



**TC01709**

**Appeal number: TC/2011/05116**

*Section 59C Taxes Management Act 1970 – surcharges for late payment of tax – whether personal and family difficulties amounted to reasonable excuse – no – appeal disallowed*

**FIRST-TIER TRIBUNAL**

**TAX**

**IAIN WICKS**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)**

**The Tribunal determined the appeal on 9 November 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 2 July 2011 and HMRC's Statement of Case submitted on 22 August 2011, the Appellant submitting no Reply.**

## DECISION

- 5 1. This is an appeal against surcharges imposed under s.59C Taxes Management Act (TMA) 1970 following the late payment of tax for the years ending 05 April 2002 to 05 April 2006 inclusive.
2. Under s.59B(4) TMA 1970 the due date for the payment of the amount of self-assessment tax as required by s.9 TMA 1970 is 31 January following the year of  
10 assessment.
3. Under s.59C TMA 1970 where any tax remains undue on the day following the expiry of 28 days from the due date the taxpayer shall be liable to a surcharge equal to 5% of the unpaid tax at that date and, under sub-section (3), where any other tax remains unpaid 6 months after the due date the taxpayer shall be liable to a further  
15 surcharge of 5% of the unpaid tax at that date.

### Facts

4. The table below shows the amount of tax due or paid late and the amount of surcharge applied for each of the years ending 05 April 2002 to 2006 inclusive (as at 22 August 2011) :

<b>Year ending 05 April</b>	<b>Date tax due</b>	<b>Return filed</b>	<b>Amount of tax due £</b>	<b>Payment/due</b>	<b>Surcharge £</b>
2002	31.01.03	19.03.04	2,486.57	22.10.04	124.32 124.32
2003	31.01.04	08.03.06	3,168.02	(due)	1,018.75 1,018.75
2004	31.01.05	24.04.06	4,286.52	(due)	214.32 214.32
2005	31.01.06	11.09.06	16,307.21	(due)	815.36 815.36
2006	31.01.07	30.05.07	10,645.01	(due)	532.25 <u>532.25</u>
					<b><u>5,410.00</u></b>

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### Taxpayer's Appeal

5. The Appellant's grounds of appeal are that :

- 5 (i) over a 5-year period starting in 2002 he suffered from severe psychological stress caused by a sustained campaign of intimidation and harassment from his neighbour. During this period one of his children was also diagnosed with Asperger's Syndrome. This resulted in additional mental stress in coming to terms with that diagnosis and ensuring that the child was given proper care and treatment.
- (ii) because of the Appellant's circumstances his business suffered.
- 10 (iii) aside from the psychological impact caused by the circumstances, the Appellant also suffered financially.
- (iv) the Appellant's condition prevented him from entering into a Time to Pay Arrangement until March 2011.
- 15 (v) The Appellant refers to *Atkinson v Commissioners of HMRC [2011] UKFTT32*. In that case the First-tier Tax Tribunal allowed an Appellant's appeal for the late payment of tax on the grounds that evidence of stress and alcoholism prevented the taxpayer from meeting his liabilities and obligations on time.

#### **HMRC's Submissions**

20 6. HMRC's records show that the Appellant's self-assessment record was set up on 30 June 1999. His filing and payment history show him to be experienced with self-assessment and fully aware of the date self-assessment returns are due, the date tax is due for payment and when and why surcharges are imposed.

25 7. The records show that, throughout the years to which this appeal relate, the Appellant was not incapacitated to such an extent that he was unable to deal with his own business affairs. HMRC do not accept that the Appellant's condition was so serious that, at the due date of payment and from that date continuously throughout the period of default, the Appellant was incapacitated or otherwise unable to deal with his self-assessment tax affairs and pay his taxes by the due dates. It is not unreasonable to have expected the Appellant to have put in place alternative  
30 arrangements or processes in order to ensure that tax was paid on time.

8. It was only upon the issue of a notice warning of legal proceedings that the Appellant appears to have addressed the matter of his outstanding tax for the years ending 05 April 2002 to 05 April 2006 inclusive. Whilst HMRC empathise with the Appellant with regard to his son's condition, it notes that no mention was made of this  
35 (nor the campaign of intimidation against him) until July 2010.

9. HMRC argue that the case of *Atkinson v Commissioners of HMRC* is a First-tier Tribunal case and therefore not a binding precedent. In any event that case involved a much shorter period default which could be directly ascribed to the Appellant's condition. In the case of *Hamidi v Commissioners of HMRC [TC/2010/00280]* the

First-tier Tax Tribunal rejected grounds of the Appellant's illness as a reasonable excuse for the late payment of tax as he had been able to manage other aspects of his financial affairs during this time.

5 10. HMRC submit that taxpayers can avoid a surcharge if they make payment proposals prior to the surcharge trigger date which HMRC agrees to and certain conditions are met. The records show that the Appellant only made payment proposals and a Time to Pay Arrangement was agreed to after the last payment due date.

### Conclusions

10 11. 'Reasonable excuse' is not defined in legislation and there are no supporting tax case authorities. The term must be given its ordinary everyday meaning and it is often regarded as an exceptional event beyond the taxpayer's control which prevented the tax from being paid by the due date. The reasonable excuse must also exist throughout the entire period of default.

15 12. Taking all the circumstances into account, the Tribunal does not consider that the Appellant's grounds of appeal amount to 'reasonable excuse' for the purposes of s.59C(9) TMA 1970. In particular, although the Tribunal sympathises with the Appellant and the circumstances which he had to endure over a sustained period, there is clear evidence that he had been able to manage his financial and business affairs  
20 throughout the period of default. Such circumstances would in any event not amount to an exceptional event beyond the taxpayer's control which prevented the tax from being paid by the due date.

25 13. Accordingly, the Tribunal finds that there is no reasonable excuse throughout the periods of default in respect of which the surcharges relate and determines the surcharges in the total sum of £5,410.00 in accordance with the legislation.

30 14. 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**  
**RELEASE DATE: 4 January 2012**

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