



TC04755

5

Appeal number: TC/2014/05847

***NATIONAL INSURANCE CONTRIBUTIONS – married woman – whether
election to pay reduced rate contributions revoked in 1975 – no – appeal
dismissed***

10

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

15

INEZ COLLINS

Appellant

- and -

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

**TRIBUNAL: JUDGE JONATHAN RICHARDS
SONIA GABLE**

20

Sitting in public at Fox Court, 30 Brooke Street, London on 3 September 2015

The Appellant in person

25

Linda Gordon, Officer of HM Revenue & Customs, for the Respondents

30

DECISION

1. This appeal relates to the amount of national insurance contributions (“NICs”) that Mrs Collins paid in the period from 6 April 1975 to 5 April 1982 as this is relevant to the amount of state pension to which she is entitled. On 10 September 2015, we issued the parties with a summary decision dismissing the appeal. This full decision is issued in response to Mrs Collins’s request under Rule 35(4) of the Tribunal Rules for full written findings and reasons.

2. On 27 May 2014, HMRC made a decision under s8 of the Social Security (Transfer of Functions etc) Act 1999 to the effect that:

(1) Mrs Collins was not liable to pay NICs as a married woman from 1 May 1967 to 5 April 1975.

(2) Mrs Collins was liable to pay NICs at the married woman’s reduced rate in the period from 6 April 1975 to 5 April 1982.

3. Mrs Collins appeals against this decision. She accepts the decision set out at [2(1)]. However, she disputes the decision set out at [2(2)] and claims that she cancelled her election to pay NICs at the reduced rate from April 1975 and paid NICs at the full rate from 6 April 1975 to 5 April 1982.

Background

4. Prior to 1975, a married woman could make an election (an “exempt rate election”) not to pay Class 1 NICs, although such an election would not affect the amount of NICs payable by her employer. If she made an exempt rate election, she was still required to pay a small contribution of a few pence per week (under legislation relating to industrial injuries). These contributions were commonly known as “exempt rate contributions” and covered the payer against risks associated with industrial injuries. However, exempt rate contributions were much lower than Class 1 NICs.

5. Mrs Collins does not dispute that, in 1967, she made an exempt rate election as she was entitled to do as a married woman. She also does not dispute that she was, on 6 April 1975, a married woman.

6. From 6 April 1975, the National Insurance scheme was changed significantly. In particular, NICs paid by both employers and employees became related to the relevant employee’s earnings and the right of married women to make an exempt rate election was replaced by a right to pay at a reduced rate contributions under Regulation 91 of the Social Security (Contributions) Regulations 1975 (the “1975 Regulations”).

7. Since Mrs Collins had previously made an exempt rate election, she was treated, under Regulation 100 of the 1975 Regulations, as making an election to pay reduced rate contributions under the revised National Insurance regime.

8. Regulation 93 of the 1975 Regulations permitted a woman to revoke a reduced rate election by giving notice in writing to the Secretary of State (in practice the relevant National Insurance Contributions Office). However, the election could not be revoked in relation to years that were completed before notice of revocation was given.

9. Mrs Collins submits that she made an election under Regulation 93 of the 1975 Regulations some time in 1975 and HMRC dispute this. That is the sole matter in dispute in this appeal.

Evidence

10. We heard evidence from Mrs Collins and from Officer Alan Greenshields of HMRC and both of these witnesses were cross-examined. Mrs Collins gave evidence of events that took place some 40 years ago. In her evidence she admitted frankly that there were some issues she could not remember which gave us a favourable impression of her honesty.

11. In short, we were satisfied that both witnesses were honest. We have not accepted some parts of Mrs Collins's evidence which conflicted with HMRC's records not because we considered her to be unreliable, but rather because, given the passage of time since the events in question, we considered HMRC's records were more likely to be accurate than Mrs Collins's recollection.

Findings of fact

12. We make the findings of fact set out below.

Mrs Collins's visit to her employer's pay office in 1975

13. Mrs Collins was employed as an NHS nurse in Enfield until some time after 1980 when she moved to take up employment as a nurse in Surrey.¹ She was a member of a trade union and realised that there was a link between NICs and state benefits. In 1967, she made a reasoned decision to make an exempt rate election, because, although she recognised that this election would disqualify her from obtaining state sickness benefits, she did not regard that as a problem given that her employer gave her sickness benefits in any event.

14. Mrs Collins was aware that paying reduced rate contributions after 6 April 1975 would have an effect on her future pension entitlement. Some time in 1975 she visited her employer's pay office, which was located in the grounds of the hospital in Enfield where she worked, with the intention of (a) making an election to pay NICs at the full rate and (b) joining the NHS pension scheme.

¹ Mrs Collins said in her evidence that she took up a new post in Surrey in 1983, but her NIC contribution record records an employment with her Surrey employer in the tax year 1981/82. It is not material to this appeal precisely when she left her job in Enfield for her job in Surrey.

