



TC02860

Appeal number: TC/2012/09907

REASONABLE excuse – payment made on time – payment allocated to earlier periods, whether taxpayer had reasonable excuse – yes – reasonable belief that payment made on time – appeal allowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOHN FRANCIS

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 23 May 2013 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier) Tribunal (Tax Chamber) Rule 2009 (default paper cases) having first read the Appellant's Notice of Appeal dated 15 May 2012 and HMRC's Statement of Case dated 22 February 2013.

DECISION

Introduction

- 5 1. This is an appeal against as first late payment penalty imposed under paragraph 3(2) of Schedule 56 Finance Act 2009 for the failure to pay tax on time for the year ending 5 April 2011. The due date for payment was 31 January 2012. At the penalty date of 2 March 2012 £1,945.66 of tax liability remained unpaid and this was paid in full on 26 July 2012.
- 10 2. A penalty was issued on 10 April 2012 for £97.00 which is 5% of the tax unpaid 30 days after the due date.

Background facts

- (1) A notice to file for the year 5 April 2011 was issued to the Appellant on 6 April 2011.
- 15 (2) The filing date was 31 October 2011 for a paper tax return or 31 January 2012 for an electronic tax return.
- (3) The Appellant's electronic return for the year 2010/11 was received on 31 January 2012 and was processed on 2 February 2012.
- 20 (4) The Appellant chose to file his Tax Return online whereby his tax liability for 2010/11 was automatically calculated by HMRC's self-assessment computer system.
- (5) The Appellant's tax liability was £14,640.12 which had to be paid before 31 January 2012. The computer records indicate that this was paid in March 2012.

25 The Law

3. A penalty is payable by a person who fails to pay that tax liability by the due date under Schedule 56 Finance Act 2009.
4. A person who has a reasonable excuse will not be liable to the penalty.

Submission by the Appellant

- 30 5. The Appellant submits that all of the 2010/11 liability was paid by his cheque of £16,580.50 credited prior to 28 February 2012 and £1,944.66 was not outstanding for 2010/11.
6. The outstanding amounts due relate to interest on tax for years prior to 2010/11 and should not be liable to a penalty relating to the tax year 2010/11.

7. The Appellant also said that payments were allocated to a 1999/00 surcharge but these surcharges were cancelled and they remained on his statement of account which stated “credit is due back to taxpayer”.

5 8. The Appellant is saying that while the surcharges were cancelled they continued to appear on his statement of account and this was a case where two different departments of the Revenue got their paperwork wrong.

9. He said that to his understanding that payment allocations were given priority for tax due, surcharges, penalties and finally interest on unpaid tax for prior years in that order. If this order was adhered to the £97.00 penalty would not arise.

10 **HMRC’s Submission**

10. HMRC say that the payments made by the Appellant were allocated correctly. Payments are allocated against the oldest debt first and his payments were allocated to interest charges dating from 2006. They explained that the Appellant still owes £1,980.44 for the tax year 2010/11.

15 11. The Respondents say that a full check was made on all the Appellant’s records. They provided a computer record showing how the payments made by the Appellant were allocated.

20 12. The Commissioners acknowledged that taxpayers have the right to determine how their payments are allocated but only if a preference was made. No such preference was made by the taxpayer at the time the payment was made and in such case the right to determine how the payments are allocated reverts to the Commissioners.

25 13. The Commissioners say that the taxpayer’s predicament has been brought about by his longstanding failure to bring his self-assessment account into proper order and therefore the penalty should be upheld.

Conclusion

30 (1) The Commissioners allocate payments to the oldest debt first and so the payments made by the Appellant were treated as being late since it was paid in satisfaction of his liability for the year ending 5 April 2011. It seems that the Appellant gave no instructions as to how the payment should be allocated.

(2) In this case the taxpayer would have a reasonable excuse for assuming that HMRC would allocate the payments to the current liability rather than to the oldest debt due.

35 (3) The practise of the Commissioners does not appear to be covered in the legislation but rather in the Debt Management and Banking Manual (para.210105 and 210120). It does not appear that these were brought to the notice of the taxpayer. In the circumstances therefore a taxpayer should be able to ask the Commissioners to reallocate the payments as they wish.

5 (4) The failure to make payment on time legislation as contained in Schedule 56 Finance Act 2009 was relatively new. The charges applied to returns for 2010-11 and later years. If HMRC were operating on a non-statutory basis on a practice which was contained in their manuals on new legislation then the taxpayer should be alerted to this practise. There is nothing to indicate this practise was brought to the attention of the taxpayer.

10 (5) A taxpayer is told in Schedule 56 FA 2009 that a penalty would be incurred if a payment is made after the due date. On a normal reading, there is nothing to suggest that if a payment is made on time it would relate to historic liabilities.

15 (6) A reasonable person in the circumstances would have thought that they had paid their tax on time and would not have known that their payments would be allocated to earlier periods and a penalty would have arisen. For this reason, where the taxpayer acted reasonably in trying to meet their tax liability a reasonable excuse should be allowed.

20 14. 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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**DR K KHAN
TRIBUNAL JUDGE**

RELEASE DATE: 14 August 2013

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