



TC02434

Appeal number: TC/2012/08436

CAPITAL GAINS TAX – penalty – late payment – gain on disposal of land – no cash received from purchaser – application by taxpayer for time to pay – taxpayer’s application refused by HMRC too late for taxpayer to fund the tax payment from other sources prior to the penalty date

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR STEPHEN BRAND

Appellant

- and -

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

**TRIBUNAL: SIR STEPHEN OLIVER QC
 SONIA GABLE**

Sitting in public in Ashford (Kent) on 30 November 2012

The Appellant appeared in person

Karen Weare for the Respondents

DECISION

1. Stephen Brand appeals against a penalty under Schedule 56 Finance Act 2009
5 of £1,965 for the year ended 5 April 2011. He incurred the penalty because he failed to pay his self assessment tax for the year ended 5 April 2011 by the statutory due date.

2. The penalty, imposed by paragraph 1 of Schedule 56, becomes payable when
10 the person in question fails to pay his self assessed tax (in this case Capital Gains Tax) before 30 days have passed from the date for filing his return. Mr Brand filed his return showing Capital Gains Tax £39,313 by 31 January 2011 but failed to pay the tax until 12 February. Had he paid by 2 March, his “failure” would not have been penalised.

3. Stephen Brand relies on the reasonable excuse defence for not paying by 2
15 March 2011.

4. In essence, the excuse is this. He had incurred a substantial gain on the sale of
property for a consideration that had not been paid and has still not been paid. He was confident that he could borrow the tax at any time and on short notice. Shortly after filing his self assessment return he sought information as to payment. Acting on
20 instructions received from HMRC, he lodged the supporting details with his local tax office and applied for time to pay. He did those things on 9 February and on 20 March he received a phone call refusing his time to pay application. He borrowed the £40,000 to cover the tax from a friend, banked it and, once it was cleared, sent a cheque to HMRC which was cleared by them by 12 April 2012.

5. In more detail, the facts are these. Stephen and Kevin Brand, brothers, were in
25 the motor trade in Broadstairs, Kent. They owned their premises (in High Street, Broadstairs) in equal shares. A developer, who was and still is a friend of Stephen Brand, agreed to buy the trade premises for £600,000 from Stephen and Kevin. The developer did not have the money but expected to realise other developments which
30 would give him the funds to pay for the High Street, Broadstairs premises.

6. Stephen and Kevin contracted to sell the Broadstairs premises to the developer
on 21 June 2010 for £600,000. The developer/purchaser then entered into a loan agreement for £600,000 with Stephen and Kevin Brand. The “redemption date” was to be 1 July 2011. Completion (without payment) took place in July 2010.

7. The developer was unable to pay by the redemption date. Stephen Brand and
35 the developer remained in close touch all the time.

8. Stephen Brand, who has been in self assessment since 1996, filed his self
assessment return on 24 January 2012 showing a capital gain of £215,200 and capital gains tax of £38,736 on the gain.

9. On 9 February 2012, Kevin Brand went to the Margate tax office to discuss their problems in paying the capital gains tax in the absence of cash from the purchaser. Acting on the advice received by Kevin from the tax office, Stephen (on 9 February) wrote to HMRC in Liverpool asking for time to pay and explaining the situation; and he delivered the paperwork about the transaction to the Margate office the same day.

10. On 2 March (the date to which the penalty provisions related) the Margate tax office telephoned asking Mr Stephen Brand where the requested paperwork was. The caller undertook to look for it and on 20 March Stephen Brand received a call from the Croydon tax office telling him that payment should be made by 2 April 2012, failing which a distraint order would be obtained. The caller followed that with a letter of 22 March refusing Stephen Brand's time to pay application stating as his reason that Stephen Brand "had had time to pay previously". (Kevin Brand was given time to pay).

11. Following the refusal of the time to pay application, Stephen Brand approached a friend for a loan to pay the tax. That friend gave him the £40,000 cheque that Stephen Brand banked and by 12 April HMRC had cleared Stephen Brand's tax cheque.

12. The present circumstances are of a large gain being realised without any payment from the purchaser, leaving the tax payer with the obligation to pay his capital gains tax without resources of his own to fund the tax. We accept that, had Stephen Brand known about the refusal of his time to pay proposal within say, two weeks of applying on 9 February, he would have paid the capital gains tax by 2 March and no penalty would have been incurred. We also accept that Stephen Brand had been regularly in touch with the developer about the amount still outstanding on the as yet unredeemed loan. Stephen Brand, we think, had a reasonable expectation that HMRC would have responded to his request for time to pay by, say, 23 February; Stephen Brand would then have been able to pay the capital gains tax by 2 March.

13. On that basis, we think that Stephen Brand had a reasonable excuse. The absence of funds was no fault of his. He can be excused for assuming that HMRC would have dealt with his application for time to pay and left sufficient time for him to raise the funds by borrowing in order to get the money to HMRC by 2 March 2012.

14. For those reasons the appeal is allowed.

15. 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.

**SIR STEPHEN OLIVER QC
TRIBUNAL JUDGE**

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RELEASE DATE: 17 December 2012