



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

196TACD2024

Between



**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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## Contents

Introduction .....	3
Background.....	3
Legislation and Guidelines .....	4
Submissions .....	5
Appellant .....	5
Respondent.....	5
Material Facts .....	6
Analysis .....	6
Section 26 of the Finance (Local Property Tax) Act 2012 .....	7
Determination .....	8
Notification .....	8
Appeal .....	8

## Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] (“the Appellant”) under section 26(4) of the Finance (Local Property Tax) Act 2012 and section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a repayment of local property tax (“LPT”) in respect of a property with property ID [REDACTED] (“the Property”) in the amount of €876.50 for the tax years 2013, 2014, 2015, 2016, 2017, 2018 and 2019 (“the relevant years”), on the ground that the Appellant’s claim for a repayment of overpaid LPT for the relevant years was made outside the statutory timeframe.
2. On 5 September 2024, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties has objected or requested a hearing of the appeal. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

## Background

3. The Respondent submitted that on 23 May 2024, the Appellant provided a self-assessed property valuation for the Property for the valuation period 2013-2021, declaring valuation band 1 (0-€100,000) as appropriate and an LPT return was filed on her behalf, resulting in an LPT overpayment for all years from 2013 to 2021.
4. On 4 June 2024, the Respondent wrote to inform the Appellant that due to the four year repayment limit, the Respondent could not allow the repayment of LPT for the relevant years.
5. On 26 June 2024, the Appellant submitted a Notice of Appeal to the Commission and enclosed the Respondent’s letter dated 4 June 2024, as well as a history of payments of LPT in respect of the Property. On 22 August 2024, the Appellant submitted a Statement of Case. In neither her Notice of Appeal nor her Statement of Case did the Appellant dispute that she had claimed a repayment of overpaid LPT for the relevant years in 2024.
6. On 30 August 2024, the Respondent submitted a Statement of Case. The Commissioner has considered all of the documentation submitted by the parties in this appeal.
7. In the Appellant’s Notice of Appeal, she stated that the quantum of tax was €1,030. However, in its Statement of Case, the Respondent stated: *“The 2020 and 2021 LPT overpayment was refunded to the Appellant. However, in accordance with Section*

26(2)(b) of the Finance (Local Property Tax) Act 2012 (as amended), Revenue is precluded from refunding the years 2013 – 2019 (€876.50), as the claim for repayment for these years was made over four years after the years in which the relevant liability dates occurred.” In circumstances where the Respondent’s refusal of the Appellant’s claim for repayment of overpaid LPT relates to 2013 – 2019, the Commissioner is proceeding on the basis that the quantum of tax under appeal is in the amount of €876.50.

### **Legislation and Guidelines**

8. The legislation relevant to this appeal is as follows:

9. Section 26 of the Finance (Local Property Tax) Act 2012 provides:

*“(1) Subject to the provisions of this section, where a person has, in respect of a liability date, paid, whether directly or by deduction, an amount of local property 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 local property tax, would not have been due from the person, the person shall be entitled to repayment of the local property tax so paid.*

*(2) The Revenue Commissioners shall not make a repayment of the local property tax referred to in subsection (1) unless -*

*(a) a claim for repayment has been made to them,*

*(b) the claim for repayment referred to in paragraph (a) is made within 4 years after the end of the year in which the liability date in respect of which the payment was made falls,*

*(c) a true and complete return has been prepared and delivered under Part 7, and*

*(d) all the information that the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment to local property tax is due to the person has been provided to them.*

*(3) Where the Revenue Commissioners make a repayment of local property tax, they may repay any such amount directly into an account, specified by the person to whom the amount is due, in a financial institution.*

*(4) Where a liable person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by the person, insofar as the 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 of the Act of 1997, within the period of 30 days after the date of the notice of that decision.”*

## Submissions

### Appellant

10. In her Notice of Appeal, the Appellant submitted:

*"I was applying for my tax credits on interest paid on my mortgage, while doing so it was brought to my attention that I had overpaid my local property tax from years 2013 - 2019. During those years I had suffered a lot of health problems [REDACTED]. As I was struggling with health issues throughout those years, I was happy to have the local property tax deducted from my salary and just presumed it was all correct [REDACTED]. As you can imagine working full-time and struggling with a chronic illness and paying doctor's fees and all those extra costs that come along with having such an illness (as I work full time I have no medical card) and trying to pay a mortgage, the overpayment that was deducted from my wages, I really could not afford, and if I was to receive it back would be of great benefit to me. I realise that I should have done all the necessary steps to ensure I was paying the correct amount at the time, but as I said I was struggling physically and cognitively at the time without realising I had such an illness and just presumed it was correct."*

11. In her Statement of Case, the Appellant submitted the following:

*"2013 LPT started to be deducted from my wages, I presumed the correct amount was being deducted, but it appears to have been overpaid on my behalf. I contacted Revenue due to mortgage relief and was informed that I had overpaid Local Property Tax by over 1030.00. I had never questioned the amount deducted from my fortnightly pay as I had just presumed it was correct and was happy that it was being paid as I was struggling with health issues for a number of years at the time [REDACTED]."*

