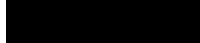




AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

22TACD2025



Appellant

and

The Revenue Commissioners

Respondent

Determination

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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 by [REDACTED] (“the Appellant”) regarding the decision by the Revenue Commissioners (“the Respondent”) to refuse the Appellant’s application for repayment of Local Property Tax (“LPT”). It is this decision that the Appellant is appealing.
2. In accordance with the provisions of section 949U of the TCA 1997, this appeal is adjudicated and determined without a hearing.

Background

3. In May 2013 the Appellant submitted an LPT return for the valuation period 2013-2021 (“LPT Return for 2013-2021”). In the LPT Return for 2013-2021 no claim for any exemption was included. The Appellant paid the associated LPT charge for all years from 2013 to 2021.
4. In November 2021 the Appellant submitted an LPT return for the valuation period 2022-2025 (“LPT Return for 2022-2025”). In the LPT Return for 2022-2025 an exemption from LPT was claimed on the basis that the Appellant’s property was being used as the residence of an incapacitated individual and that there was no charge to LPT for the years 2022-2025. Based on the self-assessed application the Respondent designated that no LPT was due from the Appellant for the years 2022-2025.
5. In November 2023, the Appellant requested a refund of the LPT paid by her for the years 2013 to 2021 on the basis that the Appellant’s property was being used during that period as the residence of an incapacitated individual. The Respondent issued a form LPT7 (*application for exemption for properties occupied by certain permanently and totally incapacitated persons*) to the Appellant for completion. Upon receipt of the completed Form LPT7 the Appellant’s case was reviewed and the exemption from LPT was approved by the Respondent for both valuation periods (2013-2021 and 2022-2025) and the Appellant was advised of this. In granting the exemption from LPT for the period 2013-2021 this generated an LPT overpayment for the years 2013 to 2021. A refund of LPT paid by the Appellant for the years 2019, 2020 and 2021 in the amount of €945.00 was issued to the Appellant.
6. On 1 May 2024 the Respondent issued a letter to the Appellant advising that in accordance with Section 26(2)(b) of the Finance (Local Property Tax) Act 2012 (as amended) (“the LPT Act”), it could not repay the overpayments of LPT for the years 2013–

2018 in the amount of €1,722 to the Appellant as the claim for repayment for these years was made after the expiry of four years from the end of the relevant taxable period.

7. On 22 May 2024 the Appellant submitted her Notice of Appeal to the Commission.

Legislation and Guidelines

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

The Finance (Local Property Tax) Act 2012/ the LPT Act.

Section 3 of the LPT Act: "relevant residential property".

Subject to sections 3A to 10D, where a building in the State is a residential property on a liability date, it shall, for the purposes of this Act, be a relevant residential property in relation to that liability date.

Section 10B of the LPT Act: Permanently and totally incapacitated individuals.

(1)A residential property shall not, for the purposes of section 16(1), be regarded as a relevant residential property where the property is occupied by an incapacitated individual as his or her sole or main residence and—

(a)either—

(i)the individual is a person—

(I)to whom paragraph (b) of section 189(1) of the Act of 1997 applies, or

(II)who is a beneficiary under a qualifying trust (within the meaning of section 189A(1) of the Act of 1997),

or

(ii)the individual is not a person referred to in clause (I) or (II) of subparagraph (i) and the Revenue Commissioners confirm, under subsection (1A), that the residential property shall not, for the purposes of this Act, be regarded as a relevant residential property,

and

(b)the property is—

(i)acquired because of its suitability for occupation by such an incapacitated individual,

or

(ii) adapted to render it more suitable for occupation by such an incapacitated individual and the cost of the adaptation, on completion of that adaptation, exceeds an amount that is equivalent to one-quarter of the chargeable value of that property before it was adapted.

(1A)(a) Where subparagraph (ii) of subsection (1)(a) applies, a liable person in relation to a residential property may make an application in writing to the Revenue Commissioners for confirmation, in relation to the property that it shall not, for the purposes of this Act, be regarded as a relevant residential property.

