



TC01443

Appeal number: TC/2009/14813

REPAYMENT CLAIM – Repayment claim more than 3 years after over payment – VAT Act 1994, S80(4) – Appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

ANDREW GEORGE BYRT

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE THEODORE WALLACE

Sitting in public in London on 5 September 2011

David Bedenham, Counsel, instructed by the Solicitor for Revenue and Customs; the Appellant did not attend by reason of ill health but participated by telephone.

DECISION

1. This appeal concerned a decision in a letter dated 7 September 2009 not to
5 repay £958 overpaid VAT for the period ending 30 November 2005.

2. The Appellant who had registered for VAT with effect from 1 February 2003
did not submit the return for period 11/05 by the due date. A central assessment was
issued on 13 January 2006 for £958. On 16 February 2006 bailiffs acting on behalf of
10 the Commissioners attended the Appellant's home address and obtained payment of
£970.50 including £12.50 bailiff's costs. I observe that distraint appears to have been
surprisingly soon after the assessment.

3. In September and October 2004 mail to the Appellant's address had been
15 returned unopened. At a date which was not stated the Appellant notified the
Commissioners of his new address in Welwyn Garden City which the bailiff visited.

4. Further mail was returned as undelivered in February 2007. In March 2009 a
long period return was issued covering 1 March 2007 to 31 May 2009. This was
20 returned with boxes 1 to 5 struck through and a note

“Please note! I have been in receipt of benefits since July 2006.”

5. On 4 August 2009 the Appellant telephoned requesting duplicate returns for
25 all outstanding periods. These were completed and received on 5 August 2009, all
being nil returns. These included 11/05. The return was either accompanied by a
repayment claim or was treated as such.

6. On 7 September 2009 an officer at the Commissioners' DMB Banking Office
30 at Liverpool wrote that the assessment had been reduced but that the payment of £958
would not be repaid because under section 80(4) of the VAT Act 1994 the
Commissioners were not liable to repay any amount paid to them where the return
was rendered more than 3 years after the end of the period in which the assessment
was made.

35 7. Section 80(4) applies where a repayment claim is made on or after 26 May
2005. The period for claims under Section 80(4) was extended from 3 to 4 years by
the Finance Act 2008, Schedule 39, paragraph 36; however paragraph 6 of the
Finance Act 2008, Schedule 39 (Appointed Day, Transitional Provision and Savings)
40 Order 2009 (2009, S.I. No 403) provided that paragraph 36 is disregarded where for
the purposes of section 80 of the 1994 Act the relevant date is on or before 31 March
2006. In this case the relevant date under section 80(4ZA)(d) was 28 February 2006
so that the 3 year period applied.

45 8. In the case where as here the relevant return was more than 3 years after the
assessment, section 80(4) provides,

“(4) The Commissioners shall not be liable on a claim under this section -
(a) ...
(b) to repay an amount to a person under subsection (1b) above,
if the claim is made more than 3 years after the relevant date.”

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9. It is clear therefore that the Commissioners were not liable under the VAT Act to repay the £958 overpaid.

10. This does not however cover the entire legal position. Under section 5 of the Commissioners for Revenue and Customs Act 2005, the Commissioners are responsible for the collection and management of revenue. This is statutorily defined as having the same meaning as the previous statutory duty for the “care and management of the taxes”.

15 11. In *R(Wilkinson) v Inland Revenue Commissioners* [2005] 1 WLR 1718; [2006] STC 270 the House of Lords considered the extend of the similar powers under section 1 of the Taxes Management Act 1970. In *R v Inland Revenue Commissioners, ex parte National Federation of Self-employed and Small Businesses Ltd.* [1982] AC 617 Lord Diplock said that Section 1 gave “a wide managerial discretion” as to the best means of obtaining the highest net return that is practicable.

20 12. In Wilkinson Lord Hoffman referring to Lord Diplock’s dictum said this at [21]

25 “This discretion enables the commissioners to formulate policy in the interstices of the tax legislation, dealing pragmatically with minor or transitory anomalies, cases of hardship at the margins or cases in which a statutory rule is difficult to formulate or its enactment would take up a disproportionate amount of Parliamentary time”.

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13. The present case is potentially a case of hardship. The Appellant’s grounds of appeal state that he suffers from bipolar disorder and was hospitalised in 2003, that became unwell again in 2005 and became incapable of functioning naturally and that in October 2005 things reached crises point when he attempted to take his own life.

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14. The Commissioners’ Statement of Case stated that he was deregistered with effect from 1 August 2006, a date before the period referred to at paragraph 4. It does not appear either from the Statement of Case or from the written submissions by Mr Bedenham that the Commissioners considered whether although they were not liable by reason of section 80(4) to reply the overpaid tax they might make a discretionary repayment. This is not surprising since it would be unusual to cover such discretion in the Statement of Case. Mr Bedenham told me that there was substantial internal correspondence as to the circumstances of the Appellant’s ill health.

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45 15. It does not appear that the Appellant provided to the Commissioners any information such as a report from his medical attendant as to his state of health at the time when he paid the money to the bailiff and the period since.

16. I have no reason of knowing whether such information would show hardship such as to justify a discretionary payment.

5 17. Although on the basis of *Oxfam v Revenue and Customs Commissioners* [2010] STC 686 the Tribunal may arguably have jurisdiction to consider public law issues on an appeal under section 83 of the VAT ACT 1994, it does not seem to me that the exercise of the powers of care and management in cases of hardship is within the Tribunal's jurisdiction.

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18. The appeal is dismissed.

19. I would suggest to the Appellant that if he wishes to pursue the matter he writes to the Commissioners asking for a payment under their care and management powers and providing information including a medical report to enable them to consider his request.

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20. 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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THEODORE WALLACE

TRIBUNAL JUDGE

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RELEASE DATE: 14 September 2011