



TC03085

Appeal number TC/2012/09527

Penalties for late payment of Income Tax – Appellant waited for confirmation of her self-assessment record from HMRC – whether reasonable excuse – no - Appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ELIZABETH NAVIN JONES

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE MICHAEL S CONNELL
MICHAEL ATKINSON**

Sitting in public at 4th Floor City Exchange 11 Albion Street Leeds LS1 5ES on 31 July 2013

The Appellant appeared in person

Mr T Eyre Officer of HM Revenue and Customs for the Respondents

DECISION

1. This is an appeal by Elizabeth Navin Jones (“the Appellant”) against a first late payment penalty imposed under Paragraph 3(2) of Schedule 56 Finance Act (“FA”) 2009 for the failure to pay tax on time for the year ending 5 April 2011.

2. Having given our decision to dismiss this appeal at the conclusion of the hearing, the following are full written findings of fact and reasons for the decision.

Background facts

3. A notice to file for the year ending 5 April 2011 was issued to the Appellant on 6 April 2011. The filing date for a non-electronic return was 31 October 2011 or 31 January 2012 for an electronic return. The Appellant chose to file her tax return online whereby the liability was automatically calculated by HMRC’s computer system. Her electronic return for the year 2010/11 was received by HMRC on 11 October 2011 and was “processed” on the same date.

5. The Appellant’s tax liability for the year was £6,564.40. The tax was due to be paid on or before 31 January 2011 in accordance with s 598(4) TMA 1970.

6. At the penalty date of 2 March 2012, £6,564.40 of the tax liability remained unpaid. The tax liability was finally paid in full on 6 March 2012.

7. HMRC issued a notice of penalty assessment on or around 18 April 2012 for £328.00; that is 5% of the tax unpaid at the penalty date.

8. The Appellant appealed against the penalty, on the grounds that she was not informed of the amount owing and neither the Appellant nor her agent were given notification of what needed to be paid. The Appellant said she had always paid on time on receipt of advice from HMRC. The amount calculated by HMRC sometimes differed from the amount calculated by her accountant, which is why she waited for confirmation from HMRC.

9. Around 3 July 2012, having still not received any notification, the Appellant made enquiries by telephone and was told that notification had been sent to her agent.

10. On 10 October 2012 the Appellant notified her appeal to the Tribunal Service, reiterating that she had not been not issued with notification as to the amount she owed. She said that HMRC’s letter dated October 2012 states that the “statement of account” was issued to *her* on 11 December 2011 when in fact the recipient’s address is actually that of her agent, Armstrong Watson. Confusingly HMRC’s letter also stated “your agent has *not* elected to receive” (which was an error).

Appellant’s contentions

11. At the hearing the Appellant reiterated much of what she had said in her correspondence with HMRC and her notice of appeal.

12. The Appellant said that the fact that she did not receive the statement from HMRC confirming the amount of tax to pay was an unexceptional or unusual event. In previous years the statement had always been sent to her, not her agent. She said that she filed her return on time, as she always did, and that HMRC's statement was
5 the trigger for her to pay the tax. She always paid immediately she received the statement.

13. The Appellant said that unusually she had not received a statement in the previous tax year as she had no tax to pay. This may have lulled her into a false sense of security. She agreed that with hindsight she should have contacted HMRC and
10 verified her self-assessment record. Had she done so, she would have known the amount of tax due and paid it on time.

HMRC's contentions

14. HMRC contends that the onus of responsibility rested with the Appellant to pay the required balancing payment of tax by the due date by 31 January 2012 and that
15 there was nothing to prevent her from meeting that obligation.

15. After the Appellant's 2010/11 tax return was filed by her accountant, Armstrong Watson, on 11 October 2011, the agent would have automatically been presented with a calculation showing precisely how much tax the Appellant was required to pay in respect of the period ending 5 April 2011. The agent would also have been informed
20 that their client's tax had to be paid by 31 January 2012. This tax calculation would have been the Appellant's balancing payment for the tax year 2010/11 and would have been computed from the figures taken directly from her tax return.

