



Between:

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Table of Contents

Introduction	3
Background	3
Legislation and Guidelines	4
Submissions	7
<i>Appellant's Submissions</i>	7
<i>Respondent's Submissions</i>	9
Material Facts	11
Analysis	11
Determination	14

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the "Commission") as an appeal against a decision by the Revenue Commissioners (hereinafter the "Respondent") made in March 2023 disallowing an application by [REDACTED] (hereinafter the "Appellant") for relief under the Owner-Occupier Relief Scheme provided for in sections 372AL to 372AV of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997").

Background

2. The Appellant is jointly assessed to tax with her husband and purchased the property at [REDACTED] (hereinafter the "Property") on [REDACTED] 2005.
3. On 13 January 2023 the Appellant submitted a tax return to the Respondent for the tax year 2022. In the tax return for 2022 the Appellant claimed "Owner-Occupier Relief" in relation to expenditure incurred on the purchase, construction, refurbishment or conversion on the Property.
4. On 22 February 2023 the Respondent informed the Appellant that, as the work on the Property was carried out more than 10 years ago, she would not be able to claim Owner-Occupier relief for 2022.
5. On 2 March 2023 the Respondent issued a PAYE / USC Statement of Liability for the Tax Year 2022 to the Appellant. No relief in relation to the Owner-Occupier Relief Scheme was included in the issued PAYE / USC Statement of Liability for the Tax Year 2022.
6. On 13 March 2023 the Appellant submitted a Notice of Appeal to the Commissioner appealing the Respondent's decision to refuse her relief under the Owner-Occupier Scheme.
7. On 19 April 2023 the Respondent wrote to the Commission stating that this appeal was resolved.
8. On 19 April 2023 following the Respondent's correspondence of 19 April 2023, the Commission wrote to the Respondent, and copied the Appellant, acknowledging the correspondence and indicating that as a result of the Respondent's correspondence this appeal had been closed by the Commission.
9. On 19 April 2023 the Appellant responded denying the appeal had been resolved with the Respondent.

10. On 19 April 2023 the Commission wrote to the Respondent asking them to comment on the Appellant’s correspondence and on 20 April 2023 the Respondent corresponded as follows:

“The Respondent wrote to the Appellant on 31 March 2023, setting out the basis of the relief and why this did not apply to the Appellant in this case.

This message was read by the Appellant on the same date and no reply was received from the Appellant. The Respondent would encourage the Appellant to reply this message with any questions they have on this matter.

As the message was read and no reply was received, the Respondent was of the opinion that the Appellant had acceded to withdraw the appeal.

The Respondent apologises to both the Appellant and Appeals Commission for any misunderstanding and considers the appeal still open as the Appellant has confirmed in their recent correspondence to the Appeals Commission that they do not consider the matter resolved. “

11. On 21 April 2023 the Commission wrote to the Parties confirming that, in light of the correspondence of 20 and 21 April 2023, this appeal had been reopened by the Commission.

12. Following submission of Statement of Case by both Parties, the Commission wrote to the Parties on 22 May 2023 informing them that the Commissioner intended to determine this appeal without the necessity for an oral hearing and based on the information already submitted to the Commission. Neither the Appellant nor the Respondent objected to this course of action. As a result this appeal is determined without the necessity for an oral hearing and based on the information submitted by the Parties to the Commission pursuant to the provisions of section 949U of the TCA1997.

Legislation and Guidelines

13. The legislation relevant to the within appeal is as follows:

Section 372AL of the TCA1997:

“Qualifying period.

(1)For the purposes of this Chapter, “qualifying period”, in relation to—

(a)a qualifying urban area, means, subject to section 372B, the period commencing on 1 August 1998 and ending on—

(i) 31 December 2002, or

(ii) where subsection (2) applies, 31 December 2006,

(iii) where subsections (2) and (3) apply, 31 July 2008,

(b) a qualifying street, means, subject to section 372BA, the period commencing on 6 April 2001 and ending on 31 December 2004 or, where subsection (1A) applies, ending on 31 December 2006 or, where subsections (1A) and (3) apply, ending on 31 July 2008,

(c) a qualifying rural area, means—

(i) for the purposes of sections 372AP and (in so far as it relates to that section) section 372AS, the period commencing on 1 June 1998 and ending on 31 December 2004 or, where subsection (1A) applies, ending on 31 December 2006 or, where subsections (1A) and (3) apply, ending on 31 July 2008, and

(ii) for the purposes of section 372AR and (in so far as it relates to that section) section 372AS, the period commencing on 6 April 1999 and ending on 31 December 2004 or, where subsection (1A) applies, ending on 31 December 2006 or, where subsections (1A) and (3) apply, ending on 31 July 2008,

...”

