



TC03332

Appeal number: TC/2013/06238

Section 59C(3) and (4) Taxes Management Act 1970 and Schedule 56 Finance Act 2009 – penalty for late payment of tax – whether time to pay arrangement was agreed with HMRC – no – whether reasonable excuse that Appellant believed arrangement existed – no – appeal disallowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NICHOLAS KING

Appellant

- and -

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

TRIBUNAL: JUDGE MICHAEL S CONNELL

The Tribunal determined the appeal on 13 November 2013 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 Appellant's Notice of Appeal dated 30 August 2013, HMRC's Statement of Case dated 2 October 2013 and the Appellant's reply dated 21 October 2013

DECISION

1. This is an appeal against the penalty imposed under paragraph 3(2) of Schedule
5 56 Finance Act 2009 for failure to pay income tax on time for the year ending 5 April
2012.

2. Under paragraph 1 Schedule 56 Finance Act 2009 a penalty is payable by a
person where he has failed to pay an amount of tax payable 30 days after the date
specified in s 59B (3) or (4) TMA 1970 as the date by which the amount must be paid.

10 3. Under Paragraph 3(2) of Schedule 56 Finance Act 2009 a taxpayer becomes
liable to a penalty where payment is made late, the penalty being calculated at 5% of
the tax remaining unpaid at the expiration of 30 days from the due date.

Facts of the Appeal

4. The Appellant's non-electronic return for the year 2011/12 was received by
15 HMRC on 1 November 2012. The Appellant's tax liability was £900.90. The tax was
due for payment by 31 January 2013.

5. On 19 March 2013 the tax was still outstanding, and HMRC issued a penalty of
£45 being 5% of the tax due.

6. The Appellant appealed against the penalty saying that he had spoken to HMRC
20 and agreed that he would pay the outstanding tax as and when he was able to. In effect
he was saying that he had come to a time to pay arrangement with HMRC.

7. HMRC say that their records demonstrate that, on 21 February 2013, the
Appellant telephoned to request a time to pay arrangement, but his proposals were not
acceptable and his request for time to pay was refused. The Appellant was advised of
25 this on the same date and he was advised that he faced the possibility of legal action
and interest as a result of the late payment.

8. The Appellant indicated to HMRC that he was not prepared to take out a loan,
as to do so would involve interest charges which in his opinion were too high.

9. By letter dated 2 May 2013 HMRC incorrectly stated that a time to pay
30 arrangement had been agreed. This was unfortunate and HMRC have apologised to
the Appellant. HMRC say that it did not however constitute a reasonable excuse for
the late payment of the Appellant's 2011/12 tax liability.

10. As at the date of HMRC's statement of case, being 2 October 2013, the sum of
£574.67 remained outstanding in respect of the Appellant's tax liability

35 Conclusion

11. Under paragraph 16 of Schedule 56 Finance Act 2009, a Tribunal may set aside
the penalty if it appears to the Tribunal that the taxpayer had a reasonable excuse for

not paying the tax throughout the period of default. Under paragraph 16(2) inability to pay is specifically excluded as a reasonable excuse.

12. 'Reasonable excuse' is not defined in legislation and is taken to mean something exceptional or out of the taxpayer's control.

5 13. The Tribunal agrees with HMRC's submission, that no evidence has been submitted of an exceptional event outside the Appellant's control to show that the Appellant was prevented from paying the outstanding tax on time. A time to pay arrangement is only agreed by HMRC where they are satisfied that a taxpayer cannot pay his liability on the actual due date and he offers the best payment proposals he can realistically afford. A time to pay arrangement is a contract which requires offer and acceptance. There is no statutory right to a time to pay arrangement and whether one is provided or not is a matter of discretion for HMRC. The Appellant has not shown that he was not in a position to obtain funds, whether by way of a loan from his bank or otherwise.

15 14. The Appellant would have been aware of HMRC's refusal to agree a time to pay arrangement and the error in HMRC's letter of 2 May 2013. At the very least he should have queried the contents of the letter. We agree with HMRC that the incorrect information contained in HMRC's letter did not constitute a reasonable excuse for late payment of his 2011/12 tax liability

20 15. In all the circumstances the Tribunal concludes that the Appellant has not shown a reasonable excuse throughout the period of default and confirms the penalty.

16. 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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**MICHAEL S CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 12 February 2014

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