



TC04386

Appeal number: TC/2014/02524

NATIONAL INSURANCE CONTRIBUTIONS – married woman’s exemption – whether exemption effective – yes - married woman’s reduced rate – whether reduced rate applied – yes – question regarding qualifying years – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SARAH CHISHOLM HUMBER

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE AMANDA BROWN
MRS JANET WILKINS**

Sitting in public at Fox Court, 20 Grays Inn Road, London WC1X 8HN, on 2 April 2015

Mr Cecil Humber, husband of and for the Appellant

Mrs Crawford, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. Mrs Sarah Chisolm Humber appeals against two decisions of HM Revenue and Customs (“HMRC”) under section 8 of the Social Security Contributions (Transfer of Functions etc) Act 1993 determining that:

(1) Mrs Humber was not liable to pay contributions as a married woman in the period from 27 October 1962 to 5 April 1975; and

(2) She was liable to pay contributions at the married woman’s reduced rate in the period from 6 April 1975 to 5 April 1980.

2. The consequence of these decisions for Mrs Humber is that she qualifies only for a reduced rate state retirement pension.

Background

3. The option for employed married women to elect not to pay national insurance contributions was a feature of the National Insurance scheme from its inception on 5 July 1948.

4. Before 6 April 1975, upon reaching a specified age, individuals were allocated a National Insurance number and National Insurance contribution card bearing that number. The person gave the card to their employer to enable Class 1 (employed person) contributions to be paid on their behalf. Each time the person was paid, the employer affixed a Class 1 contribution stamp to the card. Both the employer and employee contributed to the cost of the stamp.

5. An employed married woman was in a special position in that, in accordance with regulation 2 of the National Insurance (Married Women) Regulations 1948, she could elect not to pay contributions. This removed the liability to pay Class 1 contributions. If she did so the married woman was still required to pay a small contribution of a few pence per week which were payable under the industrial injuries provisions. These were commonly known as exempt rate contributions and covered the person for injuries at work but no other benefits.

6. In the period prior to 6 April 1975, the employee contribution was a fixed sum, irrespective of earnings. The difference in the rate of contribution as between standard and exempt rate was considerable i.e. in 1962 Class 1 contributions were 8/8d and exempt contributions were -/4d per week.

7. Making the election was attractive for many married women because at that time many married women tended to stay at home to look after their family or took only part time and/or low paid work, often on a temporary basis and were therefore unable to build up sufficient insurance to give them benefit entitlement in any event. A married woman who was in low paid work or who worked part time or intermittently, often took advantage of the opportunity to elect not to pay a National Insurance contribution because it was financially attractive to do so.

8. A married woman who had elected not to pay contributions was nevertheless entitled to receive a retirement pension based on her husband's insurance when he reached aged 65. The pension awarded was 60% of the husband's entitlement.

5 9. Pursuant to the provisions of the National Insurance (Married Women) Regulations 1948, a married woman wishing to make an election would do so by completion of a form CF 9 which was attached to the Leaflet MPNI 1. MPNI 1 explained at paragraph 8: "Once your choice is recorded it remains in force, even if you change your class of insurance, until you cancel it by recording a different choice". At paragraph 9 it explained: "You can change your recorded choice at any
10 time by completing form CF9". CF9 itself included a declaration confirming that the woman had read the leaflet or had had it explained to her.

15 10. On receipt of the CF9 form by the National Insurance office, the married woman's permanent record of contributions was noted with the date of the election and a special contribution card was issued. The woman would provide this to her employer who, in turn, was authorised to deduct only the exempt rate contributions. Without possession of the special contribution card the employer was legally bound to deduct Class 1 standard rate contributions. When the woman ceased employment for any particular employer her card would be returned to her. The cards would be provided to any subsequent employer within the contribution year, or surrendered on
20 expiry to the National Insurance Office and reissued.

25 11. From 6 April 1975, there was a wholesale reconstruction of the National Insurance Scheme which saw many significant changes, in particular a move from fixed rate contributions to earnings related contributions. Under the new scheme a lower earnings limit was introduced which meant that there was no liability to pay a Class 1 contribution unless the earnings exceeded a prescribed weekly amount. For those with earnings exceeding the lower earnings limit, contributions were calculated as a percentage of the earnings above the lower limit. These contributions were collected as part of the PAYE tax system. In 1975 the contribution rate was 5.5%.

30 12. Under the reconstructed scheme and by virtue of regulations 100 and 91 of the Social Security (Contributions) Regulations 1975, a married woman's non-paying election was deemed to continue without break as a reduced rate election from 6 April 1975. Under the reduced rate election, as at 1975, the married woman paid 2% rather than 5.5% on any earnings over the lower earnings limit. (The legality and efficacy of this legislation has been the subject of detailed consideration by the Special
35 Commissioners in *Gutteridge v Revenue and Customs Commissioners* [2006] STC 315).

