



**AC Ref: 21TACD2016**

**[NAME REDACTED]**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to a repayment claim pursuant to section 865 of the Taxes Consolidation Act 1997 as amended ("TCA 1997") in relation to the availability of the incapacitated child tax credit pursuant to the provisions of s.465 TCA 1997, (hereafter 'the tax credit').

**Background**

2. The Appellant first submitted a claim in respect of the tax credit in October 2015, in relation to the care of the Appellant's son, who was diagnosed with autism spectrum disorder. The Appellant, having not availed of the tax credit in previous years, submitted a repayment claim and received a repayment of tax from the Respondent in respect of the tax years 2014, 2013, 2012 and 2011 on foot of the Appellant's entitlement to the tax credit.
3. The Appellant subsequently submitted a repayment claim in relation to the Appellant's entitlement to the tax credit for the tax years 2008, 2009 and 2010. On **[DATE REDACTED]** the Respondent wrote to the Appellant refusing this request on the basis that the claim for repayment was out of time in accordance with the provisions of s.865 TCA 1997. The Appellant appealed this refusal by letter dated **[DATE REDACTED]**.



4. The Appellant, pursuant to this Appeal, seeks a repayment of tax as if the Appellant had availed of the tax credit in respect of the tax years of assessment 2008, 2009 and 2010.
5. On agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

### **Legislation**

#### s.865 TCA 1997 - Repayment of Tax

...

*(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]<sup>11</sup>.*

....

#### Section 465 TCA 1997 - Incapacitated child tax credit

*[(1) Where a claimant proves that he or she has living at any time during a year of assessment any child who*

*(a) is under the age of 18 years and is permanently incapacitated by reason of mental or physical infirmity, or*

*(b) if over the age of 18 years at the commencement of the year, is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself and had become so permanently incapacitated before he or she had attained the age of 21 years or had become so permanently incapacitated after attaining the age of 21 years but while he or she had been in receipt of full-time instruction at any university, college, school or other educational establishment,*

*the claimant shall, subject to this section, be entitled in respect of each such child to a tax credit (to be known as the “incapacitated child tax credit”) of [€3,300].*

*(2)(a) A child under the age of 18 years shall be regarded as permanently incapacitated by reason of mental or physical infirmity only if the infirmity is such that there would be a reasonable expectation that if the child were over the age of 18 years the child would be incapacitated from maintaining himself or herself.*

*(b) A tax credit under this section shall be in substitution for and not in addition to any tax credit to which the individual might be entitled in respect of the same child under section 466.*



*(3) Where the claimant proves for the year of assessment—*

*(a) that the claimant has the custody of and maintains at his or her own expense any child who, but for the fact that that child is not a child of the claimant, would be a child referred to in subsection (1), and*

*(b) that neither the claimant nor any other individual is entitled to a tax credit in respect of the same child under subsection (1) or under any other provision of this Part (other than section 466A), or, if any other individual is entitled to such a tax credit, that such other individual has relinquished his or her claim to that tax credit,*

*the claimant shall be entitled to the same tax credit in respect of the child as if the child were a child of the claimant.*

*(4)(a) The reference in subsection (1) to a child receiving full-time instruction at an educational establishment shall include a reference to a child undergoing training by any person (in this subsection referred to as “the employer”) for any trade or profession in such circumstances that the child is required to devote the whole of his or her time to the training for a period of not less than 2 years.*

*(b) For the purpose of a claim in respect of a child undergoing training, the inspector may require the employer to furnish particulars with respect to the training of the child in such form as may be prescribed by the Revenue Commissioners.*

*(5) Where any question arises as to whether any person is entitled to a tax credit under this section in respect of a child over the age of 21 years as being a child who had become permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself after attaining that age but while in receipt of full-time instruction referred to in this section, the Revenue Commissioners may consult the Minister for Education and Science.*

*(6) Where for any year of assessment 2 or more individuals are or would but for this subsection be entitled under this section to relief in respect of the same child, the following provisions shall apply:*

*(a) only one tax credit under this section shall be allowed in respect of the child;*

*(b) where the child is maintained by one individual only, that individual only shall be entitled to claim such tax credit;*



*(c) where the child is maintained jointly by two or more individuals, each of those individuals shall be entitled to claim such part of such tax credit as is proportionate to the amount expended by him or her on the maintenance of the child;*

*(d) in ascertaining for the purposes of this subsection whether an individual maintains a child and, if so, to what extent, any payment made by the individual for or towards the maintenance of the child which the individual is entitled to deduct in computing his or her total income for the purposes of the Income Tax Acts shall be deemed not to be a payment for or towards the maintenance of the child.]*

### **Submissions**

6. The Appellant's child was born on **[DATE REDACTED]** however the Appellant did not become aware of his/her entitlement to claim the tax credit until 2015. The Appellant submitted that the repayment claim should not be refused for the tax years 2008, 2009 and 2010 as the Appellant was unaware of his/her entitlements in relation thereto.
7. The Respondent submitted that a claim for repayment of tax must be made within four years after the end of the tax year to which the claim relates and that the Appellant was out of time as regards his/her repayment claim, in relation to the tax years of assessment 2008, 2009 and 2010.

### **Analysis**

8. The facts in this case are not in dispute. Both parties accepted that the repayment claims regarding the tax years 2008, 2009 and 2010 were not made within four years after the end of the tax year to which the claims related.
9. The Respondent submitted that the Appellant's claim for repayment was thus out of time in accordance with the provisions of section 865(4) TCA 1997 which provide; '*... 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*'.





10. In my view, the use of the word '*shall*' per section 865(4) TCA 1997, 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. In short, I do not have authority or jurisdiction to direct that a repayment be made to the Appellant where the claim in respect of the repayment is outside the four year time period specified in s.865(4) TCA 1997.

### **Conclusion**

11. Pursuant to the wording of section 865 TCA 1997, and in particular the use of the word "*shall*" per subsection 865(4) TCA 1997, I determine that I do not have discretion as regards the application of the four year limitation period in circumstances where the claim has been made outside the four year period. As a result, I have no alternative but to determine that the repayment claim on behalf of the Appellant for the tax years of assessment 2008, 2009 and 2010, is out of time in accordance with the provisions of section 865(4) TCA 1997.

12. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

**APPEAL COMMISSIONER**

December 2016