15. Given that this event took place some 40 years ago, understandably Mrs Collins was not able to remember precisely what forms she filled in during her visit to the pay office. In particular, she could not remember whether she had signed any election of the kind referred to at [8] above.

5 16. Mrs Collins's recollection is that, following her visit to the pay office, NICs deducted from her salary increased. We accept that this was her genuine recollection. However, given the lapse of time, she was unable to give precise figures or to provide copies of pay-slips. In cross-examination she said that she did not think that the increase in deductions she noticed was attributable solely to the fact that, after 6 April
10 1975, NICs had risen significantly. However, we were not able to conclude, on a balance of probabilities, that the increase in deductions that Mrs Collins noticed was attributable to the fact that "full rate" Class 1 NICs were being deducted.

Records of the National Insurance Contributions Office

15 17. Officer Greenshields has been employed by the National Insurance Contributions and Employer Office (the "Department") for two periods: between July 1965 and October 1967 and from February 1975 to the present date. He therefore has significant first-hand experience of how the Department and its processes operate.

18. Officer Greenshields explained that the Department's records have been held on computer since 1975. He showed us a print-out from the Department's computer of
20 Mrs Collins's "Statement of Account". That recorded the following:

(1) From, and including, 1975/76 to, and including, 1977/1978, Mrs Collins paid "Category B" Class 1 NICs. Officer Greenshields explained in his evidence that this was a reference to "contracted-in" Class 1 NICs at the reduced rate applicable to married women.

25 (2) From, and including, 1978/79 to, and including, 1980/81, Mrs Collins paid "Category E" Class 1 NICs. Officer Greenshields explained in his evidence that this was a reference to "contracted-out" Class 1 NICs at the reduced rate applicable to married women.

30 (3) In 1981/82, Mrs Collins paid £191.90 "Category E" NICs in relation to her Enfield employment and £4.78 "Category E" NICs in relation to her Surrey employment. She also paid £17.63 in Class 1 NICs at the full rate.

19. Officer Greenshields also showed us an extract from the final section of Mrs Collins's Statement of Account that read as follows:

Start Date	End Date	Liability Type
PRE 4/75	7/4/81	Married Woman's Reduced Rate

He said that this entry showed that Mrs Collins had been paying NICs at the reduced rate available to married women from April 1975 to April 1981 as a consequence of her previous exempt rate election being treated, from April 1975, as an election to pay contributions at the reduced rate.

20. We accepted the evidence Officer Greenshields gave as to the meanings of the various entries shown on the computer records. We therefore accept that the evidence recorded at [18] and [19] is an accurate statement of the contributions that were shown as paid on the computer record. That evidence does not itself dispose of the question of what contributions were **actually** paid and we set out our conclusions on this question in the “Discussion” section below.

21. Officer Greenshields also explained to us the information contained in a “RD 28 Posting Query Notification” that the Department’s computer generated in 1982. He said that the Department’s computer had generated this report because, in the tax year 1981/82 Mrs Collins’s Enfield employer had been deducting Class 1 NICs at the full rate (totalling £401.48) even though, according to computer records, Mrs Collins had made, and not revoked, an election to pay at the reduced rate and was therefore only liable to pay NICs of £191.90. He said that the Department’s computer would automatically generate such a report in all cases where an employer appeared to be deducting NICs at the full rate when a reduced rate election was in force.

22. Officer Greenshields said that in cases where a discrepancy of this kind was identified, the Department would send a letter to the taxpayer concerned in the following terms:

- (1) the taxpayer would be advised that an overpayment had been made and that she could claim a refund of the excess NICs wrongly deducted; and
- (2) the taxpayer would be asked to let the Department know if she wished to revoke the reduced rate election in which case revocation would take effect from the beginning of the tax year in which it was made.

Officer Greenshields said that there would be situations where a taxpayer did not claim a refund to which she was entitled. In those cases, a note would be made on the file and she would be reminded, if and when she subsequently made contact with the Department, that the refund was due.

23. Officer Greenshields said that the “RD 28” showed that Mrs Collins had received a refund as there was a manuscript note on it to the effect that a refund was necessary and a further note (apparently made on 2 August 1982) stating “Refund made £209.58”.

24. Mrs Collins did not dispute the evidence of Officer Greenshields summarised at [21] to [23] above and we accept it. We note, however, that at [23] Officer Greenshields is giving evidence only of what the Department’s records show. That does not, of itself, answer the question of whether a refund was **actually** made and Mrs Collins said that, given the lapse of time, she could not remember whether such a refund had actually been made or not. We make findings on this issue in the “Discussion” section below.

Legislation

25. The relevant legislation is now very old. The parties did not provide us with the relevant statutory provisions as in force at the particular times.

26. We have therefore sought to find the relevant provisions ourselves. That
5 research indicates that the relevant provisions were as set out at [27] to [31] below.