40 13. Whilst a reduced rate election was in force, the married woman was excluded from other rights and benefits that accrued to women who had not exercised such an election. For example a married woman who paid full Class 1 contributions was entitled to contribution credits when attending approved training and had the period of required contributions for full state pension reduced in respect of periods out of the workplace bringing up a family (known as Home Responsibility Protection ("HRP")).

45 14. The reduced rate election would be revoked by giving notice in writing (regulation 91(6) of the Social Security (Contributions Regulations) 1975). However, Regulation 92(1)(d) of the Social Security (Contributions) Regulations 1975, as superseded by regulation 101(1)(c) of the Social Security (Contributions) Regulations 1979, also provided that a woman's election to pay reduced rate would terminate

automatically if, at any time after 5 April 1978, there were two consecutive tax years during which she had no earnings in respect of which Class 1 contributions were payable and in which she was not self-employed.

5 15. From 6 April 1975, entitlement to state pension depends upon contribution conditions being satisfied (section 13 Social Security Act 1975). The satisfaction of these conditions is determined by reference to what is known as an “earnings factor” which determines, for contribution purposes, the earnings of the individual for any tax year. The earnings factor calculation is set out in Schedule 1 to the Social Security (Earnings Factor) Regulations 1979. The formula is not simple but, in essence, it
10 determines the level of an individual’s earnings on which Class 1 contributions were paid (i.e. the earnings over the lower earnings limit).

The facts

15 16. The facts were not substantially in dispute between the parties, the application of complex legislation to those facts gave rise to the issues between them. The tribunal heard formal evidence from Mr Alan Greenshields, Officer of HMRC National Insurance Contributions and Employer Office. Evidence was also received by the tribunal from Mr and Mrs Humber and the tribunal had access to documentation provided by both parties. The tribunal would like to note and thank the diligence of Mr and Mrs Humber who had retained almost every wage/pay slip
20 given to Mrs Humber in the whole of her working life.

17. Mrs Humber was allocated her National Insurance number on 7 August 1952 and paid class 1 contributions from that date. For the first year those contributions did not qualify for state pension purposes on the basis that contributions in the year of an employee’s 15th birthday qualified the payer only for other state benefits.

25 18. On 27 October 1962, Mrs Humber married. Her National Insurance Permanent Record RF1 evidences that she completed and submitted form CF1 electing to be exempt from Class 1 contributions. Her permanent record shows that she paid exempt contributions only for the period from 1962 until the manual permanent record was ended with the introduction of the reconstructed National Insurance Scheme on 6
30 April 1975. The tribunal finds as a fact that Mrs Humber’s contributions for this period were subject to the election she made with effect from 27 October 1962.

19. In the 1974/75 tax year Mrs Humber stopped working as a result of pregnancy and the subsequent birth of their son.

35 20. The tribunal understands that the married woman’s exempt rate contribution card for 1974/75 was of special design as a consequence of the reconstructed National Insurance Scheme being effective from 6 April 1975; in that year it contained a tear off portion which gave the employer the right to deduct married woman’s reduced rate contributions from 6 April 1976. When Mrs Humber ceased work, her 1974/5 exempt rate contribution card would have been returned to her. When it expired in
40 April 1975, she should have surrendered it to the local National Insurance office. At the time of surrender, the tribunal understands that she could have either retained the tear off slip for any subsequent employer or surrender the whole certificate with a view to obtaining the necessary certificate of election for reduced rate from her local Social Security office when she chose to return to the workplace. It is not clear which
45 option she chose.

21. In 1977 Mrs Humber returned to work taking on some part time work with Staff Hire Employment Agency. In accordance with the relevant legislation as set out above, her prior exempt rate election was deemed to continue without break; however, there is no evidence available to the tribunal as to whether, when she returned to work, she was or was not in possession of the tear off slip from the exempt contribution card.

22. The tribunal were, however, fortunate to have access to two pay slips with regard to this employer. The pay slips, being over 40 years old, were somewhat indistinct, but from these wage slips the tribunal was able to determine that, in week 23 09/09/77, Mrs Humber earned £28 from which her employer deducted income tax of £3.90 and Class 1 contributions at the standard rate of £1.62. On the balance of the evidence available and by reference to the statutory duties on the employer, the tribunal determines that the employer did so because at that time Mrs Humber had not provided the employer with her reduced rate election certificate by the time of the weekly pay run.

