

[2012] UKFTT 19 (TC)



TC01718

Appeal number: TC/2011/05186

APPEAL – application to extend time for appealing – refused.

FIRST-TIER TRIBUNAL

TAX

NORTH REDDISH WORKING MENS CLUB

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE RICHARD BARLOW

Sitting in public at Manchester on 5 December 2011

Mr Alan Rashleigh for the Appellant

**Mr Bernard Haley of the office of the General Counsel and Solicitor to HM Revenue
and Customs, for the Respondents**

© CROWN COPYRIGHT 2011

DECISION

1. The applicant has submitted a notice of appeal dated 5 July 2011 against a decision conveyed by a letter dated 17 January 2007 in which the respondents refused the applicant's application by way of a voluntary disclosure dated 21 December 2006 for a refund of £13,634.30 of overpaid VAT arising from the operation of a gaming machine at the Club's premises.

2. Although the Notice of Appeal requested an extension of time for the submission of the appeal it was claimed in the Notice that the due date for appealing was 18 May 2011. If that was correct the appeal would have been only a few weeks out of time and it is likely the respondents would not have objected. In fact the basis on which the applicant claimed that the appeal should have been submitted by 18 May 2011 was, I hold, entirely erroneous. That date was based on the Commissioners' refusal to accede to a request dated 18 February 2011 to review their decision of 17 January 2007. The Commissioners were under no obligation to review that decision following the request made over four years after it was given.

3. The applicant's grounds for extending the time for appealing were that the original decision had not followed "the usual protocol for advising the appellant of their rights of review or the relevant time limits". The respondents' letter of 17 January 2007 referred to the appellant having a right of appeal to an independent VAT Tribunal though it did not mention a time limit or give contact details for the Tribunal. In the Notice of Appeal the applicant states that the appellants "are not sophisticated in legal matters but relied on the Commissioners to act properly". In fact, the letter making the original claim refers to the claim as a voluntary disclosure and refers to the legal basis for making the claim and was accompanied by a spreadsheet calculation; none of which seem likely to have been things that would be known to a person who had no knowledge of the subject. In addition the letter of claim refers to the *Linneweber* case, giving its ECJ references, it refers to several sections of the VAT Act as amended and to the views of an unnamed leading tax counsel.

4. Whilst I am prepared to assume that the members of the Club committee did not have direct legal knowledge of VAT matters they clearly had had access to some guidance about it and once the Club's claim was refused it would have been obvious to them that they should seek further guidance and either decided not to do so or accepted advice that led them to decide the issue was not worth pursuing.

5. The Commissioners were not under any legal obligation to give full particulars of the manner of appealing and in the circumstances I hold that their failure to do so, although it would have been normal practice to give warning that an appeal time limit applied, is not sufficient to entitle the applicant to an extension for as long as four years to submit an appeal, especially in light of what I have said in the preceding paragraph.

6. The applicant has also sought to rely on a second ground. It is claimed that the extension should be granted because "it should have been properly considered in the light of the appeal in the case of Rank plc".

7. The Tribunal's decision in the *Rank* case was given on 15 May and 19 August 2008 and the High Court's judgment was given on 8 June 2009. The respondents could not have taken that into account at the time they made the decision and even after it was given the applicants have delayed by more than two years in submitting an appeal and even the request for a review was twenty months after the judgment in that case.

8. Accordingly the application is refused.

9. 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.

15

RICHARD BARLOW

TRIBUNAL JUDGE

20

RELEASE DATE: 5 January 2012