



TC03174

Appeal number: TC/2013/05284

***PAYE – SELF-ASSESSMENT – TAX RETURN SUBMITTED ON
PAPER LATE IN ERROR THEN ELECTRONICALLY IN TIME –
WHETHER THIS ALLOWED – WHETHER REASONABLE EXCUSE –
NO - APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KATHLEEN LAINCHBURY

Appellant

- and -

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

TRIBUNAL: JUDGE N A 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 28 July 2013 (with enclosures), HMRC's Statement of Case submitted on 23 October 2013(with enclosures) and the appellant's reply dated 22 November 2013.

DECISION

1 The appellant appeals against the decision of HMRC to impose a penalty of £100
5 in terms of Paragraph 3 of Schedule 55 of the Finance Act 2009 for the late filing of
her tax return for the year ending 5 April 2012.

2. The appellant appealed against the penalty through her agents who explained that
10 they had sent the tax return to the appellant for signature but rather than return it to
them she had posted it 'accidentally to the address on the return. It was received by
HMRC on 16th January 2013. The last date for filing a paper return was 31 October
2012. It is submitted that it would have been obvious to HMRC that an error had
15 occurred when they received the return in January. In the reply to the Statement of
Case the appellant's agents, her accountants, say that the online return was submitted
and accepted on 31 January with no rejection note to warn of any problem.

3. The position of HMRC is that the obligation was on the appellant to ensure that her
return was filed in time. They accepted that she had made a genuine mistake but did
20 not consider this to be a reasonable excuse. They say that there is no legislative
provision that allows a tax payer, having submitted a paper return in error, to submit
a second return to avoid a penalty charge. There is a provision enabling a tax payer to
amend a return but not to replace it. They concluded that the appellant had not
established that she has a reasonable excuse for the late filing of her return.

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4. I have given careful consideration to all the evidence before me. 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 event, either
unforeseeable or beyond the person's control, which prevents him from complying
30 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.

35 5. I accept that the appellant made a mistake but there is no information as to what
she was told by her agents to do with the return. In any event the paper return
submitted in January was late and the position of HMRC that there is no provision to
allow a person to submit a paper return late then replace it with an electronic one to
avoid a penalty is reasonable and I do not consider it unreasonable to expect that an
40 accountant would know this. I do not accept that it would have been obvious to
HMRC that an error had been made. It seems to me that in the absence of information
to the contrary they were entitled to assume that the return was a paper one lodged
late. In all the circumstances I find that the appellant has not established a
reasonable excuse for her failure to pay the penalty charged.

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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.

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**N A BAIRD
TRIBUNAL JUDGE**

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RELEASE DATE 18 December 2013