penalties were issued and 3 September 2014.

10. On 14 November 2014 HMRC wrote to the appellant stating that they still could not accept the late appeal and suggesting an appeal to this Tribunal.

20 **11. Appellant’s submissions**

In her Notice of Appeal the Appellant states

25 “I did not have any self-assessment income for the years in question and was initially not required to complete a tax return for these years. Due to a query which HMRC had in relation to the receipt of a pension where tax had been deducted at source a request to complete a tax return for each of these years was made by HMRC on 6 March 2014. Therefore, it would have been impossible for Mrs. Cahoon to complete her tax return on time.

30 When I received notice of the penalty dated 24 July 2014 I immediately brought it to my accountant Mr. Jonathan Ruddell of Ruddell & Company. Unfortunately my accountant Mr. Jonathan Ruddell, was on bereavement leave following the death of his father on 23 July 2014 and sickness leave between the dates of the penalties being issued and his return to the office on 3 September 2014 ... ”

12. HMRC’s submissions

35 HMRC contend that the £100 penalty was imposed for filing the returns late. The submission to the Tribunal is concerned with an appeal against a penalty imposed under Paragraph 3 of Schedule 55 of the Finance Act 2009 for the late filing of the individual tax return for the period ending 5 April 2012.

13. HMRC say the appellant filed her individual tax return from 1996/97 to 2002/3 and is therefore experienced with the self-assessment system and the online filing process. Therefore she was aware of the obligation to file her tax returns by the filing deadline.

5 14. HMRC say that if an agent is employed “to complete and file your tax return on your behalf, you remain responsible for ensuring that it is received by the relevant deadline and are liable to the automatic penalty if it is not.”

15. HMRC say that the notices to file the returns for the year ended 5 April 2011 contained the following wording:

10 **“Deadlines for sending your tax return**

You must make sure we receive your tax return by

- 31 October 2011 if you use paper (or 3 months after the date of this notice if that’s later), or
- 15 • 31 January 2012 if you file online (or 3 months after the date of this notice if that’s later).

The notices to file returns for the periods ending 5 April 2012 and 5 April 2013 contained similar wording.

20 16. HMRC say the penalty was correctly imposed in accordance with Paragraph 3 of Schedule 55 of the Finance act 2009. They say there is no reasonable excuse for the Appellant,s failure to submit the returns on time .

17. HMRC say they have considered Paragraph 16 Schedule 55 of TMA 1070 1nd whether there are any special circumstances that would allow the penalty to be reduced but have decided that there are no special circumstances.

18. Tribunal’s observations

25 The Tribunal’s has considered these submissions and comments as follows:

It is the appellant’s responsibility to ensure returns are submitted on time whether they complete the returns themselves or use an agent. The Appellant filed her individual tax return from 1996/97 to 2002/3.and so should have been aware of her obligation to send a return by the specified date.

30 The return for each of the three periods, 2010-2011, 2011 -2012 and 2012-2013 was due to be submitted by 13 June 2014 but in each case they were submitted 24 days late on 7 July 2014. A penalty of £100 is therefore due in each case unless the appellant can establish a reasonable excuse for the delay as referred to in Paragraph 23(1) Schedule 55 Finance Act 2009.

17. A reasonable excuse is normally an unexpected or unusual event that is unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to file on time.

18. In the Tribunal's view the appellant and her accountant are mistaken in saying that it was impossible for the appellant to submit her return on time. The notice to file was issued on 6 March 2014 and the legislation Section 8 (1G) TMA 1970 requires filing within 3 months. HMRC used the discretion allowed by Section 8(1H) of TMA 1970 to allow a further 7 days for submission by 13 June 2014. It was clearly possible for the appellant to submit the returns by that date and therefore on time. As the Appellant had no self-assessment income and received a pension which was taxed at source completing each return would not have been a complex or time consuming task. The illness and bereavement of her accountant in a period after 17 June 2014 may give reasonable excuse for the appeal being submitted late but it does not provide reasonable excuse for the late submission of the returns.

19. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal sees no reason to disagree.

20. HMRC has assessed each of the three late filing penalties of £100 in accordance with legislation. The appellant has not established a reasonable excuse for the late submission of her individual tax returns for the three periods 2010-2011, 2011-2012, and 2012-2013. There are no special circumstances to allow reduction of the penalty. Therefore the appeal is dismissed and the penalties totalling £300 stand.

21. 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.

PETER R. SHEPPARD
TRIBUNAL JUDGE

RELEASE DATE: 15 APRIL 2015