(b) For the purpose of an application under paragraph (a), the Revenue Commissioners may specify the form of an application, and may require that the following information is provided to them:

(i) details of the residential property and the reason why it was acquired or adapted and considered to be suitable for occupation by the incapacitated individual;

(ii) a description of the adaptation referred to in subsection (1);

(iii) the cost of the adaptation;

(iv) the date of completion of the adaptation;

(v) the chargeable value attributable to the adaptation;

(vi) any other particulars the Revenue Commissioners may reasonably require for the purpose of considering the application.

(c) For the purpose of an application under paragraph (a), the Revenue Commissioners may also require that the following information is provided by the general practitioner of the incapacitated person:

(i) the nature and extent of the incapacity;

(ii) the extent to which the incapacity affects the person's mobility;

(iii) the reason the general practitioner considers the adaptation to have been necessary;

(iv) any other particulars the Revenue Commissioners may reasonably require for the purpose of considering the application.

(d) No confirmation shall be given by the Revenue Commissioners on an application under paragraph (a) unless they are satisfied that—

(i) the residential property was acquired because of its suitability for, or adapted to make it more suitable for, occupation by the incapacitated individual,

(ii) subparagraph (i) of subsection (1)(a) does not apply to him or her, and

(iii) where the property was adapted the cost of adaptation exceeds the cost referred to in subparagraph (ii) of subsection (1)(b).

(1B) For the purposes of subsection (1A), the Revenue Commissioners shall publish guidelines in relation to—

(a) the manner in which an application is to be made,

(b) the information or documentation required to be provided in relation to the property and the incapacitated individual in support of the application, and

(c) any other information that the Revenue Commissioners consider to be relevant for the purpose of considering an application.

(2) Subsection (1) shall cease to apply on the sale (within the meaning of section 125) of the property unless the incapacitated individual continues to occupy that property as his or her sole or main residence.

(3) In this section—

“incapacitated individual” has the meaning assigned to it by section 189A of the Act of 1997;

“general practitioner”, in relation to an incapacitated individual, means the medical practitioner, for the time being registered in the register of medical practitioners established under section 43 of the Medical Practitioners Act 2007, who provides a general practitioner medical service to the incapacitated individual.

Section 11 of the LPT Act: Liable persons.

(1) Subject to the provisions of this section, a person who holds any estate, interest or right in a relevant residential property entitling that person to—

(a) the immediate possession of such a property for a period that may equal or exceed 20 years, or

(b) the receipts of rents or profits of such property for a period that may equal or exceed 20 years, Shall, for the purposes of this Act, be a liable person in relation to that property.

Section 16 of the LPT Act: Charge to local property tax.

(1) Subject to and in accordance with the provisions of this Act commencing with the year 2013, there shall be charged, levied and paid a tax to be known, and which is referred to in this Act, as "local property tax" in respect of the chargeable value of a relevant residential property.

(2) Subject to subsection (4), the local property tax shall be payable by the person who is the liable person in relation to the relevant residential property.

(3) Where more than one person is a liable person in relation to a relevant residential property, those persons shall be jointly and severally liable for the local property tax payable in respect of the property.

(4) Notwithstanding subsection (2), local property tax may be paid by another person on behalf of a liable person.

Section 26 of the LPT Act: Repayment of local property tax.

(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.

Section 949I of the TCA 1997: Notice of Appeal

(1) Any person who wishes to appeal an appealable matter shall do so by giving notice in writing in that behalf to the Appeal Commissioners.

Section 949AL of the TCA 1997: Determinations other than in relation to assessments.

(1) In relation to an appeal against an appealable matter, other than—

(a) an assessment, or

(b) a matter referred to in section 949AK(3),

the Appeal Commissioners shall, if they consider that the decision, determination or other matter, as the case may be, ought to be varied, determine that the decision, determination or other matter be varied, even if such variation is not to the advantage of the appellant; otherwise they shall determine that the decision, determination or other matter stand.

(2) The Appeal Commissioners shall, if they consider that a Revenue officer was precluded from making the enquiry or taking the action, as the case may be, referred to in section 959AJ, determine that the officer was so precluded; otherwise they shall determine that the officer was not so precluded.

