



**TC01724**

**Appeal number: TC/2011/6586**

**INCOME TAX – SURCHARGE FOR LATE PAYMENT OF TAX – *Did the Appellant have a reasonable excuse – No – Appeal dismissed***

**FIRST-TIER TRIBUNAL**

**TAX**

**MRS JANE HUTLEY**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: MICHAEL TILDESLEY OBE (TRIBUNAL JUDGE)**

**The Tribunal determined the appeal on 12 December 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 17 August 2011 and HMRC's Statement of Case submitted on 28 September 2011. The Appellant did not provide a reply.**

## DECISION

1. The Appellant appealed against the imposition of a surcharge issued on or around 1 April 2011 in the amount of £100.08 for the late payment of the tax due for the year ending 5 April 2010.

2. On 6 April 2010 HMRC issued the Appellant with a notice to file her 2009/10 tax return by 31 October 2010 for a paper return, and if online by 31 January 2011. The Appellant filed her return online on 14 December 2010 which contained a self calculation of the tax due. The Appellant's tax liability for the year was £5,470.68. On 22 December 2010 the Appellant paid £3,459 in respect of an amendment to her 2008/09 tax return. HMRC allocated this payment to the tax due on 2009/10 which reduced the balance owing to £2,001.62. On 14 April the Appellant remitted £5,470.68 to discharge her tax liability for 2009/10. The Appellant was, therefore liable to pay a surcharge for the outstanding tax due as at the day following the 28 February 2011, which was fixed at five per cent of £2,001.62 equating to £100.08.

3. The Appellant's agent pointed out that HMRC had failed to send a reminder or a paying in slip to him and the Appellant in respect of the tax due in 2009/10. The agent was loathe sending any payments without a payslip because in his experience HMRC regularly lost payments or made mistakes over allocation. The Agent supported his contention by referring to HMRC's decision to allocate the payment of £3,459 to the tax due on 2009/10 rather than to the adjustment for the year to 5 April 2009 as requested by the Appellant.

4. HMRC contended that the Appellant did not have a reasonable excuse. In HMRC's view the Appellant was aware of the deadlines for the payment of her tax liability and she bore the responsibility to pay on time. HMRC offered a range of payment methods which were available to the Appellant if she did not want to make payment to the Shipley office. HMRC pointed out that by allocating the payment of £3,459 to the tax due on 2009/10 it worked to the Appellant's advantage by reducing the amount of the surcharge imposed.

5. The Tribunal has limited jurisdiction in penalty Appeals which reflects the purpose of the legislation of ensuring that tax payers pay their tax on time. The Tribunal has no power to mitigate the penalty. The Tribunal can either confirm the penalty or quash it if satisfied that the Appellant has a reasonable excuse for her failure. If there is a reasonable excuse it must exist throughout the period of default. The Appellant has the obligation of satisfying the Tribunal on a balance of probabilities that she has a reasonable excuse for not paying the tax on time.

6. The statute provides no definition of reasonable excuse except that inability to pay the tax shall not be regarded as an excuse. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent tax payer exercising reasonable foresight and due diligence and having proper regard for her responsibilities under the Taxes Acts.

7. The Tribunal accepts that the Appellant was not deliberately avoiding payment of the outstanding tax. The Appellant, however, chose to delay payment until she received a payslip from HMRC. In so doing the Appellant disregarded the instructions of HMRC to pay the tax by the said date, and its warnings on the consequences of missing the payment deadlines. The Appellant knew the amount of tax due, and had at her disposal a range of payment methods to discharge her debt. Her lack of confidence in the efficiency of HMRC was not a valid reason for delaying payment. The Appellant took a risk that would not be taken by a prudent tax payer having regard to her responsibilities under the Taxes Acts.

8. The Tribunal holds that the Appellant did not have a reasonable excuse for the tax remaining unpaid after the expiry of 28 days from the due date of 31 January 2010.. The Tribunal dismisses the Appeal and confirms the penalty of £100.08.

9. 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 TILDESLEY OBE  
TRIBUNAL JUDGE  
RELEASE DATE: 5 January 2012**

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