



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

55TACD2024

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Appellant

and

The Revenue Commissioners

Respondent

Determination

Table of Contents

Introduction	3
Background.....	3
Legislation and Guidelines	4
Submissions	5
Appellant's submissions	5
Respondent's submissions	6
Material Facts	6
Analysis	7
Determination	10
Notification	10
Appeal	10

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for relief for health expenses, in accordance with the provisions of Section 469(2) TCA 1997, in respect of the year of assessment 2022.
2. The sum at issue is the amount of **€3,881**, in circumstances where the total claim made by the Appellant was in the sum of **€4,684.46** and the Respondent allowed the Appellant’s claim in the sum of **€803.46** only.
3. On **14 August 2023**, the Appellant duly appealed to the Commission. In accordance with the provisions of section 949U TCA 1997, and by agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997.
4. The Appellant submitted a Statement of Case which built on the information submitted in the Appellant’s Notice of Appeal. The Commissioner has also received a Statement of Case from the Respondent and that has also been considered in this determination.

Background

5. The Appellant and his spouse are jointly assessed for the purposes of income tax.
6. On **28 July 2023**, the Appellant filed their Income Tax return for 2022, through the Revenue Online System (“ROS”).
7. On **29 July 2023**, correspondence issued to the Appellant from the Respondent in the form of a Notice of Assessment, showing a balance of tax overpaid in the sum of **€4,684.46**.
8. On **1 August 2023**, the assessment was amended by the Respondent as the relief claimed for health expenses by the Appellant and his spouse, did not match the receipts supplied. The Respondent states that the receipts supplied relate to the previous period namely, 2021, for which relief was granted.
9. On **2 August 2023**, the Appellant received further correspondence from the Respondent, in the form of a Notice of Amended Assessment, showing a balance of tax overpaid in the sum of **€803.46**.

10. The Appellant states that he does not understand why relief has not been granted, in circumstances where the first correspondence included his spouse's health expenses as they are jointly assessed and the second piece of correspondence removed his spouse's health expenses claimed.
11. The Appellant states that in **May 2023**, his spouse contacted the Respondent to enquire about claiming her health expenses and was informed that a claim for relief for health expenses must be made with her spouse, as they are jointly assessed for the purposes of income tax.

Legislation and Guidelines

12. The legislation relevant to this appeal is as follows:-

13. Section 469 TCA 1997, Relief for Health Expenses, *inter alia* provides that:-

(1) *"specified amount", in relation to a year of assessment, means the amount of expenditure which qualifies for income tax relief in accordance with this section;*

(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.

(6) *Notwithstanding sections 458(2) and 459(2)—*

(a) any claim for a deduction under this section—

- (i) shall be made in such form as the Revenue Commissioners may from time to time prescribe, and
 - (ii) shall be accompanied by such statements in writing as regards any class of expenses by reference to which the deduction is claimed, including statements by persons to whom payments were made, as may be indicated by the prescribed form as being required as regard expenses of that class, and
- (b) in all cases relief from tax consequent on the allowance of a deduction under this section shall be given by means of repayment.

Submissions

Appellant's submissions

14. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in his Notice of Appeal and Statement of Case:-

".....I have received a letter from the Revenue on the 29/07/2023 stated the amount of 4684.46 was overpaid, I have attached the letters below. On the 02/08/2023 I received another letter stated that 803.46 was what they are going to pay me. On the first letter I have my wife and I medical expenses as she can't claim her Tax as our Tax are joint. The First letter had our medical expenses now on the second letter the had remove the medical expenses of my wife, that is what I don't understand. My wife contacted the Revenue in May 2023 to ask how she can claim her medical expenses so they told her she has to do it together with her husband Tax refund. So now am confuse why they had the medical expenses on the first letter and then it was removed.

