



TC03207

Appeal number: TC/2013/03511

***PAYE – SELF-ASSESSMENT – TAX PAID LATE – DISPUTE RE
AMOUNT OF PENALTY DUE – PENALTY REDUCED – APPELLANT
OWED MONEY BY SCOTTISH LEGAL AID BOARD–WHETHER
REASONABLE EXCUSE - NO – APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GEORGE GEBBIE

Appellant

- and -

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

TRIBUNAL: JUDGE NORMA BAIRD

The Tribunal determined the appeal on 6 December 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 Notice of Appeal dated 29 November 2013 (with enclosures), HMRC’s Statement of Case submitted on 4 November 2013(with enclosures) and the appellant’s reply to the Statement of Case submitted on 1 December 2013.

DECISION

1 The appellant appeals against the decision of HMRC to impose a penalty of £2485
5 under Paragraph 3(2) of Schedule 56 to the Finance Act 2009 for failure to pay on
time tax due for the year ending 5 April 2011.

2. The appellant appealed against the penalty. He said that he had been co-operating
10 with HMRC collections seeking to achieve the payment of his taxes and he referred
specifically to letters from him and from his accountant in July, March and May 2012.
He complained of ‘an inactivity of response from HMRC’, saying that the penalties
were imposed while HMRC were failing to respond to his correspondence. He said
15 that a large part of his difficulty was due to the fact that the Scottish Legal Aid Board
(SLAB) owed him money. He had made HMRC aware of this. He submitted that
HMRC had failed to give due weight to his circumstances and that he had established
a reasonable excuse for non payment. In his response to the Statement of Case he said
that SLAB owe him in excess of £40,000 and he has successfully sued them for part
20 of that sum.

3. HMRC say that on 20 December 2012 they wrote to the appellant to explain the
meaning of the term ‘reasonable excuse’ and to advise him that they could not
25 consider his appeal until he had paid his tax liability. He was originally charged
penalties totalling £6554.00 but in response to his request for a review on 11 March
2013, HMRC were able to agree that he had had a reasonable excuse with effect from
24 July 2012 and reduced the penalty to £2485.00 to cover only the first 30 days after
the due date for payment of his tax liability. It is the position of HMRC that they have
30 treated the appellant fairly. They rely on the fact that he is an advocate whose self
assessment record was set up in 1996 and who was therefore aware of his tax
obligations. They rely on a note from Senior Counsel which refers to the SLAB debt
as being ‘of considerable vintage’ and take the view that the appellant ought to have
taken this into account in planning his financial affairs. HMRC give details of the
35 appellant’s contact with them by letter, telephone and personal visits but maintain
that the first letter from the accountant was received by them after the payment date
and after the penalty date and did not in any event demonstrate a reasonable excuse. A
‘time to pay plan’ had been agreed and set up following the appellant’s letter of 7
July 2013. HMRC say that lack of funds does not constitute a reasonable excuse and
40 take the view that the appellant has not demonstrated any special circumstances to
warrant reduction of the penalty. They note that he has been charged late payment
penalties previously

4. If a person is to rely on reasonable excuse, this must have existed for the whole of
the period of default. A reasonable excuse is normally an unexpected or unusual
45 event, either unforeseeable or beyond the person’s control, which prevents him from
complying with an obligation when he otherwise would have done. The matter has to
be considered in the light of the actions of a reasonable prudent tax payer exercising

foresight and due diligence and having proper regard for his responsibilities under the Taxes Act. HMRC have accepted that the appellant had established a reasonable excuse for part of the period in question but there is nothing before me to rebut the position of HMRC that for the first 30 days after the payment was due the appellant had no reasonable excuse for non-payment. There is nothing to support the contention of the appellant that his correspondence was ignored by HMRC. The fact that he is owed money by SLAB, is irrelevant, even if SLAB is, as the appellant says 'another government department'. The fact that he did not have the funds to pay his tax does not constitute a reasonable excuse. I regret that I must agree with HMRC that the reduced penalty now charged is fair in and due in all the circumstances.

6. I dismiss the appeal.

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.

**NORMA BAIRD
TRIBUNAL JUDGE**

RELEASE DATE: 6 January 2014