



**TC02670**

**Appeal number: TC/2013/00419**

*VAT – default surcharge – reasonable excuse - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**J AND P WINDOWS LTD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE J. BLEWITT  
MR DAVID E WILLIAMS CTA**

**Sitting in public at Bedford Square, London on 15 April 2013**

**The Appellant did not appear and was represented**

**Mr Robinson, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

1. The Appellant did not attend and was not represented. The Tribunal had sent  
5 notification of the hearing to the address held on file for the Appellant which had been  
returned as “addressee gone away”. The Tribunal had been informed (the details of  
which were unknown to us) that the Appellant had been declared bankrupt and is now  
trading under a different name. A voicemail message was left for Mr Harris, who had  
10 corresponded with the Tribunal on behalf of the Appellant, requesting that he contact  
the Tribunal as a matter of urgency however no response was received. Checks made  
with Companies House showed that there were no receiver details recorded for the  
Appellant.

2. In those circumstances, we had insufficient information to be satisfied as to the  
15 current position of the Appellant. A Tribunal Judge had kept the case listed on the  
basis that the Appellant had been notified of the hearing and on that basis we were  
satisfied that it was in the interests of justice to proceed in the Appellant’s absence.  
Should further information come to light or verification of the information given to  
the Tribunal be provided, an application can be made to review this decision.

3. By Notice of Appeal dated 7 December 2012 the Appellant appealed against a  
20 penalty in the sum of £2,299.64 for late payment of VAT in the period 09/12 charged  
at 15% on the basis that this was the 6<sup>th</sup> period in which payment had been made late.

4. The issue in this case was very narrow and set out in the Appellant’s Notice of  
Appeal and attached letter dated 27 November 2012 which stated that the Appellant  
had intended to pay its VAT for the period 09/12 on 7<sup>th</sup> November 2012 (that being  
25 the due date for online payment) however he did not realise that having made  
payment after 3:30pm the payment would not, under the arrangements operated by his  
bank, clear until the following day. The Appellant submitted in its letter dated 27  
November 2012 that the Company has struggled due to customers defaulting on  
payments and that it would financially struggle if a surcharge was imposed.

30 5. We considered the Appellant’s submissions carefully. We were not provided  
with any specific details regarding the underlying cause of the Appellant’s cash flow  
difficulties arising from defaulting customers and in such circumstances we could not  
be satisfied that such problems were beyond those to be expected in the normal course  
of business or that the Appellant had taken any steps to avoid or overcome such  
35 difficulties. We therefore found as a fact that there was no reasonable excuse on this  
basis.

6. We noted that the electronic acknowledgement from HMRC upon receipt of the  
Appellant’s VAT return (both in the period relevant to this appeal and earlier periods)  
warned the Appellant prior to his online payment that before making a Faster  
40 Payment he should check with his bank as to “*any daily value limits and the latest cut  
off times for making payment*”. While we were sympathetic to the fact that the  
Appellant had no doubt used the Faster Payment system in order to ensure that  
payment was made on time, he fell foul of the cut off time for making a same day

5 payment and consequently it was made late. We found as a fact that the Appellant had received adequate warning about the methods of making online payments from HMRC and that the only explanation put forward by the Appellant, namely that he was not aware that he had missed the cut off time, could not amount to a reasonable excuse.

7. The appeal is dismissed.

8. 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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**J. BLEWITT  
TRIBUNAL JUDGE**

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**RELEASE DATE: 19 April 2013**