



**TC02659**

**Appeal number: TC/2011/07559**

*Application to make late appeal – decision given in 2006 – Appellant says this was not received - later correspondence implies it must have been received – application refused.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DL LEISURE LTD**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S      Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE JUDITH POWELL  
MRS CAROLINE DE ALBUQUERQUE**

**Sitting in public at on 24 October 2011 at SSCA Copthall House, 9 The  
Pavement, Grove Road Sutton Surrey SM1 1DA**

**Mr D Allen director of DL Leisure Ltd for the Appellant**

**Mrs Alison McHugh and Mr Philip Rowe, officer of HMRC for the Respondents**

## DECISION

This decision relates to an application by the Appellant to make a late appeal in respect of a decision issued by the Respondents on 21 November 2006. The Respondents oppose the application. The proposed appeal arises out of a decision by the Respondents to reject the voluntary disclosure submitted by the Appellant in respect of a claim for £17,381 relating to gaming machines.

### The facts

1. The history of the matter up to October 2006 is not disputed. On 16 September 2006 the Appellant submitted a claim for repayment of VAT overpaid on the takings from gaming machines. It is relevant that this letter was written on notepaper bearing the trading name of the Appellant and that the address was shown at the foot of the letter as 7 – 11 High Street Sittingbourne Kent. The letter was signed by Mr Paul Gamble. On 2 October 2006 the Respondents replied to that address and requested quantification of the amount of VAT being reclaimed under VATA 1984, section 80 subject to Regulation 37 of SI 1995/2518 (VAT Regulations) which also requires the method of calculation used to be stated. The letter also advised that HMRC Policy was still considering the VAT implications of the German Linneweber case and that a further letter would be written once policy in the area had been formulated. The Appellant replied; this was over stamped by HMRC Gloucester as having been received on 30 October 2006. The Appellant's reply did not take the form of a letter but simply enclosed the Schedule. There was no address for the Appellant on that Schedule but it must have been accompanied by a "With Compliments" slip also showing the same address since the Customs receipt stamp was on that slip.

2. On 21 November 2006 the Respondents say they issued their decision to reject the claim for £17,381 relating to gaming decisions and that the decision was made in line with Business Brief 20/06 that HMRC published concerning the issue of voluntary disclosures made with regard to the Linneweber case. The letter containing the decision said that a copy of the Business Brief was enclosed. We were shown a copy of a letter from the Respondents dated 21 November 2006 and addressed to the Appellant at "Sittingbourne Snooker Centre 17-21 High Street Sittingbourne Kent ME10 4AY. The VAT registration number quoted in that letter was, the Respondents acknowledge, incorrect. The letter rejected the voluntary disclosure, stated that HMRC did not accept that the UK's treatment of gaming machines breached the concept of fiscal neutrality and also dealt with the various options available to the Appellant if it wished to appeal against the decision. First, the Appellant was informed of its right to request a reconsideration and secondly it was told of its right to appeal to a tribunal. The letter ended "Please note there are time limits for reconsiderations and appeals and to appeal to a VAT Tribunal. You must lodge your appeal within 30 days of the date of this decision. Please refer to paragraph 28.5 of the VAT Guide for more details."

3. It is relevant at this point to go back in time to 1986 and trace the details recorded for the Appellant with Customs from that date up to October 2008.

4. The Appellant applied for VAT registration on 9 April 1986 and the application showed the name of the Appellant and, separately its trading name as Sittingbourne Snooker Centre and its address as 17 – 21 High Street, Sittingbourne Kent ME10 4AY.
5. An application to join the Annual Accounting Scheme in 1988 showed an address for the Appellant as Paddock House, Chitterne Stables, Chitterne Warminster Wilts BA12 0LF but a letter of response from an officer of Customs and Excise queried the use of this address. There is no record of a reply to this query but in 1991 a letter was sent to Paddock House by another officer recording a telephone conversation in which he had been told of the directors’ decision to transfer the “VAT principal place of business” back to Sittingbourne and saying that unless he heard otherwise he would transfer the file to the Canterbury office and inform them that future visits should be made to “DL Leisure Ltd, Sittingbourne Snooker Centre, 17 – 21 High Street Sittingbourne Kent ME10 4AY”.
6. A report of a visit by Customs in 1996 recorded this address (i.e. 17 – 21 High Street etc.) as being the one visited by the officer but this report would not have been seen by the Appellant. For that reason we gave little weight to this report as being evidence of where the visit was actually made but if the visiting officer had found it difficult to find the Appellant we might have expected a comment to that effect to be included and the report made no mention of the premises being difficult to find.
7. The company was sent at least one VAT return to the same address; we were shown signed returns dated 22 December 2006 and 20 December 2007 both of which had been issued to the Appellant at Sittingbourne Snooker Centre 17 – 21 High Street Sittingbourne ME10 4AY. Both returns were signed by Mr Paul Gamble.
8. On 23 October 2008 Mr Allen wrote to Customs to inform them that the correct address for the Appellant was 7 – 11 High Street rather than 17 – 21 High Street.
9. We accept that the initial allocation of numbers to the Appellant when they first moved to the premises may have been 17 – 21 but that they never occupied that space but instead occupied a space designated 7 – 11. We notice that this is the address shown at the foot of the headed notepaper used for the 23 October 2008 letter. However we also find (and Mr Allen accepted) that communications sent to 17 – 21 were received by the Appellant and its address at 17 – 21 High Street seems to have been confirmed in 1991 according to the letter issued to Paddock House recording a telephone conversation to that effect.
10. On 18 May 2011 Mr Allen wrote on headed notepaper (now showing the trading name “Sittingbourne Sports Bar”) referring to “a VAT refund that was received by you on 21.09.06” and asking for past correspondence so that the claim could be advanced in view of a “new legal decision”. Mr Allen explained that the director dealing with the matter at the time had retired. The Respondents replied by letter dated 24 May 2011 enclosing copies of the correspondence including the rejection letter from HMRC dated 21 November 2006. The Appellant says this letter

had not been received and they were unaware that the claim had been rejected until they received the letter from the Respondents.

### **Our decision**

5 11. Our decision, announced at the time of the hearing, is that we will not grant the application to extend the time to make an appeal. We listened carefully to what Mr Allen had to say and found him helpful. However we find that the Appellant cannot have known the date on which the Respondents received the letter sent by the Appellant to the Respondents on 16 September 2006 unless they were told the date of receipt by the Respondents. The only correspondence from the Respondents that  
10 mentions the date of receipt of the September 2006 letter was the rejection letter dated 21 November 2006 which the Appellant say they did not receive. Mr Allen did not offer any other explanation for quoting the date on which the Respondents received the 16 September 2006 letter when he wrote to them in 2011. We find it is probable that the rejection letter was received by the Appellant, that the Appellant took no  
15 action to challenge the decision at the time despite being given the opportunity to do so and we are not prepared to admit the application to extend the time to make an appeal.

12. 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  
20 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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**JUDITH POWELL  
TRIBUNAL JUDGE**

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**RELEASE DATE: 27 March 2013**