### Respondent

12. In its Statement of Case, the Respondent submitted (among other things):

*"The Appellant failed to provide a self-assessed valuation and file the LPT Return in May 2013. A reminder notice issued on 29 July 2013 advising that failure to file the LPT Return and pay the appropriate LPT liability would result in Revenue collecting the estimated LPT charge by Mandatory Deduction at Source (MDaS) from her salary. As the Appellant failed to file the LPT Return, or pay the LPT liability, Revenue commenced collection of the estimated LPT in September 2013 from her employment*

*income. Payment of the estimated LPT liability in band 2 (€100,001-€150,000) continued by MDaS for all years. Reminder notices issued to the Appellant on 9 December 2013, 9 November 2016, 4 November 2019, and 9 November 2020 informing her of the LPT estimate and that the LPT Return remained outstanding.*

*On 23 May 2024 the Appellant provided a self-assessed property valuation for her property, as of 1 May 2013, for the valuation period 2013-2021, declaring valuation band 1 (0-€100,000) as appropriate. The LPT return was filed on her behalf, resulting in an LPT overpayment for all years from 2013 to 2021.*

*The 2020 and 2021 LPT overpayment was refunded to the Appellant. However, in accordance with Section 26(2)(b) of the Finance (Local Property Tax) Act 2012 (as amended), Revenue is precluded from refunding the years 2013 – 2019 (€876.50), as the claim for repayment for these years was made over four years after the years in which the relevant liability dates occurred.”*

### **Material Facts**

13. Having read the documentation submitted, the Commissioner makes the following findings of material fact:
  - 13.1. The Appellant paid LPT in respect of the Property for the years 2013 to 2021 in valuation band 2 (€100,001-€150,000).
  - 13.2. On 23 May 2024, the Appellant provided a self-assessed property valuation for the Property for the valuation period 2013-2021, declaring valuation band 1 (0-€100,000) as appropriate.
  - 13.3. An LPT return was filed on the Appellant’s behalf, which resulted in an LPT overpayment for the years 2013 to 2021.
  - 13.4. On 4 June 2024, the Respondent refused a repayment of the overpaid LPT for the relevant years on the ground that the Appellant had claimed a repayment of the overpaid LPT outside the four year statutory time limit.

### **Analysis**

14. This appeal relates to the Respondent’s refusal of the Appellant’s claim for a repayment of overpaid LPT for the relevant years. The Commissioner is confined to considering whether that decision was in accordance with the applicable legislation.
15. In an appeal before the Commission, the burden of proof rests on the Appellant, who in this appeal must show that the Respondent was incorrect to refuse a claim for repayment

of the amount of LPT overpaid by the Appellant for the relevant years. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J. stated at paragraph 22 that:

*“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”.*

*Section 26 of the Finance (Local Property Tax) Act 2012*

16. Section 26(1) of the Finance (Local Property Tax) Act 2012 provides that a person is entitled to a repayment of LPT paid where that LPT is not due from that person. However, section 26(2) of the Finance (Local Property Tax) Act 2012 provides (among other things) that *“The Revenue Commissioners shall not make a repayment of the local property tax referred to in subsection (1) unless - ... (b) the claim for repayment referred to in paragraph (a) is made within 4 years after the end of the year in which the liability date in respect of which the payment was made falls,”* (emphasis added).
17. In this appeal, the relevant tax years were 2013, 2014, 2015, 2016, 2017, 2018 and 2019. Therefore, the claims for a repayment of LPT must have been made on or before 31 December 2017, 31 December 2018, 31 December 2019, 31 December 2020, 31 December 2021, 31 December 2022 and 31 December 2023 respectively. The Appellant has not disputed that she claimed a repayment of the overpaid LPT for the relevant years in May 2024. Having regard to this, the Commissioner is satisfied that the Appellant’s claim fell outside the four year time limit prescribed in section 26(2) of the Finance (Local Property Tax) Act 2012.
18. The use of the word “shall” in section 26(2) of the Finance (Local Property Tax) Act 2012 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 four year rule might be mitigated. The legislation does not afford the Commissioner any discretion to disapply the rule.
19. Previous determinations of the Commission have addressed the matter of repayment in the context of the four year statutory limitation period. These determinations may be found on the Commission website<sup>1</sup>.

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<sup>1</sup> [www.taxappeals.ie](http://www.taxappeals.ie)

20. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the personal and health circumstances which the Appellant outlined on appeal. The Appellant was entitled to check whether the Respondent's refusal of her claim for a repayment of LPT was correct. However as noted above, the legislation does not afford the Commissioner any discretion on this matter.

### **Determination**

21. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to refuse the Appellant's claim for a repayment of LPT in the amount of €876.50 for the relevant years, under section 26(2) of the Finance (Local Property Tax) Act 2012.

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

### **Notification**

23. 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**

24. 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.



Jo Kenny  
Appeal Commissioner  
9 October 2024