



TC01362

Appeal number: TC/2011/1876

SECTION 59C penalty for late paid tax – reasonable excuse? Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

DAVID O’CONNELL

Appellant

- and -

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

Respondents

TRIBUNAL: CHARLES HELLIER (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 30 June 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 and HMRC’s Statement of Case.

DECISION

1. The Appellant paid his tax liability for the year ending 5 April 2009 on 12 March 2010. It was due on 31 January 2010.

5

2. On 3 March 2010 HMRC imposed a surcharge at 5% of the overdue tax under section 59C(2) TMA 1970 because the tax was paid more than 28 days late.

3. Mr O'Connell appeals against the surcharge. He says that he was told by HMRC employees that he had a longer period in which to pay the tax and that he paid within that period.

4. This tribunal may allow the appeal if Mr O'Connell had a reasonable excuse for the delay in his payment (section 59C(9) TMA). In my view, if Mr O'Connell had been told by an HMRC employee, albeit incorrectly, that he had a period beyond 31 January 2010 in which he could pay the tax, and if he paid it within that period, he would have a reasonable excuse for his failure to make payment in accordance with the statute (and indeed the first part of section 118(2) TMA might deem there to have been no failure).

5. Mr O'Connell says in his notice of appeal that "a lady named Alex advised me that I would have an additional four weeks on top of the statutory four weeks to settle...". In a letter to HMRC of 15 April 2010 he says: "I was advised that because my return had been completed so close to the deadline...that I would have an additional four weeks on top of the 28 days window to settle my bill."; and in a letter of 1 June 2010 : "...Alex confirmed I effectively had 56 days to settle my bill."

6. But in a letter of 1 September 2010 to HMRC Mr O'Connell says :

"I was advised by 'Alex' an employee of HMRC that I needed to pay my tax within 4 weeks of 31 January."

7. HMRC say that they have no record of this conversation with Alex but did not produce the records of the calls they did have.

8. It seems to me that the references to the statutory 28 days are to the period before which a penalty arises under section 59C.

9. Apart from the letter of 1 September Mr O'Connell's statements seem to be consistent. But in that letter he says Alex gave him four weeks from 31 January rather than eight weeks. As a consequence it seems to me likely that Mr O'Connell is either confused in his recollection or was confused at the time as to whether the 28 days allowed were being allowed on top of the "statutory period" or were that period. As a result I do not find it proved that Alex did say that Mr O'Connell had eight weeks from 31 January to pay.

10. I therefore find that Mr O'Connell did not have a reasonable excuse for his failure.

11. I dismiss the 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 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.

CHARLES HELLIER

TRIBUNAL JUDGE
RELEASE DATE: 28 JULY 2011