



TC03326

Appeal number: TC/2013/06383

***PAYE – SELF-ASSESSMENT – LATE FILING OF RETURN –
INITIALLY TOLD BY HMRC ADVISOR THAT NO RETURN
REQUIRED – RETURN ISSUED IN MARCH AND EXTENDED TIME
TO SUBMIT IT ALLOWED - APPELLANT STILL REQUIRING
CLARIFICATION - WHETHER REASONABLE EXCUSE - NO –
APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ELIZABETH ADDINALL

Appellant

- and -

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

TRIBUNAL: JUDGE BAIRD

The Tribunal determined the appeal on 3 February 2014 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 4 September 2013 (with enclosures), and HMRC's Statement of Case submitted on 26 November 2013 (with enclosures).

DECISION

1 The appellant appeals against the decision of HMRC to impose a penalty of £100
5 under Paragraph 3 of Schedule 55 to the Finance Act 2009 for the late filing of her
individual tax return for the year ending 5 April 2012. A non- electronic return was
received by HMRC on 5 June 2013. The notice of appeal was received late but
allowed on application to the Tribunal.

10 2. In the Notice of Appeal the appellant says that she was told by an advisor at
HMRC in response to a query made in January 2013 that she did not need to complete
a return for the year 2011-12 for rental income that she had received and when she
was finally asked to complete a return it the January deadline had already passed. She
had written to HMRC on 25 January 2013 but had not received a reply although she
15 did receive the tax return they sent her.

3. HMRC accept that the appellant contacted them in January 2013 about the
commencement of an income source in February 2012. They say that the deadline for
advising HMRC of that new income source, which required the completion of a self-
20 assessment return, was 31 October 2012. The appellant failed in that obligation as she
did not advise HMRC until January 2013. The advisor who spoke to the appellant told
her to confirm details of her new income in writing but a decision was then made to
send her a tax return for 2011-12. This was issued on 24 January with a revised
filing date of three months and seven days after the issue date. HMRC say that the
25 appellant contacted them by phone on 15 March 2013 and was told that a return had
been sent out to her and offering a duplicate in the event of her not having received it.
The appellant then wrote to HMRC again on 9 April querying the conflicting
information she had received and HMRC replied by letter on 29 April 2013 reiterating
that a return was required and enclosing a duplicate form. HMRC conclude that the
30 appellant has not established that on a balance of probabilities there is a reasonable
excuse for her failure to file her return on time.

4. 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
35 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 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.

40 5. I have given careful consideration to all the evidence before me in this case. I
accept that the appellant may have been told initially on the phone that a tax return
would not be necessary but she was then sent a return for completion and it was
subsequently confirmed to her twice that a return was required. She refers in her letter
45 of 9 April to HMRC's letter of 29th March, telling her a return was required and had
been issued to her and to contact them if she had not received it. That letter is clear
that a return was required. It seems to me that the appellant received an answer to her

query and that it was made clear to her in March 2013 that a return had to be filed but she did not do this until 5 June. There is no explanation for her failure to deal with the return which she had been clearly told was required. I find that she has not established that she has a reasonable excuse for her failure to file her return on time.

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7. I dismiss the appeal.

8. 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: 13 February 2014