



**TC01973**

**Appeal number: TC/2011/05051**

*NATIONAL INSURANCE – married woman paying contributions at reduced rates – whether she had elected to do so – challenge to HMRC’s decision that she had done so – election, if made, destroyed due to passage of time – other evidence considered – on the balance of probabilities, election made – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MRS NORMA EVANS**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S      Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL:    JUDGE J. BLEWITT  
                     MRS M. CROMPTON**

**Sitting in public at Manchester on 18 April 2012**

**Mrs Evans, the Appellant, was unrepresented**

**Mrs Johnson, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an appeal by Mrs Norma Evans against a decision, contained in a notice  
5 dated 25 January 2011, that from 11 November 1974 to 5 April 1975 she was not  
liable to pay Class 1 National Insurance contributions, and that from 6 April 1975 to 5  
April 1980 she was liable to pay married woman's reduced rate National Insurance  
contributions.

2. The issue to be decided in this case is whether or not Mrs Evans made an  
10 election not to pay contributions from 11 November 1974; HMRC contend that Mrs  
Evans signed an election not to pay contributions from 11 November 1974 while Mrs  
Evans contends that she did not. It was not in dispute that Mrs Evans did in fact pay  
married women's contributions throughout the relevant period during which she was  
employed.

3. The legislation applicable to this case was not in dispute and therefore we will  
15 not address it in any great detail. In summary, under the provisions of the National  
Insurance Act 1946 each employed person over school leaving age and under  
pensionable age was required to pay a weekly National Insurance contribution at the  
Class 1 rate. The contribution was made up of two elements; the employer's share and  
20 the employee's share. Payment was made by affixing a contribution stamp to a  
National Insurance card. Under the National Insurance (Married Women) Regulations  
1948, an employed married woman was permitted to elect to pay a much reduced  
national insurance contribution and an employed married woman who chose to pay  
the reduced rate received limited benefits. Relevantly, there was no entitlement to  
25 state retirement pension; a married woman who paid the reduced rate became  
dependent on her husband's contributions for her pension. On 6 April 1975 the  
National Insurance scheme was reconstructed and the record keeping system was  
computerised. Under the provisions of regulations 91, 92 and 100 of the Social  
Security (Contributions) Regulations 1975, a non paying election made prior to 6  
30 April 1975 was deemed to continue without a break as a reduced rate election from 6  
April 1975. Under the Social Security Pensions Act 1975 a married woman's  
contribution choice was abolished from 6 April 1977, however (by virtue of  
regulation 102 of the Social Security (Contributions) Regulations 1979) a married  
woman who had made an election prior to that date, and which had not been revoked,  
35 retained that choice, although the election could expire if, at any time after 5 April  
1978, there were two consecutive tax years during which the married woman had no  
earnings in respect of which primary Class 1 contributions were payable.

4. A married woman returning to work after a period of not working was required  
to obtain a National Insurance contribution card to give to her employer. The card was  
40 obtained by completing form CF9, which was attached to leaflet NI 1 "National  
Insurance for Married Woman", copies of which we were shown by HMRC. If the  
married woman chose not to pay National Insurance contributions, she was required  
to make a formal election on form CF9 and return the form to her local social security  
office. A stamp card was still required to be given to the married woman's employer  
45 as she was liable to pay a small exempt rate contribution (£0.04p as compared with

£0.62 being the weekly cost of a Class 1 contribution in 1974) which covered her for injuries at work.

5. The eligibility requirements and consequences of making an election were set out in Leaflet NI 1 which was published by the then Ministry of Pensions and National Insurance. Particularly, the Leaflet made clear the effect of not paying contributions would have on benefit entitlement and it explained the contribution conditions which needed to be satisfied to obtain a retirement pension.

6. Once a CF9 was returned to the Department's local office, a special married woman's stamp contribution card was issued to her which was given to her employer and became, in effect, the authority for the employer to deduct exempt rate contributions. The CF9 form was retained at the local office in addition to a permanent record which was held on a record sheet (RF 1) at the Records Branch in Newcastle upon Tyne. The procedure for record keeping was that the local office informed the Records Branch and the RF 1 noted with the date from which the election was effective.

7. Mrs Evans' case began when, in October 2008, she made enquiries about her entitlement to Home Responsibilities Protection (HRP) which came into operation on 6 April 1978 and which protects the State Pension rights of a person who is prevented from going out to work because of responsibilities at home. An exception to the entitlement to HRP is a married woman during the time she has a valid reduced rate election.

8. HMRC's records show that during the 1978/1979 tax year Mrs Evans paid reduced rate contributions amounting to £0.41 and no contributions in the 1978-1979 and 1979-1980 tax years, with the consequence that her election lapsed on 5 April 1980. On this basis, HMRC contend that Mrs Evans is not entitled to HRP in the period 6 April 1978 to 5 April 1980.

9. Mr Greenshields, an officer of HMRC, gave evidence to the Tribunal in which he exhibited Mrs Evans' RF1, which is noted "MW1/NP 11.11.74 (7410)" which means "married woman Class 1 employed elected not to pay from 11 November 1974 as notified to Buxton local office." He explained that each time a National Insurance card expired, it was returned to the local office by the employer, whereupon it was sent to the Records Branch in Newcastle upon Tyne and matched to a person's record sheet. The clerk checked the card against the record:

(a) If the contributions were paid at the correct rate the card was accepted and filed away where it was kept for about 2 years before being destroyed, and

(b) If the contributions were paid at the wrong rate they were not accepted and the card was returned to the local office for investigation.

