



**TC03325**

**Appeal number: TC/2013/06510**

***PAYE – SELF-ASSESSMENT – LATE FILING OF RETURN –  
PROBLEMS WITH SOFTWARE-TOLD BY HMRC THAT UNLIKELY  
PENALTY WOULD BE CHARGED - WHETHER REASONABLE  
EXCUSE - NO – APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LESLIE E. GREEN**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE BAIRD**

**The Tribunal determined the appeal on 3 February 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 17 September 2013 (with enclosures), and HMRC's Statement of Case submitted on 12 December 2013 (with enclosures).**

## DECISION

1 The appellant appeals against the decision of HMRC to impose a penalty of £100  
5 under Paragraph 3 of Schedule 55 to the Finance Act 2009 for the late filing of his  
individual tax return for the year ending 5 April 2012. An electronic return was  
received by HMRC on 26 February 2013. The notice of appeal was received late but  
accepted on application to the Tribunal.

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2. In the Notice of Appeal the appellant's accountant says that the appellant had tried  
to submit his return on 31 January 2013 but there was no acceptance due to problems  
at HMRC's end and despite many phonecalls it was not completed for some time. He  
says too that the appellant had been assured that no penalty would be charged. The  
15 accountant provided to HMRC some correspondence from the appellant and a  
schedule of telephone calls made by the appellant to HMRC.

3. The position of HMRC is that the appellant was under a responsibility to submit his  
return on time. They accept that the appellant had been in contact with them several  
20 times after 31 January 2013 and indeed phoned their helpline on 1 February 2013, but  
say there is no record of any attempt to file his return on or before that date, the first  
attempt being an unsuccessful one on 4 February. They note that the appellant had  
provided no evidence of any attempt to file prior to that. The appellant's own  
schedule of events shows that he was in touch with HMRC on 10 February and did  
25 access his account on that day but failed to successfully file his return. HMRC say  
that the appellant's paper returns for 2007/8 and 2008/09 were filed late. They  
conclude that the appellant has not established that on a balance of probabilities there  
is a reasonable excuse for his failure to file his return 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 tax payer exercising  
35 foresight and due diligence and having proper regard for his responsibilities under the  
Taxes Act.

5. I have given careful consideration to all the evidence before me in this case. The  
first entry on the schedule provided by the appellant at (Folio 11) is dated 'midnight  
40 on 31 January' and records difficulties trying to file the return. The second is contact  
by phone with HMRC on 1 February in the course of which he was given advice  
about filing online and told he would not be fined for late filing. He tried to file the  
return that day but again it was unsuccessful. He phoned HMRC again on 3 February  
and had a discussion with a lady about his User ID. He had previously been told it  
45 was his password that was the problem and when he tried again to file the return the  
message he received was that his password did not conform. On 4 February he was  
told how to get a User ID and password and that if log in failed he was to call back.

He contacted HMRC again on 10 February and was told he had the right ID and password. The appellant does not say whether he tried to file that day or after getting advice on 4 February or not. The next entry is dated 25 February when the appellant tried to phone HMRC but hung up because he was kept waiting so long for an  
5 advisor. On 26 February he spoke to an advisor who told him he would be unlikely to get a fine after the 'saga'. The line then went dead.

6. I accept that the appellant had some difficulties. It seems from the records of HMRC that he had successfully filed his two previous returns online. There is no  
10 record of any attempt to file on 31 January but even if I accept that there was an attempt and that the appellant telephoned HMRC the next day for help there is no indication of any concerted effort by the appellant to file the return after the first advice was given on 3 February. He was given help on 4 February and was told to phone back if he had any problems but did not contact HMRC again until 10  
15 February when he was told he had the correct password and ID and should try again and phone back if he had any problems. It seems that he then took no action until two weeks later on 25 February. Even if the appellant did try to file his return on the day of the deadline it is clear that help was available from HMRC and that assistance was given to enable the appellant to file the return by 4 February. There is no explanation  
20 for the fact that there was a further delay and in these circumstances I find that the appellant has not established that he has a reasonable excuse for his failure to file his return on time.

7. I dismiss the appeal.  
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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  
30 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**

**RELEASE DATE: 13 February 2014**