



**05TACD2017**

**NAME REDACTED**

**Appellant**

**-and-**

**THE REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

***A. Background***

1. The Appellant married **NAME REDACTED** prior to the years the subject matter of this appeal. The Appellant and his/her spouse subsequently applied to be jointly assessed for income tax purposes. Unfortunately, the marriage broke down and the Appellant's spouse left the family home. The core issue for determination in this appeal is whether the Appellant is entitled to be jointly assessed with **NAME REDACTED** for the years under appeal and, consequently, entitled to the higher level of basic personal tax credit afforded by the legislation to married persons and civil partners.

***B. Matter under appeal***

2. The Appellant has appealed against assessments raised by Revenue for the years 2012 to 2015 inclusive and the tax amount under appeal is €13,615.



**C. Hearing and evidence**

3. At the hearing of the appeal, I heard oral evidence from the Appellant and reviewed documentation relevant to the appeal which was submitted on behalf of both parties. I have also had regard to additional documentation which I requested during the hearing of the appeal and which was subsequently furnished to the Commission by the Appellant and Respondent.

**D. Relevant legislation**

4. Section 461 of the Taxes Consolidation Act, 1997, as amended, provides as follows: -

*"In relation to any year of assessment, an individual shall be entitled to a tax credit (to be known as the "basic personal tax credit") of—*

- (a) €3,300, in a case in which the claimant is a married person or a civil partner who—*

*(i) is assessed to tax for the year of assessment in accordance with section 1017 or 1031C, as the case may be, or*

*(ii) proves that his or her spouse or civil partner is not living with him or her but is wholly or mainly maintained by him or her for the year of assessment and that the claimant is not entitled, in computing his or her income for tax purposes for that year, to make any deduction in respect of the sums paid by him or her for the maintenance of his or her spouse or civil partner,*

- (b) €3,300, in a case in which the claimant in the year of assessment is a widowed person or surviving civil partner, other than a person to whom paragraph (a) applies, whose spouse or civil partner has died in the year of assessment, and*

- (c) €1,650, in the case of any other claimant."*



5. The relevant subsections of section 1017 provide that: -

*“(1) Where in the case of a husband and wife an election under section 1018 to be assessed to tax in accordance with this section has effect for a year of assessment –*

- (a) the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife’s total income (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income,*
- (b) the question whether there is any income of the wife chargeable to tax for any year of assessment and, if so, what is to be taken to be the amount of that income for tax purposes shall not be affected by this section, and*
- (c) any tax to be assessed in respect of any income which under this section is deemed to be income of a woman’s husband shall, instead of being assessed on her, or on her trustees, guardian or committee, or on her executors or administrators, be assessable on him or, in the appropriate cases, on his executors or administrators.*

*“(2) Any relief from income tax authorised by any provision of the Income Tax Acts to be granted to a husband by reference to the income or profits or gains or losses of his wife or by reference to any payment made by her shall be granted to a husband for a year of assessment only if he is assessed to tax for that year in accordance with this section.”*

6. Finally, section 1015(2) provides that: -

*“(2) A wife shall be treated for income tax purposes as living with her husband unless either –*

- (a) they are separated under an order of a court of competent jurisdiction or by deed of separation, or*
- (b) they are in fact separated in such circumstances that the separation is likely to be permanent.”*



7. It was common case between the parties that the Appellant and his/her spouse were not separated by court order or by deed of separation during the years under appeal, and so the Appellant's case turned on the question of whether (s)he and his/her spouse were, during the years 2012 to 2015 inclusive, separated in such circumstances that the separation was likely to be permanent.