I have received a letter from the Revenue on the 29/07/2023 stated the amount of €4684.46 was overpaid. I have attached the letters below. On the 02/08/2023 I received another letter stated that €803.46 was what are going to pay me. On my first letter I had my wife medical expenses as she can't claim her Tax as our Tax are joint. The first letter lad our medical expenses now on the second letter they had removed the medical expenses of my wife that is what I don't understand. My wife contacted the Revenue in May 2023 to ask how she can claim her medical expenses so they told her she has to do it together with me when I do my Tax refund. So now am confuse why they had the medical expenses on the first letter and it was removed. That is why I have fill this complaint".

Respondent's submissions

15. The Commissioner sets out hereunder a summary of the submissions made by the Respondent, as set out in its Statement of Case:-

“The Appellant filed their 2022 Income Tax return through ROS on the 28th July 2023. The return indicated that they had overpaid their tax in the amount of €4,684.46.

However, this assessment was amended by Revenue on the 1st August 2023 as the Health Expenses claimed did not match the receipts supplied. The receipts supplied relate to the previous period 2021, for which relief was granted.

In their appeal, dated 16th August 2023, the Appellant states that they do not understand why relief has not been granted.

The legislation covering this matter is Section 469 Relief for Health Expenses, subsection 2 of the TCA 1997”.

Material Facts

16. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

- 16.1. The Appellant and his spouse are jointly assessed for the purposes of income tax.
- 16.2. On 28 July 2023, the Appellant filed an Income Tax return for 2022, through the ROS.
- 16.3. The Appellant's Income Tax return for 2022, included a claim for relief for health expenses.
- 16.4. On 29 July 2023, correspondence issued to the Appellant, in the form of a Notice of Assessment, showing the balance of tax overpaid for the period, being in the sum of €4,684.46.
- 16.5. On 1 August 2023, the assessment was amended by the Respondent as the receipts supplied for a claim for relief for health expenses, related to the previous period 2021, for which relief was granted.
- 16.6. On 2 August 2023, further correspondence issued to the Appellant from the Respondent, in the form of a Notice of Amended Assessment, showing the balance of tax overpaid for the period, being in the amended sum of €803.46.

16.7. In May 2023, the Appellant's spouse contacted the Respondent to enquire about claiming relief for her health expenses and was informed that a claim for relief for health expenses must be made with her spouse, as they are jointly assessed.

Analysis

17. 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 ("*Menolly Homes*"), at paragraph 22, Charleton J. states 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".

18. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgment of Charleton J. in *Menolly Homes*, wherein he states that:

"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."

19. The Appellant's appeal relates to a claim for relief for health expenses, in accordance with section 469(2) TCA 1997. Section 469 TCA 1997 provides for tax relief in respect of health expenses incurred for the provision of health care. Only "health expenses" incurred in the provision of "health care" qualify for tax relief¹.

20. Section 469 TCA 1997 defines "health care" as the prevention, diagnosis, alleviation or treatment of an ailment; an injury; an infirmity; a defect; or a disability, and includes care received by a woman in respect of a pregnancy, but does not include routine ophthalmic treatment or routine dental treatment.

21. The Commissioner notes that the Appellant and his spouse made a claim for tax relief in relation to health expenses, as part of their joint income tax return for the year of assessment 2022. Following the Appellant filing the income tax return on the ROS on 28

¹ Respondent's Tax and Duty manual, Health Expenses – Qualifying Expenses, Part 15-01-12, May 2023

July 2023, on 29 July 2023, the Respondent issued to the Appellant a Notice of Assessment showing a balance of tax overpaid in the sum of **€4,684.46**.

