



**TC07745**

*NATIONAL INSURANCE CONTRIBUTIONS – decision that taxpayer liable to pay NICs at the married woman’s reduced rate 1975-1978 – was married women’s reduced rate election made for 1975-76? – held (weighing the conflicting evidence): no – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/03704**

**BETWEEN**

**LYNN TERRY**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE ZACHARY CITRON**

**The Tribunal set down the appeal for determination on 1 May 2020 without a hearing with the consent of both parties under the provisions of rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The Tribunal considered that it was able to decide the matter without a hearing. The documents to which the Tribunal was referred are those in a “correspondence bundle” of 162 pages and a “legislation and authorities” bundle of 72 pages, both prepared by HMRC.**

## DECISION

### INTRODUCTION

1. The issue in this appeal was whether, 45 years ago, Mrs Terry made an election under Regulation 91 Social Security (Contributions) Regulations 1975 (a “Reg 91 election”) for her liability to Class 1 National Insurance (“NI”) contributions (“NICs”) to be at the reduced rate from 6 April 1975.

### THE APPEAL

2. HMRC sent Mrs Terry a notice dated 18 January 2019 of their decision that she was liable to pay NICs at the married women’s reduced rate in the period from 6 April 1975 to 5 April 1978. The decision was made under s8 Social Security Contributions (Transfers of Functions etc) Act 1999.

3. Mrs Terry notified HMRC of her appeal against the decision by email of 22 January 2019.

4. A statutory review conclusion letter from HMRC dated 17 April 2019 upheld HMRC’s original decision.

5. Mrs Terry notified her appeal to the Tribunal on 21 May 2019 (this was a few days after the deadline – Mrs Terry explained that she had been looking after her elderly father in another part of the country when HMRC’s letter arrived at her house, and she had answered as soon as possible when she got home. HMRC did not object to the appeal on the grounds of lateness. In the circumstances, I give permission for a late appeal.)

### DECISION WITHOUT A HEARING

6. The appeal was originally listed for hearing on 24 March 2020 in Manchester. Mrs Terry informed the Tribunal soon after the listing that she would not be attending, due to stress. Following the onset of the coronavirus epidemic, the hearing was cancelled and both parties consented to the matter being decided without a hearing.

7. I considered that the matter could be decided without a hearing, given the extensive evidence contained in the 162 page “correspondence bundle”.

### EVIDENCE

8. The “correspondence bundle” contained (amongst other things) copies of:

- (1) correspondence between the parties 2017-2019;
- (2) Mrs Terry’s NI records as kept by HMRC;
- (3) Department of Health and Social Security (the “Department”) Leaflet NI1 dated April 1975: “National insurance guidance for married women”;
- (4) An “RF1” document for “Lyn Margaret Terry”; and
- (5) “deduction cards” for various employments of Mrs Terry in the 1970s.

9. As well as Mrs Terry’s notice of appeal and HMRC’s statement of case, I also had an email from Mrs Terry to the Tribunal with her representations, dated 17 December 2019.

### FINDINGS OF FACT

10. Most of the following findings of fact are uncontroversial. The findings at [12] and [13] below, regarding where Mrs Terry lived from late January 1975, and whether she was working in the next few years, are made on the basis that

- (1) her account of these basic matters - where she lived, whether she was working - as emerges from the correspondence, is consistent and plausible; there was a dearth of

independent corroborating evidence for Mrs Terry's account, but I detected no deliberate untruthfulness in her account; and

(2) her memory of such basic matters is likely to be accurate, even after the passage of time, in particular since 1975 and the next few years were memorable times in her life (she got married, moved abroad, and had two children two years apart).

11. Mrs Terry was born in 1954. She had various jobs in the Wirral area in her later teenage years in the early 1970s:

(1) in the 1974-75 tax year she earned £117 working for Boots. She left Boots in June 1974. She also earned £77 in that tax year working for Navy Army & Air Force Institutes ("NAAFI") – she left that employment on 23 January 1975.

(2) in the 1973-74 tax year she earned £505 working for S Reece & Sons Ltd in Liverpool; £282 working for Unilever (Merseyside) Ltd in Bebington; £37 working for Central Wirral H.M.C. Clatterbridge Hospital; and £249 working for Kelvinator Ltd in Bromborough.

(3) in the 1972-73 tax year, she earned £636 working for Central Wirral H.M.C. Clatterbridge Hospital and £283 working for Kelvinator;

(4) in the 1971-72 tax year she earned £476 working for Kelvinator; and

(5) in the 1970-71 tax year she earned £289 working for Kelvinator.

12. On 7 January 1975, Mrs Terry, then aged 20, married Philip Terry, who was in the British Army and stationed in Germany. Later in January 1975, she left the UK to live with her husband in Germany.

13. Mrs Terry returned to the UK for about three weeks around the time her first child was born in early October 1975. She stayed with her husband's parents in Dover. She then returned to Germany and lived there with her husband and children until early 1979. Mrs Terry did not work during her time in Germany.

