



TC02567

Appeal number: TC/2012/00710

SURCHARGE – appeal against surcharges imposed for late payment of income tax-submitted that he delayed paying the tax as he was waiting for clarification of his account from HMRC- appeal dismissed- appellant had no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NEIL JACKSON

Appellant

- and -

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

TRIBUNAL: JUDGE SANDY RADFORD

The Tribunal determined the appeal on on 31 August 2012 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 19 December 2012 (with enclosures) and HMRC’s Statement of Case submitted on 17 February 2012 (with enclosures).

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DECISION

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1. This is an appeal against the imposition of a surcharge of £125.74 imposed for the late payment of tax for the year ending 5 April 2009 and a second surcharge of £125.74 imposed due to any of the tax remaining unpaid six months after the due date for the tax to be paid.

Background and facts

2. The appellant filed a paper tax return on 30 October 2009.
3. From the information provided in the appellant's tax return a tax calculation was issued on 12 November 2009 showing that the appellant had a tax liability of £6,383.60 for the year.
4. On 17 November 2009 a statement of account was issued showing a remaining balance of £3313.10 due for the year due and payable on 31 January 2010. This was made up of a tax payment of £3,264.81 and interest of £48.29.
5. By letter dated 14 December the appellant requested clarification of the statement of account. He pointed out that on 26 May 2009 he had received a statement from HMRC stating that he had overpaid by £1,618.78. HMRC did not reply to this letter until 23 December 2010.
6. In his letter the appellant indicated that he agreed with the tax calculation.
7. By the time the statement was issued the appellant's payments were already overdue as he had decided to reduce the payments on account demanded by HMRC. £1,691.80 was still due for the first payment on account for tax year 2008/09 payable on 31 January 2009 and £1,691.80 for the second payment on account for tax year 2008/09 due on 31 July 2009.
8. The appellant although requiring clarification of the outstanding liability continued to make intermittent payments to his account.
9. However although he received this clarification on 23 December 2010 he failed to make the final payments of the outstanding liability until 26 January 2011 and 24 November 2011 almost two years after the initial calculation was issued.
10. At the surcharge trigger date of 28 February 2010 a balance of £2,514.82 remained outstanding. The tax liability was finally paid on 24 November 2011.
11. HMRC issued the first surcharge on or around 1 April 2010 and the second on or around 11 August 2010.

Appellant's submissions

12. The appellant submitted that he had withheld payment whilst waiting to receive clarification from HMRC regarding the statement of account.

5 13. The appellant detailed all the letters he had sent to HMRC asking for clarification.

14. The appellant submitted that he thought it was wrong to expect payments to be made when information was being requested. He submitted that an early reply would have settled the matter.

HMRC's submissions

10 15. HMRC submitted that the appellant was experienced in the self assessment system and was well aware of his obligation to pay his due tax by the due date.

16. HMRC submitted that while awaiting clarification of the tax calculation he should have made payment of the liability to avoid the imposition of surcharges.

15 17. HMRC submitted that the appellant was issued seven statements of account from 17 November 2010 to the 14 December 2011 detailing the balance on his account and how it was calculated.

18. HMRC submitted that the return calculation also informed the appellant of various options if he had any queries such as checking online or calling the helpline.

20 19. HMRC submitted that it was satisfied that it had honoured its obligation by processing the appellant's return and issuing a tax calculation followed by a statement of account.

20. Whilst HMRC acknowledged that the appellant's letter of 14 December 2009 had not been acknowledged HMRC submitted that this was not a reasonable excuse for non payment of the tax due.

Findings

21. The Tribunal found that both the tax calculation and the statement of account clearly showed the amount of tax due. The statement of account in particular demonstrated that the payments on account in January and July had not been adequate to cover the liability.

30 22. The Tribunal found that the appellant could have contacted the helpline before the due date of the liabilities rather than wait for the clarification. Additionally if the appellant was unable to pay the tax in full he could have made a time to pay agreement with HMRC.

35 23. The Tribunal found that the appellant had no reasonable excuse for the late payment of the tax and the surcharges are hereby confirmed.

Decision

24. The appeal is dismissed.

25. This document contains full findings of fact and reasons for the decision. Any
5 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.

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**SANDY RADFORD
TRIBUNAL JUDGE**

RELEASE DATE: 22 February 2013