**E. The Appellant's Evidence and Submissions**

8. The Appellant and his/her spouse formerly resided together at **ADDRESS REDACTED**. The Appellant stated in evidence that **NAME REDACTED** left the family home shortly after 2010. I was furnished with a declaration signed by **NAME REDACTED** which stated that (s)he was separated from the Appellant as of the 20<sup>th</sup> of March 2011 and with an e-mail dated the 18<sup>th</sup> of November 2015 in which his/her accountant advised the Revenue Commissioners that the date on which the Appellant and **NAME REDACTED** had separated was 20 March 2011, this being "*in or around the date that NAME REDACTED left the family home.*"
9. The Appellant accepted in the course of the hearing that **NAME REDACTED** had in fact left the family home in March 2011 but stated that (s)he had subsequently returned to the family home "*a couple of times.*" The Appellant was unable to say when **NAME REDACTED** had returned to the family home, nor was (s)he able to say how long (s)he had returned for.
10. The Appellant further gave evidence that (s)he had been very proactive in trying to bring about a reconciliation with **NAME REDACTED** and submitted that a letter of October 2014 to the Family Law Centre requesting family mediation was objective evidence of this fact. The Appellant submitted that it was not until the 26<sup>th</sup> of August 2015 that, following a family mediation held that day, (s)he and **NAME REDACTED** agreed that there was no reasonable prospect of reconciliation. The Appellant submitted in evidence an e-mail sent by him/her to the Revenue Commissioners on the 26<sup>th</sup> of August 2015 as evidence of this.



11. The Appellant contended that the statements made by **NAME REDACTED** in relation to the date on which (s)he had separated from the Appellant were untrue, motivated by malice and represented *“a cynical attempt to impose financial hardship ... and manipulate Revenue procedures.”*
12. In support of his/her contentions, the Appellant pointed out that **NAME REDACTED**'s recorded address with the Revenue Commissioners was at the family home until October 2015. (S)He submitted in evidence a copy of a letter sent by Revenue to **NAME REDACTED** dated 3 October 2015 which was sent to the **ADDRESS REDACTED** address. In response to this point, it was submitted on behalf of the Revenue Commissioners that no correspondence was received by them from 2008 to 2015 regarding any change of **NAME REDACTED**'s personal circumstances and accordingly his/her address was not changed on Revenue records.
13. The Appellant further pointed out that a company, **NAME REDACTED**, of which **NAME REDACTED** was the Company Secretary, had its registered office at the **ADDRESS REDACTED** address and that **NAME REDACTED** had never amended this during the period between his/her leaving the family home in March 2011 and the striking off of the company in **DATE REDACTED** 2015. The Appellant submitted Companies Registration Office printouts and a Corporation Tax demand sent to the company in **DATE REDACTED** 2015 in support of this point.
14. The Appellant further submitted in evidence documentation which, (s)he contended, demonstrated that **NAME REDACTED** viewed him/herself being resident in the **ADDRESS REDACTED** property in the years subsequent to his/her having left the family home in March of 2011. This documentation comprised a letter to **NAME REDACTED** from the Collector-General of Revenue confirming receipt of a direct debit instruction for the payment of the Local Property Tax for the **ADDRESS REDACTED** property dated 3 July 2013 and a Local Property Tax Declaration in respect of that property submitted online in respect of the period



from July 2013 to December 2019, in which **NAME REDACTED** was recorded as the liable person and which recorded the property as being his/her main residence.

15. In the course of his evidence before me, the Appellant stated that (s)he had paid Local Property Tax in respect of the **ADDRESS REDACTED** property and that (s)he had made a declaration in respect of the property. I noted that the Local Property Tax declaration purportedly completed by **NAME REDACTED** for the period from July 2013 to December 2019 bore on it the Appellant's name and his/her PPS number. The Appellant was unable to explain why this was so.
16. I also note that the e-mail from **NAME REDACTED**'s accountant dated 18 November 2015 recorded that (s)he had made contributions towards the **ADDRESS REDACTED** property for approximately two years subsequent to his/her moving out in March 2011, and the Appellant accepted this as being correct in his/her evidence before me.

***F. The Respondent's Evidence and Submissions***

17. In opposing the appeal, the Revenue Commissioners stated that they had been informed by the Appellant's employer that (s)he had been separated since 2011. That communication was the subject of a complaint by the Appellant to the Data Protection Commissioner, who found that there was no evidence that the Appellant's employer had any information regarding the Appellant's marital status on file, and further found that the Appellant's personal information was processed unfairly and without his/her consent.
18. In those circumstances, I have not had regard to the alleged communication from the Appellant's employer in considering this appeal and in reaching my determination.



