



TC03233

Appeal number: TC/2012/03514

***PAYE – LATE LODGING OF EMPLOYER’S ANNUAL RETURN –
PROBLEMS WITH SYSTEM FOR ONLINE FILING – COMMUNITY
GROUP WITH NO PAYE ADMINISTRATOR -- WHETHER
REASONABLE EXCUSE - NO – APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

B R F M LTD

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE N A BAIRD

The Tribunal determined the appeal on 3 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 22 February 2012 (with enclosures), and HMRC’s Statement of Case submitted on 7 June 2013(with enclosures).

DECISION

1 The appellants appeal against the decision of HMRC to impose penalties of £400
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 5 April 2011.
The Annual Return was to be filed online by 19 May 2011. It was filed online on 8
March 2012.

10 2. The appellants say that they had were unable to file the return online. They say they
were sent two discs to try to overcome the problem but these did not work either.
They submitted the relevant figures for the return on paper. They say too that they are
a community group and do not have the funds to employ a PAYE administrator.
15 Following an unsuccessful review of the decision it was submitted on behalf of the
appellants that they had been let down by the HMRC filing system. As at 22 February
2012 contact with the online helpdesk and with HMRC technical department showed
that there were still HMRC system errors preventing them from logging in. They had
been told that a new ID and password would be issued by post and were given a
20 reference number to cite so that the history of the problem could be referred to if
necessary.

3. The position of HMRC is that the appellants have been registered as employers
since 2007 and so should be fully aware of their tax obligations. Employers were
advised numerous times that online filing would be required from 2011 and guidance
25 and instructions are on their website. They say that the appellants were using third-
party software for which HMRC have no responsibility and no support network. The
obligation to have a system which enabled the filing of the return on time was on the
appellants,. The paper return is not acceptable. HMRC say that there is no record of
the appellants having contacted their helpline prior to 19 May 2011. They say too that
30 despite a penalty notice having been issued on 26 September 2011 and subsequent
letters of 28 November 2011 and 2 February 2012, (both rejecting the grounds of
appeal submitted and upholding the penalty charge, the return was not filed until
March 2012. They say that alleged delay in the receipt of information from HMRC
has no bearing on delay after 19 May 2011. HMRC conclude that the appellants have
35 not established that on a balance of probabilities there is a reasonable excuse for their
failure to file their return on time.

4. . 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
40 event, either unforeseeable or beyond the person's control, which prevents him from
complying 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.

45

5. I have some sympathy for the appellants but it seems that they were not set up to
complete a return online on the due date. The fact that they did not have a system set

up to file online cannot be seen as a reasonable excuse since they were under an obligation to set up a system and to file their returns on time. Although the appellants claim to have had two discs sent, HMRC say that the appellants were using third-party software and that no CD ROMS were issued for the 2010/11 tax year. I note too that according to HMRC the appellants had successfully registered for online filing in April 2010. There is no chronology from the appellants of their contact with HMRC and no evidence of any concerted effort to resolve any problem they may had with their system. Even after receipt of the penalty notice there was a delay in dealing with the problem. I accept that the appellants do not believe the penalty to be justified but on the information and evidence before me, it seems that they quite simply failed to meet their obligation to file a return by 19 May 2011 and indeed did not effect filing until March 2012. In all the circumstances I find that the appellants have not established that they have a reasonable excuse for late filing.

6. The appeal is dismissed.

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

25

N A BAIRD
TRIBUNAL JUDGE

30

RELEASE DATE: 14 January 2014