



TC03277

Appeal number: TC/2013/06952

***PAYE – LATE LODGING OF EMPLOYER’S ANNUAL RETURN –
AGENTS BELIEVED RETURN HAD BEEN SUCCESSFULLY FILED –
REMINDER AND PENALTY NOTICES ISSUED – PROBLEMS WITH
THIRD-PARTY SOFTWARE – RETURN STILL NOT FILED -
WHETHER REASONABLE EXCUSE - NO – APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DALKEITH PRIVATE BOWLING CLUB

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE N A BAIRD

The Tribunal determined the appeal on 20 January 2014 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 8 October 2013 (with enclosures), and HMRC’s Statement of Case submitted on 12 November 2013(with enclosures).

DECISION

1 The appellants appeal against the decision of HMRC to impose penalties of £1200
5 in terms of Section 98A (2) and (3) of the Taxes Management Act 1970, for late
submission of the Employer's Annual Return for the tax year ending 5th April 2012.
The Annual Return was to be filed online by 19th May 2012.

2. On 11 October 2012 the appellants' accountants wrote to HMRC saying that they
10 had filed the return online on 19 April 2012 via their IRIS Payroll Software. They said
it was not possible to resubmit the return and offered to complete a paper copy if a
form could be provided.

3. HMRC say that there is no record of a return having been submitted online.
15 Although the appellants do not fit one of the few categories of taxpayer exempt from
filing online and entitled to submit a paper return they had sent the appropriate form
for completion on 9 January 2013 but it had not been completed and filed. They say
that when an attempt is made to file a return online one of two messages is sent – one
20 of these messages it was unreasonable for the appellants or their agents to assume that
the return had been successfully filed. They point out that they do not endorse third-
party software such as that used by the appellants' agents and once the appellants
became aware, on receipt of the first reminder issued in late May or early June 2012,
the appellants or their agents ought to have tried an alternative system if they could
25 not resubmit the return using IRIS. Even when alerted to the fact that the return had
not been filed the appellants failed to submit the return, or to contact HMRC's
Helpdesk. They say that they do not consider 'a dilatory agent' as a reasonable excuse
and conclude that the appellants have not established that on a balance of probabilities
there is a reasonable excuse for their failure to file their return on time.

30 4. I have given careful consideration to the evidence put before me. If a person is to
rely on reasonable excuse, this must have existed for the whole of the period of
default. A reasonable excuse is normally an unexpected or unusual event, either
unforeseeable or beyond the person's control, which prevents him from complying
35 with an obligation when he otherwise would have done. The matter has to be
considered in the light of the actions of a reasonable prudent tax payer exercising
foresight and due diligence and having proper regard for his responsibilities under the
Taxes Act.

40 5. The appellants were apparently sent a reminder in late May or early June and the
first penalty notice was issued in September 2012. At the time of the submission of
the Statement of Case the return had still not been filed either online or in paper form,
despite the fact that a form had been issued. I agree that one would have expected the
agents to make some check to make sure that the return had been successfully filed
45 and indeed that they would have expected to see an acceptance or rejection message.
It seems to me that no reasonable excuse has been offered for the failure to file the
return on time.

6. I dismiss the appeal.

5 7. 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
10 accompany a Decision from the First-tier Tribunal (Tax Chamber)” which
accompanies and forms part of this decision notice.

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**N A BAIRD
TRIBUNAL JUDGE**

RELEASE DATE: 28 January 2014