16. The Appellant's appeal contains no information that would explain why her agent did not inform her of the amount owing once the filing process had been completed.
25 As the Appellant authorised Armstrong Watson to file her tax returns it would have been possible for the agent to have checked the Appellant's self-assessment record at any date prior to 31 January 2012 to verify the tax to be paid. The Appellant therefore did not need to rely on HMRC to issue a statement to her on 11 December 2011.

17. HMRC refutes the Appellant's contention that it made an administrative error by
30 not providing her with a statement of account in December 2011. HMRC maintains that the statement of 11 December 2011 was correctly issued and would have been received by Armstrong Watson. If the Appellant's agent failed to deal with either this notification or that provided during the filing of the Appellant's return on 11 October 2012, then HMRC contends that this failure does not constitute a reasonable excuse
35 for late payment and that any redress should be pursued by the Appellant with the agent.

18. HMRC is only permitted to divulge confidential information held about a taxpayer with the express written consent of the person to whom the information relates. When the Appellant originally authorised HMRC to provide Armstrong
40 Watson with information she would have completed a form "64-8". At the time this was completed the Appellant would have been asked to decide to whom HMRC

should issue statements. Although HMRC is unable to provide a copy of the Appellant's mandate, it contends that the Appellant would have ticked the relevant box on her 64-8 that authorised HMRC to issue statements to the agent.

5 19. The Appellant has stated that she is in the custom of paying her tax each December upon receipt of notification. HMRC records show that the Appellant's self-assessment record was set up on 13 October 1996. She would therefore have been aware of the need to settle her 2010/11 tax liability by 31 January 2012.

Relevant Legislation

10 20. Section 59 B (3) & (4) Taxes management Act (TMA) 1970) - Payment of income tax and capital gains tax

(3) In a case where the person-

(a) gave the notice required by section 7 of this Act within six months from the end of the year of assessment, but

15 (b) was not given notice under section 8 or 8A of this Act until after the 31st October next following that year,

the difference shall be payable or repayable at the end of the period of three months beginning with the day on which the notice under section 8 or 8A was given.

20 (4) In any other case, the difference shall be payable or repayable on or before the 31st January next following the year of assessment.

21. Schedule 56 Finance Act 2009

Paragraph 1(1) & 1(4)

25 (1) A penalty is payable by a person where he/she fails to pay an amount of tax payable 30 days after the date specified in section 598(3) or (4) TMA 1970 as the date by which the amount must be paid.

(4) The penalty date in relation to an amount of tax, means the date on which a penalty is first payable for failing to pay the amount (that is to say, the day after 30 days from the date specified in section 598(3) or (4).

30 Paragraph 3(2), 3(3) & 3(4)

(2) A person is liable to a penalty of 5% of the unpaid tax.

(3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, a person is liable to a penalty of 5% of that amount.

35 (4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, a person is liable to a penalty of 5% of that amount.

Decision

22. The Appellant authorised any self-assessment statement to be issued to her agent. It is because the Appellant previously elected to have these statements issued to her agent that the statement of 11 December 2012 was not sent to her. HMRC do not send duplicate statements to the taxpayer in such cases.

23. Given the fact that the Appellant had been within the self-assessment tax system since 1996, and the fact that she is accustomed to paying her tax each December, the Appellant would have been aware that she needed to pay her 2010/11 balancing payment by 31 January 2012. The Appellant should therefore have made enquiries with either her agent or HMRC to ensure that the relevant payment was made on time. Had the Appellant exercised reasonable forethought it would have been possible for her to have met her obligations and requirements of the self-assessment system

24. The late payment penalty charged by HMRC is in accordance with legislation and there is no reasonable excuse for the Appellant's failure to pay her tax on time

25. For the above reasons we dismiss the appeal and the £328.00 late payment penalty is confirmed.

26. 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: 27 November 2013