



TC03635

Appeal number: TC/2013/04325

Income tax – penalty for late filing of income tax return – Appellant delegated task to agent – whether reasonable excuse – no – appeal disallowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ADELAIDE NOLAN

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL
 MR LESLIE HOWARD**

Sitting in public at 45 Bedford Square, London WC1B 3DN on 21 February 2014

Ms Adelaide Nolan the Appellant in person

Ms Karen Weare, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Adelaide Nolan ('the Appellant') against the £100 penalty imposed under Paragraph 3 of Schedule 55 Finance Act ('FA') 2009 for the late filing of her Individual Tax Return for the year ending 5 April 2012.

The background facts

2. The notice to file for the year ending 5 April 2012 was issued to Ms Nolan on 6 April 2012.
3. The filing date was 31 October 2012 for a non-electronic return or 31 January 2013 for an electronic return.
4. As the return was not received by the filing date, HMRC issued a notice of penalty assessment on or around 12 February 2013 in the amount of £100 in accordance with Paragraph 3 Schedule 55 FA 2009. Both the 'filing date' and the 'penalty date' are defined at Paragraph 1(4) Schedule 55 FA.
5. Ms Nolan's electronic return for the year 2011-2012 was received on 20 February 2013.
6. On 22 March 2013, HMRC received an appeal from Ms Nolan dated 1 March 2013.

The Appellant's case

7. The Appellant accepts that the income tax return was filed late, but says that she has a reasonable excuse for the late filing.
8. In her letter to HMRC requesting a review Ms Nolan said:
- 'My tax return is filed by my accountant. I am not in control of his system or computer. I do not have a computer. If I am to be charged, I will have to file my own returns and this will have to be done by post by 31 October. I see that you do not accept this- even though I am not in control of this and can have no control, so I assume that you are now happy to change to post.'
9. In her notice of appeal Ms Nolan states
- i. 'I gave all my papers to my accountant for filing. I am then not in control. He says he worked solidly for 43 hours to file the 2011-2012 accounts. I had given him the papers in good time.
 - ii. On 21 February 2013 I received a cheque as repayment for overpaid tax in 2011-2012. No mention of late fee.

- iii. Notice of late fee sent to me. That section of HMRC used an address which I left four years ago. The repayment cheque went to the right address. The late notice did not give the time or date on which the return was filed late.
- iv. That office has still not answered my question — if I have to pay because a third party is late filing and they have not proved that to me. Should I now file paper copies? Is that what they prefer?
- v. I do not believe that I owe a late fee - no proof has been furnished to me. And given that they used an out of date address for several months, no fee to pay.'

10. At the hearing the Appellant reiterated much of what she had said in her notice of Appeal.

HMRC's Case

11. HMRC records demonstrate that Ms Nolan has previously made self-assessment returns in the years 2000-2001 to 2009-2010. Therefore, HMRC consider her to be experienced with the self-assessment filing deadlines and the consequences of late filing.

12. Late filing penalties for the year ended 5 April 2012 are due in accordance with Schedule 55 FA 2009, even if a customer has no tax to pay, has already paid all the tax due or is due a refund.

13. The 2011-2012 notice to file issued to Ms Nolan on the 6 April 2012 warned that a penalty of £100 would be charged if the return was filed after the relevant deadline.

14. HMRC contend that it was the responsibility of Ms Nolan to advise them promptly of any change of address. HMRC maintain that both the 2011-2012 notice to file issued on 6 April 2012, and penalty notice issued on 20 February 2013 were sent to the address shown on HMRC's records at the time. That address was provided by Ms Nolan in the 2010-2011 tax return, filed on 31 January 2012. Undelivered correspondence is recorded by HMRC and there are no records held to show that the notice to file or the penalty notice were returned undelivered. Therefore the documents are deemed to have been served within the ordinary course of post-delivery in line with Section 7 of the Interpretation Act 1978. HMRC updated Ms Nolan's address on 20 February 2013, in accordance the information provided in her 2011-2012 tax return. HMRC note that the repayment was issued to Ms Nolan on 21 February 2013. This was after the 2011-2012 return bearing her updated address had been filed.

15. In this case, HMRC used part of the repayment due to Ms Nolan for the years 2010-2011 and 2011-2012 to pay the 2011-2012 late filing penalty in accordance with standard procedure. The remaining amount of £879.40 was repaid to Ms Nolan on 21 February 2013.

16. HMRC maintain that it was the responsibility of Ms Nolan to ensure that she complied with her tax responsibilities by filing her 2011-2012 tax return by the relevant due date, in accordance with Section 8 Taxes Management Act 1970. This responsibility cannot be transferred to any other person acting on her behalf. Where a person has asked another person to do something on his or her behalf, that person is responsible for ensuring that the other person carries out the task. They cannot claim they had a reasonable excuse merely because they delegated the task to a third party and that third party failed to complete it.

17. Paragraph 23(2) Schedule 55 FA 2009 states:

- a. an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the appellant's control,
- b. where the appellant relies on any other person to do anything, that is not a reasonable excuse unless the appellant took reasonable care to avoid the failure, and
- c. where the appellant had a reasonable excuse for the failure but the excuse has ceased, the appellant is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

18. HMRC expect a taxpayer to take reasonable care to explain to the third party what they require them to do, to set deadlines for the work and to make regular checks on progress. If Ms Nolan feels that her accountant has failed in his/her professional capacity or did not follow specific instructions then she should seek redress directly from the accountant.

19. HMRC do not consider a lack of computer literacy as a reasonable excuse for late filing. A taxpayer can choose to file a paper return or submit the same online. If a taxpayer chooses to send a paper return, it must reach HMRC by midnight on 31 October. An online submission must reach HMRC by midnight on 31 January. Where a return is filed after the relevant deadline a penalty is charged. The later a return is received, the more penalties are charged. This information was clearly shown on the 2011-2012 notice to file issued to Ms Nolan on 6 April 2012.

20. In this case, the 2011-2012 self-assessment tax return due on 31 January 2013 was not filed until 20 February 2013, therefore a late filing penalty was correctly charged in accordance with Paragraph 3 Schedule 55 FA 2009.

Conclusion

21. When a person appeals against a penalty they are required to have a reasonable excuse which existed for the whole period of the default. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case.

22. It is necessary to consider the actions of the Appellant from the perspective of a prudent taxpayer exercising reasonable foresight and due diligence and having proper regard for their responsibilities provided by legislation. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person's control, which prevents him or her from complying with an obligation which otherwise would have been complied with. The Appellant has relied upon a third party who did not file the return until after the statutory date for doing so. The Appellant is not at law entitled to delegate responsibility for compliance with tax legislation and regulations and unfortunately her agent was late filing the return. The Appellant has to bear the responsibility for that.

23. The Tribunal therefore finds that the late filing penalty charged by HMRC is in accordance with legislation and there is no reasonable excuse for the failure of the Appellant to file her tax return on time. The appeal is disallowed and the £100 penalty payable for late submission of the Appellant's tax 2011-2012 return is confirmed.

24. 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.

MICHAEL S CONNELL
TRIBUNAL JUDGE

RELEASE DATE: 23 May 2014