



**TC03168**

**Appeal number: TC/2013/03862**

*Section 98A (2) and (3) Taxes Management Act 1970 – Employer’s End of Year P35 late - £2300 penalties – ignorance of obligation to file return – Appeal not allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RCCG NEW LIFE CENTRE**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL  
JANET WILKINS**

**Sitting in public at 45 Bedford Square, London, WC1B 3DN on 23 August 2013**

**Pastor Olusina Akinseye for the Appellant**

**Paul Reeve, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

### Decision under Appeal

1. This is an appeal by The Redeemed Christian Church of God (RCCG New Life Centre), ('the Appellant') against penalties of £2,300, imposed for the late submission of the Employer's Annual Return (P35) under s 98A (2) and (3) Taxes Management Act 1970 for the tax years ending 5 April 2010, 2011 and 2012.

2. An employer has a statutory obligation to make End of Year returns before 20 May following the end of a tax year in accordance with Regulation 73 of the Income Tax (PAYE) Regulations 2003 and paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001.

3. In the case of an employer failing to make an End of Year return on time, s 98A (2) and (3) Taxes Management Act 1970 provides for a fixed penalty at £100 for each month (or part month) during which the failure continues for each batch (or part batch) of 50 employees. If the failure continues beyond 12 months a penalty can be imposed up to a maximum of the amount outstanding at 19 April i.e. it is a tax geared penalty.

4. Regulation 205 to 205B of The Income Tax (Pay As You Earn) Regulations 2003 provides that an employer must use electronic communications to deliver their 2009/10 end of year return online.

### The background facts

5. The filing date for the Appellant's 2009/10 return was the 19 May 2010. This had to be filed online.

A first interim penalty of £400 for the period 20 May 2010 to 19 September 2010 was issued on 27 September 2010.

A second interim penalty for £200 for the period 20 September 2010 to 19 November 2010 was issued on 17 November 2010.

The 2009/10 return was filed online on 12 November 2010.

6. The filing date for the Appellant's 2010/11 return was the 19 May 2011. This had to be filed online.

A first interim penalty of £400 for the period 20 May 2011 to 19 September 2011 was issued on 26 September 2011.

A second interim penalty for £400 for the period 20 September 2011 to 19 January 2012 was issued on 30 January 2012.

A third interim penalty for £400 for the period 20 January 2012 to 19 May 2012 was issued on 28 May 2012.

The return was filed online on 20 September 2012

7. The filing date for the Appellant's 2011/12 return was the 19 May 2012. This had to be filed online.

5 A first interim penalty of £400 for the period 20 May 2012 to 19 September 2012 was issued on 24 September 2012.

A second interim penalty for £100 for the period 20 September 2010 to 19 October 2012 was issued on 28 September 2012.

The 2011/12 return was filed online on 25 September 2012.

10 8. The Appellant's 2010, 2011 and 2012 P35 returns were 177 days, 490 days and 129 days late respectively.

15 9. HMRC submitted a demand for payment of the penalties imposed to the Appellant on 5 March 2013. On 19 March 2013. Pastor Olusinaina Akinseye responded on behalf of the Appellant to the effect that the P35 (singular, not plural) had been submitted on time, but not received by HMRC due to technical issues. He said that he had been told by HMRC to ignore the penalty notices. This was rejected by HMRC and on 25 March 2013 the Appellant submitted a letter of appeal. The appeal was out of time, as the time within which to appeal against a penalty is 30 days from the date the penalty notifications are sent to the employer. The Appellant was notified to that effect.

20 10. On 15 April 2013 the Appellant lodged a notice of appeal with the Tribunal Service. Pastor Akinseye on behalf of the Appellant claimed to be appealing against penalties amounting to £3,000, whereas the penalties imposed totalled £2,300. The appeal notice did not specify which penalty was being appealed. The grounds of appeal were that the P35 (again the penalty year was not specified) had been submitted by the Appellant, but not received by HMRC due to technical issues. It was also stated that the Appellant was a charity and was in financial distress.

