



17TACD2020

BETWEEN/

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction and Background

1. This appeal relates to a claim pursuant to s.865 of the Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997') in respect of the tax years of assessment 2003 to 2010 inclusive. The request for repayment relates to the Incapacitated Child Credit in accordance with s.465 TCA 1997 and to the tax years of assessment 2003 to 2010.
2. Upon agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

Background

3. The Appellant made a claim in October 2015 for the Incapacitated Child Credit in respect of her son Daniel who has a lifelong disability. Following a lengthy period of



correspondence between the parties the credit was granted to the Appellant in 2017 with effect from the year 2013. Following notification of the Appellant's notice of appeal the Respondent also granted the credit for the years 2011 and 2012 as it was found that a valid claim had been made by the Appellant during the year 2015. The Respondent declined to process the claim for the years prior to this on the basis that they were precluded from doing so by virtue of the four-year limitation period in accordance with s.865(4) TCA 1997. The Appellant duly appealed to the Tax Appeals Commission.

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].

Submissions

4. The Appellant submits that the Incapacitated Child Tax Credit should be backdated to the child's year of birth which was 2003, on the basis that her son was born with his disability and did not acquire it at a later date. The Appellant further states that diagnosis of her son's condition is difficult before the age of 8 -11 years and therefore it was not possible to submit an earlier application.
5. The Respondent submits that a claim for repayment of tax must be made within four years after the end of the tax year to which the claim related in accordance with s.865 TCA 1997. The Respondent submits therefore that the Appellant's claim for the years prior to 2011 were out of time as the claim was received in October 2015.

Analysis and findings

6. The facts in this appeal are not in dispute. Both parties accepted that the repayment claim regarding the tax years 2003 to 2010 inclusive were not made within four years after the end of the chargeable period to which the claims related. The Respondent submitted that the Appellant's claim for repayment was thus out of time in accordance with s.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]
7. In my view, the use of the word '*shall*' per s.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 jurisdiction to direct that a repayment be made to the Appellant where the claim for repayment is outside the four-year period specified in s.865(4) TCA 1997.

8. 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 can be found on the Commission website at www.taxappeals.ie. under references, 20TACD2019, 14TACD2019, 4TACD2019 03TACD2019, 29TACD2018, 25TACD2018, 19TACD2018, 16TACD2018, 12TAC2018, 09TACD2018, 25-26TACD2017, 11TACD2017, 08TACD2017, 02TACD2017, 26TACD2016, 21TACD2016, 18-19TACD2016.

Conclusion

9. Pursuant to the wording of s.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 claims on behalf of the Appellant for the tax years of assessment 2003 to 2010 inclusive are out of time in accordance with the provisions of section 865(4) TCA 1997.
10. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

9 JANUARY 2020

