



15TACD2018

BETWEEN/

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against assessments, in relation to the withdrawal from the Appellant of the One Parent Family Tax Credit, pursuant to section 462 of the Taxes Consolidation Act 1997, as amended (hereafter 'TCA 1997'), in respect of the tax years of assessment 2012 and 2013. This appeal is determined in accordance with section 949U TCA 1997.

Background

2. The Appellant claimed the One Parent Family Tax Credit (hereafter 'the credit') for the tax years of assessment 2012 and 2013 in relation to his child, born in 2004. The Appellant was not cohabiting with his child's mother but was cohabiting with his partner for the relevant tax years of assessment. The Appellant applied for the tax credit online and during the application process and in answer to the question; '*Are you living with your partner?*' the Appellant answered '*no*'. He stated that he misunderstood the word '*partner*' to be a reference to the mother of his child as opposed to his partner with whom he was residing.

3. When the Respondent discovered the error, the Respondent raised P21 balancing statements in respect of the tax years of assessment 2012 and 2013, withdrawing from the Appellant, the benefit of the tax credit, in the sum of €5,228. The Appellant duly appealed. The balancing statements are treated as assessments for the purposes of this appeal in accordance with s.997(3) TCA 1997.

4. Legislation

(1) (a) In this section, “qualifying child”, in relation to any claimant and year of assessment, means—

(i) a child—

(I) 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—

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

(B) 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

(ii) a child who is a child of the claimant or, not being such a child, is in the custody of the claimant and is maintained by the claimant at the claimant’s own expense for the whole or part of the year of assessment.

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



[(2) Subject to subsection (3), where a claimant, being an individual to whom this section applies, proves for a year of assessment that a qualifying child is resident with the claimant for the whole or part of the year, the claimant shall be entitled to a tax credit (to be known as the “one-parent family tax credit”) of €1,650, but this section shall not apply for any year of assessment—

(a) in the case of a husband or a wife where the wife is living with her husband,

(b) [in the case of civil partners who are not living separately] in circumstances where reconciliation is unlikely, or

(c) in the case of cohabitants.

(3) A claimant shall be entitled to only one tax credit under subsection (2) for any year of assessment irrespective of the number of qualifying children resident with the claimant in that year.

(4)(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.

(5) Where any question arises as to whether any person is entitled to a tax credit under this section 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 Science.

(6) This section shall cease to apply for the year of assessment 2014 and subsequent years of assessment.



Submissions

5. The One Parent Family Tax Credit is available where a taxpayer satisfies the conditions contained in section 462 TCA 1997. Section 462(2) provides that the credit will not be available where the taxpayer is cohabiting.
6. When completing the application form in respect of the tax credit, the Appellant submitted that he misunderstood the question '*Are you living with your partner?*'. The Appellant stated that he answered '*no*' as he understood the word '*partner*' to be a reference to the mother of his child.
7. The Appellant accepted that for the relevant tax years of assessment, he was cohabiting with his partner. The Appellant stated that if he had known that he was not entitled to claim the credit, he would not have applied for it. The Appellant submitted that withdrawal of the credit by means of a request for repayment by the Respondent, created undue hardship.

Analysis

8. The facts in this appeal are not in dispute. The Appellant accepted that he was cohabiting with his partner for the relevant tax years of assessment and that his answer to the question '*Are you living with your partner?*' when completing the application for the credit, was incorrect.
9. Further, there is no disagreement between the parties in relation to the interpretation of the law insofar the Appellant does not dispute that where a taxpayer claimant is cohabiting with his/her partner it will disqualify that taxpayer from claiming the credit. While the Appellant received the benefit of the credit for the tax years of assessment 2012 and 2013, he stated that he would not have claimed the credit had he known, or been notified that he was not entitled to it.

Conclusion

10. The provisions of section 462(2) TCA 1997, as amended, are not in dispute and the Appellant received the benefit of the credit in error, in respect of the tax years of assessment 2012 and 2013.



11. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments are incorrect. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that he falls within the relief, see *Revenue Commissioners v Doorley* [1933] 1 IR 750 and *McGarry v Revenue Commissioners* [2009] ITR 131. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated:

‘The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.’

12. Having considered the facts and circumstances of this appeal, together with the documentary evidence and submissions, I determine that the Appellant did not succeed in discharging the burden of proof. As a result, I determine that the assessments dated 14 July 2015 in respect of the tax years of assessment 2012 and 2013, shall stand.

13. This appeal is hereby determined in accordance with s.949AK TCA 1997.

APPEAL COMMISSIONER

June 2018