Submissions

The Appellant's submissions

9. The Appellant's Statement of Case submitted that:

"I received a letter from Revenue dated 10th April 2024 granting me an Exemption from Local Property Tax on Property ID: [REDACTED] from 2013 onwards. 2) I am applying for a rebate of the tax paid for years 2013, 2014, 2015, 2016, 2017, 2018. I believe that I have provided all the information, in so far as possible in support of my case.

I am appealing my case on moral and compassionate grounds. I paid the LP T [I]n good faith, being unaware that at the time I could apply for an exemption on my property. At the time I was dealing with [REDACTED] and [REDACTED]

██████████. Since this was a new tax there ██████████ around the implementation of it. For someone like me who has always been tax compliant, there was a sense of 'Fear' attached to the tax. This was evident from all the news bulletins and Literature at the time. With the high cost of living, and all the expenses incurred with being a full time Carer for my ██████████ I trust that you will consider my application."

The Respondent's submissions

10. The Respondent's Statement of Case submitted that:

"1.A description of the matters under dispute:

The matter under dispute is the refusal by Revenue to refund an overpayment of Local Property Tax (LPT) for the years 2013 to 2018 inclusive. The overpayment arose following the approval by Revenue of an LPT exemption claimed for years 2013 to 2025 in respect of the property at ██████████ (Property ID: ██████████) on the grounds that the property was being used as the residence of an incapacitated individual.

2. The statutory provisions being relied upon:

Section 10B of the Finance (Local Property Tax) Act 2012 (as amended) provides for an exemption from LPT based on certain criteria, for properties purchases, adapted or built for use by incapacitated persons.

(1) A residential property shall not, for the purposes of Section 16(1), be regarded as a relevant residential property where the property is occupied by an incapacitated individual as his or her sole or main residence and—

(a) either—

(i) the individual is a person—

(I) to whom paragraph (b) of section 189(1) of the Act of 1997 applies, or

(II) who is a beneficiary under a qualifying trust (within the meaning of section 189A(1) of the Act of 1997), or

(ii) the individual is not a person referred to in clause (I) or (II) of subparagraph (i) and the Revenue Commissioners confirm, under subsection (1A), that the residential property shall not, for the purposes of this Act, be regarded as a relevant residential property,

and

(b) the property is—

(i) acquired because of its suitability for occupation by such an incapacitated individual, or

(ii) adapted to render it more suitable for occupation by such an incapacitated individual and the cost of the adaptation, on completion of that adaptation, exceeds an amount that is equivalent to one-quarter of the chargeable value of that property before it was adapted.

(1A) (a) Where subparagraph (ii) of subsection (1)(a) applies, a liable person in relation to a residential property may make an application in writing to the Revenue Commissioners for confirmation, in relation to the property that it shall not, for the purposes of this Act, be regarded as a relevant residential property.

(b) For the purpose of an application under paragraph (a), the Revenue Commissioners may specify the form of an application, and may require that the following information is provided to them:

(i) details of the residential property and the reason why it was acquired or adapted and considered to be suitable for occupation by the incapacitated individual;

(ii) a description of the adaptation referred to in subsection (1);

(iii) the cost of the adaptation;

(iv) the date of completion of the adaptation;

(v) the chargeable value attributable to the adaptation;

(vi) any other particulars the Revenue Commissioners may reasonably require for the purpose of considering the application.

(c) For the purpose of an application under paragraph (a), the Revenue Commissioners may also require that the following information is provided by the general practitioner of the incapacitated person:

(i) the nature and extent of the incapacity;

(ii) the extent to which the incapacity affects the person's mobility;

(iii) the reason the general practitioner considers the adaptation to have been necessary;

(iv) any other particulars the Revenue Commissioners may reasonably require for the purpose of considering the application.

(d) No confirmation shall be given by the Revenue Commissioners on an application under paragraph (a) unless they are satisfied that—

(i) the residential property was acquired because of its suitability for, or adapted to make it more suitable for, occupation by the incapacitated individual,

(ii) subparagraph (i) of subsection (1)(a) does not apply to him or her, and

(iii) where the property was adapted the cost of adaptation exceeds the cost referred to in subparagraph (ii) of subsection (1)(b).

