



TC01830

Appeal number: TC/2011/7590

INCOME TAX – late payment surcharge – section 59C Taxes Management Act 1970 – was payment sent in sufficient time to reach HMRC by due date – reasonable excuse – no - appeal dismissed

FIRST-TIER TRIBUNAL

TAX

GRAHAM HASTINGS-EVANS

Appellant

- and -

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

Respondents

TRIBUNAL: NICHOLAS ALEKSANDER (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 6 February 2012 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 25 September 2011, HMRC's Statement of Case submitted on 1 November 2011 and the Appellant's Reply dated 10 December 2011.

DECISION

1. This appeal relates to the imposition of a late payment surcharge under section 59C Taxes Management Act 1970 ("TMA") following the late payment of tax for the tax year 2009/10.

2. The due date for payment of income tax under self-assessment for the tax year 2009/10 is 31 January 2011 (section 59B(4) TMA).

3. A taxpayer is liable to a surcharge on tax that remains unpaid on the day following the expiry of 28 days from the due date (in other words, anything unpaid at the close of 28 February). The surcharge is 5% of the unpaid tax after the expiry of 28 days (section 59C(2) TMA).

4. HMRC (and this Tribunal on an appeal), may set aside a surcharge if the taxpayer has a "reasonable excuse" for his default, and that excuse is in existence throughout the period of the default.

5. HMRC assert that payment was not received until Tuesday 1 March 2011, which was the date on which Mr Hastings-Evans cheque is recorded on HMRC's computer systems as having been received.

6. Mr Hastings-Evans asserts that he posted his cheque before 28 February. However, he does not state the date on which the envelope containing his cheque was posted (and whether the envelope was placed in the letter-box before the last collection), nor whether the letter was posted first or second class. He exhibits in evidence his cheque stub showing that the cheque was dated 25 February 2011, which indicates that the cheque cannot have been posted before that date. But he provides no evidence as to the date of actual posting (such as an official Post Office receipt).

7. I note that 25 February 2011 was a Friday, and 28 February 2011 was the following Monday, so that Mr Hastings-Evans had left himself negligible margin for any delays.

8. On the basis of the evidence before me, I am satisfied that Mr Hastings-Evan's cheque was not received by HMRC until 1 March 2011, which was more than 28 days after the due date. Accordingly the surcharge for late payment is properly due.

9. Mr Hastings-Evans has given no reasons as to why he might have a reasonable excuse for the delay, and I find that he had none.

10. The appeal is therefore dismissed.

11. 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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NICHOLAS ALEKSANDER

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TRIBUNAL JUDGE
RELEASE DATE: 16 February 2012

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