Section 372AR of the TCA1997 –

“Relief for owner-occupiers.

(1) Subject to this section, where an individual, having duly made a claim, proves to have incurred qualifying expenditure in a year of assessment, the individual is entitled, for that year of assessment and for any of the 9 subsequent years of assessment in which the qualifying premises in respect of which the individual incurred the qualifying expenditure is the only or main residence of the individual, to have a deduction made from his or her total income of an amount equal to—

(a) 5 per cent of the amount of that expenditure, where the qualifying expenditure has been incurred on the construction of the qualifying premises,

(b) 10 per cent of the amount of that expenditure, where the qualifying expenditure has been incurred on the necessary construction of a qualifying premises which fronts on to a qualifying street or is comprised in a building or part of a building which fronts on to a qualifying street, or

(c) 10 per cent of the amount of that expenditure, where the qualifying expenditure has been incurred on the conversion into or the refurbishment of the qualifying premises.

...

(4) A deduction shall be given under this section in respect of qualifying expenditure only in so far as that expenditure is to be treated under section 372AS(1) as having been incurred in the qualifying period.

...”

Section 865 of the TCA1997:

“(2) Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid.

...

(3) A repayment of tax shall not be due under subsection (2) unless a valid claim has been made to the Revenue Commissioners for that purpose.

(3A)(a) Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of Part 41A), a repayment in respect of tax deducted, in accordance with Chapter 4 of Part 42 and the regulations made thereunder, from that person’s emoluments for a year of assessment where, on the basis of the information available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person’s liability for that year.

(b) A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).

(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made—

(a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,

(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and

(c) in the case of claims made—

(i) under subsection (2) and not under any other provision of the Acts, or

(ii) in relation to any chargeable period beginning on or after 1 January 2003, within 4 years, after the end of the chargeable period to which the claim relates.

...

(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, the person may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision."

Submissions

14. The following is a summary of the submissions made by both Parties and in addition the evidence adduced on behalf of the Appellant.

Appellant's Submissions

15. The Appellant submitted the following in support of this appeal in her Notice of Appeal:

"I, [REDACTED] claim that Revenue.ie has refused me an "Owner-Occupier Relief" since I requested on 13th January 2023. Revenue.ie Tax Return 2019 - 2022 has an option on their online to claim the "Owner-Occupier Relief" which is published on 26th January 2023. It is available for the Tax Payers on revenue.ie, but revenue.ie do not give it to certain people. I claim that despite it is available to claim under the "Town Renewal Schemes", revenue.ie refused me. I spent 50 000 Euros to renew and fix my property at [REDACTED]. The mentioned property was BADLY built in 2003. The water pipes bursted and it was a flood in the property. Also no insulation in the property. I borrowed 50 000 Euros in 2006 and used all the money on fixing this property from 2006 to 2020. Revenue.ie has this relief available to claim!!!! There are step to claim it!!!! But revenue.ie refused me. Why do they have this relief available to claim updated on their page on 26th January 2023. But they do not give it?????? I have a lot of screenshots of revenue.ie steps how to

claim it. I want to investigate why revenue.ie do not give it to people when they claim????? Is it available only to certain people??????? Why I am not getting the relief if it is there and should be available to me? Double standards!!!!!!

I paid back to bank HUGE money!!!! The property needed the renovation because it was built so BAD!!!!!!!"

16. The following was submitted in support of this appeal in the Appellant's Statement of Case:

"On 13th January 2023 I submitted a Tax Return 2022. Revenue.ie has an option "Claim Owner-Occupier Relief" under Town Renewal Scheme published / updated on 26th Jan 23 on Revenue web page.

On 24th Jan 23 Revenue texted in "my Revenue account" stating that owner had to spend money purchasing, constructing, converting or refurbishing a qualifying property.

25th Jan 23 I sent a proof of re-mortgage €50,000 taking from [REDACTED] in 2006 to refurbish and convert the property.

Revenue ignored my proof till I rang Revenue.ie on Monday, 20th Feb, 2023 at 12:39 on (tel: [REDACTED]). The operator told me that tax return 2022 will be done manually because I claimed the "owner Occupier Relief".

On 22th Feb 2023 Revenue sent a message to "my account" that I was not getting a relief at all. They stated first that I am late to claim a relief. Why do Revenue still have an option to click and claim??? Updated on 26th Jan 23. Who do Revenue grant a relief????

I have a document from planning Consultant, [REDACTED] dated 14/12/2019 about exemption from Planning Permission for property in [REDACTED]

Revenue ignored my claim about Tax Return 2022 and they did not respond to my queries from 25/01/23 till 2/03/2023.

