



TC03327

Appeal number: TC/2013/06818

***PAYE – LATE LODGING OF EMPLOYER’S ANNUAL RETURN –
APPELLANT HAD PERSONAL PROBLEMS AND ILL-HEALTH -
WHETHER REASONABLE EXCUSE - NO – APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

EAMON KEMP trading as THE RADNOR ARMS Appellant

- and -

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

TRIBUNAL: JUDGE BAIRD

The Tribunal determined the appeal on 3 February 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 18 September 2013 (with enclosures), HMRC’s Statement of Case submitted on 5 November 2013(with enclosures) and the appellant’s reply dated 5 January 2014

DECISION

1 The appellant appeals against the decision of HMRC to impose penalties of £1200
5 in terms of Section 98A (2) and (3) of the Taxes Management Act 1970, for late
submission of the Employer's Annual Return for the tax year ending 5 April 2010.
The annual return was to be filed online by 19 May 2010. It had not been filed by the
date of submission by HMRC of their Statement of Case. The appellant's appeal was
late but was accepted on application to the Tribunal.

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2. The appellant appeals against the penalty citing several grounds. He says a nil
balance return had been filed and on advice from the Accounts Office he had
submitted another return and had assumed the matter to be closed. He says that the
business closed down in July 2011 and he has no funds. He was sick up to January
15 2012 and unemployed until October 2012. In his reply to the Statement of Case he
says that he has had many problems since taking over the Radnor Arms in 2003. His
wife was bi-polar. She divorced him in 2006 and he had to pay a large settlement of
£96,000. He then had a hip replacement. He suffered ulceration to his leg as a result
of being diabetic. From 2009, due to lack of resources for staff he worked a 16 hour
20 day. His son was incarcerated in a youth detention centre. His bookkeeper went on
maternity leave.

3. HMRC say that they received emails in April 2010 and February 2011 advising
that no P35 return was due. They say that a return has to be completed by employers
25 if they have had to maintain a Form P11 for at least one employee during the tax year,
even if they did not have to make any deductions for PAYE or National Insurance.
The appellant had received a payment in advance for Statutory Maternity Pay of over
£2000 for the 2009 – 10 tax year so was under an obligation to file a return. The same
situation had pertained in the year 2008 – 9 and he had filed a return so he ought to
30 have known a return was required. HMRC say that it was the responsibility of the
appellant to ensure that the return was filed. This responsibility cannot be delegated to
an agent or accountant and lack of funds cannot be accepted as a reasonable excuse. If
illness is to be accepted as a reasonable excuse it must have been so serious that it
prevented the appellant from controlling all business affairs immediately before the
35 due filing date and from then to the day the return was finally filed. The appellant has
provided no evidence of illness on or around the filing date. HMRC conclude that the
appellant has not established that on a balance of probabilities there is a reasonable
excuse for his failure to file his return on time. They do point out that as a concession
to small employers they allow fixed penalties to be mitigated to the amount of the
40 duties on the return if these are less than the amount of the penalty, to a minimum of
£100

4. . If a person is to rely on reasonable excuse, this must have existed for the whole of
the period of default. A reasonable excuse is normally an unexpected or unusual
45 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 tax payer exercising

foresight and due diligence and having proper regard for his responsibilities under the Taxes Act. A combination of unexpected or foreseeable events may when taken together constitute a reasonable excuse.

5 5. I have some sympathy for the appellant who has had a lot to deal with but it is the
case that he has provided no evidence to show a reasonable excuse on the grounds of
illness covering the period of the due date for the return. The problems related also
appear to cover the period of the tax year 2008-9 but his return for that year was filed.
10 In all the circumstances I find that the appellant has not established that he has a
reasonable excuse for failing to file his return on time.

6. The appeal is dismissed.

15 7. 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
20 accompany a Decision from the First-tier Tribunal (Tax Chamber)” which
accompanies and forms part of this decision notice.

25 **N A BAIRD**
TRIBUNAL JUDGE

RELEASE DATE: 13 February 2014