



TC03924

Appeal number: TC/2014/03110

INCOME TAX – late submission of individual tax return – Whether reasonable excuse for late submission of return – Yes.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STEVEN MAURICE SOUTH

Appellant

- and -

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

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA AIIT**

The Tribunal determined the appeal on 12 August 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 3 June 2014, and HMRC's Statement of Case dated 23 June 2014 with enclosures. The Tribunal wrote to the Appellant indicating that if he wished to reply to HMRC's Statement of Case they should do so within 30 days. A reply dated 16 July 2014 was received.

© CROWN COPYRIGHT 2014

DECISION

1. Introduction

5 This considers an appeal against a penalty of £100 levied by the Respondents (HMRC) for the late filing by the Appellant of his individual tax return for the tax year 2012 – 2013.

2. Legislation

Finance Act 2009 Schedule 55

10 Taxes Management Act 1970, in particular Section 8(1D)

3. Case law

Crabtree v Hinchcliffe (Inspector of Taxes) [1971] 3 ALL ER 967

Clarks of Hove Ltd v Bakers' Union [1979] All ER 152

Rowland v HMRC [2006] STC (SCD) 536

15 Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC)

4. Facts

20 The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970. For the period ended 5 April 2013 an electronic return must be filed by 31 January 2014.

5. In respect of the year 2012-2013 the Appellant failed to submit his individual tax return. As the return was not submitted by the latest filing date of 31 January 2014 HMRC issued a notice of penalty assessment on or around 18 February 2014 in the amount of £100.

25 6. Appellant's submissions

In a letter dated 4 March 2014 the Appellant appealed to HMRC against the Notice of penalty assessment. He said "I have not received a tax return in the post or by email, neither have I had a request to complete a tax return by post or by email. In previous years when I have been asked to complete one (not every year though), I have been
30 sent the tax return by post and completed every one on time. If you send me one I will be happy to complete it."

7. In a letter dated 20 March 2014 HMRC rejected the appeal and offered a review. the response included the following:

35 "On reviewing I can see that no evidence to date has been received confirming that you did not receive a tax return or notice to file."

8. A request for review of decision form SA634 completed by the Appellant on 3 April 2014 was received by HMRC on 7 April 2014. In the request the Appellant made the following comments

40 What kind of tautology is your statement 'I can see that no evidence has been received that you did not receive a tax return'. If I did not receive a tax return how on earth would I know to tell you I have not received something I was not expecting. Why would I do this? This is bureaucracy gone awry. The bottom line is this I did not

receive a tax return. If I did I would have completed it, as I have done when requested in the past. If you send me one now I will complete it with due haste. Forget about 'reasonableness' in law, if I do not have a return I cannot send it to you."

5 9. HMRC wrote to the Appellant on 13 May 2014 giving the conclusion of their review. It confirmed that the decision to charge a penalty was correct. It commented: "I have checked HMRC records for you and they show that a notice to file was sent to you on 6 April 2013. A paper return was not issued as you had filed online in 2011/12 so it is assumed you will continue to file online.

HMRC have no record of any mail being undelivered.

10 10. In his Notice of Appeal dated 16 May 2014 the Appellant makes the following points:

I have not received any request by email or post to complete a tax return for the 2012/13 self-assessment. The tax office say that as they have checked their records and 'a notice to file was sent to me on 6 April 2013. A paper return was not issued.....' If a notice was sent to me I have 2 issues:

15 1) If, as they say, they did not issue a paper return, then how was the notice sent to me (referred to above), email ?? If so I have had a new email address since the previous tax return was filed.

20 2) If indeed any communication was sent by post, it was not received. Could it be that the address details it was sent to are inaccurate? The inaccuracy appears to be the street name.

Address sent toFinkle Street Lane

Actual address..... Finkle Street

25 11. In response to HMRC statement of case the Appellant wrote to the Tribunal on 16 July 2014.. The letter includes:

30 "... Within the HMRC case statement prepared on 23/6/14, it states that self-assessment is based on voluntary compliance. However in previous years I have been sent in the post, self-assessment forms to complete in some years, and then not sent them in other years. Furthermore, as HMRC's own website states in the 'Do you need to complete a tax return?' sectionit says "If you have relatively straight forward tax affairs and already pay tax through PAYE" (As indeed I did in the tax year 2012/13), then "..... you probably won't need to complete a tax return." Given that I received no written instruction to complete a tax return, given the above advice, how would I know to 'voluntarily' provide information.