30 11. On 1 July 2013 the Appellant wrote to HMRC saying that it had not received any correspondence about late filing until March 2012 when it received penalty notices (although the 2010/2011 second penalty had been issued in January 2012) and that the proprietor was not aware that he had to file the P35 returns by any particular date. Pastor Akinseye said that the return had to be delivered to HMRC by post as he was unable to submit them electronically.

12. It was not therefore clear which penalties were being appealed, but HMRC treated the appeal as an application to bring a late appeal against all the penalties.

35 13. The Appellant's appeal against the penalties imposed in respect of the default in the year 2009/10 was 874 days late. The appeal against the penalties imposed in respect of the default in the year 2010/11 was 510 days late and the appeal against the penalties imposed in respect of the default in the year 2011/12 was only 45 days late.

### HMRC's submissions

14. HMRC oppose the Appellant's application to bring a late appeal on the basis that the proprietors should have been aware of its obligations to file a P35 return on time and should also been aware of the appeal procedure because it was detailed on each of the seven penalty notices that were issued to the Appellant. Ignorance of the law is no excuse.

15. Penalties exist to give finality in legal proceedings to both parties. This is in the public interest and dilatory taxpayers should not be allowed to have their case re-opened unless there are exceptional circumstances. In this case it appears that multiple penalty notices and demands for payment were simply ignored by the Appellant.

16. Time limits are set by Parliament and as a matter of public policy should be respected. As Judge Brannan said in *Pytchley v HMRC* [2010] UKFTT at [23]

*"The normal statutory 30 day time limit on appeals serves an important purpose of producing finality and ensuring that HMRC can regard a taxpayer's affairs as closed off in respect of certain years where no appeals have been lodged. Therefore permission to bring an appeal out of time should not be granted lightly"*

Sir Stephen Oliver in *Ogedegbe v HMRC* [2009] UKFTT 364, said

*"While this tribunal has got power to extend the time for making an appeal this will only be granted exceptionally"*

17. Despite the Appellant's claims that it did not know until March 2012 that it had to file returns by a certain date, it still waited from then until September 2012 before filing returns for 2010/11 and 2011/12. No reasonable excuse has been shown for the six-month delay.

18. The Appellant has not explained why it claims that there was a system failure for the non-submission of its P35 and does not state in which year the P35 was submitted on time as claimed.

### Appellant's contentions

19. Pastor Olusina Akinseye attended the hearing and reiterated what he had said in the notice of appeal as summarised in paragraphs 9 and 11 above. He said that the Appellant was in financial distress and did not have the funds to pay any penalties. It was a charitable organisation which depended entirely on donations.

20. Pastor Akinseye said that he had not received any penalty notices until March 2012, but accepted that even if that was the case, he had not filed the Appellant's 2010/11 and 2011/2012 returns until September 2012. He also acknowledged that he had filed the Appellant's 2009/2010 return late in November 2010 and therefore must have been aware of the obligation to file an Employer's end of year return.

21. Pastor Akinseye said that he dealt with the Appellant's business and tax affairs but that he had been ill in 2009 and 2011. He did not offer that as a reason for the late returns, but produced a letter from Maidstone Hospital which confirmed that he had been hospitalised in June 2009 and September 2011 for surgery. He said that he received a small salary and was the only employee apart from four or five part time volunteers. He confirmed that the Appellant's address had remained the same throughout the default period and there was no reason why the penalty notices should not have been received by the Appellant.

22. Pastor Akinseye said that the Appellant was now up to date with its returns and following advice from HMRC had a better understanding of the tax and PAYE filing obligations.

23. Taking all the circumstances into account the Tribunal considers that the penalties of £2,300 were correctly imposed. There is no definition in law of a reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond a person's control, which prevents him from complying with an obligation. On the facts the Tribunal found that the Appellant had shown no reasonable excuse throughout the period of default for the late submission of its 2009/10, 2010/2011 and 2011/2012 Employer's Returns.

24. The appeal was accordingly dismissed and the penalties of £2,300 confirmed.

25. 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.

**MICHAEL S CONNELL**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 19 December 2013**