



TC03171

Appeal number: TC/2013/05956

***PAYE – SELF-ASSESSMENT – TAX PAID LATE – DISPUTE RE
AMOUNT DUE – APPEAL BY APPELLANT TO HMRC AGAINST TAX
LIABILITY -- WHETHER REASONABLE EXCUSE - NO – APPEAL
DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THOMAS BARNISH

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 14 August 2013 (with enclosures), and HMRC's Statement of Case submitted on 28 October 2013(with enclosures).

DECISION

1 The appellant appeals against the decision of HMRC to impose a penalty of £186
5 under Paragraph 3(2) and (3) of Schedule 56 to the Finance Act 2009 for failure to
pay on time tax due for the year ending 5 April 2012.

2. The appellant appealed against the penalty saying that he was not working for the
10 best part of 2012 and 2013 and was not in a position to pay his tax due of £3470.87.
He said he was awaiting a phonecall from HMRC about payment arrangements that
he had been promised within 4 days. His appeal was lodged late. The Appellant was
insistent in correspondence with HMRC that he has always paid his taxes on time and
was not trying to avoid payment. He is working with his parents to try to pay the
15 amount owing.

3. The position of HMRC is that they are sympathetic to the Appellant's situation and
indeed can organise 'time to pay plans' to assist people in difficulty. It is a condition
of such a plan that the taxpayer contact HMRC prior to the penalty date. The evidence
20 of the Appellant was not only that he had not contacted HMRC until 23 May 2013
about a possible payment plan but that in hindsight he should have contacted them
sooner. The agreement of HMRC to the proposed payment plan was agreed by letter
from HMRC on 5 June 2013.

4. I have given careful consideration to all the evidence before me. If a person is to
25 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
with an obligation when he otherwise would have done. The matter has to be
30 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.

5. I accept that the appellant had had a difficult time financially but it is clear that he
35 was dilatory both in advising HMRC of his difficulties and requesting a payment plan
and in submitting his appeal. He conceded this. In all the circumstances I find that he
has not established a reasonable excuse for his failure to pay the penalty.

6. I dismiss the appeal.
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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
45 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.

**N A BAIRD
TRIBUNAL JUDGE**

RELEASE DATE 20 December 2013

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