



Ref: 81TACD2020

BETWEEN/

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'). The request for repayment relates to an overpayment of income tax in 2013. This case is adjudicated without a hearing in accordance with the provisions of s.949U.

Background

2. The Appellant, submitted his 2013 return of income and claim for allowances in October 2018 that gave rise to an income tax repayment due to the Appellant.
3. The Appellant has sought a repayment and has advised that he submitted his tax return for 2017 in time for that return in October 2018. The Appellant submits that his claim for incapacitated child allowance should be allowed for 2013 as the claim was made at the same time as filing his in time 2017 return.
4. The facts are not in dispute in this appeal.

Legislation

5. The relevant legislation in this appeal is section 865 TCA 1997.

Submissions

6. The Appellant has submitted in his appeal documentation that having made the claim for the allowance giving rise to the repayment on his 2017 income tax return he was within the four-year time frame in accordance with section 865 TCA 1997. The Appellant sought advice in the matter from the Citizens Advice Bureau who informed him of his right to appeal the matter.
7. The Respondent by way of letter dated 6 March 2019 stated that it is unable to review the Appellant's income tax position for 2013 as Section 865(4) TCA 1997 states that all claims for repayment of tax made may only be allowed within 4 years. According it was precluded from repaying the tax due for repayment in respect of 2013, because the Appellant's application for repayment had not been made within the four years after the end of the chargeable period to which the claim relates.

Analysis and findings

8. The Appellant's claim for repayment in respect of the tax year 2013 was made for the first time by the Appellant in October 2018. Thus the Appellant's claim for a repayment in respect of the tax year 2013 was out of time in accordance with section 865(4) TCA 1997 which provides; '... 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]
9. 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 consider that I have the authority or discretion to direct that a repayment be made to the Appellant where the claim for repayment falls outside the four-year period specified in s.865(4) TCA 1997.

10. Previous determinations of the Tax Appeals 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 at www.taxappeals.ie.

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 statutory limitation period in circumstances where the claim has been made outside of 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 year 2013, 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.

Charlie Phelan
Appeals Commissioner
3 January, 2020.

