



TC01347

Appeal number: TC/2011/00827

Surcharge under Section 59C(2)&(3) TMA 1970 for late payment of tax – Appellant claimed expenses above threshold and caught by self assessment legislation - late payment conceded by Appellant – failure to notify HMRC of new address – Appellant claims underpaid tax should have been collected from his PAYE coding – Appellant’s self assessment return not captured in time for correct coding to be implemented before payment due – whether reasonable excuse – no – appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

MICHAEL MACKEY

Appellant

- and -

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

Respondents

TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 28 April 2011 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 30 January 2011, HMRC’s Statement of Case submitted on 01 March 2011 and the Appellant’s Reply dated 29 March 2011.

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DECISION

1. This is an appeal against the surcharges imposed under s.59C(2) & (3) TMA1970 following late payment of tax for the year ending 05 April 2009.
- 5 2. The Appellant's obligation to complete a self-assessment tax return arises because he claimed expenses at his PAYE employment exceeding £2,000.00. Normally HMRC collect any balancing payment due, or outstanding payment on account, through a taxpayer's PAYE tax code where a paper return is filed by 31 October following the end of the return year. In this case the Appellant did not
10 receive his 2008-2009 tax return at the usual issue date of 06 April 2009 and therefore was unable to file his paper return by 31 October 2009.
3. The Appellant has been completing self-assessment tax returns in respect of expense claims in excess of £2,000.00 since 2001-2002 and was aware of the procedure, the requirement for a 2008-2009 return, and the due date for the return.
- 15 4. HMRC's records show that mail to the Appellant had been returned undelivered in January 2009 and that the Appellant did not advise HMRC of his new correct address until 15 December 2009.
5. On 11 February 2010 HMRC issued a notice to file a return for 2008-2009. Where a return or notice to file is issued after 31 October following the tax year to
20 which it relates, both the filing date and the due date for payment is 3 months from the date the notice to file was delivered.
6. HMRC say that the Appellant delivered an unsatisfactory return on 09 June 2010, which was then returned to the Appellant on 15 July 2010. A satisfactory return was received on 20 July 2010 but did not contain a self-calculation by the Appellant of tax
25 due. The return was accordingly processed by HMRC on the same date and showed a tax liability of £1,165.95. The tax liability was due to be paid on or before 18 May 2010. As at the date of HMRC's statement of case – 01 March 2011 – the liability had not been fully paid.
7. A taxpayer becomes liable to a surcharge where tax is paid late. The surcharge is
30 calculated at 5% of all tax remaining unpaid after the expiry of 28 days from the due date – s.59B(2) TMA1970. A further 5% surcharge is imposed on any tax which is still unpaid more than 6 months after the due date for payment – s.59C(3) TMA1970. HMRC issued the first surcharge notice in the amount of £58.29 on or a few days after 11 August 2010 and the second surcharge notice in the amount of £58.29 on or a
35 few days after 30 November 2010.
8. HMRC contend that the Appellant took over 3 months to complete and submit his 2008-2009 tax return, which revealed that there had been an underpayment of tax of approximately £872.67 for that year. HMRC said that, because the underpayment was not established until 20 July 2010, it could not be collected through the
40 Appellant's tax code and therefore had to be settled by direct payment.

9. The background to the underpayment is that the information contained in the Appellant's 2006-2007 tax return was not captured until 14 September 2007 and accordingly the expenses claimed in that return of £7,078.00 was coded for 2007-2008 and carried forward to 2008-2009. HMRC say it was not until the 2007-2008 return was captured on 12 November 2008 that the 2008-2009 code was changed to reduce the expenses claimed by the Appellant from £7,078.00 to the correct amount of £2,767.00. The subsequent reduction in the Appellant's tax code revealed an underpayment of £872.67 but, because expenses claimed by the Appellant were in excess of £2,500.00, he was automatically caught under the self-assessment legislation and was accordingly required to complete an annual tax return. The underpayment of tax could only have been included in the Appellant's tax code if HMRC had received his tax return by 31 December 2009. As the return was not received until 09 June 2010, it was not possible to 'code out' the tax due.

10. The Appellant disputes HMRC's contention that he was issued with, or received, the 2008-2009 return on or around 11 February 2010, although he concedes that the return was filed with HMRC on or around 09 June 2010, saying that this was in compliance with a conversation he had with HMRC shortly prior to that date. He also says he was unaware of time for payment being 18 May 2010.

11. The Appellant also says that HMRC had access to his new care of address via his employer and that, in any event, he should have received a return from HMRC having set up a postal redirection service in October 2008.

12. The Appellant also claimed that on 14 June 2010 and 20 August 2010 he requested a formal 'time to pay' arrangement to settle his arrears of income tax and that the arrangement was accordingly put in place before the first and second surcharge trigger dates respectively. According to HMRC, their records show that the Appellant did not request a formal 'time to pay' arrangement despite being notified of the 2008-2009 liability before the second surcharge trigger date of 15 November 2010 via the calculation by HMRC issued on 20 July 2010 and the statements of account issued on 23 August 2010 and 09 November 2010.

13. The Appellant asserts that a reasonable excuse existed for late payment of tax because the arrears of tax had resulted from HMRC's failure to make proper and timely use of information either supplied or available to them.

14. The Tribunal took all these circumstances into account and concluded that it was the Appellant's responsibility to ensure that the tax codes that had been issued were correct and to notify HMRC of any changes. A tax code had been sent to the Appellant on 13 January 2008 which included expenses of £7,078.00. The Appellant had the opportunity at that time to provide HMRC with a more realistic estimate of his expenses so that the correct code could have been operated from the start of the 2008-2009 year. The tax that was charged for the fiscal year 2008-2009 was statutorily due and could not be collected through the Appellant's tax code for 2010-2011. He had been notified of this fact by HMRC, who were therefore entitled to demand full payment by 18 May 2010 in accordance with s.59B(3) TMA1970.

15. The Tribunal concluded that there was no reasonable excuse throughout the period of default in respect of the late payment of tax for the year ended 05 April 2009. The Tribunal accordingly dismissed the Appellant's appeal and determined the surcharges in the sum of £116.58.

5 16. 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
10 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)"
which accompanies and forms part of this decision notice.

15 **MICHAEL S CONNELL**

TRIBUNAL JUDGE
RELEASE DATE: 25 JULY 2011

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