



**TC01329**

**Appeal number: TC/2011/01134**

*Reasonable excuse. Cause of impecuniosity.*

**FIRST-TIER TRIBUNAL**

**TAX**

**MISS MAXINE BARRON**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: GERAINT JONES Q.C. (TRIBUNAL JUDGE)  
ANTHONY HUGHES ESQ (TRIBUNAL MEMBER)**

**The Tribunal determined the appeal on 07 July 2011 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 09 February 2011 and HMRC's Statement of Case submitted on 22 April 2011.**

## DECISION

1. By her Notice of Appeal the appellant, Miss Barron, appeals against a surcharge or penalty of £54.07 levied against her in respect of a late payment of tax due for the tax year 2008/2009. Although the appeal was out of time, in the absence of any objection from HMRC and in the exercise of our discretion, we extend time until the day upon which this appeal was lodged.
2. The appellant requested a Review by HMRC which was concluded on 10 January 2011, upholding the surcharge.
3. HMRC does not need to prove the default because it has been admitted by the appellant.
4. The basis for the appeal is set out in the Notice of Appeal and in the appellant's letters respectively dated the 21 April and 9 November 2010. In short, the appellant says that she was unable to pay the tax due, on time, as a result of impecuniosity.
5. At the conclusion of the Review the Review Officer correctly stated that "*not having the money to pay is not a reasonable excuse.*" So far as it goes, that is correct. However, the jurisprudence of this Tribunal shows that whilst impecuniosity per se might not amount to a reasonable excuse, the cause of or reason for such impecuniosity might nonetheless amount to, or give rise to, a reasonable excuse. That was not something that the Reviewing Officer took into account.
6. Accordingly, we must consider the reason for the impecuniosity put forward by the appellant who, by her Notice of Appeal signed by her on 9 February 2011, gives evidence that as a result of damage and default by a former tenant at one of her let properties, she found herself with an empty damaged house over the winter of 2009/2010 and had to spend significant sums on repairs and maintenance so as to ensure that further damage was not caused by such things as pipes freezing and then splitting, allowing water damage to occur. The appellant says that used up all her savings and she had to rely upon running up debt on credit cards to fund much of that unexpected emergency work, whilst also attempting to keep up mortgage payments on that rented property.
7. The Reviewing Officer commented that people are expected to keep money aside to pay their tax. In a perfect world, which this certainly is not, that might be so. However, even in a perfect world the unexpected happens. We have little doubt that the appellant has paid tax on her rental income and, once her rental income stream was restored, further tax liabilities accrued upon it, thus benefiting HMRC.
8. HMRC often contends that for a person to put forward a "reasonable excuse" she must demonstrate that some exceptional event has occurred and persisted throughout the period of default. This Tribunal has ruled that that approach is, as a matter of law, wrong. Parliament has laid down that an appellant needs to establish a "reasonable excuse". They are words in ordinary everyday use and the gloss that HMRC seeks to place upon them, cannot be justified.

9. However, nothing in this appeal turns upon whether the appellant needs to prove some exceptional event so as to be able to rely upon a reasonable excuse. That is because we are satisfied that the events to which the appellant has referred, which we accept, are indeed exceptional and were unforeseen. In our judgement, the cause of the appellant's impecuniosity was sufficient to give rise to a reasonable excuse throughout the period of default relied that led to the surcharge of £54.07.

10. The appeal is allowed and the surcharge is discharged.

11. 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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**TRIBUNAL JUDGE**  
**RELEASE DATE: 15 JULY 2011**

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