



Ref: 84TACD2020

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 mortgage interest relief in accordance with section 244 TCA 1997 and to the tax years of assessment 2007-2014 inclusive. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

Background

2. The Appellant purchased her home in 2007 and made mortgage loan repayments in the years 2007 to 2014. In 2016 she realised that she was not in receipt of mortgage interest relief for any of the years 2007 to 2014. In an email dated 25 July 2016 the Appellant queried the matter with her bank. This email was never replied to by the bank. She visited the bank in January 2019 and was informed that her email went to a defunct email address. The bank informed her that the matter was an issue between Revenue and herself.

3. The Appellant sought a repayment of the amount involved in the interest rate relief directly from Revenue in a letter dated 22 January 2019. Revenue responded to that letter via the MyEnquiries messaging system advising that the repayment was statute barred.
4. The Appellant wrote again to Revenue on 23 April 2019 requesting that the matter be reconsidered. Revenue replied by letter dated 12 June 2019 that it was unable to process her claim for mortgage interest relief for 2007 to 2014. It advised that Section 865(4) TCA 1997 states that all claims for repayment of tax made on or after 1 January 2005 may only be allowed within 4 years. Accordingly it was unable to deal with any claims that relate to the tax years 2007 to 2014.
5. The facts are not in dispute in this appeal.

Legislation

6. The relevant legislation in this appeal is section 865 TCA 1997, section 244 TCA 1997, section 244A TCA 1997 and S.I. No. 558/2001.

Submissions

7. The Appellant outlined the circumstances of the case as set out in the background above and appeals for consideration for a repayment for any of unclaimed years in light of her email dated 25 July 2016 to the bank.
8. The Respondent advised that Section 865(4) TCA 1997 states that all claims for repayment of tax made on or after 1 January 2005 may only be allowed within 4 years. Accordingly it was unable to deal with any claims that relate to the tax years 2007 to 2014.

Analysis and findings

9. The Appellant's claim for mortgage interest relief in respect of the tax years 2007 to 2014 was made for the first time by the Appellant on 22 January 2019. Her email to the Bank dated 25 July 2016 is not a valid claim for mortgage interest relief. Thus the Appellant's



claim for repayment in respect of the tax years 2007-2014 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]

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 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.
11. 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

12. 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 years of assessment 2007-2014, is out of time in accordance with the provisions of section 865(4) TCA 1997.
11. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

Charlie Phelan
Appeals Commissioner
2 January, 2020.

