



TC03429

Appeal number: TC/2013/06868

INCOME TAX – Individual Tax Return – Self Assessment – late filing penalty – reasonable excuse – change from employed to self employed – illness – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MRS ANUPAMAH HUNEEWOTH

Appellant

- and -

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

**TRIBUNAL: JUDGE RICHARD J MANUELL
 MRS H MYERSCOUGH ACA**

Sitting in public at 45 Bedford Square, London WC1B 3DN on 19 December 2013

The Appellant did not attend and was not represented at the hearing. The Appellant had informed the Tribunal by email dated 19 December 2013 that she was unable to attend because her baby son was 6 months old and she was reluctant to leave him with a neighbour. The Appellant sought an adjournment. The Tribunal considered the application but refused it, because (a) the Appellant could have brought her son with her; (b) made proper alternative arrangements for his care; (c) the Appellant had set out her case clearly in writing and (d) the nature of the issues in the appeal did not require the Appellant's personal attendance. The Tribunal was satisfied that it was in the interests of justice to proceed with the hearing despite such absence.

Having read the bundle of documents filed by the Respondents and having heard Ms Karen Weare, Presenting Officer, for the Respondents

DECISION

1. The Tribunal decided that it had no jurisdiction in respect of the self assessment
5 income tax assessment of £3,000, identified by the Appellant in her Notice of Appeal
as a surcharge or penalty. It was for the Appellant to lodge a corrected self
assessment return if she contended that the assessment made was wrong. The
Tribunal's only jurisdiction was the appeal over the late payment penalty of £188 for
10 the year ended 5 April 2012, issued on 19 March 2013. The appeal to the Tribunal
had been served late but an extension of time was not opposed by HMRC and was
granted. The Tribunal decided that the Appellant had failed to show that she had a
reasonable excuse.

2. The facts were not in dispute. The Appellant had been self employed and in self
assessment since 8 June 2012. Notice to file her 2012 return was issued on 14 June
15 2012. The return was filed on line on 30 June 2012, but this showed self employment
as ceasing on 31 March 2012. The self assessment calculation issued showed a
liability of £3,770.75. The Appellant omitted her employment income from 2011-
2012 from her self assessment return. The total tax liability for 2011-2012 was
£4,119.75, was unpaid as at 31 January 2013, and remains unpaid.

3. The relevant legislation, i.e., sections 8, 9, 30 and 59B of the Taxes
Management Act 1970, and schedule 56 of the Finance Act 2009, was copied to the
Appellant by HMRC as part of their bundle. It will not assist the Appellant to recite
those materials at any length here. In brief, the Appellant was under an obligation to
20 file an accurate self assessment return for the relevant tax year once requested to do so
by HMRC and to pay any tax she owed by the due date. The penalties for failure to
25 pay tax owed by the due date are prescribed in schedule 56. Late payment is subject
to the reasonable excuse provisions set out at paragraph 6 of schedule 56, which if
satisfied may avoid a penalty or reduce the period for which a penalty is payable.

4. The Appellant admitted that the tax was unpaid. She had been pregnant which
30 had reduced her clientele. She had suffered thrombosis, causing low income and
financial difficulties. The Appellant contended that this amounted to a reasonable
excuse.

5. HMRC's position was that the penalty was issued in the correct sum and there
was nothing proved which amounted in law to a reasonable excuse. Insufficiency of
35 funds was not a reasonable excuse because, among other matters, the Appellant ought
to have set aside funds to meet her tax obligations.

6. The Tribunal agreed with HMRC's submissions, as set out above. In particular,
the Appellant must have been aware of the payments she received and thus must have
been aware that she would have to (a) make provision for income tax and (b) contact
40 HMRC, preferably in advance, if she foresaw problems.

7. The appeal against the late payment penalties of £188 must be dismissed.

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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**RICHARD J MANUELL
TRIBUNAL JUDGE**

RELEASE DATE: 19 March 2014

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