



Between

07TACD2024



Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) of the decision of the Revenue Commissioners (“the Respondent”) of 16 November 2021 to withdraw Single Person Child Carer Credit (“SPCCC”) claimed by the Appellant for the years 2017, 2018, 2019 and 2020 (“the years in question” where referred to collectively). The withdrawal of SPCCC resulted in the Appellant being assessed as having a tax liability of €7,601.91. With the application of penalties and interest, the Appellant’s overall liability came to €9,669.23.
2. In accordance with the wishes of both parties, this appeal is determined without a hearing pursuant to section 949U of the Taxes Consolidation Act 1997 (“the TCA 1997”).

Background

3. At all times material to this appeal the Appellant was a PAYE taxpayer assessed as a single person.
4. For the years 2017, 2018, 2019 and 2020 the Appellant claimed and received SPCCC in respect of the care of her child.

5. On or about 10 October 2017, the Appellant made a joint application with [REDACTED] (“the partner” or “her partner”) under section 477C of the TCA 1997 for income tax relief under the Help to Buy scheme in respect of [REDACTED], County [REDACTED] (“the qualifying property”). This joint application having ceased to be valid, the Appellant and her partner made a second Help to Buy application on or about 16 April 2018. The Appellant and her partner received the Help to Buy relief and acquired the qualifying property on or about early 2019.
6. It was not in dispute that prior to acquiring the qualifying property, and throughout the periods 2017 and 2018, the Appellant and her partner jointly rented another property, namely [REDACTED], County [REDACTED] (“the rented property”).
7. In November 2021, the Appellant was informed by the Respondent that it intended to withdraw her SPCCC for the years 2017, 2018, 2019 and 2020 in circumstances where it believed that she and her partner were “*cohabitants*” (that is persons who live together in an intimate and committed relationship). Persons who are cohabitants are excluded by the terms of section 462B of the TCA 1997 from claiming SPCCC.
8. In response to this, the Appellant informed the Respondent that although both she and her partner were signatories to the lease of the rented property, they did not live together at this address in the years 2017 and 2018. She said that for much or all of this period their relationship was unstable and her partner lived in his parents’ home. Thereafter their relationship improved and they found themselves able to live with one another in the qualifying property from 2019. The Appellant appeared to accept in correspondence that she did not have an entitlement to SPCCC for this year and 2020, though it seems that the decision to withdraw entitlement in respect of each of the years in question has been appealed.
9. Having been informed of this, the Respondent asked that the Appellant provide some form of documentary proof that her partner resided with his parents for the years 2017 and 2018. In this regard it suggested that a utility bill or car insurance policy might suffice. The Appellant stated that her partner would not have access to any utility bill given that he lived at the relevant time in the property belonging to his parents and was not the person to whom bills were addressed.
10. On 16 November 2021 the Respondent, having not been provided with documentary material supporting the non-cohabitation of the Appellant and her partner for 2017 and 2018, made its decision to withdraw the SPCCC and seek payment of a liability of €9,669.23, including interest and penalties.

11. The Appellant appealed this decision to the Commission on 9 December 2021 by way of the delivery of her Notice of Appeal.

Legislation and Guidelines

12. Section 462B of the TCA 1997 makes provision for a tax credit of €1,650 for single persons who have a “qualifying child” residing with them for the greater part of a year, or the greater part of a year following the birth of a qualifying child.

13. Under section 462B (1)(c) of the TCA 1997, the credit is not available:-

“(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.”

14. The word “cohabitant” is not defined in section 462B of the TCA 1997. However, section 1031P of the TCA 1997 provides that “cohabitant”:-

“[...] has the same meaning as in section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010”.

15. Section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (hereafter “the 2010 Act”) provides:-

“(1) For the purposes of this Part, a cohabitant is one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.

(2) In determining whether or not 2 adults are cohabitants, the court shall take into account all the circumstances of the relationship and in particular shall have regard to the following:

(a) the duration of the relationship;

(b) the basis on which the couple live together;

(c) the degree of financial dependence of either adult on the other and any agreements in respect of their finances;

(d) the degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property;

(e) whether there are one or more dependent children;

(f) whether one of the adults cares for and supports the children of the other; and

(g) the degree to which the adults present themselves to others as a couple.”

16. Section 477C of the TCA 1997 provides income tax relief to assist first-time buyers in the obtaining of funds necessary for the deposit required to purchase or build their first home.

Submissions

Appellant

17. The Appellant submitted that she should have no liability for 2017 and 2018 in circumstances where she was not then cohabiting with her partner, with whom she at that point had an unstable relationship.
18. The Appellant further submitted that even were it to be found that she did not have an entitlement to SPCCC for these years, the application of fees and penalties was unjust in circumstances where she had honestly believed that she had an entitlement to this relief. The Appellant stated that she was not of great means and would struggle or be unable to pay the sum assessed by the Respondent.

Respondent

19. The Respondent submitted that the burden of proof rested with the Appellant, citing in support of this the judgment of Charleton J in *Menolly Homes v Revenue Commissioners* [2010] IEHC 49. The Appellant, it said, had failed to provide anything to verify her claim that she was not cohabiting with her partner at the rented property over 2017 and 2018. Given that both of them were signatories to the lease of that property and they had made joint applications for Help to Buy relief in 2017 and 2018, it was incumbent on her to produce some evidence corroborating her account so as to meet the evidential burden resting with her.

