



TC02644

Appeal number: TC/2012/7476

PENALTIES – late filing of Employer’s Annual Return – Closure of business during the year with tax obligations being brought up to date – reasonable excuse – appeal allowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HOTT JOINT CARVERY

Appellant

- and -

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

TRIBUNAL: JUDGE LADY JUDITH MITTING

The Tribunal determined the appeal on 27 March 2013 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chambers) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 27 July 2012 (with enclosures), HMRC’s Statement of Case submitted on 13 January 2013 (with enclosures) and the Appellant’s Reply dated 17 February 2013 (with enclosures).

DECISION

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1. Hott Joint Carvery appeals against the imposition of a penalty in the sum of £100 for its failure to file its Employer's Annual Return for the tax year 2010-2011.

2. Hott Joint Carvery was a partnership of a Mr Mark Collins and a Mr C Braithwaite. It was a small firm with two employees, the parents of Mr Collins. In December 2010, Mr Collins' father was very ill and the business was going through considerable financial stress and it ceased trading. At the time of cessation, the partners informed HMRC of the cessation, made its employee returns and brought all outstanding tax liabilities and employee liabilities up-to-date.

3. The Employer Annual Return for 2010-2011 was due to be filed on line by 19 May 2011. An electronic reminder was sent to the firm on 13 February 2011. The Return was filed on 16 September 2011 and a penalty for its late submission was duly raised.

4. Mr Collins, on behalf of the partnership, maintains that by April 2011 there were no employees, no outstanding tax and no payments due to HMRC, the business having ceased. It did not therefore occur to him that the Annual Return had to be filed. As far as he was concerned, their obligations to HMRC had been complied with and were complete. When realised in September 2011 that in fact a Return did still have to be filed, he did it immediately. Mr Collins asks the Tribunal to take into account the ill-health of his father and the financial stress they were going through and the fact that throughout the period of trading (seven years) all Returns had always been submitted on time.

5. I find that the partnership did have a reasonable excuse for its failure to submit the Annual Return. The partners closed the business in a period of stress and fulfilled all their obligations at that time to HMRC and in my view acted quite properly with a full regard for their responsibilities. It is not unreasonable for the partners then to have concluded that their obligations to HMRC were over. They had completed all necessary forms and brought all tax and other liabilities up to date. The reasonable excuse did continue until the partners realised in September 2011 that in fact the Return still had to be filed and it was filed immediately. I therefore find that the Appellant did have a reasonable excuse for its failure to submit the Return and the appeal is allowed.

6. 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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**LADY JUDITH MITTING
TRIBUNAL JUDGE**

RELEASE DATE: 16 April 2013