



**28TACD2018**

**BETWEEN/**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to a claim in respect of the Single Person Child Carer Credit (hereafter 'the tax credit') in accordance with section 462B of the Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997') in respect of the tax years of assessment 2015 and 2017. The Appellant sought an oral hearing, which took place at the Tax Appeals Commission on 20 September 2018.

**Background**

2. The Appellant and his wife separated in 2013. The Appellant submitted that he had joint custody of his children and that he and his former spouse had a 50:50 arrangement in relation to access, custody and care of their children. The Appellant's former spouse was in receipt of the tax credit for the relevant tax years and was also in receipt of child benefit payments under the Social Welfare Consolidation Act 2005. The Appellant claimed an entitlement to the tax credit on the basis that he was the primary claimant in accordance with s.462B(2)(a) TCA 1997. In the alternative, the



Appellant claimed an entitlement to 50% of the tax credit on the basis that he and his wife shared custody of the children on a 50:50 basis.

## **Legislation**

### Section 462B TCA 1997 – Single person child carer credit

*(1)(a) In this section—*

*“order”, in relation to a child, means an order made by the court under section 11 of the Guardianship of Infants Act 1964 granting custody of the child to the child’s father and mother jointly;*

*“qualifying child” in relation to any primary claimant and year of assessment means a child—*

*(i) who is born in the year of assessment,*

*(ii) who, at the commencement of the year of assessment, is under the age of 18 years, or*

*(iii) who, if over the age of 18 years at the commencement of the year of assessment—*

*(I) is receiving full-time instruction at any university, college, school or other educational establishment, or*

*(II) is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself and had become so permanently incapacitated before he or she had attained the age of 21 years or had become so permanently incapacitated after attaining the age of 21 years but while he or she had been in receipt of such full-time instruction,*

*and who—*

*(A) is a child of the primary claimant, or*

*(B) not being such a child is in the custody of the primary claimant, and is maintained by the primary claimant at the primary claimant’s own expense for the whole or the greater part of the year of assessment or, in respect of a child born in the year of assessment, for the greater part of the period remaining in that year of assessment from the date of birth of that child.*



*(b) This section shall apply to an individual who is not entitled to a basic personal credit referred to in paragraph (a) or (b) of section 461.*

*(c) This section shall not apply for any year of assessment—*

*(i) in the case of either party to a marriage unless—*

*(I) the parties are separated under an order of a court of competent jurisdiction or by deed of separation, or*

*(II) they are in fact separated in such circumstances that the separation is likely to be permanent,*

*(ii) in the case of either civil partner in a civil partnership unless the civil partners are living separately in circumstances where reconciliation is unlikely, or*

*(iii) in the case of cohabitants.*

*(2)(a) This paragraph applies to an individual (in this section referred to as the “primary claimant”), being an individual to whom this section applies, who proves for a year of assessment that a qualifying child is resident with him or her for the whole or the greater part of that year of assessment or, in respect of a child born in that year of assessment, for the greater part of the period remaining in that year of assessment from the date of birth of that child, provided that where a child is the subject of an order and the child resides with each parent for an equal part of the year of assessment, this paragraph shall apply to whichever of the parents referred to in that order is the recipient of the child benefit payment made under Part 4 of the Social Welfare Consolidation Act 2005.*

*(b) This paragraph applies to an individual (in this section referred to as the “secondary claimant”), being an individual to whom this section applies, who proves for a year of assessment that a qualifying child of a primary claimant is resident with him or her for a period of, or periods that in aggregate amount to, not less than 100 days.*

*(3) Subject to subsection (5), an individual to whom subsection (2)(a) applies, shall be entitled to a tax credit (in this section referred to as a “single person child carer credit”) of €1,650.*

*(4) Subject to subsection (5), and notwithstanding subsection (3), where for any year of assessment a primary claimant would be entitled to a single person child carer credit but for the fact that he or she has, in the form specified by the Revenue Commissioners, relinquished his or her claim to that credit, a secondary claimant shall be entitled to claim a single person child carer credit in respect of the qualifying child concerned.*



*(5) A claimant under this section shall be entitled to only one single person child carer credit for any year of assessment irrespective of the number of qualifying children resident with the claimant in that year.*

*(6)(a) The references in subsection (1)(a) to a child receiving full-time instruction at an educational establishment shall include references to a child undergoing training by any person (in this subsection referred to as “the employer”) for any trade or profession in such circumstances that the child is required to devote the whole of his or her time to the training for a period of not less than 2 years.*

*(b) For the purpose of a claim in respect of a child undergoing training, the inspector may require the employer to furnish particulars with respect to the training of the child in such form as may be prescribed by the Revenue Commissioners.*

*(7) Where any question arises as to whether any person is entitled to a single person child carer credit in respect of a child over the age of 18 years as being a child who is receiving full-time instruction referred to in this section, the Revenue Commissioners may consult the Minister for Education and Skills.*

*(8) For the purposes of this section a child shall be treated as resident with an individual for any day where the child so resides for the greater part of that day.*

### **Submissions**

3. The Appellant claimed the tax credit in respect of the tax years of assessment 2015 and 2017 on the basis that he was the primary claimant in accordance with s.462B(2)(a) which provides;

*This paragraph applies to an individual (in this section referred to as the “primary claimant”), being an individual to whom this section applies, who proves for a year of assessment that a qualifying child is resident with him or her for the whole or the greater part of that year of assessment .... provided that where a child is the subject of an order and the child resides with each parent for an equal part of the year of assessment, this paragraph shall apply to whichever of the parents referred to in that order is the recipient of the child benefit payment made under Part 4 of the Social Welfare Consolidation Act 2005.*

4. In the alternative, the Appellant claimed an entitlement to 50% of the tax credit on the basis that he and his former spouse shared custody of the children on a 50:50 basis.



5. The Appellant submitted that he had joint custody and that he and his former spouse had a 50:50 arrangement in relation to the access, custody and care of their children. The Respondent requested documentation in support of the custody arrangement however, the Appellant failed to furnish such documentation.
6. While the Appellant's former spouse was in receipt of the tax credit, the Appellant confirmed at hearing, that he had not informed his wife of his intention to claim the tax credit. In circumstances where a person who is not a party to an appeal stands to lose a tax credit as a result of the determination of an appeal brought by another taxpayer, where that person has no knowledge of the appeal, the Tax Appeals Commission may consider it appropriate to hear evidence from that person in accordance with s.949AE TCA 1997 which provides that the Appeal Commissioners *'may summon any person to appear before them to be examined where they consider such a person to be in a position to give evidence relating to a matter under appeal.'*
7. The Respondent contended that even if there was an order for joint custody on a 50:50 basis, the Appellant could not succeed in his claim in respect of the tax credit because the Appellant's wife, being the person in receipt of the child benefit payments under the Social Welfare Consolidation Act 2005, was the person entitled to the tax credit in accordance with s.462B(2)(a) TCA 1997.

### **Conclusion**

8. In this appeal it was not necessary to summon the Appellant's former spouse to give evidence because, taking the Appellant's case at its height, the Appellant could not succeed in his claim in respect of the tax credit. The position is that the Appellant's former spouse, being the parent in receipt of the child benefit payments under the Social Welfare Consolidation Act 2005, was the person entitled to the tax credit in accordance with s.462B(2)(a). Thus, in respect of the relevant tax years of assessment, I determine that the Appellant is not entitled to the single person child carer credit pursuant to section 462B TCA 1997.
9. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, s.949AL thereof.

**COMMISSIONER LORNA GALLAGHER**

**October 2018**