(1B) For the purposes of subsection (1A), the Revenue Commissioners shall publish guidelines in relation to—

(a) the manner in which an application is to be made,

(b) the information or documentation required to be provided in relation to the property and the incapacitated individual in support of the application, and

(c) any other information that the Revenue Commissioners consider to be relevant for the purpose of considering an application

(2) Subsection (1) shall cease to apply on the sale (within the meaning of section 125) of the property unless the incapacitated individual continues to occupy that property as his or her sole or main residence.

(3) In this section—

“incapacitated individual” has the meaning assigned to it by section 189A of the Act of 1997;

“general practitioner”, in relation to an incapacitated individual, means the medical practitioner, for the time being registered in the register of medical practitioners established under section 43 of the Medical Practitioners Act 2007, who provides a general practitioner medical service to the incapacitated individual.

Section 26 of the Finance (Local Property Tax) Act 2012 (as amended) applies the usual 4-year time limit on repayment of overpaid taxes that applies to other types of taxes to LPT.

Section 26(4) allows for liable person to appeal a decision by Revenue not to allow a repayment.

Section 26. Repayment of local property tax.

(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.

Section 35 of the Finance (Local Property Tax) Act 2012 (as amended) requires a liable person to prepare and deliver a return.

Section 949I of the Taxes Consolidation Act 1997 provides that any person who wishes to appeal an appealable matter shall do so by giving notice in writing to the Appeal Commissioners.

3 (a). Background to the case

LPT was introduced in 2013 and at that time Revenue conducted an extensive publicity campaign around LPT, including the exemptions available. In March 2013 Revenue issued an information booklet to all residential property owners along with the 2013 LPT Return, which included a list of the LPT exemptions available. Property owners were obliged to file an LPT Return, based on their self-assessed valuation of their properties

as of 1st May 2013 and if applicable, claim an exemption based on the criteria specified in Part 2 of the LPT legislation (Sections 4 to 10D inclusive).

In March 2013 the Appellant was linked as the liable person for LPT to the residential property at [REDACTED] Property ID [REDACTED]. Revenue issued an LPT Return to the Appellant along with a Notice of Estimate for the property. The Appellant was advised that Revenue's estimated value for the property was in valuation band 3 (150,001-200,000).

The Appellant submitted the LPT return for the first valuation period 2013-2021 in May 2013, declaring valuation band 3 (€150,001 - €200,000) as applicable without any claim for an exemption. The Appellant paid the associated LPT charge for all years from 2013 to 2021. The LPT return for the second valuation period (2022-2025) was filed in November 2021, in which an exemption from LPT was claimed (property was being used as the residence of an incapacitated individual), on a self-assessed basis, therefore, there was no charge to LPT for the years 2022-2025. This exemption was unverified by Revenue at this time.

In November 2023, the Appellant requested a refund of the LPT paid for the years 2013 to 2021. The Appellant advised that she had applied for an exemption in 2021 for the valuation period 2022 to 2025 as her [REDACTED]. In order for Revenue to verify the claim for an exemption for the years 2013-2021 and 2022-2025, Revenue issued a form LPT7 (application for exemption for properties occupied by certain permanently and totally incapacitated persons) to the Appellant for completion. Upon receipt of the completed Form LPT7 the case was reviewed and the exemption from LPT was approved for both valuation periods (2013-2021 and 2022-2025) and the Appellant was advised of this. When Revenue approved the exemption, it generated an LPT overpayment for the years 2013 to 2021 inclusive. A refund of LPT paid for 2019, 2020 and 2021 (€945.00) issued to the Appellant. However, in accordance with Section 26(2)(b) of the Finance (Local Property Tax) Act 2012 (as amended), Revenue cannot repay the overpayments for the years 2013-2018 (€1,722), as the claim for repayment for these years was made over four years after the years in which the relevant liability dates occurred.