35 Secondly in the HMRC responsethey say that even if I "believed a Self-assessment return was not required the penalty notices would have alerted him.....This is exactly what did alert me, and I contacted HMRC in March 2014.

40 The letter goes on to explain that now the appellant understands that he has to file a return he is now having to set up a new account in order to file online and to gain P11D and P60 forms from a previous employer who has been taken over.

12. HMRC Submissions

HMRC say the Appellant has filed self-assessment returns online since 2010-2011 and they therefore consider he is experienced with the self-assessment system and fully aware of his tax obligations.

5 13. HMRC say the Notice to file was sent to the address they hold on file which has the correct post code. They say that as “a Notice to file for the year ending 5 April 2013 was correctly issued to (the appellant) and as such he was legally bound to complete and file it by the legislative deadline and there is nothing within this appeal that would relieve him of this obligation”

10 The Tribunal notes that this statement is inaccurate. There is no obligation to complete and file a Notice to file. When requested to do so there is an obligation to complete and file a tax return.

14. HMRC say they have no discretion in the level of the penalty which was imposed in accordance with Paragraph 3 of Schedule 55 of the Finance Act 2009.

15 15. HMRC have considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009. They say special circumstances must be “exceptional, abnormal or unusual” (*Crabtree v Hinchcliffe*) or “something out of the ordinary run of events” (*Clarks of Hove Ltd. v Bakers’ Union*). In their view there are no special circumstances which would allow them to reduce the penalty.

20 16. HMRC make a number of submissions about the fact that the appellant had not submitted a return by the date of their statement of case. In turn the appellant has given reasons for this. The Tribunal has not set out the details of these submissions because they concern events which occurred after the date of issue of the penalty notice which is being appealed.

25 17. Tribunal’s Observations

The Tribunal has considered these submissions and comments as follows:

30 The result of the appeal dated 20 March 2014 is a piece of nonsense and shows that the appeal was not properly considered by HMRC. It is ridiculous to expect the appellant to produce evidence to show he did not receive the tax return or notice to file.

However subsequently he did get evidence that he did not receive a tax return. It came from HMRC in their letter of 13 May 2014 which stated a paper return was not issued.

35 The Tribunal notes that the reasons the appeal was upheld is conspicuously absent from HMRC’s statement of case.

18. The Tribunal does not accept HMRC’s statement that because the appellant has completed two self-assessment returns he is experienced in self- assessment, with that level of experience he could be described as a novice.

19. The appellant has not received a return or notice to file a tax return from HMRC every year. In the respect of the year 2012-2013 he was not issued with a paper return and he did not receive a notice to file. As this had been his experience in some previous years he was not alerted to the fact that he needed to complete a return in 2012-2013 until he received the penalty notice.

20. The Tribunal agrees with HMRC that if an appellant is requested to file a return it is the Appellant's responsibility to submit that return on time, and there is nothing that relieves him of that obligation. The return for the period 2012-2013 was due to be submitted online by 31 January 2014, but it had not been submitted by 18 February 2014. A penalty of £100 is therefore due unless the appellant can establish a reasonable excuse for the delay as referred to in Paragraph 23(1) Schedule 55 Finance Act 2009.

21. A reasonable excuse is normally an unexpected or unusual event that is unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to file on time. In the Tribunal's view the appellant was unaware that he was required to complete a return. In the past he had not been required to file a return every year and therefore when he did not receive a return or a notice to file for the year 2012-2013 he was not alerted to any problem. In addition HMRC's guidance notice indicated that he probably would not need to file a return.

20 HMRC sent the notice to file by post. The appellant did not receive the notice to file. The postal address held by HMRC is slightly inaccurate which may be an explanation for the non-delivery.

In the Tribunal's view all of these circumstances constitute a reasonable excuse for the appellant's failure to provide a return by 31 January 2014. It is clear that until he received a penalty notice he had no idea that he was required to file a return. The appeal against the penalty dated 18 February 2014 is therefore allowed.

18. 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.

35

PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 14 August 2014

40