



**170TACD2020**

**BETWEEN/**

**APPELLANT**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction and Background**

1. This is an appeal against a decision by the Respondent, to deny an application for relief for dental costs incurred, pursuant to S.469 TCA 1997 ('relief'), in the 2018 tax year in respect of dental costs incurred by the Appellant in 2014, 2015 and 2016.
2. The Appellant incurred dental costs in 2014, 2015 and 2016. However, as the Appellant did not have taxable income in those years, he did not make a claim for relief in those years.
3. The Appellant submitted an enquiry to the Respondent, querying whether he could make a claim for relief in the 2018 tax year in respect of the costs incurred in 2014, 2015 and 2016.



4. The Respondent wrote to the Appellant on 19 November 2018 stating that no claim for relief could be made against income in 2018 in respect of dental costs not incurred or paid in that year.
5. The decision to deny an application for relief is appealable under S.864(1A) TCA 1997 and the Appellant duly appealed this decision to the Tax Appeals Commission on 5 December 2018.
6. This Appeal was heard by remote hearing held at the offices of the Tax Appeals Commission on 9 September 2020.

### **Legislation**

#### Section 469 TCA 1997 – Relief for health expenses

*“(2)(a) Subject to this section, where an individual for a year of assessment proves that in the year of assessment he or she defrayed health expenses incurred for the provision of health care, the income tax to be charged on the individual, other than in accordance with section 16(2), for that year of assessment shall be reduced by the lesser of—*

*(i) the amount equal to the appropriate percentage of the specified amount, and*

*(ii) the amount which reduces that income tax to nil,*

*but, where an individual proves that he or she defrayed health expenses incurred for the provision of health care in the nature of maintenance or treatment in a nursing home, other than a nursing home which does not provide access to 24 hour nursing care on-site, the individual shall be entitled for the purpose of ascertaining the amount of the income on which he or she is to be charged to income tax, to have a deduction made from his or her total income of the amount proved to have been so defrayed.”*



## Submissions

### 7. Appellant Submission

The Appellant in his Statement of Case wrote:

#### *“Circumstances of appeal*

*During the years 2014 to 2016 I incurred considerable expenses for dental treatment. I had no income then, so I could not claim tax relief for these expenses.*

*I retired from my public service position as a second level teacher REDACTED 2018, and from that date I was in receipt of a pension and retirement gratuity (lump sum).*

*On REDACTED 2018 I enquired of the Revenue Commissioners if I could now claim tax relief for the above-mentioned expenses, as I now had an income. The Revenue Commissioners advised that I could claim for such expenses only in the year that the expenditure occurred or the year they were paid...*

#### *Grounds of appeal*

*In view of the exceptional circumstances of this situation, I wish to appeal against this decision. The grounds of my appeal are that this decision seems discriminatory against me compared to people who had an income at the time in question and therefore the decision seems punitive and unjust. Moreover, as there appears to be no basis in reason or justice for this discrimination, it seems illogical and unfair.”*

*In an email dated 31 August 2020 and at the appeal hearing, the Appellant stated*

*“I wish to elaborate on the grounds of appeal as follows.*

*The only argument adduced by the Revenue Commissioners in rejecting my claim is that it is precluded by Section 469 of the Taxes Consolidation Act 1997.*



*Clearly, this Section applies only to situations where income has been received during the time in question. Therefore, it cannot apply to my situation, for the obvious reason that I received no income during the time in question.*

*Accordingly, the Revenue Commissioners' rejection of my claim is baseless and untenable."*

### Respondent Submission

8. The Respondent submitted correspondence with the Appellant as follows:

*(Decision of Respondent regarding potential S.469 Claim)*

*"I refer to your recent enquiry.*

*Claims for Health Expenses are governed by Section 469 of the Taxes Consolidation Act 1997. Section 469 outlines that where an individual, for a year of assessment, proves that in that year of assessment he/she has paid health expenses then he/she is entitled to a deduction from total income for an amount equal to the amount proved to have been paid during that year of assessment.*