3 (b) Legislative and Administrative basis for refusal to refund the overpayments arising for the years 2013 to 2018 inclusive

LPT is administered in accordance with the Finance (Local Property Tax) Act 2012 (as amended). Section 26 of the Act applies the 4-year time limit on repayment of overpaid tax that applies to other taxes, to LPT.

Section 10B of the Act provides for an exemption from LPT based on certain criteria, for properties purchased, adapted or built for use by incapacitated persons. Where a property is eligible for an exemption, the property owner is still required to value the property, submit the valuation, and claim the exemption as part of the return. For certain exemptions the property owners are also required to submit supporting documentation.

Section 26(2)(b) of the Finance (Local Property Tax) Act 2012 (as amended) specifically states that Revenue shall not make a repayment of LPT unless the claim for repayment 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. As the claim made by the Appellant was made more than four years after the end of the years in which the relevant liability dates in respect of which the payments were made falls, Revenue cannot make a repayment for the years 2013 to 2018.

3 (c) Grounds for appeal

In the appeal application the Appellant states, at the time LPT was introduced, she was

[REDACTED]

[REDACTED]. She stated that she did not have time to update herself on the various aspects of LPT and she was not aware that she could apply for an exemption. In view of her situation, the Appellant has requested that on compassionate grounds, Revenue re-considers the decision not to refund LPT paid for the years 2013-2018.

3 (d) Revenue's position

In May 2013 the appellant self-assessed the value of the property as of 1 May 2013 and filed a paper LPT return for the first valuation period (2013-2021), declaring the property valuation in Band 3 and she did not claim an Exemption. The paper LPT return advised property owners to refer to the Exemption list in the LPT Booklet provided with the return. The appellant paid the associated LPT charge for all years from 2013 to 2021.

In November 2021 the appellant self-assessed the value of the property as of 1 November 2021 and filed an LPT return online for the second valuation period (2022-2025), declaring the property valuation in Band 3 and claimed an exemption for properties purchased, adapted or built for use by incapacitated persons. The appellant did not include form LPT7 in support of this exemption claim.

On 30 November 2023 that the appellant made contact with Revenue seeking a refund of the LPT paid for the years 2013 to 2021, the appellant claimed that the property was

exempt for the valuation period 2013-2021 also. A form LPT7 issued to the appellant in response because at this stage the claim for all years remained unverified.

Following a review of the case, Revenue accepted the Appellants application for an exemption from LPT "Residence [REDACTED] a severely incapacitated individual" for all years from 2013 to 2025. Revenue refunded the overpayment of LPT that arose for 2019, 2020 and 2021. Revenue is precluded from refunding the years 2013, 2014, 2015, 2016, 2017 and 2018 as the claim for repayment for these years was made over four years after the end of the years in which the relevant liability dates in respect of which the payments were made falls.

4. Relevant case law:

Tax Appeal Commission Determinations in 2023 and 2024 are listed below.

These cases relate to other taxes where the 4-year time limit was upheld, and the repayment of overpaid taxes could not be approved in accordance with Section 865(4) of the TCA 1997.

66TACD2023

104TACD2023

117TACD2023

126TACD2023

138TACD2023

141TACD2023

154TACD2023

03TACD2024

35TACD2024

36TACD2024".

11. On 21 June 2024 the Respondent after submission of its Statement of Case wrote further to the Commission and submitted as follows:

"I refer to your e-mail of 24 May 2024 to the Tax Appeals Unit, Revenue Commissioners, in respect of [REDACTED] (the Appellant) application for the admission of an appeal (App-2405-00747), against the refusal by Revenue to refund an overpayment of Local Property Tax (LPT) for the years 2013 to 2018 inclusive.

LPT is administered in accordance with the Finance (Local Property Tax) Act 2012 (as amended). Section 26 of the Act applies the 4-year time limit on repayments of overpaid tax that applies to other taxes, to LPT.

Section 26(2)(b) specifically states that Revenue shall not make a repayment of LPT unless the claim for repayment 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. As the claim made by the Appellant was made more than 4 years after the end of the year of the LPT liability dates for the LPT years 2013 - 2018, Revenue cannot make a repayment for those years.

