



TC03520

Appeal number: TC/2013/03235

Income Tax – PAYE – Late payment penalty reasonable excuse – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STEPHEN McCORMICK

Appellant

- and -

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

**TRIBUNAL: JUDGE IAN W. HUDDLESTON
MS CELINE CORRIGAN**

Sitting in public at Bedford Street, Belfast on 28 August 2013

Kate Murphy, Officer for HMRC appeared for the Respondents

The Appellant appeared in person

DECISION

Appeal

- 5 1. This is an Appeal against a late payment penalty of £2,542.00 for the tax year 2010/11. Under Section 59(B) of the Taxes Management Act 1970 the Appellant was required to pay his full tax liability for the year ended 5 April 2011 before the 4 August 2012.

The Facts

- 10 2. The facts are very straightforward. The Appellant was a higher rate tax payer employed by Ulster Bank and during the tax year 2010/11 was made redundant resulting in taxable income for that year totalling £243,969.00. This income resulted in a tax liability for that year of £50,858.25 which was due for payment by the 4 August 2012. £50,000 was paid on the 13 November 2012, £1,750 arising from an
15 overpayment in the tax year 2011/12 was offset and the final balance was paid on the 10 December 2012.

The Appellant's Grounds of Appeal

3. Mr McCormick has appealed the penalty on the grounds that "the circumstances that contributed to my late payment were wholly outside [his] control". Mr
20 McCormick appeared in person and gave evidence to the effect that to meet the liability he had upon receipt of the tax statement disclosing the liability on the 6 July 2012 started to look for a mortgage so that he could remortgage his home in order to pay the tax liability. It took until August 2012 to receive a mortgage offer from Nationwide and that it was only some time after that that he was able to draw down
25 funds and make the actual payment.

HMRC's Case

4. HMRC makes the case that under Section 59(B) of the Taxes Management Act the Appellant was required to pay his tax by the 4 August 2012 and failed to do so. HMRC accept that there is a defence of reasonable excuse pursuant to paragraph 16 of
30 Schedule 56 of the Finance Act 2009 but paragraph 16(2)(a) makes it clear that insufficiency of funds is not reasonable excuse unless attributable to events outside a person's control. To that position HMRC's case is that the Appellant was aware of the potential liability when the return was made and could (and should) have made provision for it out of the redundancy payment which he received.

The Evidence

- 35 5. We had oral evidence from Mr McCormick who explained both the circumstances of his redundancy and his failure to pay on the due date. On that he said he was not actually aware of the full extent of the liability until he received a letter from HMRC on the 4 July 2011. In cross examination, however, Mr
40 McCormick did accept that as part of the preparation for redundancy provided by his former employer he had been made aware of the potential tax liabilities which would arise as a result of a redundancy payment of this magnitude. His evidence was that he did not make a provision from funds received as part of that redundancy package in

order to pay the tax liability and, therefore, when he did receive the tax demand from HMRC he had no option but to seek a remortgage of his property. There was some delay whilst title documents themselves were traced and (in fact reconstituted) and a mortgage offer made but that as soon as he could he discharged his liability.

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Decision

6. As HMRC said at the hearing there is no statutory definition of what actually constitutes "reasonable excuse". Paragraph 16(2)(a) of Schedule 56 of the Finance Act 2009, however, makes it clear that an insufficiency of funds is not a reasonable excuse unless attributable to events outside a person's control. On the facts of this case we find that the Appellant could have made sufficient reserve for his tax liability from the redundancy payment which he received. For whatever reason he did not do that and therefore when the tax liability was notified to him he had to commence a remortgage of his property which took longer than he had anticipated.

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We do not conclude, on those facts, that a defence of reasonable excuse is established and therefore we 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.

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**IAN HUDDLESTON
TRIBUNAL JUDGE**

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RELEASE DATE: 23 April 2014