

DECISION

1. The appellants, Mr and Mrs Lennie, run a business selling, amongst other things, ice cream. It can be readily understood that much of the business might be seasonal.
2. On 25 February 2009 the appellants, through the agency of their accountant, applied to join the Flat Rate Scheme for accounting for value added tax. They had to satisfy certain criteria which it appears they did satisfy because on 12 March 2009 the respondent agreed to them joining the flat rate scheme and accounting for value added tax at a flat rate of 2% of their turnover.
3. Some 19 months later, on 22 October 2010, the appellants' accountant wrote to the respondent stating that the appellants wished to reclaim earlier value added tax paid, and to have their registration for flat rate accounting backdated to an earlier time.
4. It may well be that the application to backdate the entry to the flat rate scheme was prompted by the appellants' realisation that they may have had to account for less value added tax prior to February 2009 if they had been in the flat rate scheme from an earlier date. It also seems to have been prompted by the fact that the respondent was pursuing the appellants for outstanding value added tax of more than £4000 relating to the year 2008. The appellants contended that if they were successful in having their flat rate scheme registration backdated, that would remove all or most of the liability then outstanding.
5. At the hearing before us Mr Priest showed us calculations which demonstrated that had the appellants been admitted to the flat rate scheme from an earlier date they would indeed have had to account for less money to the respondent.
6. There has been no explanation as to why, when the initial application was made, a request for backdating was not made at that time. Further, there is no explanation as to why the appellants did not seek to enter the flat rate scheme at a much earlier date. It seems plain to us that they only applied for backdating, some 19 months later, upon realising that that might result in a refund of value added tax to them.
7. Immediately prior to this appeal coming on for hearing we were handed a letter which was sent to the respondent by the appellants. The very clear inference from that letter is that the appellants had no intention of attending the appeal hearing. In those circumstances, we decided that it was just and reasonable to proceed with the substantive appeal hearing in their absence.
8. The appellants have contended that they are in an extremely precarious financial position. They have adduced evidence to support that contention. Indeed, on one reading of it, it is difficult to understand how they can extricate themselves therefrom.
9. The respondent refused the request for backdating by its letter dated 02 November 2010. It explained that its policy is not to permit backdating simply because that would result in the taxpayer paying less tax. It also indicated that where a

taxpayer has accounted for value added tax using normal accounting procedures, a retrospectivity will usually only be authorised where there are exceptional circumstances. The purpose of the flat rate scheme is to decrease the administrative burden on those who run small businesses.

5 10. At the appeal hearing our attention was drawn to the decision of the High Court
in Revenue and Customs Commissioners v Burke [2009] EWHC 2587 (Ch) where Mr
Justice Henderson observed that the appeal against a request for backdating is not by
way of a rehearing but is by way of a review and that an appeal can only be allowed if
10 the Tribunal is of the opinion that the respondent could not reasonably have come to
the decision to which it in fact came. It is a quasi judicial review appeal provided for
by section 84(4ZA) Value Added Tax Act 1994.

11. Notwithstanding that the appellants have not been present we have considered the
totality of the material placed before us, including the manuscript letters of 9 August
2011 and 13 April 2012 which they have sent in support of their position.

15 12. Whilst having some sympathy for the appellants and whilst being left wondering
why they did not apply for flat rate value added tax accounting from an earlier date,
we find it impossible to conclude that the respondent acted in any way unreasonably
or outside the proper ambit of discretion in refusing the backdating request, especially
given that that request was made some 19 months after the appellants had entered the
20 flat rate accounting scheme.

Decision.

13. Appeal dismissed.

14. This document contains full findings of fact and reasons for the decision. Any
25 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)”
30 which accompanies and forms part of this decision notice.

**GERAINT JONES Q. C.
TRIBUNAL JUDGE**

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