



TC03292

Appeal number: TC/2013/07285

***VAT – LATE PAYMENT – APPELLANTS SAY GENUINE MISTAKE
MADE – FINANCIAL CONTROLLER OFF AND NEW SOFTWARE
BEING INSTALLED - WHETHER REASONABLE EXCUSE - NO –
APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RHINOWASH LTD

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE N A BAIRD

The Tribunal determined the appeal on 20 January 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 28 October 2013 (with enclosures), and HMRC's Submissions (with enclosures).

DECISION

1 The appellants appeal against the decision of HMRC to impose a surcharge of
5 £720.12 for the period 06/13 under the provisions of Section 59 of the VAT Act 1994.
The return for that period was filed electronically, in time, on 1 August 2013.
Payment was due electronically on or before 7 August 2013 and was received by
HMRC on 9 August.

10 2. It is submitted in the Grounds of Appeal that the failure to pay on time was a
genuine and honest mistake. It happened because their Financial Controller was on
holiday and the company was in the middle of migrating their Sage System to a new
one. They say that having to pay the surcharge has had a negative effect on the staff
15 responsible and has led to disciplinary procedures. The level of surcharge is difficult
for a small business to absorb and affects their growth. They accept that they have had
difficulty with payment in the past but have never defaulted without speaking to
HMRC and agreeing a payment plan.

20 3. The position of HMRC is that the appellants, having been advised of the default
surcharge regime previously, should have been aware of the consequences of not
paying in time. Their change of computer system was a foreseeable event and they
ought to have taken into account that the VAT would have to be paid by the due date.
They ought to have put an arrangement in place to cover the absence of their
Financial Controller. The effect of payment on the finances of the appellants is
25 irrelevant to the question of whether there was a reasonable excuse for the late
payment. HMRC conclude that the appellants have not established that they have a
reasonable excuse for the late payment.

30 4. I have given careful consideration to the evidence before me. A reasonable excuse
is normally an unexpected or unusual event, either unforeseeable or beyond the
person's control, which prevents him from complying with an obligation when he
otherwise would have done. The matter has to be considered in the light of the actions
of a reasonable prudent taxpayer exercising foresight and due diligence and having
proper regard for his responsibilities under the Taxes Act. I accept that the payment
35 was only two days late and that a mistake was made. The appellants were presumably
aware in advance that their Financial Controller would be away and that there might
be some difficulties with arising from the installation of a new system. They had
received surcharge liability notices before. I do have some sympathy with the
appellants but I must agree with HMRC that they have not in all the circumstances
40 established a reasonable excuse for the late payment

5. The appeal is dismissed.

45 6 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.

5

**N A BAIRD
TRIBUNAL JUDGE**

10

RELEASE DATE: 7 February 2014