*You have outlined that you incurred health expenses in the 2014, 2015 and 2016 year of assessment, however, as you declared no income in the 2014, 2015 and 2016 year of assessment there is no option to claim for health expenses for that year of assessment."*

9. The Respondent in its Statement of Case for this appeal wrote:

*"Outline of relevant facts.*

*On the REDACTED 2018 the Appellant contacted Revenue explaining that he had accumulated considerable dental expenses between 2014 and 2016. The Appellant stated that he had no income during the period, so he was unable to claim any tax relief. The Appellant queried if he could claim relief now as he currently had an income.*



*On the REDACTED 2018 Revenue replied to the Appellant advising that dental expenses can only be claimed in the year that the expenditure occurred.*

*On the REDACTED 2018 the Appellant confirmed that he wished to appeal this decision. On the REDACTED Revenue replied to the Appellant and directed him to lodge an appeal with the Tax Appeals Commission.*

*Health Expenses are governed by Section 469 of the Taxes Consolidation Act 1997. Section 469 outlines that where an individual for a year of assessment proves that in the year of assessment he or she paid health expenses incurred for the provision of health care, the income tax to be charged on the individual for that year of assessment shall be reduced by the lesser of 20% of the total qualifying expenses or the amount which reduces the tax liability to nil.*

*The Appellant advised that the health expenses arose in 2014, 2015 and 2016. As the Appellant declared no income for these years there is no option to claim a deduction for tax relief. The Appellant claims that this position is discriminatory towards him and unjust."*

## **Analysis**

10. The wording of section 469 is clear and unambiguous. It states:

*"(2)(a) Subject to this section, where an individual for a year of assessment proves that in the year of assessment he or she defrayed health expenses incurred for the provision of health care, the income tax to be charged on the individual, other than in accordance with section 16(2), for that year of assessment shall be reduced by the lesser of—*

*(i) the amount equal to the appropriate percentage of the specified amount, and*

*(ii) the amount which reduces that income tax to nil,...( Emphasis added)*

11. There is no discretion in the application of the provision. The wording of the provision does not provide for extenuating circumstances, such as where an individual has



insufficient taxable income. I do not consider that I have the authority to direct that a repayment be made to the Appellant where a claim for repayment of tax is made in tax year 2018 in respect of health expenses incurred in 2014, 2015 and 2016.

12. At the Appeal hearing, the Appellant admitted that Section 496 did not apply to him (due to the absence of taxable income for the relevant years) and that Revenue should not use this legislation to deny him tax relief. However, the Appellant did not put forward any alternative tax provision that might afford him tax relief.

*The burden of proof*

13. In appeals before the Tax Appeals Commission (TAC), 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 it falls within the relief, see *Revenue Commissioners v Doorley* [1933] 1 IR 750 and *McGarry v Revenue Commissioners* [2009] ITR 131.

14. 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.'*

15. The Appellant contends that the Respondent, in denying him relief, is acting in a discriminatory way (compared with taxpayers with taxable income) and unfair manner. The scope of the jurisdiction of an Appeal Commissioner, as discussed in a number of Irish cases, namely; *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577, is confined to the determination of the amount of tax owing by a taxpayer based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be.





The jurisdiction of the Tax Appeals Commission does not extend to the provision of equitable relief or matters of fairness. Insofar as the Appellant seeks that the Tax Appeals Commission set aside the refusal of the repayment claim based on an alleged unfairness, such grounds of appeal do not fall within the jurisdiction of the TAC and thus do not fall to be determined as part of this appeal.

### **Determination**

16. I determine that the Respondent's decision to deny the Appellant a repayment of tax in 2018 in respect of health expenses incurred in 2014, 2015 and 2016, is correct. The Appellant's appeal therefore fails.
17. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

**PAUL CUMMINS**

**APPEAL COMMISSIONER**

***Designated Public Official***

**14 September 2020**