Material Facts not in Contention

20. The facts material to this appeal that were not in dispute were as follows:-

- the Appellant was a PAYE taxpayer who claimed SPCCC for the years in question;
- for the years 2017 and 2018 the Appellant and her partner were joint signatories to the lease of the rented property;
- on or about 10 October 2017 the Appellant and her partner made a joint application for Help to Buy relief in respect of the qualifying property;
- on or about 16 April 2018 the Appellant made a second application with her partner for Help to Buy relief in respect of the qualifying property;
- the Appellant and her partner received Help to Buy relief in 2019 and purchased the qualifying property;
- in November 2021 the Respondent informed the Appellant that it had commenced a review of her entitlement to SPCCC for the years in question. The Respondent indicated to the Appellant that it was doing so in circumstances where it had reason to believe she was, for the purposes of section 462B of the TCA 1997, a cohabitant for the years in question;
- on 16 November 2021 the Respondent decided to withdraw the Appellant's SPCCC for the years in question;
- the Appellant was assessed therefore as having a balance payable excluding penalties and interest of €7,601.91. With penalties and interest the balance payable was €9,669.23;
- the Appellant appealed the decision to withdraw her entitlement to SPCCC for the years in question, although in written argument she contested only its withdrawal for the years 2017 and 2018.

Findings of Facts in Contention and Legal Analysis

21. In making provision for a tax credit for single persons caring for a "*qualifying child*", section 462B of the TCA 1997 excludes persons who are married, civil partners living together and cohabitants. While this section does not define the term "*cohabitant*", a definition can be located elsewhere at section 1031P of the TCA 1997, which is within Part 44B entitled

"Tax Treatment of Cohabitants". Therein it is provided that the term is to have the same meaning as that given in section 172 of the 2010 Act.

22. The Commissioner can see no reason why the definition of a cohabitant under section 462B of the TCA 1997 should differ from that under section 1031P of the TCA 1997. The Commissioner finds as a matter of law that they are the same.
23. Section 172 of the 2010 Act provides that a cohabitant is one of two adults who live together in an intimate and committed relationship.
24. The key factual question to determine therefore is whether the Appellant was living in an intimate and committed relationship with her partner for some or all of the years in question. In this regard it is necessary to observe at this point that it is the Appellant who bears the burden of proving her entitlement to SPCCC. This is clear from the following statement of the law by Charleton J in the aforementioned case of *Menolly Homes v Revenue* [2010] IEHC 49, at paragraph 22:-

"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."

25. The reason for the burden resting with an appellant was explained by Gilligan J in *TJ v Criminal Assets Bureau* [2008] IEHC 168, in a passage itself quoted by Charleton J in *Menolly Homes v Revenue Commissioners* [2010] IEHC 49:-

"The whole basis of the Irish taxation system is developed on the premise of self assessment. In this case, as in any case, the applicant is entitled to professional advice, which he has availed of, and he is the person who is best placed to prepare a computation required for self assessment on the basis of any income and/or gains that arose within the relevant tax period."

26. While the Appellant is a PAYE taxpayer, the logic underlying the above statements of law applies equally in circumstances where a person makes a claim for a credit or relief, their entitlement to which is dependent on their own personal circumstances.
27. The Respondent withdrew the Appellant's entitlement to SPCCC for the years in question in circumstances, firstly, where she and her partner had made joint applications for Help to Buy relief in 2017 and 2018 to assist them in the purchase of the qualifying property and, secondly, where it was aware that they were the joint signatories to the lease agreement of the rented property. On the face of it, therefore, it was reasonable to

conclude that the Appellant and the partner were in an intimate and committed relationship and met the definition of cohabitants. The Respondent gave the Appellant the opportunity to furnish some documentary evidence supporting her assertion that she and her partner lived apart for the years 2017 and 2018. The Commissioner appreciates that the precise type of corroborating documentary evidence suggested by the Respondent in correspondence might not have been available to the partner and the Appellant. However, the making of this suggestion did not preclude her from producing some other type of evidence either to the Respondent or the Commissioner that might have corroborated or supported her assertion of their having lived apart for this duration. The absence of anything of this nature means that the Appellant must be found to have failed to meet the burden resting with her to prove her case on the balance of probabilities. As such, the Commissioner finds as a fact material to the determination of this appeal that the Appellant and the partner did indeed live together in an intimate and committed relationship for 2017 and 2018 and, though it was not in apparent dispute, for the years 2019 and 2020 also.

28. The making of this factual finding means that the Appellant was not, under section 462B of the TCA 1997, a person entitled to receive SPCCC for the years in question. Accordingly, the decision of the Respondent to withdraw the credit, which the Appellant has appealed to the Commission, must stand affirmed.
29. In written argument the Appellant raised objection to the application of interest and penalties by the Respondent. Although the Commissioner has sympathy for the Appellant given her account of her personal financial circumstances, it is necessary to stress that the jurisdiction given by legislation to an Appeals Commissioner is limited to assessing whether tax is owed by a taxpayer and, if it is, the correct amount so owed (see *Lee v Revenue Commissioners* [2021] IECA 18). The Commissioner is not empowered to review the application of penalties and interest prescribed by statute and no determination in respect thereof is made.

Determination

30. The decision of the Respondent to withdraw the Appellant's entitlement to SPCCC for the years in question, being 2017, 2018, 2019 and 2020, stands affirmed. The Commissioner appreciates that this decision may be disappointing to the Appellant but wishes to emphasise that she was correct to check her legal rights by appealing to the Commission.

31. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

32. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

33. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Conor O'Higgins
Appeal Commissioner
25th October 2023