



TC03536

Appeal number: TC/2014/00112

*INCOME TAX - penalty for late submission of Employer's annual return
– whether there was a “reasonable excuse” – yes in part only*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**GEOFFRY BILLETT & SUZANNE BILLETT Appellants
t/a HILL FARM CARAVAN PARK**

- and -

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

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 04 April 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 26 December 2013 and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 13 February 2014.

DECISION

Introduction

- 5 1. This is an appeal against a penalty of £400 imposed for the late filing of the Employer's Annual return for the tax year 2012-13.

The issue

2. Mr Geoffrey Billett appeals on the grounds that there was a reasonable excuse for the late filing of the return. This is opposed by HMRC,

The Law

- 10 3. In so far as it is relevant to this appeal the law is set out below.

Obligation to file the return

4. An employer has an obligation to file an Employer's Annual Return before 20 May following the end of the tax year in accordance with Regulation 73(1) of the Income Tax (Pay As You Earn) Regulations 2003.

15 *Imposition of penalty*

5. If the return is not filed a penalty is payable in the sum of £100 per month for a firm with 50 employees or less. S98A (2) (a) of the Taxes Management Act 1970 ("TMA").

Powers of the Tribunal

- 20 6. The Tribunal can set aside the penalty if it has been incorrectly applied s100(1) TMA.

Reasonable excuse

7. The Tribunal can set aside the penalty if the taxpayer has a "reasonable excuse" for the late submission of the return s118(2) TMA.

- 25 8. In the case of *Rowland v HMRC [2006] STC (SCD) 536* it was decided that "reasonable excuse" was "a matter to be considered in the light of all the circumstances of the particular case"

Burden of proof

- 30 9. HMRC has the burden of proving that the penalty has been incurred. The appellant has the burden of proving that there was a reasonable excuse. *Jussila v Finland (75053/01) [2006] ECHR 996*.

The Facts

The agreed facts

10. The appellants were required to file an Employer's annual return, P35, for the tax year 2012-13. The return was due to be filed on 19 May 2013. On 24 March 2013
5 HMRC issued an electronic notice to file the return.

11. The return had not been filed by 31 May 2013 and an interim penalty letter was sent during a five day period after that date.

12. On 23 September 2013 HMRC issued a first interim late filing penalty of £400 for the period 20 May 2013 to 19 September 2013. The return remains outstanding.

10 13. The business migrated to real time information ("RTI") in April 2013 and adjusted their software accordingly. However their software provider, Quickbooks, did not allow them to file the return for the period 2012-13 whilst they were set up for RTI. Mr Billett sought the assistance of Quickbooks in order to resolve the problem.

The contested facts

15 *The appellant's case*

14. Mr Billett states that the return was filed on 10 May. In support of his case he has supplied a copy of the return. He contacted HMRC on 10 June and was advised to ignore the interim penalty letter as they were aware of ongoing software problems. He was told to ring back in 48 hours if the problem persisted. He assumed that the
20 problem had been resolved and therefore took no further action.

The respondent's case

15. HMRC accept that the return was created on 10 May. However they state that the return was not filed on that date and remains outstanding. They accept that Mr Billett contacted them on 10 June. Their record of the telephone call is as follows

25 "Re P35 penalty advised filed already advised director seems to be having issues logging P35 issue under investigation with 3rd party software will call back in 24-48H to see if fix in place"

16. In their review letter dated 07 October HMRC state that there was an agreed extension until 25 June for Employer's experiencing software problems.

30 **The arguments**

The appellant's case

17. Mr Billett submits that he was unable to file the return due to the software problems occasioned by the migration to RTI. He genuinely believed that the return had been filed and was misled by the telephone call made to HMRC on 10 June. He
35 has not provided an explanation for the continuing failure to file the return.

The Respondent's case

18. HMRC appear to accept that there were initial problems in filing the return due to the implementation of RTI and the software problems caused. Indeed in their review letter of 07 October they state that they agreed an extension of the filing date to 25 June 2013. However they submit that the appellant had the opportunity to resolve these problems but did not do so. The point out that the return remains outstanding.

Reasons for decision

Findings of fact

19. I am satisfied that the return was not filed on 10 May as HMRC have no record of any filing activity on that date. I accept that Mr Billett believed he had filed the return on that date as he has provided a printout of the return showing that date.

20. I accept that the business experienced difficulties with online filing due to problems with Quickbooks and that these problems appeared to persist up to and including 10 June. This evidence is not contested

21. I am not satisfied on the balance of probabilities that Mr Billett was advised to ignore the interim penalty notice in the telephone call of 10 June because HMRC have provided a contemporaneous record of the telephone call and Mr Billett is merely relying on his recollection of events.

Reasonable excuse for the period 19 May to 26 June

22. I accept that Mr Billett was initially unable to file the return in May due to software difficulties occasioned by the migration to RTI. I also find that HMRC extended the filing deadline to take account of this difficulty.

23. I find that this amounts to a reasonable excuse for the failure to file the return between 20 May and 25 June 2013.

Reasonable excuse for the period 26 June to 19 September

24. I am satisfied that HMRC notified Mr Billett that the return was outstanding via the interim penalty letter sent in the first week of June and the subsequent telephone call of 10 June. I find that HMRC acted reasonably in extending the deadline to 25 June to take account of the software difficulties.

25. Accordingly I find that Mr Billett had the opportunity to resubmit the return before the extended deadline of 25 June but failed to do so. In the event of uncertainty it would have been reasonable for him to have sought successful confirmation of receipt.

26. For these reasons I do not find that there was a reasonable excuse for the continuing failure to submit the return between 26 June and 19 September 2013.

27. The effect of this decision is to reduce the period of the default from four months to twelve weeks. The surcharge of £100 is applied for every month, or part month, of the default. The effect of this decision is to reduce the applicable penalty from £400 to £300.

5 **Decision**

28. There was a reasonable excuse for the late submission of the Employer's annual Return between 20 May and 25 June 2013.

29. There was no reasonable excuse for the late submission of the Employer's Annual Return between 26 June and 19 September 2013.

10 30. The appeal against the late filing penalty of £400 is allowed in part and the penalty is reduced to £300.

Rights of appeal

15 31. 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.

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**JOANNA LYONS
TRIBUNAL JUDGE**

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RELEASE DATE: 28 April 2014