



TC01729

Appeal number: TC/2011/05075

Appeal against penalty for late submission of P35 Employer's return – said to be sent in time – no details where sent – no reasonable excuse – appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

Speed Enterprise Limited

Appellant

- and -

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

Respondents

TRIBUNAL: Judith Powell (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 15 November 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 28 June 2011, HMRC's Statement of Case submitted on 19 August 2011 and the Appellant's Reply dated 15 September 2011.

DECISION

The Appeal

- 5 1. This is an appeal against a penalty for the year 2007/08 and for the year 2008/09. In both cases the penalties relate to the late submission of an employer's return known as a P35.

The facts and submissions – 2007/08

- 10 2. The P35 was due on 19 May 2008 and was filed on 25 August 2009. Interim penalty notices (each for £400) were issued on 29 September 2008, 26 January 2009 and 25 May 2009.

- 15 3. The agent says that the P35 was not late and that it was sent in at the correct time; the agent is unable to provide details of posting or of where it was sent. He was able to provide a copy of a letter dated 13 July 2007 but this concerned the breakdown of a single payment covering various taxes due and was written prior to the due date for submission of the P35. Indeed the letter was written during the year for which the P35 was due and could have no bearing on the P35 which must be prepared on the basis of the entire year; on 13 July 2007 the 2007/08 year was not complete. There is a telephone conversation record of 6 August 2009 – see below – in relation to the
20 appeal for 2008/09 which contains a promise that the P35 would be sent in and no record of the agent saying it had already been sent in.

Decision

- 25 4. There was no reasonable excuse for the late submission of the return on 25 August 2009 and no evidence of it being submitted prior to 20 May 2008. The Appeal is accordingly dismissed.

The facts and submission - 2008/09

- 30 5. The P35 was due on 19 May 2009 and was filed on 25 August 2009. On 29 September 2009 a final penalty notice of £400 was issued for the four month period 20 May 2009 to 25 August 2009. The Appellant's agent says that the return was late because "online services department did not give us the authentication code to file on time".

Decision

- 35 6. We accept what the Respondents say that an activation code (this appears to be the same as the authentication code referred to by the Appellant's agent in their notice of appeal) is issued when an agent registers to file online, that the agent registered on 7 May 2009, the code was sent out on 12 May 2009 and was activated by the agent on 20 May 2009 (who must, therefore, have received it by that date). However, the agent eventually filed a paper return on 25 August 2009. In this context the agent also seems to rely on his letter to the Respondents dated 13 July 2007 (see above in
40 relation to 2007/08). The letter is even less relevant to the 2008/09 year than it was to

the 2007/08 year since the 2008/09 year had not commenced when it was written. Further, there is a (very brief) record of a telephone conversation between the Respondents and the Appellant's agent in which he said he would send in the P35s for 2007/08 and for 2008/09. This conversation took place on 6 August 2009. There was
5 no record of the agent saying he had sent the P35s in at an earlier stage or having any difficulty in sending them in due to technical problems.

7. We can find no reasonable excuse for the delay in submitting the P35 for 2008/09 and dismiss the appeal.

8. This document contains full findings of fact and reasons for the decision. Any
10 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
15 "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
RELEASE DATE: 6 January 2012

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