



TC03448

Appeal number: TC/2013/09289

***MACHINE GAMING DUTY - LATE LODGING OF RETURN – CHANGE
IN CLUB SECRETARY – INEXPERIENCED IN COMPLETION OF
RETURN – DELAY IN HMRC SENDING REQUESTED COPY OF
PREVIOUS RETURN - WHETHER REASONABLE EXCUSE - NO –
APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BIRKDALE CONSERVATIVE CLUB

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE NORMA BAIRD

The Tribunal determined the appeal on 28 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 28 November 2013 (with enclosures), and HMRC's Statement of Case submitted on 14 January 2014 (with enclosures).

DECISION

1 The appellants appeal against the decision of HMRC to impose a penalty of £100 in
5 terms of The Machine Games Duty Regulations 2012 and Schedule 55 s. 13 of the
Finance Act 2009 for the late submission of the July 2013 quarterly return for
Machine Gaming Duty (MGD). The return was due on 30 August 2013 but was not
received by HMRC until 10 September 2013.

10 2. It is accepted by the appellants that the return was late. They say that the club
Secretary changed in April 2013. He was inexperienced in the submission of the
MGD return and as he was unable to find a copy of the previous return he contacted
HMRC and asked them to send him a copy of the return for the period to 30 April
15 2013. This was not received until 9 September and it was only then that the Secretary
was in a position to file the return. He had not been told that late submission of the
return would give rise to a penalty.

20 3. The position of HMRC is that the appellants have not demonstrated that they have
a reasonable excuse for the late submission of the return. Their view is that the
appellants ought to have retained a copy of the previous return. It was their
responsibility to ensure that the return was submitted on time. The fact that they
waited for HMRC to send a copy of the previous return does not constitute a
reasonable excuse.

25 4. I have carefully considered the evidence before me. MGD was introduced only in
February 2013 and only one return had been submitted by the appellants. HMRC had
made it clear to taxpayers liable for MGD that no penalty would be charged for late
submission of the first return. I have some sympathy for the appellants in this case but
I must consider what amounts to a reasonable excuse. If a person is to rely on
30 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 considered in the light of
the actions of a reasonable prudent taxpayer exercising foresight and due diligence
35 and having proper regard for his responsibilities under the Taxes Acts.

40 5. Whilst I accept that the Secretary of the appellant club was new to the job and to
the tax and that he contacted HMRC prior to the due date he had by that time been in
post for a few months. It is the responsibility of taxpayers to ensure that systems are
in place to enable tax obligations to be met in time. Information is available online,
from which it would have been clear that late lodging of the return would result in a
penalty. Assistance could have been sought from HMRC by telephone. It seems to
me that the appellants did not take all reasonable steps to file their return in time and I
find that the penalty was properly charged.

45 6. I find that the appellants have not established that they have a reasonable excuse for
late filing and 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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**NORMA BAIRD
TRIBUNAL JUDGE**

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RELEASE DATE: 25 March 2014