



TC02862

Appeal number: TC/2012/08252

Reasonable excuse – late filing of return – whether no tax to pay gives a reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ASHLEY CURTIS

Appellant

- and -

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

TRIBUNAL: DR K KHAN

The Tribunal determined this appeal on 25 July 2013 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 Appellant's Notice of Appeal dated 20 August 2012 and HMRC's Statement of Case which was dated 12 October 2012.

DECISION

Appeal

- 5 1. This is an appeal against a late filing penalty imposed under paragraph 3 of Schedule 55 Finance Act 2009 for the late filing of a personal tax return for the year ending 5 April 2011.

Background facts

- 10 (1) A notice to file a tax return for the year ending 5 April 2011 was issued on 6 April 2011.
- (2) The filing date was 31 October 2011 for paper return and 31 January 2012 file online.
- (3) The 2010/2011 tax return was file online on 20 February 2012.
- (4) A penalty notice was issued a few days after 14 February 2012.
- 15 (5) On 21 March 2012, the Appellant's agent, The Accountancy Shop, submitted an appeal his behalf against the late filing penalty. They asked for the penalty to be cancelled since there was no tax to pay for the tax year 2010/2011.
- 20 (6) HMRC conducted a review and advise that the taxpayer was self-employed and had to complete a tax return each year and having no tax to pay was not a reasonable excuse.
- (7) HMRC notified the Appellant on 13 June 2012, based on their review, that a notice to file letter was sent on 6 April 2011. This requires the Appellant to file a tax return in accordance with his statutory obligation.
- 25 (8) On 20 August 2012 the Appellant filed an appeal to the Tribunal stating there was a reasonable excuse for not sending the tax return on time as the Appellant thought he had no tax to pay. The tax return was not completed.
- (9) The penalty is for £100 for late filing.

30 Conclusion

- 35 2. Under s.81 Taxes Management Act (TMA) 1970 a person is required to file a return in the form prescribed by law and has to include a declaration to the effect that the Return is to the best of their knowledge correct and complete. Under s.8(1D) TMA 1970 a return must be filed on paper by 31 October 2011 or online by 31 January 2012. There is a penalty for late filing which arises under the Schedule 55 Finance Act 2009. The return in this case was filed on 20 February 2012 which means it was late.

3. The law allows taxpayers to have a reasonable excuse for a penalty if submitted late. A reasonable excuse is not defined but is taken as behaviour which one would expect from a reasonably responsible person. An insufficiency of funds or reliance on a third party to do anything would not constitute a reasonable excuse.

5 4. Since the Appellant was advised by a firm of accountants or tax advisers it is not entirely clear as to whose decision it was that a return was not due. However, the Appellant had been registered for self-assessment since 2 July 1999 and was familiar with the self-assessment regime and the fact that he needed to complete and submit appropriate returns to HMRC. He failed to do so by the due date.

10 5. The Appellant has provided no grounds for showing that he had a reasonable belief that the return should not be filed. The absence of a liability to tax is not a reasonable ground or reasonable excuse. The Tribunal will be sympathetic in looking at situations where a person is prevented from filing their returns by circumstances outside of their control or where there are special circumstances. Neither of these
15 applies in this case.

6. HMRC can reduce a penalty where there are special circumstances. These must be exceptional, abnormal or unusual, something out of the ordinary, and there are no such circumstances here.

7. Accordingly the appeal is dismissed.

20 8. 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
25 "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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**DR K KHAN
TRIBUNAL JUDGE**

RELEASE DATE: 14 August 2013

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