LPT is a self-assessed tax and, as such, property owners are required to determine the market value of their property as at the valuation date. The valuation date for the first valuation period (2013 to 2021) is 1 May 2013 and the valuation date for the current valuation period (2022 to 2025) is 1 November 2021. The legislation provides for exemptions for certain properties from LPT, based on criteria specified in Part 2 of the Act (Sections 4 to 10D inclusive). Where a property is eligible for an exemption, the property owner is still required to value the property, submit the valuation, and claim the exemption as part of the return. For certain exemptions the property owners are also required to submit supporting documentation.

LPT was introduced in 2013 and at that time Revenue conducted an extensive publicity campaign about LPT, including the exemptions available. The relevant representative bodies including those dealing with various disabilities, were advised of the exemptions and reliefs available. Revenue also issued an information booklet to all residential property owners, along with the 2013 LPT Return, listing the LPT exemptions available. Additionally, Revenue published extensive guidance material in relation to LPT exemptions on the Revenue website.

The Appellant submitted the LPT return, dated 3 May 2013, declaring valuation band 3 (€150,001 - €200,000) as applicable without any claim for an exemption from LPT. The Appellant paid the associated LPT charge for all years from 2013 to 2021. The LPT return for the second valuation period (2022 – 2025) was filed on 7 November 2021, in which an exemption from LPT was claimed on the grounds that the property was being used as the residence of an incapacitated individual.

As previously stated, the Appellant claimed an exemption for years 2022-2025 on the portal, on a self-assessed basis, therefore, no LPT charge was paid for years 2022-2024. In November 2023, the Appellant requested a refund of the LPT paid for the years 2013 – 2021. The Appellant advised that she applied for an exemption in 2021 for the valuation period 2022 to 2025 as [REDACTED]

██████████. Subsequent to the refund request, as is standard practice Revenue issued a form LPT7 (application for exemption for properties occupied by certain permanently and totally incapacitated persons) to the Appellant for completion. Upon receipt of the completed LPT7 and review of the case, an exemption from LPT was approved for all years from 2013 onwards and the Appellant was advised. When Revenue approved the exemption, it resulted in an LPT overpayment for all years from 2013 to 2021 inclusive. A refund of the 2019, 2020 and 2021 LPT paid (€945.00) issued to the Appellant. However, in accordance with Section 26(2)(b) of the Finance (Local Property Tax) Act 2012 (as amended), Revenue cannot repay the overpayments for the years 2013 – 2018 (€1,722), as the claim for repayment for these years was made over four years after the years in which the relevant liability dates occurred.

Revenue considers this a valid appeal in accordance with Section 26(4) of the Finance (Local Property Tax) Act 2012 (as amended) which states that a liable person who is aggrieved by a decision of the Revenue Commissioners not to make a repayment because of the 4-year time limit, may appeal the decision to the Appeal Commissioners, in accordance with section 949I of the TCA Act of 1997.

Relevant legislation

Section 10B. Permanently and totally incapacitated individuals.

1. A residential property shall not, for the purposes of Section 16(1), be regarded as a relevant residential property where the property is occupied by an incapacitated individual as his or her sole or main residence and—

(a) either—

(i) the individual is a person—

(I) to whom paragraph (b) of section 189(1) of the Act of 1997 applies, or

(II) who is a beneficiary under a qualifying trust (within the meaning of section 189A(1) of the Act of 1997), or

(ii) the individual is not a person referred to in clause (I) or (II) of subparagraph (i) and the Revenue Commissioners confirm, under subsection (1A), that the residential property shall not, for the purposes of this Act, be regarded as a relevant residential property,

and

(b) the property is—

(i) acquired because of its suitability for occupation by such an incapacitated individual, or

(ii) adapted to render it more suitable for occupation by such an incapacitated individual and the cost of the adaptation, on completion of that adaptation, exceeds an amount that is equivalent to one-quarter of the chargeable value of that property before it was adapted.

(1A) (a) Where subparagraph (ii) of subsection (1)(a) applies, a liable person in relation to a residential property may make an application in writing to the Revenue Commissioners for confirmation, in relation to the property that it shall not, for the purposes of this Act, be regarded as a relevant residential property.