19. The Revenue Commissioners further rely on a letter from the Appellant dated 25 February 2015 in which (s)he wrote *“Following Family Mediation in 2015, I wish to inform you that, due to a change in personal status I will no longer continue claiming married person’s tax credit in 2016.”* When this letter was put to the Appellant in the course of the hearing, the Appellant reiterated that (s)he was not aware that there was no prospect of a reconciliation with **NAME REDACTED** until after the family mediation on 26 August 2015.
20. The Revenue Commissioners also rely on the fact that the Appellant was asked on 27 January 2015 to provide a signed statement that both the Appellant and **NAME REDACTED** were residing together at the **ADDRESS REDACTED** property, but such a statement was never furnished by the Appellant. In response to this point, the Appellant says that his/her failure to provide such a statement was simply an oversight on his/her behalf. I accept his/her evidence that this was an oversight, while noting that the Appellant could not have truthfully provided such a statement at that time.
21. The Revenue Commissioners further relied upon the declaration signed by **NAME REDACTED** which stated that (s)he was separated from the Appellant as of the 20<sup>th</sup> of March 2011 and the e-mail dated the 18<sup>th</sup> of November 2015 in which his/her accountant advised the Revenue Commissioners that 20 March 2011 was the date of separation, being *“in or around the date that NAME REDACTED left the family home.”* As outlined in paragraph 11 above, the Appellant’s response to these documents was that **NAME REDACTED**’s account of events was untrue and actuated by malice against him/her.
22. The Revenue Commissioners further relied on the fact that they had received information from the Department of Social Protection which indicated that an unnamed individual had been residing at the **ADDRESS REDACTED** property since before March of 2014 and that a child, had been born to the Appellant and the unnamed individual on **DATE REDACTED** 2014.



23. In the Appellant's evidence before me, the Appellant stated the unnamed individual had been resident in the **ADDRESS REDACTED** property since in or about April of 2014. The Appellant said that this person was a student and they had originally met through social media (hereafter 'the student'). The student subsequently moved into the **ADDRESS REDACTED** property as a guest and did not pay rent. The Appellant confirmed that the child born in November 2014 was their child. The Appellant further stated that **NAME REDACTED** was not aware of the relationship with the student; the Appellant said (s)he had never discussed it with **NAME REDACTED** and did not believe that it would have impacted on the likelihood of reconciling with **NAME REDACTED**.

24. The Revenue Commissioners further relied upon correspondence from the Legal Aid Board submitted to them by the Appellant on 19 November 2015, which recorded the Appellant's instructions to issue proceedings for a divorce. The Revenue Commissioners pointed out that it is a condition precedent to the granting of a divorce that the parties must have lived apart for at least four of the previous five years.

**G. Analysis and findings**

25. In order to determine this appeal, it is necessary to determine the date on which **NAME REDACTED** ceased to be treated as living with the Appellant for income tax purposes, namely the date by which the Appellant and **NAME REDACTED** were "*in fact separated in such circumstances that the separation is likely to be permanent.*" I believe that the wording of section 1015(2)(b) requires a two-stage analysis; firstly, is there a factual separation of the spouses? And, secondly, are the circumstances such that the separation is likely to be permanent?

26. Having heard and carefully considered the evidence and submissions offered on behalf of the parties, I am satisfied and find as a material fact that the Appellant and **NAME REDACTED** were in fact separated from March of 2011 onwards. **NAME REDACTED** stated through





his/her accountant that (s)he left the family home on or about 20 March 2011 and this evidence was not seriously challenged by the Appellant. While the Appellant did give evidence that **NAME REDACTED** had subsequently returned to the family home on one or two occasions, his/her evidence was very uncertain as to the particulars of those returns and I am not satisfied that they amount to evidence that (s)he intended to return to the family home.

**27.** In reaching this finding of fact, I have had careful regard to the fact that **NAME REDACTED** did not advise the Revenue Commissioners or the Company Registration Office that (s)he had ceased to reside at the **ADDRESS REDACTED** property. I believe that his/her failure to do so is equally consistent with an oversight or neglect on his/her part as it is with a view that (s)he believed himself/herself to be resident in the property, especially when viewed in the light of him/her having ceased to physically reside in the property.