7th March 2023 I sent a letter to Appeals Commission, but before I sent a letter to Revenue Access Officer to review my request to "Owner Occupier Relief" dated 28/02/2023.

14th Mar 23 I emailed a supportive document of certificate about exemption from planning permission to info@taxappeals.ie I got no confirmation of receipt.

31st Mar 23 Revenue sent a message to “my account” instructing me to withdraw my appeal. I considered that message as a “Threat”!!!!

19th April 23 Tax appeal decided to close my appeal!!!! Why? I did not ask the Tax Appeal to close my case!!! I truly expressed my full disappointment. I want an investigation.

17. The Appellant submitted the following documentation in support of this appeal:

- Certificate of Compliance on Exemption from Planning Permission dated 14 December 2019;
- Mortgage Loan Offer Letter dated 25 September 2006;
- Copy Mortgage Application Enquiry;
- Mortgage Statement dated 19 March 2010 for 2009 and 2010;
- Mortgage Statement dated 28 September 2020 for years 2006, 2007 and 2008;
- Copy letter dated 28 February 2023 from Appellant to Respondent;
- Screenshots of Respondent’s website with information relating to Owner-Occupier Relief;
- Screenshots of correspondence between Appellant and Respondent on the Respondent’s “My Account” portal;
- Copy PAYE / USC Statement of Liability for 2022 issued by the Respondent on 2 March 2023;
- Screenshot of “████████████████████” from Respondent’s web portal.

Respondent’s Submissions

18. The following was submitted in support of this appeal in the Respondent’s Statement of Case:

“████████████████████ (Appellant) and her spouse purchased the property at ██████████ ██████████ on ██████████ 2005 as per information included on the Stamp Duty Return Form ST.21.

The Respondent would note that owner occupier relief is a tax relief available to individuals who have incurred expenditure on the purchase, construction,

refurbishment, or conversion of a qualifying residential property that is used by the individual as his or her sole or main residence.

What is beyond doubt from the information on record in this case, is that the Appellant purchased the property in 2005. The location of the property purchased by the Appellant in 2005 fell within the qualifying location for eligibility for the scheme, [REDACTED]. As per the criteria for owner occupier relief, qualifying expenditure could be incurred on the "Town Renewal Scheme" up to 31 July 2008, provided that certain conditions were fulfilled. To qualify for owner occupier relief, construction, refurbishment or conversion work must have been carried out by this date.

The Respondent would note that it is the first use of the property following construction, refurbishment or conversion that determines the type of relief that applies. If the property was first used by an individual as his or her sole or main residence, owner occupier relief applies. In this instance when the property was originally constructed the Appellant was not the main occupant of the property. Consequently, the Appellant does not appear eligible to owner occupier relief in this instance, so their claim is not a valid one.

Were the claim deemed valid and the respective qualifying criteria met, the Appellant would be entitled to have claimed the relief over a ten-year period from 2006-2016. The Respondent would note that the property must have been occupied as the sole or main residence of the individual claiming the relief for all or part of each year, for which relief is claimed. The individual is not required to occupy the property for all of the 10-year period following his or her first occupation, but no relief is due for any year in which there was no period of occupation by the individual.

The Respondent would note that any claim for relief up to and including 2018 is statute barred under Section 865(4) of the Taxes Consolidation Act 1997, which provides that a claim for repayment of tax for a chargeable period shall not be allowed unless it is made within 4 years after the end of that chargeable period. Accordingly, were the Appellant to prove their eligibility to the scheme any claim would be statute barred from 2018 and prior years under the previously referenced legislation.

The Respondent clarified the legislative position behind its refusal to allow the claim for owner occupier relief for tax year 2022 to the Appellant in correspondence sent to them on 31 March 2023. The Respondent would further note that if the Appellant was entitled to the owner occupier relief any claim submitted by them would be outside the statutory time-limit as outlined above.

Given the legislative parameters in place the Respondent was precluded from processing the claim for owner occupier relief from the Appellant included in their 2022 income tax return. Furthermore, the Respondent would reemphasise the entitlement to claim owner occupier relief is contingent on a number of factors one of which is the first use of the property following construction, refurbishment or conversion that determines the type of relief that applies. If the property was first used by an individual as his or her sole or main residence, owner occupier relief applies.

In this instance the property when originally constructed was not the main residence of the Appellant, the Appellant resided at [REDACTED], before purchasing the property at [REDACTED] in [REDACTED] 2005. Accordingly, the Appellant was not the original owner of the property following construction and therefore they are not entitled to the relief.”

