



TC03685

Appeal number: TC/2014/00581

VAT – late submission of return – late payment – taxpayer in dispute with customer – reasonable excuse – no estimated return or estimated payment

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LATERAL ADVERTISING LTD

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 19 May 2014 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 24 January 2014 (with enclosures), HMRC's Statement of Case received on 25 February 2014 (with enclosures) and the Appellant's Reply dated 7 March 2014 (with enclosures).

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DECISION

1. The Appellant company is appealing a surcharge of £1,143.34 in respect of late payment of VAT for the period 09/13. The due date for filing and electronic payment was 7 November 2013 but the return was not received until 21 November 2013 and the payment was not received by direct debit until 26 November 2013.
2. At the due date the Appellant company was in discussion with one of its customers and was therefore uncertain of the exact figure to enter in the return. The Appellant company was already in the default surcharge regime as three earlier default surcharge notices had been issued.
3. The Appellant company is appealing this surcharge on the grounds that it delayed submission of the return and payment of the liability solely so that it could account for the correct amount of VAT due.
4. HMRC on review confirmed the surcharge as it believed the Appellant company did not have sufficient funds to pay the liability by the due date. While HMRC now accepts that it was wrong to make this assumption nevertheless it would have confirmed the surcharge as no reasonable excuse has been provided by the Appellant company.
5. HMRC contend that the Appellant company would have received papers for the periods ending 01/13 onwards which clearly advised the Appellant company to pay its VAT on time. Also the VAT Guide advises the Appellant company that if it is aware that it cannot submit an accurate return then HMRC may accept a return based on estimated figures. HMRC maintains there was no contact from the Appellant company to explain that the return or payment would be late.
6. The Tribunal considers that, while the grounds for upholding the surcharge on review were incorrect, as the Appellant company could have submitted an estimated return and paid the estimated liability on time, no reasonable excuse has been provided by the company for the late submission and late payment.
7. The appeal is therefore dismissed and the original surcharge of £1,143.34 remains.
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.

**ALASTAIR J RANKIN
TRIBUNAL JUDGE**

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RELEASE DATE: 2 June 2014