14. Mrs Terry's form RF1, a national insurance record form kept by the Department and completed by officials of the Department in manuscript, had the following entry in the "notes" column on the line below the line for the year 1974-1975: "Married MW/NP 6 4 75". "MW/NP" was the abbreviation used by Department officials to indicate that the person in question had made a married women's ("MW") election not to pay ("NP") NICs (more is said about this RF1 at [32(1)] and [35] below).

15. The text of a Reg 91 election was set out on the Department's form CF9 (RNI), found at the back pages of Leaflet N11. Form CF9 carried the heading "Married woman's contribution choice" and gave two alternative declarations: "A" for full liability and "B" for reduced liability. Declaration B on form CF9 was the Reg 91 election. The declaration on form CF9 indicated that the married woman had either read Leaflet N11 or had it explained to her.

16. Forms CF9 were to be completed at, or sent to, a local office of the Department. Local offices sent completed forms CF9s to the Department's record office in Newcastle-upon-Tyne, where there were procedures for Reg 91 elections to be noted on that person's form RF1.

17. The Department's document retention policy was to destroy forms CF9 after six years.

18. A company by the name of Metal Box Co Ltd of Old Hall Rd, Bromborough filed Department "deduction cards" for "Lynn Margaret Terry" for the tax years 1975-1976 and 1976-77, showing married women's reduced rate NICs deducted under "category table B" of £1.46 (on pay of £84.04) and £0.52 (on pay of £26.26) for the two years respectively. These

show Mrs Terry's NI number although they misspell her middle name ("Margaret" rather than "Margarete"). They indicate a date of leaving of 2 April 1976.

19. Mrs Terry's second son was born in Germany in November 1977.

20. In the discussion below I consider whether or not to find as a fact that Mrs Terry made a Reg 91 election for 1975-76.

21. Mrs Terry never made a revocation of a Reg 91 election.

#### **THE LAW**

22. Under sub-section 5(2) Social Security Act 1975, a married woman was liable to contribute at the reduced rate if she had elected, in accordance with regulations under that Act, to contribute at that rate and had not revoked her election.

23. Under regulation 91 (read with regulation 90) Social Security (Contributions) Regulations 1975,

(1) a married woman could make an election that while she was married her liability in respect of primary Class 1 contributions shall be at the reduced rate under s5(2) Social Security Act 1975 (such an election was a "Reg 91 election" as referred to in this decision);

(2) a Reg 91 election was made by giving notice in writing to the Secretary of State and needed to specify the year in respect of which it was made. Notice could be given at a local office of the Department or sent to such an office. The notice was to be made on a form approved by the Secretary of State.

24. To make a first Reg 91 election for a given tax year, the election had to be made on or before 11 May in that tax year (regulation 91(4)).

25. Under regulation 92, a Reg 91 election made for a first year continued in respect of subsequent years, until revoked.

26. Under regulation 98, where the Secretary of State was satisfied that a woman was married and made a Reg 91 election, the Secretary of State was to issue to that woman a certificate of Reg 91 election. Such certificate remained the property of the Secretary of State (although the woman to whom it was issued remained responsible for its custody unless and until it was delivered to an employer or returned to the Secretary of State). A woman to whom a certificate was issued had to deliver it to an employer (if she became employed), who was then responsible for its custody until redelivered to the woman to whom it was issued or to the Secretary of State.

27. The married women's reduced rate of NICs was abolished from 11 May 1977; but if a Reg 91 election was made before then, it generally continued in force until revoked or ended by other prescribed events. From 6 April 1978, a Reg 91 election automatically lapsed if the woman did not pay Class 1 NICs for two consecutive years: reg 101(1)(c) Social Security (Contributions) Regulations 1979.

28. Under the Social Security Contributions (Transfer of Functions, etc) Act 1999, it shall be for an officer of HMRC to decide whether a person is or was liable to pay contributions of any particular class and, if so, the amount that he is or was liable to pay (s8(1)(c)). There is a right of appeal to the Tribunal.

#### **ISSUES IN THE APPEAL, BURDEN OF PROOF AND PARTIES' ARGUMENTS**

29. Mrs Terry contests HMRC's decision in this case because tax years in which a Reg 91 election was in force do not count as "full" for the purposes of Mrs Terry's state pension.

30. HMRC's case in this appeal is that Mrs Terry made a Reg 91 election for the 1975-76 tax year. If that is correct then, under the law in respect of Reg 91 elections summarised above, that election would have continued in force over the next two tax years as well. Mrs Terry's case is that she did not make a Reg 91 election for the 1975-76 tax year. This question of fact is therefore the single issue in this appeal.

31. Although the burden of proof in tax appeals like this one is ordinarily on the appellant, HMRC have assumed that burden here (as they have in similar cases going back many years) on the grounds that it would be unfair to place the burden on the appellant to "prove a negative" i.e. prove that they did not make an election. The standard of proof is the usual civil standard: on the balance of probabilities.

