



TC03695

Appeal number: TC/2014/01038

Income Tax – annual return filed late – appellant subject to PAYE – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SARAH OSBORNE

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 22 May 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 18 February 2014 (with enclosures) and HMRC's Statement of Case submitted on 21 March 2014 (with enclosures).

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DECISION

5 1. This is an appeal against the imposition of a penalty of £100.00 for the late filing of the Appellant's individual tax return for the year ending 5 April 2011 which should have been filed either electronically or in paper form by 6 November 2013 but was not received by HMRC until 6 January 2014.

10 2. HMRC had issued a notice to file the return on 30 July 2013 which resulted in the last filing date being 6 November 2013. As no return had been received HMRC issued a penalty notice on 12 November 2013 which should have prompted the Appellant to take the necessary corrective action.

15 3. In his letter dated 21 January 2014 addressed to HMRC, Mr Karpel of ADS Accountants on behalf of the Appellant states that the request for returns 'was only issued on 30th July 2013 to an address that our client had moved from. Further there appears to be no reason why our client should be asked to do returns for those years. Her total income was under the PAYE system although this appears to have been incorrectly operated by one of her employers'.

20 4. On 30 January 2014 HMRC wrote to the Appellant advising that it could not accept the appeal against the late filing penalty because the deadline for making an appeal had passed.

25 5. In her Notice of Appeal, completed by her accountants, the Appellant stated that the notice to file returns was only issued in July 2013 and that she had no reason to volunteer returns as all of her income was subject to PAYE. Mr Karpel further stated that the penalties should be vacated as there was no reason to request returns and that the appeal was within seven months of the request for returns being issued.

6. It appears the Appellant was successful in having a penalty set aside for the late filing of her 2011/12 return.

30 7. HMRC contend that the Appellant was correctly served with a 2010/11 tax return as when it was eventually received on 6 January 2014 it became apparent that she owed an additional £498.00 in tax for 2010/11.

8. HMRC further contend that as there was nothing to prevent the Appellant from filing her 2010/11 tax return by 6 November 2013 no reasonable excuse has been established.

35 9. The Tribunal notes that the Appellant has not mentioned in her grounds of appeal the point made in the letter dated 21 January 2014, referred to in paragraph 3 above, that the original returns issued on 30 July 2013 were sent to the wrong address. The Tribunal further notes that HMRC has not raised the issue as to whether the appeal was received within time.

10. As once the request for a return has been issued the onus is on the Appellant to file the return within the time limits imposed by statute and as the Appellant has not offered any reasonable excuse as to why the penalty should be removed, the appeal is unsuccessful and the penalty of £100.00 remains.

5 11. 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
10 “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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Alastair J Rankin
TRIBUNAL JUDGE

RELEASE DATE: 06 June 2014