(b) For the purpose of an application under paragraph (a), the Revenue Commissioners may specify the form of an application, and may require that the following information is provided to them:

(i) details of the residential property and the reason why it was acquired or adapted and considered to be suitable for occupation by the incapacitated individual;

(ii) a description of the adaptation referred to in subsection (1);

(iii) the cost of the adaptation;

(iv) the date of completion of the adaptation;

(v) the chargeable value attributable to the adaptation;

(vi) any other particulars the Revenue Commissioners may reasonably require for the purpose of considering the application.

(c) For the purpose of an application under paragraph (a), the Revenue Commissioners may also require that the following information is provided by the general practitioner of the incapacitated person:

(i) the nature and extent of the incapacity;

(ii) the extent to which the incapacity affects the person's mobility;

(iii) the reason the general practitioner considers the adaptation to have been necessary;

(iv) any other particulars the Revenue Commissioners may reasonably require for the purpose of considering the application.

(d) No confirmation shall be given by the Revenue Commissioners on an application under paragraph (a) unless they are satisfied that—

(i) the residential property was acquired because of its suitability for, or adapted to make it more suitable for, occupation by the incapacitated individual,

(ii) subparagraph (i) of subsection (1)(a) does not apply to him or her, and

(iii) where the property was adapted the cost of adaptation exceeds the cost referred to in subparagraph (ii) of subsection (1)(b).

(1B) For the purposes of subsection (1A), the Revenue Commissioners shall publish guidelines in relation to—

(a) the manner in which an application is to be made,

(b) the information or documentation required to be provided in relation to the property and the incapacitated individual in support of the application, and

(c) any other information that the Revenue Commissioners consider to be relevant for the purpose of considering an application

(2) Subsection (1) shall cease to apply on the sale (within the meaning of section 125) of the property unless the incapacitated individual continues to occupy that property as his or her sole or main residence.

(3) In this section—

“incapacitated individual” has the meaning assigned to it by section 189A of the Act of 1997;

“general practitioner”, in relation to an incapacitated individual, means the medical practitioner, for the time being registered in the register of medical practitioners established under section 43 of the Medical Practitioners Act 2007, who provides a general practitioner medical service to the incapacitated individual.

Section 26. Repayment of local property tax.

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 to 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.

Section 949I Notice of appeal.

(1) Any person who wishes to appeal an appealable matter shall do so by giving notice in writing in that behalf to the Appeal Commissioners.

(2) A notice of appeal shall specify—

(a) the name and address of the appellant and, if relevant, of the person acting under the appellant's authority in relation to the appeal,

(b) in the case of an appellant who is an individual, his or her personal public service number (within the meaning of section 262 of the Social Welfare Consolidation Act 2005) or, in the case of any other person, whichever of the numbers in respect of the person specified in paragraphs (b) and (c) of the definition of "tax reference number" in section 885(1) is appropriate,

(c) the appealable matter in respect of which the appeal is being made,

(d) the grounds for the appeal in sufficient detail for the Appeal Commissioners to be able to understand those grounds, and

(e) any other matters that, for the time being, are stipulated by the Appeal Commissioners for the purposes of this subsection.

(3) Where the provisions of the Acts relevant to the appeal concerned require conditions specified in those provisions to be satisfied before an appeal may be made, a notice of appeal shall state whether those conditions have been satisfied.

(4) Where an appeal is a late appeal, the notice of appeal shall state the reason the appellant was prevented from making the appeal within the period specified by the Acts for doing so.

(5) A copy of the notification that was received from the Revenue Commissioners (that is to say, the notification in respect of the matters the subject of the appeal) shall be appended to a notice of appeal.”

