



TC03611

Appeal number: TC/2013/09502

*PAYE – late submission of P35 Return – whether reasonable excuse – No –
Penalty confirmed and Appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STC FASTENERS LTD

Appellant

- and -

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

**TRIBUNAL: JUDGE KENNETH MURE, QC
 MR JOHN DAVISON**

Sitting in public at North Shields, on Wednesday 14 May 2014

In this appeal the appellant company was represented by its director, Mr Castlehow, and its agent/accountant, Mr Ingram, who made submissions on its behalf

Mr Aidan Boal, Presenting Officer for HMRC, appeared for the Respondents

DECISION

1. The appeal relates to the late electronic submission of the appellant's P35
5 Return for 2012/13, which was due by 19 May 2013. It was not received
electronically until 28 August 2013 and was accordingly over three months late. A
penalty of £400 was accordingly imposed. P35 Returns require to be submitted
electronically: Income Tax (PAYE) Regulations 2003, no 205.

2. Mr Boal explained that when these Returns are filed electronically a response is
10 issued by HMRC indicating whether it has been logged successfully or not. The
person submitting the Return is advised to print off a copy to confirm a successful
submission (see Guidance at 39-40). No such evidence had been produced by the
appellant. Mr Ingram, its adviser, claimed that he believed that the form had been
15 submitted successfully on 19 March 2013. Why, in that event, had he not challenged
the reminder dated 24 March (pA1) and the further reminder dated 28 April 2013
(A2-3), Mr Boal wondered. Previous Returns for the taxpayer had been filed
electronically successfully.

3. Mr Ingram, who acts as the appellant company's accountant, explained that he
had submitted P35 Returns for the appellant company and other clients on 19 March.
20 He uses a third party software which has proved reliable. It was not his practice to
print off individual receipts from HMRC: rather they were totalled in number and
checked against the number of P35s submitted. The receipts did not show the name
of the individual taxpayer, he explained, just a reference number. He accepted now
that HMRC did not receive the P35 for 2012/13 for the appellant, but he believed that
25 it had been filed successfully at the time. He referred to the record at pA9 prepared
on his software on behalf of the appellant company.

4. However, in early May 2013, Mr Ingram continued, he had submitted a paper
Return to HMRC, providing all the information required. He considered that this was
sufficient given that it had been received before 19 May. HMRC in August had asked
30 him to submit a fresh electronic Return. After some further discussions with HMRC
it was eventually submitted successfully on line on 28 August.

5. In reply Mr Boal explained that a P35 Return could be submitted only once
electronically. As it had been submitted successfully on 28 August 2013, that
indicated that it had not been submitted earlier. He stressed that Regulation 205
35 imposed the requirement to submit electronically: paper form was not acceptable. He
emphasised HMRC's record for 5 July 2013 (A4) indicating that the appellant
company had been instructed to resubmit the P35. Had that been done promptly a
lower penalty of £200 would have been appropriate.

6. In his concluding remarks Mr Ingram considered that the company had more
40 than a *reasonable excuse*. There had been the intention to submit the P35 containing
all the relevant information all along. The necessary information had been provided
timeously albeit on paper. The receipts following successful electronic submission
did not give a client name, only a reference. The failure was merely a technical
glitch, he claimed.

Decision

7. It is acknowledged that the Return was not filed electronically until 28 August 2013. The issue for us to determine therefore is whether the appellant company had a *reasonable excuse* for the failure. The narrative set out on behalf of
5 both the appellant and respondents was not disputed in material respects.

8. While the error was attributable to Mr Ingram as agent, the responsibility remains with the taxpayer. We accept that the necessary information was provided in paper form by the due date of 19 May but Regulation 205 requires its electronic submission. After the reminders of 24 March and 28 April there was ample
10 opportunity to attempt again to submit the Return electronically. Even if it had been done promptly after 5 July, the penalty would have been halved. Mr Ingram should have appreciated this as an experienced agent, familiar with the requirement of electronic filing. We cannot understand why he “negotiated” over the matter with HMRC at that stage when he could simply have re-attempted to file the Return
15 electronically. His system which did not check electronic receipts individually, failed in the circumstances. There is no satisfactory evidence of a technical “glitch” affecting the exercise.

9. We do not consider that a *reasonable excuse* arises, and we confirm the Penalty and dismiss the Appeal.

20 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
25 “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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**KENNETH MURE QC
TRIBUNAL JUDGE**

RELEASE DATE: 22 May 2014