23. The second pay slip is more indistinct than the first. The tribunal was able to determine from this slip that in week 23 Mrs Humber earned £34.50 on which income tax was £6.10. The entry for National Insurance contributions was illegible, however, total deductions were actually £5.73 indicating a refund of National Insurance contributions of 37p. This accords entirely with the HMRC central computer record and the employer's P11 year end deduction card which shows total earnings of £62.50, from which tax of £10 and National Insurance contributions of £1.25 were deducted. On the basis of this evidence, the tribunal finds that by the time this second pay slip was issued the employer was aware of Mrs Humber's election to reduced rate contributions and amended her total contributions accordingly. The tribunal finds as a fact that Mrs Humber's reduced rate election was effective in the tax year 1977/8 and that contributions were paid by her in accordance with that election.

24. For the period February 1979 – July 1979 Mrs Humber attended an approved training course.

25. The tribunal understands that whilst Mrs Humber was in part time employment from 1977 onwards, for the tax years 1978/79 and 1979/80 Mrs Humber paid no National Insurance contributions because all her earnings for that period were below the lower earnings limit.

26. As a consequence of having two consecutive years in which no National Insurance contributions were made, Mrs Humber's reduced rate election was terminated and with effect from 5 April 1980 Mrs Humber was liable to pay standard rate National Insurance contributions.

27. During the 1980/81 tax year Mrs Humber was employed by Blue Arrow. By reference to a pay slip dated 17/07/80, the tribunal finds that the National Insurance contributions paid by Mrs Humber in the course of that employment were £9.12. The HMRC central record of contributions only recognises contributions of £2.64 that year. The tribunal finds that the HMRC central record is incorrect in this regard.

28. In the tax year 1981/82 the parties agree that Mrs Humber's earnings were £1512.17. The tribunal received evidence from Mr Greenshields regarding the calculation of the earnings factor for Mrs Humber's earnings in 1981/82. By reference to that evidence and as supported by the central computer records, the

tribunal finds that Mrs Humber's Class 1 contributions for the year were £94.39 from her employment with Bowring Bradford. The tribunal accepts the evidence of Mr Greenshields that the earnings factor calculation applied to that contribution gives an earnings factor of £1218.06 (the balance of earnings having been below the lower earnings limit). The required level of contribution to constitute a qualifying year being £1404.

29. Mrs Humber worked with Bowring Bradford until she retired on 7 August 1997.

30. In order to qualify for a full state pension at retirement, Mrs Humber required 39 qualifying years' contributions. For the period from 5 April 1980, Mrs Humber was paying Class 1 standard rate contributions but, having insufficient earnings to qualify in tax years 1980/81 and 1981/82, Mrs Humber was entitled to HRP. HRP allowed for the number of qualifying years of a person otherwise paying Class 1 standard rate contributions, to be reduced by reference to periods in which the individual was prevented from working because of responsibilities at home. As a consequence, Mrs Humber's qualifying years' requirement was reduced to 37.

31. It was determined by reference to Mrs Humber's National Insurance contribution records that her total qualifying years amounted to 24 (9 years from 1953 – 1962 when her married woman's exemption election took force and 15 years from the tax years 1982/83 – 1996/97). Mrs Humber's entitlement was therefore limited to 24/37 or 65% of the full state pension.

32. Over the period from 1997 until 2009, Mrs Humber sought to establish the basis on which the reduction had been determined. In October 2009, the matter was referred to HMRC by the Pension Service.

33. Following a period of investigation the Notice of Decision dated 16 December 2009 was issued. As set out in paragraph 1 above this decision provided:

(1) Mrs Humber was not liable to pay contributions as a married woman in the period from 27 October 1962 to 5 April 1975; and

(2) She was liable to pay contributions at the married woman's reduced rate in the period from 6 April 1975 to 5 April 1980.

30 **The issues**

34. Mrs Humber raised a number of specific issues with regard to the Notice of decision, in summary these issues were that:

(1) She was paying full rate National Insurance contributions in the 1977/8 tax year by reference to her pay slips thus evidencing that her contributions for that year indicated that there was no reduced rate election in place at that time

(2) For tax years 1978/9 and 1979/80 whilst on the approved government training course she was entitled to be credited with National Insurance contributions

(3) The Citizen's Advice Bureau had informed her that because she had not worked for two years whilst her son was born her married woman's reduced rate election was cancelled

(4) The 1980/1 tax year should be a qualifying year as she worked throughout that year albeit part time and low paid

(5) The 1981/2 tax year should be a qualifying year because her earnings of £1512 exceeded the qualifying earnings level of £1404

5 (6) There were a number of issues arising from inaccuracies in communications from HMRC

Analysis and determination of the issues

35. *Issue 1* – The tribunal has found that because Mrs Humber had an effective married woman's exemption election as at 5 April 1975 she is deemed to have had a
10 reduced rate election from 6 April 1975 (see paragraph 21). As set out in paragraphs 22 – 23 above whilst for week 23 of 1977/8 Mrs Humber's employer deducted standard rate Class 1 National Insurance contributions it did so as required by law pending confirmation of her reduced rate election. That confirmation was clearly presented to them before the issue of the second payslip seen by the tribunal. On the
15 basis of this evidence the tribunal determines that not only was Mrs Humber's reduced rate election in place for the year 1977/8 she was also paid in accordance with that election and there was no overpayment of National Insurance contribution. Accordingly, 1977/8 was a non-qualifying year.