32. Particular aspects of HMRC's case included:

(1) they stated that the "MW/NP" notation on Mrs Terry's RF1, although indicating a election "not to pay" NICs (such elections could be made by married women prior to April 1975), actually meant that a Reg 91 election had been made, as (they said) the officials in the Department's Newcastle office continued to use the "NP" notation for Reg 91 elections following changes in the law in 1975; and

(2) they argued that the evidence showed that Mrs Terry must have provided Metal Box Co Ltd with a certificate of a Reg 91 election issued to her by the Department – otherwise the company would have deducted standard rate NICs.

33. Mrs Terry's case included that she was never employed by Metal Box Co Ltd (and was living in Germany at the time); she speculated that perhaps someone else used her details to get work with Metal Box Co Ltd.

#### **DISCUSSION**

34. Two kinds of documents would have furnished direct documentary evidence of Mrs Terry having made an Reg 91 election for 1975-76: a copy of a form CF9 showing her having signed under "Declaration B"; or a copy of the certificate which, under the 1975 regulations, the Secretary of State was required to issue to her if satisfied that she was a married woman and had made a Reg 91 election. I accept HMRC's evidence that forms CF9 were destroyed under the Department's document retention policy (and, like earlier Tribunals, I draw no adverse inference from that fact). The whereabouts of any certificate issued to Mrs Terry was not fully explored in the parties' cases: HMRC's case was Metal Box Co Ltd would not have withheld at the married women's reduced rate in the 1975-76 and 1976-77 tax years without having been given such a certificate by Mrs Terry; I presume HMRC would also say that Metal Box Co Ltd would have returned such certificate to Mrs Terry when she left their employment in 1976; and Mrs Terry would say that she was never issued with such a certificate.

35. Despite not being able to produce either of the documents mentioned above, HMRC in my view made out a prima facie case for Mrs Terry having made a Reg 91 election for 1975-76, based on the copies of her RF1 and the "deduction cards" from Metal Box Co Ltd for 1975-76 and 1976-77 showing deductions at the married women's reduced rate. I consider that the RF1 does relate to Mrs Terry, even though her name there is spelled "Lyn" rather than "Lynn", as it correctly shows here maiden surname, married surname, NI number, date of birth and date of marriage.

36. Based on her own memory of events, Mrs Terry counter-argues that, to the extent they indicate she made a Reg 91 election, both the RF1 and the Metal Box Co Ltd "deduction cards" are incorrect due, essentially, to bureaucratic error. Mrs Terry's version of events, though confirmed by her husband, is uncorroborated by independent evidence.

37. For reasons explained at [10] above, I have accepted Mrs Terry's account of what I call "basic" matters – such where she lived, and whether she was working, in 1975 and following years. I have therefore found as a fact at [13] above that Mrs Terry was living in Germany with her husband and young child in the 1975-75 and 1976-77 tax years, and was not working at the time. It follows that, on these "basic" matters, I have preferred Mrs Terry's evidence – first hand but subject to the frailties of human memory - to the evidence of the "deduction cards" in her name from Metal Box Co Ltd, a company based in Bromborough – independent evidence but subject to the frailties of bureaucratic error.

38. Whether Mrs Terry signed a CF9 for 1975-76, completing declaration B, is a different order of question as to the reliability of her memory: it is one thing to recall where one lived and whether one was working 45 years ago in one's early 20s – it is another to recall if one signed a particular form.

39. I note, however, that if Mrs Terry signed an Reg 91 election for 1975-76, she would have had to do so some time between 7 January 1975 (when she got married) and 11 May 1975 (the latest date to make an "in-year" Reg 91 election). I have accepted Mrs Terry's evidence that, of this four month period, she spent the first three weeks or so in the UK, and then was in Germany for the remainder. This means that, if she signed such a form, she would have done so at a local office of the Department in the UK sometime in the first two or three weeks after her marriage; or she would have had to obtain it from, and return it by post to, such a local office from her new home in Germany, if she signed it after late January 1975.

40. I consider it inherently unlikely that, after leaving the UK for Germany at the end of January 1975, Mrs Terry would have obtained a Leaflet NI1, completed the CF9 at the back, and posted it back to a local office of the Department – there would have been logistical obstacles to doing this (where does one obtain a Leaflet NI1 in Germany?) and, given she was not working, there was no obvious reason why she would have undertaken this exercise in those first few months of her new life in Germany. This leaves the two or three weeks in January between her getting married and leaving for Germany. Although it appears Mrs Terry was still working for NAAFI until 23 January 1975, I again consider it inherently unlikely that attending a local office of the Department during the first weeks after the wedding, when she was preparing to move to Germany, was something Mrs Terry would have done.

41. Balancing Mrs Terry's memory of not having signed a Reg 91 election, and the points made above about the inherent unlikelihood of her having done so in the circumstances, against the form RF1 – independent evidence, but subject to bureaucratic error, especially in an age of hand-written records – I again prefer Mrs Terry's account, on the balance of probabilities.

42. I accordingly find that Mrs Terry did not sign a Reg 91 election for the 1975-76 year. This means that the decision under appeal was incorrect; the appeal is allowed.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

43. 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.

**ZACHARY CITRON**

**TRIBUNAL JUDGE**

**RELEASE DATE: 17 JUNE 2020**