



**TC03047**

**Appeal number: TC/2012/08640**

*Income tax – claim for repayment of supposedly overpaid tax – Schedule 1AB and 1A Taxes Management Act 1970 – HMRC issued closure notice rejecting the claim – appeal against HMRC’s rejection of claim – Tribunal not satisfied on the evidence that HMRC’s rejection of the claim was incorrect – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**JANET SIMPSON**

**Appellant**

**-and-**

**THE COMMISSIONERS FOR HER MAJESTY’S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE KEVIN POOLE  
MICHAEL ATKINSON**

**Sitting in public in Priory Court, Birmingham on 12 July 2013**

**The Appellant appeared in person**

**Catherine Douglas, presenting officer of HM Revenue and Customs, for the  
Respondents**

## DECISION

### Introduction

1. This is an appeal against HMRC's refusal to accept a claim for repayment of  
5 tax arising from the Appellant's assertion that her self-assessment tax return for the relevant year included an incorrectly high figure for turnover.

2. These full findings of fact and reasons are issued following a request from the Appellant for such findings and reasons after the issue of a summary decision by the Tribunal on 20 September 2013.

### 10 The facts

3. The Appellant carried on a hairdressing salon business in Dudley under the trading style "Janet's H & B Salon". In her original self-assessment tax return for the year 2008-09, she declared taxable profits of £9,916 from her self-employment. Her total tax and NIC liability for that year was calculated at £1,134.68. Her basis period  
15 for the tax year 2008-09 was 1 April 2008 to 31 March 2009.

4. On 4 May 2011, her agent wrote to HMRC with a request to "repair" the Appellant's 2008-09 return. The amendment they were seeking to make was to reduce the Appellant's turnover by precisely £10,000. With no other changes, this would have resulted in a loss of £84 for the year for tax purposes, resulting in nil tax  
20 liability (and therefore a credit or repayment of the £1,134.68 previously calculated).

5. As the amended return was submitted too late to be treated as a "repair", HMRC treated it as an application for a repayment of tax overpaid, pursuant to Schedules 1AB and 1A Taxes Management Act 1970. After requesting information and evidence to support the claimed £10,000 reduction in turnover, and in the absence  
25 of any satisfactory reply, they issued a closure notice on 15 March 2012 rejecting the claim. This decision was upheld on review by letter dated 16 August 2012 from HMRC.

6. The essence of the Appellant's claim is that the turnover figure in her accounts did not take into account the fact that £10,000 of the money supposedly received as takings of the business was in fact money injected into the business. It was suggested  
30 that the source of this money might have been some £12,000 which she had received from an employment tribunal claim in 2006.

7. At the hearing, the Appellant said she had put the £10,000 into the business by paying personally for goods bought from suppliers. She said she had written down details of the amounts at the time, but had lost the paper. It became apparent from the  
35 bank statements included in the bundle that the £12,000 employment tribunal money had all been spent by 1 April 2008, so that could not be the source of any personal payments of business expenses during 2008-09.

## The law

8. Paragraph 1 of Schedule 1AB Taxes Management Act 1970 (“TMA”) provides, so far as relevant, as follows:

(1) This paragraph applies where –

- 5 (a) a person has paid an amount by way of income tax or capital gains tax but the person believes that the tax was not due, or
- 10 (b) a person has been assessed as liable to pay an amount by way of income tax or capital gains tax, or there has been a determination or direction to that effect, but the person believes that the tax is not due.

(2) The person may make a claim to the Commissioners for repayment or discharge of the amount.”

9. The mechanics of making a claim are set out in Schedule 1A TMA. Paragraph 5 of that Schedule makes provision for an officer of the Board to enquire into claims that have been made. Paragraph 7 of that Schedule provides that any such enquiry is completed “when an officer of the Board by notice (“a closure notice”) informs the claimant that he has completed his enquiries and states his conclusions.” It goes on to say (at paragraph 7(2)) that:

20 “In the case of a claim for discharge or repayment of tax, the closure notice must either –

- (a) state that in the officer’s opinion no amendment to the claim is required, or
- 25 (b) if in the officer’s opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.”

10. Rights of appeal are provided in paragraph 9 of Schedule 1A, which provides (so far as relevant) as follows:

“(1) An appeal may be brought against –

- 30 (a) any conclusion stated or amendment made by a closure notice under paragraph 7(2) above...

35 (3) In the case of an appeal against an amendment made by a closure notice under paragraph 7(2) above, if an appeal is notified to the tribunal under section 49D, 49G or 49H, the tribunal may vary the amendment appealed against whether or not the variation is to the advantage of the appellant.

## Discussion and conclusion

11. The role of the Tribunal under paragraph 9 of Schedule 1A is to decide whether to uphold or vary the amendment made to the Appellant’s overpayment claim by HMRC’s closure notice.

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12. HMRC's closure notice denied the Appellant's claim, thereby effectively deciding it to be "excessive" for the purposes of paragraph 7(2) of Schedule 1A. It therefore amended her claim to nil to eliminate that excess.

5 13. The appeal is therefore technically against HMRC's amendment of the claim to nil.

14. In order to succeed in her appeal, the Appellant must persuade the Tribunal that HMRC were wrong to refuse her claim. To do this, she must produce evidence to support her argument – to that extent, the "evidential burden" lies on the Appellant.

10 15. The Appellant's difficulty is that in the absence of any business records or any clear and satisfactory explanation of how the turnover was supposedly overstated in her original return, she is unable to satisfy us that her claim for repayment of tax is correct and that HMRC's refusal of it is therefore wrong. All the evidence before us points to the conclusion that any private expenditure for business purposes would have taken place before 1 April 2008 and the Appellant has not satisfied us that any  
15 reduction in her original turnover figure for 2008-09 is justified.

16. As the Appellant has been unable to satisfy us that her claim for repayment is correct, we do not consider it appropriate to vary HMRC's decision to amend her claim to nil. The appeal must therefore be dismissed.

17. This document contains full findings of fact and reasons for the decision. Any  
20 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  
25 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

30 **KEVIN POOLE**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 14 November 2013**