



TC04807

Appeal number: TC/2015/06232

Income tax – penalty for failure to pay – Whether reasonable excuse or “special circumstances” – No – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DIANA AUSTIN

Appellant

- and -

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

TRIBUNAL JUDGE: THOMAS SCOTT

The Tribunal determined the appeal on 4 December 2015 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 6 October 2015 (with enclosures), HMRC’s Statement of Case submitted on 20 October 2015 (with enclosures), and the Appellant’s Response to the Statement of Case.

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DECISION

Introduction

- 5 1. Mrs Diana Austin appealed against a penalty of £1629 imposed by HMRC as a first late payment penalty for the failure to pay tax on time for 2013-14.
2. Mrs Austin's appeal was on the basis that she had a reasonable excuse for the late payment.

Legislation

- 10 3. Under section 59B(4) of the Taxes Management Act 1970 ("TMA") tax falls due for 2013-14 by 31 January 2015.
4. Schedule 56 to the Finance Act 2009 ("Schedule 56") sets out various penalties for failures to make payments on time. Under paragraph 1(4) of Schedule 56 the relevant "penalty date" is 30 days after 31 January 2015. The first late
15 payment penalty imposed by paragraph 3(2) of Schedule 56 is 5% of the tax remaining unpaid.
5. Under paragraph 16(1) of Schedule 56, liability to such a penalty does not arise if the tribunal is satisfied that there is a reasonable excuse for the failure to pay the tax when due.
- 20 6. Paragraph 9 of Schedule 56 provides that if HMRC think it right because of special circumstances, they may reduce such a penalty.
7. Under paragraph 13 of Schedule 56 a taxpayer may appeal against a decision by HMRC that a penalty is payable, or as to the amount of a penalty.

Facts

- 25 8. HMRC issued Mrs Austin with a notice to file for the tax year 2013-14 on 6 April 2014. The relevant filing date was 31 October 2014 for a non-electronic return or 31 January 2015 for an electronic return.
9. Mrs Austin's electronic return was received by HMRC on 28 December 2014.
- 30 10. Mrs Austin's tax liability for the year was £32,580.56. This amount was due to be paid by 31 January 2015.
11. The tax liability was paid in full on 7 March 2015.
12. HMRC issued Mrs Austin with a notice of penalty assessment on 17 March 2015 in the amount of £1629, being 5% of the tax unpaid at the penalty date.

The Appeal

13. Mrs Austin lodged an appeal against the penalty on 9 October 2015. The stated grounds of appeal were as follows:

5 “HMRC letter dated 15th July stated the law says there must be reasonable excuse for failure to pay the tax owed by the due date and the reasonable excuse must have continued throughout the whole period when the payment was overdue.

10 I believe there was genuine reasonable excuse for late payment and that HMRC contributed considerably to the cause of the delay.

The circumstances and facts are as follows:-

15 On 26th January I moved home. I was 76 at the time and for 10 months extensive refurbishment of the property had been undertaken. My new home is an old listed Georgian building and delays in planning and extra costs had arisen.

The extent of these extra costs was not known until January, 2015.

20 I was in a situation where I had to pay the builder substantial extra costs and also had a considerable tax bill to pay. Both required payment to avoid penalty by the end of February.

25 I immediately applied for and received a mortgage.

The mortgage provider required Forms SA302.

30 My agent requested these on 29th January. The mortgage was available subject to receipt of forms SA302.

HMRC letter dated 16th September 2015 – first page, last paragraph states – “there is no note of a phone call made by your agent on 29th January 2015 requesting a copy of your SA302 for your mortgage application.”

35 In my letter of reply dated 21st September I provided my agent’s evidence that the request was made.

40 My husband on my behalf (I am hard of hearing) telephoned HMRC on the 23rd February and explained the difficult circumstances I was in and that forms SA302 were urgently required.

45 HMRC letter dated 15th July 2015 – first page, third paragraph states-
“Further to this there was no contact with HMRC until after the payments deadline had passed. Had you contacted the helpline prior to the deadline then it is possible payment arrangements could have been put in place and late payment penalties would not have been chargeable.

50 This is exactly what my husband did on the 23rd February and in my letter to HMRC of the 30th July I enclose a copy of a page from my husband’s diary which confirms we made the telephone call and numbers that were telephoned.

The cheque for the tax was sent on the 5th March – five days after the deadline – and immediately the Forms SA302 were received.

In summary I did everything I could to overcome as quickly as possible the problems associated with the payment of the tax and I believe that there was “reasonable excuse”.

5 May I also add that I am now 77 years old, still working and throughout my working life have never had a history of late payment of tax.

I feel strongly about the charge of £1,629 because I did my best to pay on time. HMRC clearly contributed to the late payment and the penalty sum is, I believe, unfairly imposed.”

10 ***Discussion and Decision***

14. The evidence of the parties differed on whether or not Mrs Austin’s agent had in fact called HMRC to request a Form SA302 on 29 January 2015. The agent’s annotated notes on a previous letter to Mrs Austin’s husband indicated that this had occurred. There was, however, no record at HMRC of such a call having been made. For the reasons given below, it is not necessary for me to determine whether or not such a call was in fact made.
15. Mrs Austin argued that she needed to take out a mortgage to pay an unexpected builder’s bill in January 2015, and the mortgage lender required a Form SA302. This is a form commonly accepted by lenders as evidence of the applicant’s income. She claimed that her agent requested the form from HMRC on 29 January, and her husband chased HMRC during February, but the form was not received, and therefore the mortgage was not obtained, until early March. She then sent HMRC a cheque for the tax due on 5 March, five days after the statutory deadline.
16. Mrs Austin argued that HMRC were at fault in not supplying Form SA302 in time for her to process her mortgage, pay her builder’s bill, and meet her tax liability before penalties began to accrue. HMRC contributed to her failure to pay, and this was a reasonable excuse which should mean the penalty did not arise. Alternatively, HMRC should have reduced the penalty to nil under paragraph 9 of Schedule 56 because of the “special circumstances” of the case.
17. Paragraph 16(2)(a) of Schedule 56 provides that an insufficiency of funds is not a reasonable excuse unless attributable to events outside the taxpayer’s control. In this case, while the builder’s bill in January 2015 was unexpected and doubtless unwelcome, Mrs Austin nevertheless had a choice. She chose to pay the builder’s bill in priority to paying her tax bill on time. The fact that she made a decision to prioritise the builder’s bill does not constitute a reasonable excuse for failure to meet the tax liability on time.
18. Nor is it correct to regard the separate question of any delay by HMRC in supplying a Form SA302 as causing or contributing to Mrs Austin’s failure to pay the tax liability until 5 March. It was Mrs Austin’s decision to apply for a mortgage to help to meet her financial commitments. HMRC would not furnish a reasonable excuse to Mrs Austin for failure to pay her tax on time by delaying

in sending a copy form which might assist in any mortgage application. That is the case whether or not Mrs Austin's agent requested the form on 29 January.

19. HMRC considered whether or not there were any "special circumstances" within paragraph 9 of Schedule 56 as a result of which they would think it right to reduce the penalty. They concluded that there were not. While the builder's bill may arguably have been "special" in the sense of being abnormal or unusual, it is not unusual in practice for long-running building works such as those in the present case to produce unexpected bills. I agree with HMRC's analysis in relation to paragraph 9.
20. For the reasons given, I therefore dismiss the appeal and confirm the penalty in the sum of £1629.

Right to Apply for Permission to Appeal

21. 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.

THOMAS SCOTT

TRIBUNAL JUDGE

RELEASE DATE: 15 DECEMBER 2015