



TC01713

Appeal number: TC/2011/05156

Section 59C(2) Taxes Management Act 1970 – surcharge for late payment of tax – family bereavement causing financial difficulty – whether reasonable excuse – no – appeal disallowed

FIRST-TIER TRIBUNAL

TAX

TIM WILLIAMSON

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 5 July 2011, HMRC's Statement of Case dated 25 August 2011, the Appellant submitting no Reply.

DECISION

- 5 1. This is an appeal against the surcharge imposed under s.59C(2) Taxes Management Act (TMA) 1970 following the late payment of tax for the year ended 05 April 2010.
2. Under s.59B(4) TMA 1970 the due date for payment of the amount of a self-assessment as required by s.9 TMA 1970, is 31 January following the year of
10 assessment.
3. Under s.59C TMA 1970 a taxpayer becomes liable to a surcharge where payment is made late, the surcharge being calculated at 5% of the tax remaining unpaid at the expiration of 28 days from the due date.

Facts of the Appeal

- 15 4. A notice to file a self-assessment return for the year ending 05 April 2010 was issued to the Appellant on 6 April 2010. The filing date was 31 October 2010 (or 31 January 2011 if filed online). The return was filed online on 31 May 2010. The Appellant calculated his own tax liability of £12,513.52.
5. The Appellant submitted form SA303 to HMRC on 18 February 2011 requesting
20 that payments on account for the year 2010-11 be reduced to 'nil'. HMRC therefore contend that the Appellant was fully aware of his tax obligations and that tax was due to be paid on or before 31 January 2011.
6. At 28 February 2011 (being the surcharge trigger date) a balance of £9,892.68 unpaid tax liability remained outstanding.
- 25 7. The tax liability was finally paid on 28 March 2011, being 56 days late.
8. HMRC issued a surcharge notice on 01 April 2011 in the amount of £494.63 representing 5% of the balance outstanding at the surcharge trigger date.

Taxpayer's Appeal

- 30 9. On 18 April 2011 the Appellant appealed the surcharge. He said that, due to the sudden death of his brother aged only 49 years on 31 July 2010, he had to assume care of his brother's six children aged between 6 and 25 years old. He said that this was an emotionally and financially very difficult and demanding period of his life, that he had been preoccupied with the welfare of his late brother's children and that he had to use some of the funds he had, to support his brother's children until Social Services
35 organised financial support. The Appellant also said that whilst continuing to work, looking after his own family, his brother's children and other family difficulties, he had been unable to keep on top of administrative matters.

Conclusion

10. Under s.59C(9) TMA 1970 if it appears to the Tribunal that the taxpayer had a reasonable excuse for not paying the tax throughout the period of default, it may set aside the imposition of the surcharge. Under s.59C(10) TMA 1970 inability to pay is specifically excluded as a reasonable excuse.

5 11. 'Reasonable excuse' is not defined in legislation and is taken to mean something exceptional or out of the taxpayer's control.

12. The Tribunal notes that the Appellant had previously been the subject of a surcharge for the period ending 05 April 2008 and that, on appeal, HMRC cancelled the surcharge due to the bereavement of the Appellant's father-in-law.

10 13. The Tribunal sympathises with the Appellant's circumstances but, as HMRC say, no evidence of an exceptional event has been submitted to show that the Appellant was prevented from paying the outstanding tax on time.

15 14. A taxpayer must be expected to arrange his affairs so as to ensure that payment is not made late or, if this is not possible, to contact HMRC with a view to arranging a 'time to pay' arrangement plan. There is no record that the Appellant contacted HMRC prior to the surcharge trigger date and it was clear from the fact that he submitted form SA303 in mid-February 2011 that he was fully aware of his tax obligations before the surcharge trigger date.

20 15. In all the circumstances the Tribunal concludes that the Appellant has not shown a reasonable excuse throughout the period of default and confirms the surcharge.

25 16. 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

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TRIBUNAL JUDGE
RELEASE DATE: 4 January 2012

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