



TC03275

Appeal number: TC/2013/07035

***PAYE – SELF-ASSESSMENT – FAILURE TO PAY TAX – CLAIM BY
APPELLANT THAT AMOUNT DUE HAD NOT BEEN AGREED WITH
HMRC - WHETHER REASONABLE EXCUSE - NO – APPEAL
DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JULIAN BERRY

Appellant

- and -

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

TRIBUNAL: JUDGE N A BAIRD

The Tribunal determined the appeal on 20 January 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 October 2013 (with enclosures), and HMRC’s Statement of Case submitted on 13 November 2013(with enclosures).

DECISION

1 The appellant appeals against the decision of HMRC to impose a penalty of £460
5 under Paragraph 3 of Schedule 56 to the Finance Act 2009 for the failure to pay on
time his tax due for the year ending 5 April 2012. The tax was due to be paid before
31 January 2013 and as at 13 November 2013 the sum of £9211.13 remained unpaid.

2. The appellant had enrolled for online filing on 28 January 2013 and to allow for
10 receipt of the activation code the filing date was extended until 15 February 2013. The
return for the year to 5 April 2012 was filed online on 6 February 2013. A penalty
notice was issued on 3 March 2013. The appellant says that his return was late
because his accountants had failed to furnish him with the necessary information. He
15 submitted the return the day he got this information. He says it was impossible to pay
the tax on time because the amount had not been assessed.

3. The position of HMRC is that the appellant was under an obligation to file his
return and pay his tax on time. The late filing of the return cannot in itself be deemed
20 a reasonable excuse for the late payment of the tax. The 30 day period before a late
penalty arises gives tax payers some leeway. The return was received by HMRC
online on 6 February and the tax calculated to be £9211.13. The appellant was
therefore aware of the amount he had to pay from 6 February 2013. He had ample
time prior to the penalty date of 3 March either to pay his tax in full or arrange a
25 payment plan but he did neither. The penalty charge was calculated in accordance
with the legislation. HMRC concluded that the appellant had not established that on a
balance of probabilities there is a reasonable excuse for his failure to pay his tax on
time.

4. If a person is to rely on reasonable excuse, this must have existed for the whole of
30 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 and having proper regard for his responsibilities under the
35 Taxes Act.

5. The appellant would have been aware of the amount of tax he would have to pay
on 6 February. I accept that the appellant is in discussion with HMRC about a claimed
overpayment but this matter has still not been resolved and can have no bearing on his
40 tax liability for the 2011-2012 tax year. It was made clear to the appellant in
correspondence from HMRC that a penalty would be charged if the tax was not paid.
The tax has apparently still not been paid.

Taking account of all the circumstances I find that the appellant has not established
45 that he has a reasonable excuse for his failure to pay his tax on time.

6. 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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**N A BAIRD
TRIBUNAL JUDGE**

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RELEASE DATE 28 January 2014