



130TACD2022

Between:

██████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter "the Commission") as an appeal against the refusal of the Revenue Commissioners (hereinafter "the Respondent") of a claim for the repayment of tax pursuant to section 865 of the Taxes Consolidation Act, 1997 (hereinafter the "TCA1997") made by the Appellant in respect of the tax years 2007 to 2015 inclusive.
2. The amount of tax at issue is €27,648.20
3. The oral hearing of the appeal was heard on 20 July 2022.

Background

4. Mr ██████████ (hereinafter the "Appellant") is a retired gentleman and, for the purposes of the within appeal, was in receipt of the State Contributory Pension for the years 2007 to 2016 inclusive.

5. The Appellant declared the receipt of the State Contributory Pension for the relevant years as follows:

(i)	2007	€18,138	return dated 20/11/2008
(ii)	2008	€19,721	return dated 23/10/2009
(iii)	2009	€20,341	return dated 04/11/2010
(iv)	2010	€19,958	return dated 03/11/2011
(v)	2011	€19,958	return dated 20/11/2012
(vi)	2012	€19,958	return dated 18/11/2013
(vii)	2013	€19,958	return dated 29/10/2014
(viii)	2014	€20,054	return dated 02/11/2015
(ix)	2015	€20,246	return dated 08/11/2016
(x)	2016	€20,548	return dated 08/11/2017

6. By way of letter dated 27 September 2018 from the Department of Social Protection the Appellant was informed that the increase for a Qualified Adult Allowance received by him had been overpaid during the relevant years as follows:

(i)	2007	€6,397.10
(ii)	2008	€7,440.00
(iii)	2009	€6,552.00
(iv)	2010	€8,135.00
(v)	2011	€7,982.00
(vi)	2012	€7,982.00
(vii)	2013	€7,644.00
(viii)	2014	€7,383.50
(ix)	2015	€7,990.20
(x)	2016	€ 153.50

7. The Appellant immediately began the process of repaying the said overpayments to the Department of Social Protection and repaid an amount equivalent to 59% of the value of the overpayments to the Department of Social Protection.
8. On 08 June 2021 the Appellant filed a claim with the Respondent requesting amendment of his Income Tax Assessments for the tax years 2007 to 2016 inclusive seeking to reduce the amount of State Contributory Pension income on which he was assessed in those years to reflect the overpayment amounts and seeking a refund for any overpayment of tax which would thereafter result.
9. By way of letter dated 08 March 2022 the Appellant's claim for the overpayment made by the Appellant in 2007 to 2015 was disallowed by the Respondent on the basis that the claims for repayment of tax had not been made within 4 years of the end of the relevant tax years to which the claim related pursuant to section 865 of the TCA1997.
10. A refund for the overpayment made in 2016 was allowed by the Respondent on the basis that the claim for repayment of tax had been made within 4 years of the end of the tax year to which the claim related pursuant to section 865 of the TCA1997.
11. The Appellant has appealed the disallowance of the claim for repayment of tax by the Respondent for the tax years 2007 to 2015 inclusive.
12. The oral hearing took place remotely before the Commissioner on 20 July 2022. The Appellant appeared at the oral hearing and was not represented. The Respondent was represented by officers from its Business Division. The Commissioner heard submissions on behalf of the Appellant and on behalf of the Respondent.

Legislation and Guidelines

13. The legislation relevant to the within appeal is as follows:

Section 865 of the TCA1997:

“(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

Appellant's Submissions

14. At the oral hearing the Appellant submitted to the Commissioner that, as soon as the Department of Social Protection made him aware of the fact that there had been an overpayment on his pension, he immediately made a lump sum repayment to the Department of Social Welfare equivalent to 59% of the total overpayment amount. This repayment amount was made from his savings. He stated that the reason he made a repayment of 59% was that during the relevant years he had been taxed at a rate of 41%. He was of the opinion that the tax which he had paid would be refunded to him by the Respondent and that this would then be passed on to the Department of Social Protection to satisfy the overpayment.
15. The Appellant submitted that he had only become aware of the overpayment on foot of correspondence from the Department of Social Protection in September 2018. He stated that he could not have submitted any claim for repayment to the Respondent prior to that date as he did not have a tax issue until the Department of Social Protection sought the repayment of monies.
16. The Appellant submitted that since September 2018, when he was notified of the overpayment, he had been involved in a lot of correspondence with the Department of Social Protection and it was only on foot of correspondence in May 2021 from the Department of Social Protection that he had been told to contact the Respondent if he felt he was entitled to a refund. The Appellant submitted that he then immediately contacted the Respondent and submitted his claim for repayment. He stated that since 2018 he has been in receipt of a reduced pension payment from the Department of Social Protection and that the deduction from his pension is being applied towards the balance of the monies which are due on foot of the overpayment.
17. The Appellant submitted that he is seeking an exception to the 4 year rule contained in section 865 of the TCA1997 because this is a highly unusual matter. He stated that the State will in effect be in receipt of 141% of the overpayment amount because he must now repay the full amount of the overpayment to the Department of Social Protection and he has already paid tax of 41% tax on the overpayment which he received between 2007 and 2016.