Material Facts

19. The following material facts are not at issue in the within appeal and the Commissioner accepts same as material facts:

- i. The Appellant purchased the Property on [REDACTED] 2005;
- ii. The location of the Property fell within the qualifying location for eligibility the Owner-Occupier Relief Scheme;
- iii. The Appellant submitted a claim to the Respondent for relief under the Owner-Occupier Relief Scheme in January 2023 in relation to expenditure incurred on or before 31 July 2008.

Analysis

20. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49 (hereinafter “*Menolly Homes*”), at paragraph 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”.

21. The Commissioner has considered the submissions made and documentation submitted on behalf of both Parties in the within appeal.
22. Section 372AL of the TCA1997 sets out that the qualifying period for expenditure under the Owner-Occupier Relief Scheme ended on 31 July 2008. Therefore the latest date on which the Appellant could have incurred qualifying expenditure for the purposes of the Owner-Occupier Relief Scheme was 31 July 2008.
23. Section 372AR(1)(c) of the TCA1997 sets out that where an individual, having made a claim for relief, proves to have incurred qualifying expenditure in a year of assessment, the individual is entitled, for that year of assessment and for any of the 9 subsequent years of assessment to have a deduction made from his or her total income of an amount equal to 10% of the amount of expenditure where the expenditure incurred has been incurred on the refurbishment of a qualifying property.
24. In order for the Appellant to have made a claim for relief under the Owner-Occupier Relief Scheme, she must have submitted a claim in relation to expenditure incurred in the year of assessment in which she had incurred the qualifying expenditure. As the latest date on which the Appellant could have incurred qualifying expenditure for the purposes of the Owner-Occupier Relief Scheme was 31 July 2008, this means that in order for the Appellant to qualify for relief under the Owner-Occupier Relief Scheme she must have submitted a claim for relief for the tax year 2008.
25. Section 865(2) of the TCA1997 provides that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person. Section 865(3) of the TCA1997 provides that a repayment of tax is not due unless a valid claim has been made to the Respondent.
26. Section 865(1)(b)(i) of the TCA1997 provides that where a person furnishes a return which is required to be delivered by the person for a chargeable period, such a return shall be treated as a valid claim in relation to a repayment of tax where all the information which the Respondent may reasonably require to enable them determine if and to what extent a repayment of tax is due is contained in the return furnished by the person.
27. Section 865(1)(b)(ii) of the TCA1997 provides that where all the information which the Respondent may reasonably require to enable them to determine if and to what extent a repayment of tax is due is not contained in the return furnished by the person, a claim for repayment of tax shall be treated as a valid claim when that information has been furnished by the person.

28. In relation to a limitation period for a repayment of tax section 865(4) of the TCA1997 provides that “...a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made- within 4 years, after the end of the chargeable period to which the claim relates.” [emphasis added].
29. A repayment of tax was sought by the Appellant on the basis that she was entitled to relief under the Owner-Occupier Relief Scheme for the year 2008. The entitlement to a repayment of tax arises under section 865(2) of the TCA1997. Section 865(3) of the TCA1997 means the repayment of tax sought under section 865(2) of the TCA1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax under the Owner-Occupier Relief Scheme to be due, the Respondent must have received a valid claim.
30. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due on 13 January 2023, following the delivery of the relevant claim to repayment by the Appellant, by way of the submission of her annual tax return for the tax year 2022. This was in excess of 4 years from the end of the tax year 2008.
31. Having established that there is a valid claim, the provisions of section 865(4) of the TCA1997 must be applied. As the claim for repayment of tax was made outside the 4 year period specified in section 865(4) of the TCA1997, no valid claim for repayment of tax had been submitted by the Appellant and the claim for repayment of tax due as a result of the Owner-Occupier Relief Scheme was disallowed by the Respondent.
32. The use of the word “*shall*” as set out in section 865(4) of the TCA1997, indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the 4 year rule might be mitigated.
33. The Commissioner has no authority or discretion to direct that repayment be made or credits allocated to the Appellant where the claim for repayment falls outside the 4 year period specified in section 865(4) of the TCA1997.
34. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the 4 year statutory limitation period. These determinations, may be found on the Commission website.¹
35. As a result of the above, the Commissioner finds that the burden of proof has not been discharged to satisfy the Commissioner that a refund was payable by the Respondent.

¹ www.taxappeals.ie

Determination

1. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in her appeal. The Appellant has not succeeded in showing that the Respondent was incorrect to refuse her relief under the Owner-Occupier Relief Scheme.
2. It is understandable the Appellant will be disappointed with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the Appellant's position. However, the Commissioner has no discretion in these cases due to the application of the 4 year rule, set out above.
3. This appeal is hereby determined in accordance with Part 40A TCA 1997 and in particular, section 949AL thereof. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal to the High Court on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Clare O'Driscoll
Appeal Commissioner
05 September 2023