22. However, the Commissioner notes that on 1 August 2023, the assessment was amended by the Respondent. The Respondent states that the health expenses claimed by the Appellant and his spouse, did not match the receipts supplied. The Respondent submits that the receipts supplied relate to the previous period 2021, for which relief was granted.
23. The Commissioner notes that the Appellant states that he does not understand why the amount of refund available, as per the Notice of Assessment dated 29 July 2023, in the sum of **€4,684.46**, was subsequently amended by way of a Notice of Amended Assessment dated 2 August 2023, to show balance of **€803.46** being available for refund.
24. The Commissioner notes paragraph 4.1 of the Respondent's Tax and Duty Manual² which states that:

"Taxpayers in receipt of PAYE income can claim relief on their health expenses and nursing home fees in one of the following ways:

- *In-year, using the Real-Time Credit facility; or*
- *after the end of the year, by completing an income tax return.*

The total amount of relief received in respect of a year of assessment will be the same, irrespective of whether the relief is claimed in year or following the end of the year of assessment".

25. Moreover, the Commissioner notes paragraph 4.1.2 of the Respondent's Tax and Duty Manual³ entitled "Claiming tax relief following the end of the year of assessment" which states *inter alia* that:

"Taxpayers in receipt of PAYE income only who wish to claim relief for health expenses and nursing home fees after the end of the year of assessment can do so by submitting an annual income tax return. This can be done by accessing the 'Review your Tax' card in myAccount. Taxpayers claiming relief on an annual income tax return can manage and keep track of their health expenses and other receipts on the Receipts Tracker service in MyAccount and ROS.

² Respondent's Tax and Duty manual, Health Expenses – Qualifying Expenses, Part 15-01-12, May 2023

³ Respondent's Tax and Duty manual, Health Expenses – Qualifying Expenses, Part 15-01-12, May 2023

Where relief is claimed after the end of the year of assessment, the claimant will receive a refund equal to the full amount of relief due. This is subject to the requirement that the total amount of income tax paid by the individual in the relevant year of assessment exceeds the amount of relief due”.

26. The Commissioner notes that the Appellant was denied the full amount of the claim for relief for health expenses, on the basis that the receipts submitted by the Appellant related to the tax year 2021, for which the Respondent states, tax relief has already been afforded.
27. As stated in a tax appeal, the burden of proof is on the Appellant. The Commissioner is satisfied that the Appellant has not provided evidence to show that the Respondent was incorrect in its assessment of the receipts submitted and thus, was incorrect in its calculation of the balance of refund available to the Appellant.
28. For the sake of completeness, the Commissioner notes that Appellant states that he does not understand how correspondence issued from the Respondent on 29 July 2023, subsequent to him filing of an income tax return on ROS on 28 July 2023, showing a balance available for repayment in the sum of **€4,684.46**, which the Respondent later reduced to the sum of **€803.46**, by correspondence dated 2 August 2023.
29. It appears to the Commissioner that correspondence automatically issued to the Appellant on 29 July 2023, in the form of a Notice of Assessment, following the filing of an income tax return for 2022 on 28 July 2023, and which Notice of Assessment was based on the information provided by the Appellant.
30. Thereafter, the Commissioner assumes the Respondent had an opportunity to consider the receipts submitted with the Appellant’s income tax return, which resulted in the Respondent issuing correspondence dated 2 August 2023, in the form of a Notice of Amended Assessment, reducing the initial amount available for repayment, on the basis that the receipts related to the year 2021 and had already formed the basis for tax relief. The Commissioner notes that 29 July 2023, is a Saturday and 2 August 2023, is a Wednesday. The Commissioner is satisfied that the correspondence that issued from the Respondent, reducing the amount, issued without delay.
31. Accordingly, the Commissioner is satisfied that the Respondent was correct to issue the Notice of Amended Assessment, dated 2 August 2023. Thus, the Appellant’s appeal fails.

Determination

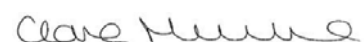
32. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal. The Appellant has not succeeded in showing that the Respondent was incorrect to issue the Notice of Amended Assessment showing a balance being available for repayment in the amount of **€803.46**.
33. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax. The Appellant was correct to appeal to have clarity on the position.
34. This Appeal is determined in accordance with Part 40A 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) TCA 1997.

Notification

35. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ 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

36. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
9 February 2024