



**TC04146**

**Appeal number: TC/2014/05214**

*INCOME TAX – penalties for late submission of employer’s P35 returns – application for permission to make a late appeal under section 49 Taxes Management Act 1970 – consideration of all the circumstances of the late appeals and of the merits of the substantive appeal sought to be brought – decision not to allow a late appeal in all the circumstances – appeal struck out*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**COLIN BURNS**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE JOHN WALTERS QC  
                  MR ALAN REDDEN FCA**

**Sitting in public at Manchester on 17 November 2014**

**Martin Ashworth for the Appellant**

**Bryan Morgan, HMRC, for the Respondents**

## DECISION

1. The Appellant, Mr Burns, runs a beauty shop and is an employer. He submitted  
5 annual return forms (P35) showing total relevant payments made by him as employer  
and the total net tax deducted in relation to those payments for the years 2009-10,  
2010-11 and 2011-12. These returns were all submitted late. The return for the year  
2009-10, which was due to be submitted on or before 19 May 2010, was submitted  
(on-line) on 8 January 2011 – that is, 7½ months late. The return for the year 2010-  
10 11, which was due to be submitted on or before 19 May 2011, was submitted on 4  
October 2013 – that is, 29½ months late. The return for the year 2011-12, which was  
due to be submitted on or before 19 May 2012, was submitted on 15 November 2013  
– that is, 18 months late.
2. Penalty notices were issued by HMRC in relation to the late submission of these  
15 returns and Mr Burns entered late appeals against them.
3. The penalty notices in relation to the year 2009-10 were issued on 27 September  
2010 and 12 January 2011. The penalty notices in relation to the year 2010-11 were  
issued on 26 September 2011, 30 January 2012 and 28 May 2012. The penalty  
notices in relation to 2011-12 were issued on 24 September 2012, 28 January 2013  
20 and 24 June 2014.
4. These penalty notices were all appealed against by Mr Burns on 24 June 2014.  
The time allowed for appealing is 30 days. The appeals were all therefore out of time  
by between 1 year and 3 years and 8 months.
5. Mr Ashworth, for Mr Burns, applied for permission to give notice of the appeals  
25 out of time – i.e. an extension of time to appeal. Such an extension would be  
necessary to enable the Tribunal to entertain the appeals and consider whether Mr  
Burns had a reasonable excuse for filing the annual return forms late, so as to quash or  
adjust the penalties.
6. We considered whether we should allow the extension of time for appealing in  
30 all the circumstances and in the course of doing so considered the strength of Mr  
Burns's case on the main appeal – that is, whether he had a reasonable excuse for the  
late submission of the annual return forms.
7. Mr Ashworth told us that the appeals were made late because Mr Burns did not  
know that there was a time limit for appealing. The penalty notices, informing Mr  
35 Burns of the time for appealing were, according to Mr Ashworth, never received  
because both Mr Burns's shop and the flat above (which was rented out) had the same  
postal address and post delivered to that address was often put through the letter box  
of the flat and, unfortunately, Mr Burns was in dispute with the tenant and the tenant  
did not pass on to Mr Burns the post that was addressed to him.
- 40 8. Mr Ashworth said that it was only when Mr Ashworth was dealing with the  
Respondents ("HMRC") in resolving issues concerning Mr Burns's tax affairs that he

became aware of the penalty notices and the need to appeal against them, but he complained that HMRC never told him about the time limit for appealing – he said that HMRC almost agreed that Mr Burns should pay off the tax that was due and then consider the penalties.

5 9. We were shown records of Mr Burns’s telephone conversations with HMRC. On 14 August 2013 he is recorded as saying that he would be appealing the penalties charged. There is also a record of him saying to HMRC on 1 November 2013 that he wanted to appeal the penalties. However, as related above, no appeal was entered until 24 June 2014.

10 10. There is also a record of a telephone conversation on 19 November 2012 in which Mr Burns called HRC as he had received a reminder letter about outstanding P35 returns for 2010-11 and 2011-12. He is recorded as admitting that the return for 2011-12 was outstanding – because of a computer crash – but as maintaining that the return for 2010-11 had been submitted on time by post.

15 11. The evidence was that although the P35 return for 2009-10 had been submitted successfully on-line (as was required by the regulations with effect from April 2009) on 8 January 2011, Mr Burns had been unable to submit the return for 2010-11 on-line and had instead submitted a paper copy by post. HMRC had no record of the receipt of a paper return which would, in any event, not have been accepted.

20 12. Even if we accepted that Mr Burns had a reasonable excuse for the late submission of the return for 2010-11 because he had thought that he had successfully submitted a paper version in time, that excuse would have expired on 19 November 2012, and the return was not in the event submitted until 4 October 2013.

25 13. We considered all the circumstances of the case in deciding whether or not to give permission for a late appeal pursuant to section 49(2)(b) Taxes Management Act 1970. We decided not to give permission because we found that Mr Burns was aware of the need to appeal the penalties as early as 14 August 2013, but did not do so until 24 June 2014, which we regard as an unjustifiably long delay. Certainly no adequate explanation was given for it. We reject Mr Ashworth’s complaint that HMRC never warned him or Mr Burns about the time limit for appealing on the basis that this is a matter which he ought to have known or found out about and it was not HMRC’s legal responsibility to alert him to it. We considered the merits of Mr Burns’s case in respect of a reasonable excuse for the late submission of the returns, and find that they were nowhere near strong enough for us to regard them as counterbalancing the length of delay in appealing, in the balancing exercise we had to carry out to determine whether it would be fair and just to give permission for a late appeal.

35 14. The appeal is therefore struck out pursuant to rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009.

40 15. 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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**JOHN WALTERS QC  
TRIBUNAL JUDGE**

**RELEASE DATE: 24 November 2014**