



TC01935

Appeal number:TC/2011/8141

**INCOME TAX – PENALTY FOR LATE FILING OF END OF
YEAR PAYE RETURN – *Whether the Appellant filed the return on
time – No – Did the Appellant have a reasonable excuse for default
– No – Appeal dismissed.***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LITTLE COMBERTON PARISH COUNCIL

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE
RAYNA DEAN FCA**

**Sitting in public at Tribunals Service 4th Floor, Temple Court 35 Bull Street,
Birmingham B4 6EQ on 21 March 2012**

Paul Morris for the Appellant

Karen Powell of the Appeals and Review Unit for HMRC

DECISION

1. The Appellant appeals against the imposition of a penalty in the sum of £100 for the late submission of the employer's annual return (P35) for the tax year ending 5 April 2011.

2. The Appellant was required to file on-line its end of year PAYE return for 2010/11 by 19 May 2011. HMRC received the return on 23 May 2011 which was three days late. Under sections 98A(2) and (3) of the Taxes Management Act 1970, the Appellant was liable to a fixed penalty of £100 for each month or part month that it was in default with its return. The Appellant, therefore, received a penalty of £100 for the period of its default from 20 to 23 May 2011.

3. The Tribunal has limited jurisdiction in penalty appeals which reflects the purpose of the legislation of ensuring that employers file their returns on time. The Tribunal has no power to mitigate the penalty. The Tribunal can either confirm the penalty or quash it if satisfied that the Appellant has either filed the return on time or has a reasonable excuse for its failure. The onus is upon the Appellant to prove on a balance of probabilities the matters upon which it asserts to discharge the penalty.

4. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent employer exercising reasonable foresight and due diligence and having proper regard for its responsibilities under the Tax Acts.

5. In this Appeal Mr Morris for the Appellant asserted that he had filed the return on-line on 26 April 2011 which was before the deadline on 19 May 2011. Mr Morris was an accountant and experienced with the submission of on-line returns to HMRC. He was a Parish Councillor and acted for the Appellant in an honorary capacity. Mr Morris believed that the copy of the P35 return which he printed off his computer on the 26 April 2011 established that the return had been filed on that date. He considered that there must have been a problem with HMRC's computer system which had delayed the filing of the return until the 23 May 2011. Mr Morris accepted that he had been unable to obtain a copy of the P60 for the Council's part-time employee until he accessed the HMRC website after his return from holiday on 23 May 2011. Mr Morris said that he had received an online screen message that the return had been successfully submitted. Mr Morris could not recall receiving an e mail from HMRC stating that the return had been filed.

6. Mr Morris pointed out that the Appellant was a small Parish Council serving a rural community of about 250 persons. The Council employed one part-time employee who acted as its Clerk, and had very limited resources. This was the first time that the Appellant had encountered difficulties with on-line tax returns.

7. The Tribunal makes the following findings of fact:

(1) The Tribunal prefers HMRC's evidence as set out in folio 9 of its bundle which recorded the Appellant's access to the Government Gateway through which the returns are made. The record showed that the Appellant accessed the

Gateway on 26 April, 3 May and 23 May 2011 but that no return was filed until the 23 May 2011.

5 (2) The Tribunal is not satisfied that the copies of the returns printed by Mr Morris on 26 April and 3 May 2011 established that he had filed the return on 26 April 2011. The Tribunal accepted HMRC's evidence that it was possible for a tax payer to print off copies of the P35 and P14 returns for the purpose of checking its accuracy before being filed.

10 (3) Mr Morris was unable to produce a print-out of the screen message and or an e mail confirming the successful filing of the return. HMRC's guidance for on-line filing of returns recommends that employers retain copies of such messages in case of potential disputes on when returns are submitted.

(4) The fact that Mr Morris had difficulties in obtaining a copy of the P60 was an indication that the return had not been filed.

15 (5) HMRC's help desk indicated that there had been no technical problems with its computer during the period in question.

(6) The public service nature of the Appellant's activities, its limited resources and history of previous compliance with HMRC's requirements did not provide an explanation for its failure to file its return on time.

20 8. The Tribunal is satisfied on the above findings that the Appellant did not file its end of year PAYE return for 2010/11 until 23 May 2011 which was after the required date of the 19 May 2011. Further the Appellant has offered no explanation which would constitute in law a reasonable excuse for its failure to file the return on time. The Tribunal accepts that Mr Morris was conscientious and took his responsibilities seriously. Sadly it would appear that an honest mistake has been made in respect of
25 the filing which the Tribunal has to disregard under its limited jurisdiction when dealing with penalties. The Tribunal has no power to reduce the penalty for an honest mistake. Under the law the Tribunal's authority is restricted either to waving or confirming the penalty.

9. The Tribunal dismisses the Appeal and confirms the penalty in the sum of £100.

30 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
35 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

TRIBUNAL JUDGE

40 **RELEASE DATE: 04 April 2012**