**28.** I have also had regard to the Local Property Tax declaration allegedly submitted by **NAME REDACTED** in respect of the period from July 2013 to December 2019. As detailed above, I had a concern about whether the online declaration had actually been submitted by **NAME REDACTED** and the evidence before me was not sufficient to enable me to reach a conclusion on this issue. However, even if I was to accept that the Local Property Tax declaration was submitted by **NAME REDACTED** in mid-2013, and that (s)he had authorised the payment of the Local Property Tax by direct debit, that would not mean that **NAME REDACTED** and the Appellant were not in fact separated. The e-mail from **NAME REDACTED**'s accountant dated 18 November 2015 stated that **NAME REDACTED** had continued to make financial contributions towards the former family home for a couple of years after (s)he had separated from the Appellant, and I find that the fact of him/her having made such contributions is not inconsistent with him/her having separated from the Appellant. Again, the statement in the declaration that the **ADDRESS REDACTED** property was **NAME REDACTED**'s main residence has to be considered in the light of the fact that (s)he had ceased to reside in that property from March 2011 onwards.



29. Having found as a material fact that the Appellant and **NAME REDACTED** were in fact separated from 20 March 2011 onwards, I must next determine when the circumstances of their separation became such that the separation was likely to be permanent.
30. There does not appear to have been any judicial consideration or interpretation of section 1015(2)(b). While a number of Irish and UK decisions are cited by commentators (see, for example, Maguire, *Irish Income Tax: 2016*, at para. 3.501, citing *Ua Clothasaigh II* ITR 75, *Ward-Stemp –v- Griffin* [1988] STC 47, *Holmes –v- Mitchell* [1991] STC 25 and *McA (M) –v- X McA* [2000] 1 I.R. 457), those decisions turn on their particular facts and are not of material assistance in determining the appeal before me.
31. I believe that I cannot make a determination as to whether the circumstances of the Appellant's separation from **NAME REDACTED** were such that the separation was likely to be permanent without having regard to the intentions of the parties. No evidence was available to me in relation to **NAME REDACTED**'s intentions; while I am satisfied that (s)he is of the view that (s)he separated from the Appellant in March 2011, there is no evidence before me in relation to the question of when (s)he first believed the separation to be permanent. There is no evidence that (s)he sought to obtain a divorce from the Appellant and, indeed, the evidence before suggests that (s)he failed to engage with the Appellant's legal advisors when (s)he instructed them that (s)he wished to begin proceedings seeking a divorce.
32. Turning to the Appellant's own intentions in relation to his/her marriage, I accept as truthful and correct his/her evidence that (s)he wished to bring about a reconciliation with **NAME REDACTED** following him/her leaving the family home in March 2011. However, having carefully considered all of the evidence before me, I am not satisfied that this remained the case throughout all of the years under appeal.



33. In particular, I have had regard to the fact that as of March or April 2014, the Appellant had commenced a relationship with the student, the student had taken up residence in the **ADDRESS REDACTED** property and was pregnant with the Appellant's child. While I note that the Appellant gave evidence that these facts did not, in his view, impact upon the likelihood of his/her reconciling with **NAME REDACTED**, I believe that they amount to circumstances such that his/her separation from **NAME REDACTED** was likely to be permanent.

34. I therefore find as a material fact that the Appellant was in fact separated from **NAME REDACTED** in such circumstances that the separation was likely to be permanent from 1 April 2014 onwards.

#### **H. Determination**

35. Having carefully considered all of the evidence before me and the submissions made by the parties, I have determined that **NAME REDACTED** is not to be treated as living with the Appellant for income tax purposes from 1 April 2014 onwards, and consequently the Appellant ceased to be entitled to assessed in respect of their joint incomes pursuant to section 1017 and ceased to be entitled to the higher basic personal tax credit pursuant to section 461(a)(i) from 1 April 2014 onwards.

36. I will therefore allow the Appellant's appeal in respect of the years 2012 and 2013 and will allow the appeal in part in respect of the year 2014. I will entertain further submissions from the parties in relation to the extent to which the assessment for 2014 is to be reduced if they cannot reach agreement on this point. I will refuse the Appellant's appeal in respect of the year 2015.

**APPEAL COMMISSIONER**

**March 2017**

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