



TC02971

Appeal number: TC/2013/01433

***TYPE OF TAX – INCOME TAX – late payment of amount due on return –
Whether reasonable excuse for late payment - No.***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STEPHAN J REYNOLDS

Appellant

- and -

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

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA
AIIT**

The Tribunal determined the appeal on 13 September 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 18 February 2013, and HMRC's Statement of Case received by the Tribunal on 11 July 2013 with enclosures. The Tribunal wrote to the Appellant on 11 July 2013 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.

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DECISION

1. Introduction

5 This considers an appeal against penalties totalling £598 levied by HMRC for the late payment by the appellant of the amount due as shown on its self-assessment return for the period 2010-2011.

2. Legislation

Finance Act 2009 Schedule 56

10 Taxes Management Act 1970, in particular Section 59B

3. Facts

The appellant suffered a bad car accident on 12 November 2008 and has had health problems since.

15 4. A notice to file for the year ending 5 April 2011 was sent to the appellant on 6 April 2011. The deadline for filing was 31 October 2011 for a paper tax return or 31 January 2012 for an electronic return. HMRC received an electronic return from the appellant on 20 July 2011.

20 5. The appellant's tax liability for the year was £5,986.04. In accordance with Section 59B (4) of the Taxes Management Act 1970 this was due to be paid by 31 January 2012

25 6. Where tax remains unpaid 30 days after the due date (2 March 2012) a first penalty of 5% is due (Finance Act 2009 Schedule 56 paragraph 3(2). On 2 March 2012 none of the tax of £5,986.04 had been paid so a penalty of £299 became due. On or around 10 April 2012 HMRC issued the appellant with a notice of penalty assessment for £299.

30 7. Where tax remains unpaid 5 months after the penalty date of 2 March 2012 (2 August 2012) a further penalty of 5% is due (Finance Act 2009 Schedule 56 paragraph 3(3). On 2 August 2012 none of the tax of £5,986.04 had been paid so a further penalty of £299 became due. On or around 4 September 2012 HMRC issued the appellant with a notice of penalty assessment for a further £299.

8. The tax was paid in full on 3 October 2012.

35 9. In accordance with Paragraph 16 (1) Schedule 56 Finance Act 2009 an appeal against a late payment penalty will be successful where the taxpayer shows that there is reasonable excuse for paying late.

10. On 25 October 2012 the appellant appealed against "all additional charges and penalties.

11. HMRC sent a decision letter to the appellant on 16 November 2012 rejecting the appeal but offering a review of the penalty decision

12. On 10 December 2012 the appellant requested a review.

5 13. In a letter dated 28 January 2013 HMRC issued a conclusion of letter which advised that the decision would be upheld.

14. On 18 February 2013 the appellant submitted a notice of appeal against the second of the penalties of £299

10 15. His grounds of appeal are “I have overpaid on PAYE £713.72 and £258.82 but in a letter received today dated 13 February 2013 HMRC still won’t refund those monies because I don’t know the exact dates I overpaid even though it was HMRC told me I did. So you have my money and I can’t do anything about it and yet you still penalise me when the balance I owed and paid was told to me by you!

It took till the 13th February for HMRC to reply to my letter of the 23/9/2012 a total of nearly 5 months. Is this reasonable? I have poor health, no money and no business.

15 16. HMRC state that they have treated the notice of appeal as referring to both penalties of £299 even though the appeal refers to one.

17. HMRC say that the appellant has based his appeal on two key factors. Firstly, that since a car crash that occurred on 12 November 2008 he has been too ill to work and secondly, that he is in financial difficulty and HMRC has not refunded tax owing to
20 him. They say that contrary to the information supplied by the appellant , evidence from his own self-assessment record indicates that he has continued to work and has receive income for all years since 2008 until very recently and that the appellant was fully aware of his tax liability for 2011/12 significantly prior to 31 January 2012. The appellant declares two sources of income from self-employment on his 2010/11 tax
25 return namely a financial advisor and a sky diving instructor. He also receives further income from property. The appellant was able to file his tax return on time and calculate his own tax liability for the year. On 21 December 2011 and 26 March 2012 the appellant contacted HMRC by telephone in order to make Time To Pay arrangements by paying off £1,500 per month. No payment were received until 17
30 September 2012 and the balance was paid on £ October 2012

18. Tribunal’s observations

The Tribunal’s has considered these submissions and comments as follows: The appellants grounds of appeal against a penalty for late payment of tax of £5,986 due in
35 March 2012 seem to be centred on that he had reasonable excuse because of his health problems and that overpayments of PAYE on unspecified dates but totalling £972 had not been refunded to him.

It is the appellant’s responsibility to submit returns and payments on time.

Despite the health problems followings his car crash the appellant has managed to earn income in every year since the 2008 accident.

5 In respect of 2010/11 the appellant submitted his self-assessment return over 3 months early on 20 July 2011. He calculated the amount due himself. He therefore knew the amount he was due to pay well before the due date for payment of 31 January 2012. He has offered no explanation of his failure to pay the tax due of £5986.04 until 3 October 2012 other than the delayed PAYE payments totalling £972. That amounts to just over 16% of the total due. The appellant made no attempt to pay the remaining 83% until September and October 2012 and has given no explanation for that failure.

10 The level of the penalties has been laid down by parliament. HMRC have applied the legislation correctly and calculated the total amount of the penalties accurately at £598 being a penalty for the 30 day period to 2 March 2012 (£299) and a further penalty for the 5 month period from 2 March 2012 to 2 August 2012 (£299). The appellant has not established a reasonable excuse for the late payment as
15 contemplated by Paragraph 16 (1) Schedule 56 Finance Act 2009. Therefore the appeal is dismissed.

19. 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
20 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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PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 15 October 2013

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