



**TC01733**

**Appeal number: TC/2011/05229**

*Section 98A (2) and (3) Taxes Management Act 1970 – late Employer’s P35  
End of Year return – Employer Scheme inactive – not a reasonable excuse*

**FIRST-TIER TRIBUNAL**

**TAX**

**BEVERLEY DAVIDSON t/a SECTA SERVICES**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)**

**The Tribunal determined the appeal on 18 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 8 July 2011 and HMRC’s Statement of Case submitted on 1 September 2011**

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## DECISION

- 5 1. This is an appeal by the Appellant Beverley Davidson t/a Secta Services against penalties of £750 imposed under s 98A (2) and (3) Taxes Management Act 1970 following the late submission of the Employer's P35 Annual Return for the tax year ending 5 April 2009.
- 10 2. An employer has a statutory obligation to deliver a Employer Annual Return before 20 May following the end of a tax year in accordance with Regulation 73 of the Income Tax (PAYE) Regulations 2003 and paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001. If the full Return does not reach HMRC by 19 May following the end of the tax year HMRC may impose a penalty. Interim penalties are charged under s 98A (2)(a) and (3) TMA where a Return remains outstanding after the due date. The penalties are fixed at £100 per  
15 month or part of a month during which the failure continues.
- 20 3. The Appellant's employers scheme ceased on 24 September 2007. A P35 cessation return for the tax year 2007-08 was issued by HMRC to the Appellant for completion on 28 September 2007. The filing date for the Appellant's End of Year P35 cessation return was 19 May 2008 although the return could have been filed at any time prior to that.
- 25 4. The Appellant did not file the P35 cessation return by 19 May 2008 and a first penalty notification was issued on 11 December 2008 for the sum of £400 in respect of the period 20 May 2008 to 19 September 2008. A second penalty notification was issued on 26 January 2009 in the sum of £400 in respect of the period from 20 September 2008 to 19 January 2009.
- 30 5. On 25 March 2011 the Appellant filed a P35 cessation return and on 31 March 2011 the Appellant's agent appealed the penalty on the grounds that the P35 for 2007-08 had been overlooked as the Appellant's employer scheme had become inactive and the Appellant had moved house and was therefore unaware of failure to submit the return.
- 35 6. HMRC say that because of the possible disproportionate amount of a fixed penalty in relation to the amount of tax and NIC payable by a tax-payer, some measure in mitigation is given to smaller employers. The mitigation is limited to the greater of the total duty (tax and NIC) shown on the return or £100. In this case the penalty was mitigated by HMRC to £750 as the return filed on 25 March 2011 showed a total liability of £750.69. HMRC say that although the Appellant's return was almost three years late the Appellant had nonetheless received a tax free incentive payment of £100 for filing the return on-line.
- 40 7. When a person appeals a penalty they are required to have a reasonable excuse which must have existed throughout the entire period of default. There is no definition in law of 'reasonable excuse' which is a matter to be considered in the light of all the circumstances of the particular case. A reasonable excuse is normally regarded an unexpected or unusual event, either unforeseeable or beyond the person's control, which prevents him from complying with an obligation when  
45 he otherwise would have done. A combination of unexpected or unforeseeable events may, when viewed together, be a reasonable excuse.

5 8. Taking all the facts of the appeal into account the Tribunal determines that the Appellant has not shown a reasonable excuse to have existed throughout the entire period of default. The Tribunal does not accept that either overlooking a P35 return because an employers scheme has become inactive or being unaware of penalties because the employer has moved address is a reasonable excuse. In any event neither the P35 cessation return which had been issued to the Appellant nor the penalty notifications issued were recorded by HMRC as being undelivered. Furthermore the Appellant does not dispute that the return was late.

10 9. The Tribunal accordingly determines that the Appellant has not shown a reasonable excuse to have existed throughout the period of default. The appeal is dismissed and the £750 penalty is confirmed in accordance with s100B(2)(a) TMA 1970.

15 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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**MICHAEL S CONNELL**

**TRIBUNAL JUDGE**  
**RELEASE DATE: 09/01/2012**

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