



**TC04199**

**Appeal number: TC/2014/03222**

*INCOME TAX – PAYE penalty for late annual returns P35s - reliance on  
bookkeeper - no reasonable excuse - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PHYLLIS ROBERTSON  
t/a  
CARE FOR ALL**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE BARBARA KING  
MR NOEL BARRETT**

**Sitting in public at Leeds on 2 December 2014**

**Andrew Walker, chartered accountant of Walker & Co, for the Appellant**

**Linda Shepherd of HM Revenue and Customs, for the Respondents**

## DECISION

### *The issue*

1. The appellant ( Mrs Robertson) appeals against the imposition of penalties in the total sum of £3,200 for her failure to submit employer's annual returns (Forms P14 and P35) for the tax years ending 5 April 2009, 5 April 10 and 5 April 2011. These appeals are late but time is extended and the appeals are admitted.
2. A further penalty of £100 for failing to file electronically for the year ended 5 April 2010 and £300 for failing to file electronically for the year ended 5 April 2011 had been imposed by the Respondents (HMRC) but are not subject to appeal.

### 10 *The law*

3. Regulation 73(1) of the Income Tax (Pay As You Earn) Regulations 2003 and paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001 impose a statutory obligation on an employer to deliver an Employer's Annual Return before 20 May following the end of a tax year.
- 15 4. The Employer's Annual Return consists of a P14 for each employee, together with a P35 which is the Employer's composite return. The P14 and the P35 have to contain the requisite information set out in Regulation 73(2), and the details submitted within the forms have to correspond with one another.
- 20 5. The onus of proving reasonable excuse lies on the appellant. Where an agent has been used, an appellant cannot have a reasonable excuse unless the agent has shown a reasonable excuse.

### *The evidence*

6. Mrs Robertson did not attend to give oral evidence. Andrew Walker stated that she did not wish to attend.
- 25 7. Andrew Walker was instructed to act as her accountant in June 2012. He had written letters dated 18 October 2014 and 1 December 2014 which were taken into account by the Tribunal.
8. The Tribunal were told that Mrs Robertson had trained as a nurse but started running the business 'Care for All' to provide care in customer's own homes. Mrs Robertson had no experience of accounts and for some time employed a firm called 'Tax Assist' to help with accounts. Tax Assist ceased trading in 2005 and Mrs Robertson then arranged for a Paula Marshall, who had previously worked for Tax Assist to do bookkeeping for Mrs Robertson.
- 30 9. In 2005 the P35 was filed but thereafter no P35s were filed and no PAYE or NIC was paid to HMRC. Paula Marshall prepared 'Income and Expenditure' accounts for Mrs Robertson but no balance sheet.
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10. Income tax and NICs was shown as an item of expenditure by Paula Marshall but was never paid over. Mrs Robertson did not realise this ‘under-expenditure’ but had noticed that her bank balance looked healthy. In the absence of Mrs Robertson it was not possible to ask her any questions about her understanding of her financial position.

11. In January 2008 HMRC sent a reminder about end of year returns to Mrs Robertson. In November of that year HMRC received a telephone call stating that nothing was due for the years ending 5 April 2006 and 5 April 2007 as all employees were on long term sick. In the absence of Mrs Robertson it was not possible to ask her about her knowledge of these reminders or the telephone call. After this phone call HMRC ceased sending reminders.

12. In January 2010 HMRC contacted Paula Marshall to inform her that filing had not taken place. Paula Marshall requested blank P35s for the years 2005-06 to 2008-09 but despite reminders a further year passed and they were not received by HMRC.

13. Paula Marshall wrote a letter dated 8 February 2011 expressing her surprise that annual returns had not been received by HMRC. She does not state when she claims to have submitted them originally and she does not state why no PAYE has been paid.