Respondent's Submissions

18. The Respondent submitted that the provisions of section 865 of the TCA1997 mean that there is no discretion available in relation to the application of the 4 year rule for claiming the repayment of tax and on that basis their hands are tied.
19. The Respondent expressed sympathy with the Appellant's situation.

Material Facts

20. The following material fact is not at issue in the within appeal and the Commissioner accepts same:
- (i) The Appellant submitted a claim for repayment of tax for the years 2007 to 2015 inclusive to the Respondent on 08 June 2021.

Analysis

21. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-
- "This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."*
22. The Commissioner has considered the submissions made and documentation submitted on behalf of both Parties in the within appeal.
23. Section 865(2) of the TCA1997 provides that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person. Section 865(3) of the TCA 1997 provides that a repayment of tax is not due unless a valid claim has been made to the Respondent.
24. Section 865(1)(b)(i) of the TCA1997 provides that where a person furnishes a return which is required to be delivered by the person for a chargeable period, such a return shall be treated as a valid claim in relation to a repayment of tax where all the information which the Respondent may reasonably require to enable them determine if and to what extent a repayment of tax is due is contained in the return furnished by the person.
25. Section 865(1)(b)(ii) of the TCA1997 provides that where all the information which the Respondent may reasonably require to enable them to determine if and to what extent a repayment of tax is due is not contained in the return furnished by the person, a claim for

repayment of tax shall be treated as a valid claim when that information has been furnished by the person.

26. In relation to a limitation period for a repayment of tax section 865(4) of the TCA1997 provides that “...*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].
27. A repayment of tax was sought by the Appellant on the basis that an amount of tax paid for 2015 was not due. The entitlement to a repayment of tax arises under section 865(2) of the TCA1997. Section 865(3) of the TCA1997 means the repayment of tax sought under section 865(2) of the TCA1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax in the amount of €27,648.20 in relation to the tax years 2007 to 2015 inclusive to be due, the Respondent must have received a valid claim.
28. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due on 08 June 2021 following the delivery of the relevant claim to repayment by the Appellant. This was in excess of 4 years from the end of each of the tax years 2007 to 2015 inclusive.
29. Having established that there is a valid claim, the provisions of section 865(4) of the TCA1997 must be applied. As the claim for repayment of tax was made outside the 4 year period specified in section 865(4) of the TCA1997, no valid claim for repayment of tax had been submitted by the Appellant and the claim for repayment in the amount of €27,648.20 for the tax years 2007 to 2015 inclusive was disallowed by the Respondent.
30. The use of the word “*shall*” as set out in section 865(4) of the TCA1997, 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 4 year rule might be mitigated.
31. The Commissioner has no authority or discretion to direct that repayment be made or credits allocated to the Appellant where the claim for repayment falls outside the 4 year period specified in section 865(4) of the TCA1997.
32. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the 4 year statutory limitation period. These determinations, may be found on the Commission website.¹

¹ www.taxappeals.ie

33. As a result of the above, the Commissioner finds that the burden of proof has not been discharged to satisfy the Commissioner that the refund was payable by the Respondent.

Determination

34. For the reasons set out above, the Commissioner determines that the within appeal has failed and that it has not been shown that the relevant refund was payable.

35. It is understandable the Appellant will be disappointed with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the Appellant's position. However, the Commissioner has no discretion in these cases due to the application of the 4 year rule, set out above.

36. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") and in particular, section 949 thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA1997.



Clare O'Driscoll
Appeal Commissioner
20 July 2022