



**TC01589**

**Appeal number: TC/2011/04809**

*Penalties – late submission of the Employer’s Annual Return – was the Return in fact submitted in time – yes – appeal allowed.*

**FIRST-TIER TRIBUNAL**

**TAX**

**P & D NEEDHAM  
T/A M.T. LEE DAIRY**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: LADY MITTING (TRIBUNAL JUDGE)**

**The Tribunal determined the appeal on 28 October 2011 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 21 June 2011, HMRC’s Statement of Case submitted on 10 August 2011 and the Appellants’ Reply dated 30 August 2011.**

## DECISION

1. Mr and Mrs Needham are appealing against the imposition of a penalty in the sum of £400 for late submission of their employer's annual return for the tax year ended 5 April 2010. The P35N was issued on 10 January 2010. The Return had to be filed on line by 19 May 2010. When the Commissioners had not received it by then, they issued a penalty in the sum of £400 on 27 September 2010. The Return was submitted on line and received by the Commissions on 11 January 2011. It is the Commissioners' case that the appellants failed to submit their return until the 11 January 2011 and as such are liable to the penalty.

2. From the documents and submissions before me, I understand Mr and Mrs Needham's case to be as follows. Mr and Mrs Needham took over the dairy business in November/December 2007. They took it over from a Mr M.T. Lee who at that time gave up all interest in the business. HMRC were notified of the change of ownership, a change which was clearly recorded by HMRC as subsequent correspondence, Returns etc were all addressed to Mr and Mrs Needham. The penalty notice which was issued on 27 September 2010, of which I have not seen a copy but merely the computerised record of it having been sent, was addressed to Mr Lee and further it did not record the nature of the penalty in question. Mr and Mrs Needham telephoned HMRC on two separate occasions to clarify whether the notice was for the business or for Mr Lee and on both occasions were advised that it was for Mr Lee and to do with his personal tax affairs. They therefore passed the notice on to him and he in turn took it up with HMRC who finally on 9 December 2010, (I am given the date as being the date of a letter but the letter was not before me) admitted that they had made an error and advised Mr and Mrs Needham of the true nature of the penalty.

3. Mr and Mrs Needham are in fact adamant that the Return was submitted online by their experienced book-keeper at the end of April 2010. They themselves kept a hard copy (again this was not before me) and the copy was passed to their accountants in May 2010 with the remainder of the business records for the preparation of the end of year accounts. It was not until December 2010 that Mr and Mrs Needham realised that the Commissioners had not received the Return and it was re-submitted on 11 January 2011.

4. Other than disputing that the end of year Return was received in April 2010, the Commissioners do not challenge any of the assertions contained in the previous two paragraphs and I accept in full the representations made by the Needhams. Specifically, I accept that Mr and Mrs Needham's book-keeper did attempt to submit the Return at the end of April 2010 and had no reason to believe that it had not been received by the Commissioners. Why it did not get through I do not know, perhaps a glitch in the system at one or other end. The crucial finding however is that Mr and Mrs Needham believed that the Return had gone in and that they had complied with their statutory liability. The delay in appealing against the penalty is clearly explained by the factors recorded above, which again I accept.

5. I accept that Mr and Mrs Needham did have a reasonable excuse for their failure to submit the Return in that they honestly believed that it had been done. My view

was reinforced by the fact that they kept a hard copy which, although I did not see it, I have no reason to doubt and that this was sent on to their accountants who, as Mr and Mrs Needham point out would have raised an issue with them if they had not seen it.

6. The appeal is allowed.

5 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  
10 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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**TRIBUNAL JUDGE**

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**RELEASE DATE: 21 NOVEMBER 2011**