



**TC05623**

**Appeal number: TC/2015/02315**

*Income tax – late payment of self-assessment tax liability – whether  
reasonable excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Terence Brian Miles**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE Dr K Khan  
Ms Sonia Gable**

**Sitting in public at Bedford on 14 October 2015**

**The Appellant appeared in person.**

**Justin Kruyer, Presenting Officer, appeared for the Respondents.**

## DECISION

### **Introduction**

- 5 1. This is an appeal against a penalty for the late payment of Self-Assessment tax liability for the tax year ending 5 April 2013 charged under Schedule 56 Finance Act 2009. The 5% penalty for late payment is £105.
2. The matter for the Tribunal is whether the Appellant has a reasonable excuse for the late payment of the tax liability.
- 10 3. If the Appellant does have a reasonable excuse, the question then arises as to whether or not he made full payment “without unreasonable delay” once the excuse had ended.

### **Legislation Sections 7, 8, 9, 31 and 59B Taxes Management Act 1970 (TMA 1970) and Schedule 56 Finance Act 2009**

### 15 **Background**

4. HMRC issued to the Appellant on 16 September and 21 November 2013 Voluntary Payment letters informing him that if he did not pay the tax due, he would be put into the self-assessment system to collect the debt. The Appellant did not respond to these letters and was issued with a self-assessment tax return for 2012/13 on 7 June 2014 with a filing date of 14 September 2014. The due date for payment of the 2012/13 tax liability was 14 September 2014.
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5. The Appellant was issued with a paper return (he had no internet access) which he completed on the 3 October 2014 and based on his returned self-assessment, his tax liability for 2012/13 was £2,115.95. The thirty day late penalty for 2012/13 was £105 which was 5% of the amount outstanding at 14 October 2014, being £2,115.95. The penalty was issued on 28 October 2014.
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6. The Appellant has never paid the amount of tax outstanding. He appealed against the assessment on 5 November 2014. On 5 February 2015 HMRC rejected his appeal and offered a review of the decision. The review on 27 February 2015 concluded that the decision from HMRC should be upheld.
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7. The Appellant appealed to the Tribunal on 6 March 2015.

### **The Appellant’s Contentions**

8. The Appellant made the following points in his appeal -
- “a. he does not understand his tax return
- 35 b. he is not working at the moment and has never been self-employed in 2012/13
- c. he sent the forms back to HMRC and tried ringing with no luck

d. he only gets a pension

e. he was very sick with a stroke and spent time in hospital”

9. The Appellant explained that “he had not worked since 2011.”

### **Respondent’s Contentions**

5 10. HMRC says that the Appellant owes the amount of £2,115.95 for the tax year 2012/13 which was due and payable on 14 September 2014 and no payment has been made against this tax liability.

10 11. HMRC says that the Appellant did not have a reasonable excuse for not paying his tax on time. They say that the period of default has not ended because the Appellant’s tax liability for the period ending 5 April 2013 remains due and payable and since the tax has not been paid the period of default is ongoing and there is no reasonable excuse. There is simply no reasonable excuse for the entire period of default.

15 12. HMRC say that they notified the Appellant that there was an underpayment for the 2012/13 tax year when they issued the request for voluntary payment and therefore he should have been aware of the liability to tax and the amount of tax due. The underpayment arose as a result of the receipt of a number of multiple pensions and other income some of which were not recorded on his tax return.

20 13. The HMRC explained how the tax liability arose and when the Appellant called to discuss the matter on 5 November 2014 he was advised of the amount outstanding.

14. HMRC say that the Appellant’s contention that poor health had prevented him from paying the outstanding tax is not a reasonable excuse since the payment was due to HMRC in September 2014 a whole year after he had been taken ill.

25 15. Tax returns were not issued until June 2014 and no explanation or evidence has been provided as to how the medical condition he suffered from in May 2013 prevented payment in late 2014.

### **Conclusion**

30 16. At the hearing which took place on 14 October 2015 the Tribunal directed HMRC to provide further submissions and evidence relating to the taxable income figures of the Appellant. It was not clear how HMRC arrived at the figure of £20,820. It was felt that the different sources of income should be properly identified together with tax codes and P 60 information.

35 17. It was necessary for the Tribunal to properly understand the sources of income, deductions made at source and the allocation of the personal allowance. At the hearing, the Appellant had provided income figures which were very different from those of HMRC.

18. HMRC in their further submission gave a breakdown of the £20,820 figure as follows

1. £6,593.70 State Pension
2. £1,347.24 Prudential UK Pension
- 5 3. £28.20 Prudential UK Pension
4. £3,523.26 Prudential South Pension
5. £666.36 Prudential UK Pension
6. £11,832.21 All Saints Academy, Dunstable

10 19. HMRC used these figures to “repair” Mr Miles’ tax return because he had entered them incorrectly on his paper return.

20. HMRC has since noted that £11,832.21, which was received from All Saints Academy, Dunstable was employment income which Mr Miles failed to include on his self-assessment return.

15 21. HMRC say that regardless of whether that sum is treated as pension or employment income, the taxable income will be the same and this would result in the same amount of tax. HMRC acknowledged that the figures could have been laid out more clearly to the Appellant.

20 22. HMRC says that the Appellant would have received the P60 form for each source of income. This would have showed the relevant information for all of the Appellant’s taxable income sources including how much he received in the 2012/13 tax year and tax deducted at source. Due to the number of income sources, the personal tax allowance of £10,500 was allocated across the board. It is not necessary to go into the details of that allocation other than the state pension received the largest allocation.

25 23. HMRC explained that due to the different sources of income in the 2012/13 tax year some income was not taxed and there was an underpayment of £2,115.95.

30 24. At the hearing, the Appellant gave details of three payments he received from Prudential each month (£112, £31, £55) which amounted to £2,345 per annum ( his tax return gave the annual figure as £2,376) together with the state pension of £6,604. If these two sums are added together it falls well short of the £20,820 figure on which he is being assessed. It was clear that there were other sources of income which were not declared on the self-assessment return.

35 25. At the hearing Mr Miles denied he was employed in 2012/13. However it is clear from the documentary evidence provided by HMRC that he was employed. It is unclear why there was a break in his employment between 31 August and 3 September 2012 but this is not material to the discussion in this decision. It is possible

that at the hearing Mr Miles, due to his illnesses, may have failed to remember the dates of his employment. There is no doubt that he was employed by the All Saints Academy, Dunstable as an assistant caretaker.

5 26. Given the information provided by HMRC and the explanation as to the different sources of income, the Tribunal is satisfied that the Appellant does not have a reasonable excuse for failing to pay the tax liability. It is unclear what period he was seriously ill but he was able to complete his 2012/13 tax return which HMRC received on 3 October 2014. His illness was therefore not a reasonable excuse.

10 27. The Appellant may have argued, which he did not, that he could not have paid the tax until he was sent the proper calculations but, in any event, for that to amount to a reasonable excuse he would have had to have paid the tax as soon as he received the calculation, which was issued on 29 October 2014. This was not done.

28. In the circumstances, the Appellant is liable for the penalty and the appeal is dismissed.

15 29. 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  
20 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

25 **DR K KHAN**

**TRIBUNAL JUDGE**  
**RELEASE DATE: 25 JANUARY 2017**