Material Facts

12. Having considered and assessed the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
 - 12.1. In November 2021 the Appellant submitted the LPT Return for 2022-2025 and claimed an exemption from LPT for the years 2022-2025 on the basis that the Appellant's property was being used as the residence of an incapacitated individual. The Respondent granted the exemption and there was no charge to LPT for the years 2022-2025.
 - 12.2. In November 2023, the Appellant requested a refund of the LPT paid for the years 2013 to 2021 on the basis of being entitled to an exemption from LPT for the years 2013-2021 as the Appellant's property was being used as the residence of an incapacitated individual.
 - 12.3. The Respondent approved the LPT exemption for the period 2013-2021. A refund of LPT paid for the years 2019, 2020 and 2021 in the amount of €945.00 issued to the Appellant.
 - 12.4. On 1 May 2024 the Respondent issued a letter to the Appellant advising that in accordance with Section 26(2)(b) of the LPT Act it could not repay the overpayments of LPT for the years 2013–2018 in the amount of €1,722 to the Appellant as the claim for repayment for these years was made after the expiry of four years from the end of the taxable period.
 - 12.5. On 22 May 2024 the Appellant submitted her Notice of Appeal to the Commission.

Analysis

13. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997.
14. In this regard, the jurisdiction of an Appeal Commissioner is well established and was considered by the Court of Appeal in *Lee v the Revenue Commissioners* [2021] IECA 18 wherein Murray J. stated at paragraph 20:

“The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation”.
15. The Commissioner also refers to the judgment of *Fahy v the Revenue Commissioners* [2023] IEHC 710; wherein Quinn, J. stated at paragraph 47:

“ Applying the rationale of the jurisprudence summarised and analysed in Lee, the function of the TAC is limited to what is provided in the legislation and factual and legal questions arising therefrom. There is no inherent jurisdiction to consider broader questions ...”.
16. All material submitted to the Commission has been assessed by the Appeal Commissioner (“the Commissioner”) before making this determination.
17. In November 2021 the Appellant submitted the LPT Return for 2022-2025 and claimed an exemption from LPT as provided for at section 10B of the LPT Act on the basis that the Appellant’s property was being used as the residence of an incapacitated individual for the years 2022-2025. The Respondent having regard to the Appellant’s application and personal circumstances granted the exemption for the years 2022-2025 and accordingly deemed that there was no charge to LPT for the years 2022-2025.
18. In November 2023 the Appellant made application to the Respondent to have the exemption provided at section 10B of the LPT Act applied also to the years 2013-2021 inclusive. The Respondent granted the application for an exemption in respect of LPT for the years 2013-2021. As a result of applying the exemption to the Appellant’s LPT account it was found that the Appellant had made an overpayment in respect of LPT for

the years 2013-2021. For the years 2019, 2020 and 2021 the Respondent made a repayment to the Appellant of LPT paid in the sum of €945.

19. For the years 2013-2018 (inclusive) the Respondent applied the exemption from LPT further to section 10B of the LPT Act to the Appellant's LPT account and it was found that the Appellant had therefore overpaid LPT for this period in the amount of €1,722. However, further to the provisions of section 26(2)(b) of the LPT Act the Respondent was prohibited from making a repayment of LPT to the Appellant as the claim for repayment was not made within four (4) years after the end of the year in which the liability date in respect of which the payment was made falls.
20. Accordingly, notwithstanding that the Respondent acknowledged that the Appellant had paid the sum of €1,722 in respect of LPT for the years 2013-2018 (inclusive) which she was exempted from, it was nonetheless prohibited from repaying this overpayment amount to the Appellant as the request for repayment by the Appellant was received in November 2023 which was more than four years after the end of 2018.

Determination

21. The Commissioner has assessed all matters in this appeal and finds that for the reasons set out above that the Respondent was entitled to refuse the Appellant's request for a repayment of LPT paid by her for the years 2013-2018.
22. Accordingly, for the reasons set out above the Commissioner finds that the Appellant's appeal in this matter is unsuccessful and the decision of the Respondent in its letter of 1 May 2024 further to the provisions of section 949AL(1) of the TCA 1997 shall stand.
23. The Commissioner acknowledges that the Appellant was within her rights to appeal the Respondent's decision and to have clarity of her legal rights. The Commissioner has no discretion in how the statutory provisions are to be applied to the Appellant's appeal. The Commissioner understands that the Appellant may be disappointed with the outcome of her appeal.
24. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL(1) and 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

25. 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

26. 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.



Leonora B. Doyle
Appeal Commissioner
13 November 2024