14. In February 2011 HMRC spoke to Jeremy Reed, Mrs Robertson’s husband saying that no returns had been filed since 05/06. Mr Reed has made detailed notes of his conversations with Paula Marshall and HMRC throughout the period from February 2011 to May 2012, explaining what efforts he thought Paula Marshall was then making to submit the required forms.

15. Mr Reed was wrongly advised by HMRC on 6 May 2011 that forms had been received but on 6 June 2011 Mr Reed was informed by HMRC that the information he had been given on 6 May 2011 was incorrect and the forms had still not been received.

16. HMRC state that Paula Marshall told them in January 2012 that the reason she was having difficulties submitting returns is because she was using an incorrect agent ID. In February 2012 Paula Marshall submitted spreadsheets but these were completed incorrectly and further spreadsheets had to be submitted. On 22 March 2012, P14s for 2008-09 and 2009-10 were processed. Further incomplete spreadsheets were sent in for the years 2005-06, 2006-07 and 2007-08 and had to be resubmitted so that it was 10 April 2004 before the P14s for these years could be processed. The P14s for the year 2010-11 were processed at the same time. Only after the P14s were correct was Paula Marshall able to complete the P35s correctly for the years 2005-06 through to 2010-11 and these were received by HMRC on 9 May 2012.

#### *Discussion and findings*

17. The reason HMRC made contact in January 2010 was because a previous employee of Mrs Robertson had made a claim to benefit and the records showed that contributions had not been paid to justify the claim. This is a serious matter and it is

important that National Insurance contribution records are kept up to date as otherwise someone might be denied a benefit to which they might be entitled.

18. Mrs Robertson's problems with non filing and non payment all appear to start when Paula Marshall left Tax Assist and is carrying out the bookkeeping on her own.  
5 The onus is on Mrs Robertson to show that she took reasonable care in appointing Paula Marshall to do her bookkeeping and that she took reasonable care to ensure that thereafter the information given to her by Paula Marshall was accurate. In the absence of Mrs Robertson we find that the burden of proof has not been satisfied. There may have been an item shown in her 'Income and Expenditure accounts' for payment of  
10 Income tax and NICS for employees but if she never wrote any cheques to cover those payments we do not find it reasonable for her to have believed that the payments had been made.

19. The Tribunal accepts that between February 2011 and May 2012, Mr Reed has put in some effort to ask Paula Marshall why the filing has not taken place. We find  
15 that, in the main, the problems she claims to have had, relate to her inability to file 'duplicate' forms for the years 2009 and 2010. We find that this does not show that she had a reasonable excuse for not filing them before 19 May in each of the earlier years. Nor does it explain why she did not pay any of the Income tax and NICS due in the years from 2005 onwards.

20. The letter written by Paula Marshall in February 2011, the Notice of Appeal written by her dated 21 May 2014 and the notes kept by Jeremy Reed contain many inconsistencies. As neither of these people came to give evidence these  
20 inconsistencies could not be resolved.

21. Paula Marshall appears to have used an incorrect agent ID when attempting to  
25 file documentation for Mrs Robertson. On balance we find that it has not been shown that the fault for using the incorrect ID was anyone's other than Paula Marshall's.

22. We find that another reason for Paula Marshall's inability to file successfully on line was that the information was incorrect. The information in the P14s was incorrect and so the P35s could not be filed as these need to correspond with the P14s.

30 23. HMRC have accepted that they gave incorrect information to Mr Reed in May 2011 but this referred to the duplicate returns. We find that this misinformation has not contributed to the delay in filing at the time the original returns were due.

24. We find that further delays were incurred because the information in the duplicate returns was not correct.

35 25. Taking all of the above into account we find that it has not been shown that Paula Marshall had a reasonable excuse for the failure to file end of year returns for Care for All. Mrs Robertson remained responsible for the filing of these returns and she too has not shown reasonable excuse for the failure to file in time. The appeal is dismissed and the penalties amounting to £3,200 are confirmed.

26. 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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**BARBARA KING  
TRIBUNAL JUDGE**

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**RELEASE DATE: 18 December 2014**