36. *Issue 2* – Had Mrs Humber been a standard rate Class 1 contributor at the time
20 she attended the approved government training course she would have been entitled to National Insurance contribution credit for her attendance on the course. However, National Insurance contribution credit was not available to married women who had elected (or been deemed to have elected) to pay the reduced rate. Mrs Humber was deemed to have elected to pay reduced rate National Insurance contributions during
25 the tax years during which she attended the approved government training course and accordingly she is not entitled to credit for these periods.

37. *Issue 3* – It is not clear to the tribunal whether the Citizen's Advice Bureau were aware of the date of Mrs Humber's son's birth when they gave the advice that her
30 break in employment over two years caused the cancellation of her married woman's reduced rate election. There may also have been some misunderstanding about the requirement for the break in employment to include two consecutive tax years, not just a two year period which might include only one full tax year. The legislative provisions are clear, non-contribution during two consecutive tax years post 1978 caused the cancellation of a reduced rate election. Mrs Humber's period outside
35 employment arose prior to 1978 when no equivalent provision was in force. Mrs Humber did not complete a CF9 or otherwise notify in writing any intention to cancel either her married woman's exemption election (prior to 6 April 1975) or her deemed married woman's reduced rate election (post 6 April 1975) with the consequence that there was no cancellation of the reduced rate election until 5 April 1980 following two
40 consecutive tax years in which she paid no contributions.

38. *Issue 4* – The tribunal has found that in the 1980/81 tax year there is evidence that the HMRC's central computer record of contributions is inaccurate, it shows contributions of £2.64 whereas evidence has been produced showing contributions for
45 that year of £9.12. The tribunal has considered the implications for Mrs Humber of this inaccuracy and find that the central record should be amended, this was indicated by the tribunal at the hearing and Mr Greenshields confirmed that HMRC would rectify the record. No other evidence was presented to the tribunal which would

indicate that the inaccuracy of the record is any more than to the extent of the £9.12. The tribunal has not undertaken an earnings factor calculation for 1980/81 however, it is apparent by reference to the calculation for 1981/82 that, even after the central record is rectified, Mrs Humber's contributions for 1980/81 will be insufficient to constitute a qualifying year and thus will have no impact on the pension payable to Mrs Humber. It is to be noted however that the 1980/81 tax year did qualify as an HRP year reducing the number of total qualifying years.

39. *Issue 5* – Paragraph 28 sets out the findings of the tribunal regarding the application of the earnings factor to Mrs Humber's contributions for tax year 1981/82. It is clear that, whilst Mrs Humber's total earnings exceeded the necessary limit as a qualifying year, £294.11 of her total earnings were below the lower earnings limit for National Insurance contribution purposes and accordingly 1981/82 was not a qualifying year. It is to be noted however that the 1981/82 tax year did qualify as an HRP year reducing the number of total qualifying years.

40. *Issue 6* – It was noted by Mrs Crawford that errors had been made in communications with Mrs Humber. These errors had been rectified and Mrs Crawford apologised for them. This tribunal has no jurisdiction to consider matters other than those relevant to whether the decisions of HMRC as set out in the Notice of Decision are correct. None of the matters raised come into that category. However, the tribunal notes that in complex issues affecting individuals it is clearly preferable that errors are not made but it is unrealistic to expect that mistakes will never be made. All that can be expected is that errors are recognised, corrected and where appropriate apologised for. That has happened in this case.

Decision

41. The tribunal determines that:

(1) Mrs Humber had elected to be exempt from Class 1 National Insurance contributions from 27 October 1962 and that election had not been revoked as at 5 April 1975 accordingly she was not liable to pay contributions in the period from 27 October 1962 to 5 April 1975 as determined by HMRC; and

(2) As a consequence of the deeming provisions Mrs Humber had an effective election to pay contributions at the married woman's reduced rate in the period from 6 April 1975 to 5 April 1980 as determined by HMRC.

(3) The appeal is therefore dismissed.

42. 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.

**AMANDA BROWN
TRIBUNAL JUDGE**

RELEASE DATE: 6 April 2015