



**TC01702**

**Appeal number: TC/2011/03505**

*PENALTY for late filing of P35 (end of year PAYE) returns – whether a reasonable excuse had been shown for the late filing – Clerk to the Appellant communicated her address to HMRC but the requisite forms had not been sent to her – when she became aware of the issue she acted with reasonable promptness to file the returns – Appeal allowed*

**FIRST-TIER TRIBUNAL**

**TAX**

**MAYFIELD PARISH CHURCH**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JOHN WALTERS QC (TRIBUNAL JUDGE)  
R J FREESTON**

**Sitting in public in Nottingham on 9 November 2011**

**Mrs C. Etherington, Clerk, for the Appellant**

**Mr P Osborne, Senior Officer, HMRC, for the Respondents**

## DECISION

1. Judge Walters was provided with papers with a view to his determining the appeal without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases). Having read the Notice of Appeal dated 4 May 2011, HMRC's Statement of Case submitted on 27 June 2011 and the Appellant's Reply, which was undated but acknowledged by the Tribunal Centre on 1 August 2011, the judge directed that the appeal be set down for hearing.
2. The appeal came on for hearing by the Tribunal on 9 November 2009. Mrs. C, Etherington, the parish clerk of the Appellant Council appeared for the Appellant and Mr. P. Osborne, Senior Officer, HMRC, appeared for the Respondents.
3. The appeal is against penalties imposed on the Appellant for late filing of P35 returns in respect of the tax years 2008/09 and 2009/10. At the time of the appeal and of Judge Walters's initial consideration of it, the penalties concerned were interim penalties of £1,200 in respect of 2008/09 and £800 in respect of 2009/10.
4. In the direction that the appeal be set down for hearing, Judge Walters had stated that the direction was made because (a) the penalties appealed against were of significant amount (£2,000) and (b) although the Tribunal was minded to regard Mrs. Etherington's excuse that she informed HMRC of her changes of address by completing the tear-off form in the back of the employer payment booklet and that she assumed that this was sufficient as all payment booklets had arrived at her correct address, as being reasonable so far as it went, no explanation had been given by the Appellant for the non-submission of the P35 return for 2008/2009 and 2009/2010 following Mrs. Etherington's receipt of the letter dated 23 February 2011, stated by her in her letter to the Tribunal dated 26 April 2011 to have been passed on to her by her former landlord on 7 March 2011.
5. At the hearing, Mrs. Etherington, whom Mr. Osborne did not require to cross-examine, stated that the P35 return for each year had been filed at the end of June 2011. The amount of PAYE returned would have been such that the penalties would automatically have been reduced to an amount equivalent to the amount of the PAYE returned.
6. Mrs. Etherington stated (and the Tribunal accepts) that the delay from 7 March 2011 to the end of June 2011 in the filing of the P35 returns was caused by difficulties experienced by Mrs. Etherington in setting up a Government Gateway password to enable on-line filing, and further technical IT difficulties with establishing a password together with delays in collecting the necessary data and filing the forms on-line.
7. The Tribunal found that Mrs. Etherington had had a reasonable excuse for the delay and that she had filed the returns within a reasonable time after the excuse ceased.

8. The Tribunal therefore allowed the appeal.

9. The Tribunal would wish to state that the evidence was that Mrs. Etherington had received no effective training in the fulfilment of all the functions of her office as Clerk to the Parish Council (which included the functions of the responsible financial officer). She had struggled to understand and fulfil all her duties with regard to PAYE. The Tribunal wishes to state that it appears that the Chairman of the Council should consider how to ensure that the Clerk has adequate training to fulfil all the functions of her role, so as to ensure as far as possible that the difficulties demonstrated by the facts of this case do not recur. The responsibility for paying any penalty due would be that of the Council as employer.

**Right to apply for permission to appeal**

10. 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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**JOHN WALTERS QC**

**TRIBUNAL JUDGE**

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**RELEASE DATE: 3 January 2012**