



Ref: 181TACD2020

BETWEEN/

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

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 2003-2013.
2. The Appellant initially filed her Income Tax returns in respect of tax years 2003-2013 on the basis that she was not entitled to 'rent a room' relief in respect of two properties jointly owned by herself and her husband. Subsequently, she established that she was entitled to such relief for the tax years 2014, 2015, 2016 and 2017.
3. The Appellant is appealing against the decision by the Respondent, pursuant to the four year time restriction contained in S.865(4) TCA1997, to refuse to issue a refund of tax collected from her for the tax years 2003 to 2013 in respect of rental income that otherwise qualified for 'rent a room' relief.



4. This appeal was heard by remote hearing by the Tax Appeals Commission on 1 October 2020.

Background

5. The Appellant was registered under the self-assessed system since 2003 due to the fact that she was in receipt of rental income. The rental income from the two properties was included, by the Appellant, as taxable income in her annual tax returns. Any liability that arose was paid accordingly.
6. In November 2018, the Appellant sent a letter to Revenue requesting that Revenue amend the years 2003 to 2014 and apply the rent-a-room exemption limits to her rental income and issue any repayments arising due to the exemption.
7. As Revenue did not receive a valid claim within the required timeframe the claim was refused. The appellant was informed, via email, that a refund was due in respect of the year 2014 but the years 2003 - 2013 were statute barred and would not be amended.
8. The Respondent argued that a four-year claim limitation period applies to most claims for repayment of overpaid tax, including for example, where an individual pays tax on rental income without realising that rent-a-room relief applies to such income. A claim for relief is not possible where the claim is made more than four years after the end of the year in which the rental income arose. In accordance with Section 865 (4), which deals with the 4-year time limit imposed on repayment claims, the Revenue submitted that it is unable to issue refund claims made more than four years after the end of the tax year.

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

9. The Appellant submitted the following at the hearing :

The Appellant said she was not disputing the facts. She was however, seeking the refunds on grounds of fairness. She said she was “old school” and was not filing online. She recalled going with her father early on, to the Revenue Office in REDACTED, querying whether she was entitled to ‘rent a room relief’ on the rental income. She was advised by a Revenue official in that office that she was not so entitled and she filed her tax returns accordingly. Many years later, after reading a newspaper article she discovered she was entitled to the relief. However, Revenue were only allowing her relief from 2014 and not for the earlier years due to the 4 year rule.

10. The Respondent made the following submission:

“A claim for repayment of tax must be made within four years after the end of the tax year to which a claim relates. The claim made by the appellant was outside the four year limit per section 865(4) TCA1997 and as such, is not a valid claim.”

Analysis and findings

11. The facts in this appeal are not in dispute. Both parties accepted that the repayment claims in 2018, regarding the tax years 2003 -2013 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’.
12. 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 or tax offset be made to the Appellant where the claim for repayment is outside the four-year period specified in s.865 (4) TCA 1997.

13. 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, numbered 18TACD2016, 19TACD2016, 21TACD2016, 26TACD2016, 08TACD2017, 11TACD2017, 26TACD2017, 09TACD2018, 12TACD2018, 16TACD2018, 25TACD2018, 29TACD2018, 03TACD2019, 14TACD2019, 20TACD2019, 69TACD2019, 70TACD2019, 01TACD2020, 78TACD2020, 80TACD2020, 81TACD2020, 82TACD2020, 83TACD2020, 84TACD2020, 85TACD2020, 95TACD2020, 96TACD2020, 103TACD2020, 105TACD2020, and 132TACD2020 can be found on the Commission's website at www.taxappeals.ie.

14. In this case the Appellant had acted with probity in declaring rental income from properties, that qualified for 'rent a room' relief, in her joint tax returns with her husband. At the hearing, the Appellant expressed her frustration regarding the inflexibility of the four year rule. In addition, the Appellant, expressed great disappointment that the four year rule would operate in a manner so as to prevent the repayment of the tax overpaid by her, during the tax years 2003 to 2013, in circumstances where the overpayment arose as a result of the incorrect advice, specifically sought, from a Revenue official and leading to the initial non-claiming of the 'rent-a-room' tax relief.

Conclusion

15. Pursuant to the wording of section 865 TCA 1997, and in particular the use of the word "*shall*" per subsections 865(3A)(b) and 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 as a matter of law that the repayment claim on behalf of the Appellant for the years from 2003 to 2013 is out of time in accordance with the provisions of section 865(4) TCA 1997.

16. Insofar as the Appellant seeks that the Tax Appeals Commission set aside the refusal of the repayment claim based on an alleged unfairness, such grounds of appeal do not fall within the jurisdiction of the TAC and thus do not fall to be determined as part of this appeal.



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

PAUL CUMMINS

APPEAL COMMISSIONER

Designated Public Official

12 October 2020