10. Mr Greenshields exhibited computer records (the RD19) which used the expired 1974/1975 exempt rate card as an input document to insert the election onto HMRC's

computer records. The document records “MW/Widows reduced rate authority from pre RNI to 5.4.80” which, Mr Greenshields explained, indicates that a 1974/1975 exempt rate contribution card referring to Mrs Evans was received and used to insert the election on her computer record. The ends of year returns submitted by Mrs Evans’ employer, Derbyshire County Council, show that reduced rate contributions for the 1975/76, 1976/77 and 1977/78 tax years were deducted. Mrs Evans left employment with Derbyshire County Council on 29 July 1977. As Mrs Evans paid no contributions on the 1978/79 and 1979/80 tax years, Mrs Evans’ election lapsed on 5 April 1980.

11. Mr Greenshields explained that due to departmental policy to destroy documents after 6 years, such as form CF9, it was not possible to produce any documents which had been signed by Mrs Evans and consequently HMRC relied on the various documents which supported the contention that she had made an election. Mr Greenshields pointed to the various end of year returns submitted by Mrs Evans’ employers which showed that she had paid the reduced rate, a course which could not have been adopted without an authority to do so being handed to the various employers.

12. In response to Mrs Evans’ query as to why a scanned copy of the original documents had not been retained, HMRC contended that such procedures were not used by HMRC at the relevant time. When asked whether the record of an election having been made could be incorrect, Mr Greenshields explained that the end of year returns from Mrs Evans’ employers supported the fact that an election had been made and that each of the various departments responsible for recording information were rigorously audited. HMRC also relied on the authorities of *Gutteridge v Revenue and Customs Commissioners* [2006] STC (SCD) 315, *Whittaker v Revenue and Customs Commissioners* [2006] STC (SCD) 271 and *Margaret Ann Morgan v HMRC* [2008] in support of their contention that the records were reliable.

13. Mrs Evans returned to employment during the 1980/81 tax year with Tameside Metropolitan Borough Council. An end of year return was received from the employer showed that reduced rate contributions were deducted from Mrs Evans despite the fact that the election had lapsed. Consequently the contributions were rejected by the National Insurance Recording System and the underpayment collected from Tameside MBC by Manchester local office. The correct amount of full rate contributions was then input on HMRC’s record.

14. Mrs Evans told us that she had not, so far as she was aware, elected to pay a married woman’s reduced rate. She had worked and paid a full stamp until her first child was born in 1965, at which point she remained at home to care for her child. Mrs Evans resumed part time work in 1974, at which point she did not elect to pay a reduced contribution. In 1980 Mrs Evans began work for Tameside MBC and believed she had continued to pay full rate contributions.

15. Mrs Evans presented as an intelligent and credible lady, and we were sympathetic to her submission that, in the absence of HMRC producing a document signed by her, she did not recall ever making an election. Mrs Evans explained that

she and her friend, Mrs Pollington, had both been employed on the same day and that she had, prior to leaving employment to raise her children, always paid full rate contributions. Mrs Evans accepted that she had never checked the amount deducted which was shown on wage slips as she had assumed that her contributions had continued at full rate and she had never been told otherwise by HMRC.

16. Mrs Evans did not challenge any of the records produced by HMRC which showed the reduced rate paid, but had no recollection of seeing a form CF 9 or Leaflet NI 1.

17. We found Mrs Evans' evidence convincing and we were satisfied that her recollection that she had signed no election properly represents her belief. However, it is for Mrs Evans to satisfy us, on the balance of probabilities, that the decision against which she has appealed is wrong. We acknowledge the difficulty for Mrs Evans in establishing a negative, but our duty is to balance the evidence available and to reach a decision based on that evidence. We considered the possibility of Mrs Evans' election being mistakenly recorded by an HMRC clerk but, given the process involved in making an election and the audits undertaken by HMRC to ensure that their records were correct, we found it highly unlikely that an election would have been recorded where none was made. We considered the absence of the CF 9 and, although we were sympathetic to Mrs Evans' argument that she could not be satisfied that she had signed the document without seeing the document, we found that this was not evidence that the document had not been signed. These findings, taken together with the records produced by HMRC from Mrs Evans' employers which supported the fact that deducted contributions in the relevant period (and after, albeit erroneously) had been made at the reduced rate, led us to conclude that Mrs Evans' recollection is not so reliable that we must prefer it to the documentary evidence available to us. In reaching our conclusion we did not find that Mrs Evans was not telling the truth; we must make clear that it is no easy task for a taxpayer to show that a recollection of events so long ago is more likely to be accurate than a written record, particularly where case law has held that even though a written record may be liable to error, the likely rate of error is very small.

18. We found as a fact that Mrs Evan has not discharged the burden upon her to satisfy the Tribunal that HMRC's decision was wrong and consequently we must dismiss the appeal.

19. 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.

**TRIBUNAL JUDGE**

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**RELEASE DATE: 30 April 2012**