27. The right of married woman to pay reduced rate contributions was set out in Regulation 91 of the 1975 Regulations which provides, relevantly, as follows:

Class 1 and Class 2 contributions

10 91(1)(a) A married woman may make an election in accordance with paragraph (2) of this regulation that while she is a married woman ... her liability in respect of primary Class 1 contributions shall be at the reduced rate under section 5(2) of the Act, or she shall not be liable for Class 2 contributions under section 7 of the Act.

15 (2) An election made by virtue of the preceding paragraph of this regulation shall be made by giving notice of election in writing to the Secretary of State and shall specify the year in respect of which it is made.

28. Regulation 100 provided for a deemed election to be made by, among others, women who had previously made an exempt rate election as follows:

Deemed election of married women and widows excepted from contribution liability under former principal Act

20 100 Where as respects a woman immediately before the appointed day there is... current an election under regulation 2(1)(a) of the National Insurance (Married Women) Regulations 1973 (married women who
25 are employed persons) and... on that day ... the woman is ... a married woman, that woman shall be deemed to have made an election under regulation 91 of these regulations.

29. Regulation 92 of the 1975 Regulations provided for elections, once made, to continue until revoked as follows:

Continuation of election

30 92(1) Subject to the provisions of the next succeeding paragraph, every election made in accordance with regulation 91 of these regulations shall continue as an election made in respect of each complete year after the year in respect of which it was made, until such time as it is
35 revoked in accordance with the provisions of this Case.

30. Regulation 92(2) set out circumstances in which an election was treated as not continuing. However, that regulation dealt with situations where a married woman ceased to be married and for particular situations relevant to widows which are not relevant to Mrs Collins's situation.

40 31. Regulation 93 of the 1975 Regulations dealt with the revocation of reduced rate elections as follows:

Revocation of elections

93(1) Every woman who has made an election may revoke such election by giving notice of revocation in writing to the Secretary of State.

5 (2) Where an election has been so revoked that election shall –

(a) in a case in which the notice of revocation is given before the beginning of the year in respect of which the election was made, be treated as if it had not been made; and

10 (b) in any other case, be treated as made in respect of any year which she may specify beginning after the end of the year in which the revocation is made².

Discussion

15 32. Given that Mrs Collins had previously made an exempt rate election, on 6 April 1975, she was treated (by Regulation 100 of the 1975 Regulations) as making an election to pay contributions at the reduced rate.

20 33. Mrs Collins submitted that from 1975 she had intended to pay NICs at the full rate and knew the implications of doing so. When she moved to her employment in Surrey, she took care to pay contributions at the full rate. In those circumstances, she said that it simply was not credible that she had only asked her Enfield employer to deduct full-rate NICs for the single 1981/82 tax year. Nor, she submitted, was there any reason why she would claim a refund in relation to her employment in Enfield in the 1981/82 tax year given that she was making full rate contributions in respect of her employment in Surrey that started at or around the time it was said she had received that refund

25 34. HMRC's position was that the Department's records referred to above set out an accurate statement of the NICs that Mrs Collins had paid. They accepted that Mrs Collins might well have had the intention to revoke her election to pay reduced rate contributions in 1975 but that, because she did not give written notice to the Department, no such revocation ever took place.

30 35. We have weighed up the evidence on both sides. Mrs Collins has not produced any evidence that she submitted written notice to the Department under Regulation 93 of the 1975 Regulations to revoke her election to pay reduced rate contributions in 1975. The evidence that she put forward in support of her argument that her NIC contributions history was not as set out in the Department's records consists only of
35 her own recollection of events that took place some 40 years ago. While we have no doubt that Mrs Collins was a thoroughly honest witness, the passage of time since the

² We found this provision to be somewhat confusing as paragraph (b) appears to be stating that the election is treated as made after the revocation whereas we would expect it to explain when the revocation takes effect. However, nothing turns on this point in this appeal given our ultimate conclusion that Mrs Collins did not submit a valid revocation in 1975 and that HMRC were correct in asserting that her revocation took effect from 6 April 1982.

events in question has led us to conclude that her recollection is of less weight than the evidence set out in the Department's records.

36. We have considered the possibility that Mrs Collins's Enfield employer had, at all times after 6 April 1975, been deducting contributions at the full rate but that, for some reason that had not been shown on the Department's records. However, we found that this was not the case as, if it were, given Officer Greenshields's evidence at [21], the Department's computer would have generated an "RD 28 Posting Query Notification" much earlier than 1982.

37. We therefore find, on a balance of probabilities, that the Department's record of Mrs Collins's NICs history is accurate, that she did receive a refund of contributions of £209.58 in respect of the 1981/82 tax year and that revocation of her election to pay reduced rate contributions took effect from 6 April 1982. Those findings mean that the appeal is dismissed.

38. 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.

JONATHAN RICHARDS
TRIBUNAL JUDGE

RELEASE DATE: 17 NOVEMBER 2015