



TC01357

Appeal number: TC/2010/07497

5% initial surcharge under Section 59C(2) TMA 1970 – Appellant claimed time to pay arrangement in place during and following a period of illness – not accepted by HMRC – tax liability remaining outstanding at appeal – whether reasonable excuse shown for period of default – no – appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

KATHRYN CARTWRIGHT

Appellant

- and -

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

Respondents

TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 28 April 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 15 September 2010, HMRC's Statement of Case submitted on 03 November 2010 and the Appellant's Reply dated 12 November 2010.

DECISION

1. This an appeal against an initial surcharge imposed because of the late payment of tax due for the year ending 05 April 2009.
- 5 2. The Appellant's liability for the year was £4,654.18. The liability was due for payment by 31 January 2010. At the date of the appeal, tax of £1,448.21 remained outstanding.
3. When tax due is still unpaid more than 28 days from the due date a surcharge automatically arises. Under s.59C(2) TMA1970, this initial surcharge is equal to 5%
10 of the unpaid tax at that date. A further 5% surcharge applies where payment remains unpaid more than 6 months after the due date under s.59C(3)TMA1970.
4. HMRC issued a surcharge notice in the sum of £224.33 on 01 April 2010.
5. The Appellant's agent appealed against the surcharge on 20 April 2010, saying he understood that a 'time to pay' arrangement was in place under which the Appellant
15 had arranged to pay off her liability by monthly payments and that consequently no surcharge would be applied, only interest. No other reasons are given for the appeal.
6. HMRC contend that its records demonstrate that a 'time to pay' arrangement was entered into on 08 December 2008 and that this had continued during a period when Mrs Cartwright had been ill with a kidney problem up to January 2009. The 'time to
20 pay' arrangement which had been for the tax year 2007-2008 had expired on 10 January 2009. HMRC further contend its records do not indicate that the Appellant contacted HMRC to agree a 'time to pay' arrangement for the tax year 2008-2009 and in fact no evidence has been produced to the Tribunal to suggest otherwise, although in August 2009 the Appellant had contacted HMRC regarding her 2007-2008 'time to
25 pay' arrangement, asking if she could be let off with the August payment as she was not working that month.
7. The Appellant's agent said that HMRC had 'lost 4 monthly payments of £250.00' during the 'time to pay' arrangement which, after telephone calls by the Appellant and the agent, had eventually been corrected. Accordingly this has no bearing on the
30 appeal.
8. The Appellant's agent indicates that the Appellant had been extremely ill and unable to work for many months, which had a negative impact on her business leaving her unable to pay her tax liabilities as and when they fell due. He said that the Appellant had been hospitalised and unable to work for a 6-month period. The
35 Appellant and her husband had encountered an extremely difficult time and maintained that a 'time to pay' arrangement had been agreed with HMRC. He said that the Appellant was still making monthly payments, which would not be the case if HMRC had not agreed to such an arrangement. The agent says the reason he mentioned the 'lost cheques', which he accepts had been subsequently found and the
40 position in that regard resolved, was he says relevant to the extent that it shows HMRC's records are not necessarily complete and accurate and that the fact that

HMRC have no record of a further 'time to pay' arrangement does not mean that one was not in place.

5 9. The Appellant's agent also says that a second surcharge notice was issued at the beginning of August 2010 and that this had also been appealed, but no response had been received from HMRC. This he said was further evidence that there was 'something lacking in the system'. For these reasons the Appellant, through her agent, asked for the initial surcharge to be set aside on the basis that there was a reasonable excuse for late payment and because it is the accepted practise of HMRC not to apply a surcharge when a 'time to pay' arrangement has been agreed.

10 10. The inability of an Appellant to pay is specifically excluded as a reasonable excuse under s.59C(10) TMA1970. The Appellant did not produce any evidence of a 'time to pay' arrangement for the relevant period, nor is there is any evidence that the Appellant's illness had continued or that there was some other exceptional event which had prevented her from discharging her tax liability by the due date or
15 arranging a 'time to pay' arrangement. At the date of HMRC's statement of case – 03 November 2010 – the sum of £1,448.21 of the tax liability due on 31 January 2010 remained outstanding.

20 11. The Tribunal finds that the Appellant has not shown reasonable excuse throughout the period of default for the late payment of tax due on 31 January 2010 in respect of tax due for the year ending 05 April 2009. Accordingly, the Tribunal dismisses the Appellant's appeal and determines the initial surcharge in the sum of £224.33.

25 12. 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

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RELEASE DATE: 26 JULY 2011