



05TACD2023

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 “TCA 1997”) made by the Appellant in respect of the year of assessment 2016. The amount of tax at issue is €1,500.
2. The oral hearing of the appeal was heard remotely on 13th September 2022.

Background

3. The Appellant stated that his business was in difficulty and as such he was required to work a 7 day week in order to keep it operational. As a result of the time devoted to looking after his business, the Appellant stated that he was unable to keep up with his paperwork and as a result he neglected to file his income tax return for 2016 in a timely manner.
4. The Appellant advised that he lost his business in 2019 but was lucky enough to get a job in the hotel industry at that time. The Appellant stated that the loss of his business was such that he risked losing his home and in order to keep it was required to attend to court

proceedings and attend court twice. This coupled with his new employment further prevented him from lodging his 2016 tax return on a timely basis.

5. The Appellant stated that when matters resolved, he filed his 2016 income tax return on 22nd April 2021 and was elated on discovering that he was due an income tax refund for that year which he intended on offsetting against his mortgage arrears.
6. On 29th April 2021, the Respondent issued a letter entitled "*Late Claim For Repayment of Tax*" to the Appellant stating that the refund of tax in respect of the tax year 2016 could not be repaid as it had been submitted later than four years after the end of the chargeable period in which it arose which was in violation of the provisions of section 865 (4) TCA 1997.
7. A Notice of Appeal dated 11th May 2021 against the Respondent's decision was filed with the Commission.

Legislation

8. The legislation relevant to this appeal is as follows:

Section 865 of the TCA 1997:

"(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

9. The Appellant stated that he was unaware that there was a time requirement in which to submit a claim for repayment and he requested the Commission to allow the refund outside of the time period.
10. The Appellant submitted that owing to the efforts required to keep his business afloat, the subsequent loss of that business, his new employment and the further efforts required to retain his home, he was prevented from devoting sufficient time to attend to his income

tax affairs. The Appellant requested the Commission to consider these factors in permitting the repayment of tax due to him for 2016.

11. In summation, the Appellant submitted that he was preoccupied with matters which prevented him from filing his tax return for 2016 in a timely manner and as such, the Commission should allow the claim for repayment of 2016 income tax which he badly needed to assist his financial position.

Respondent

12. The Respondent advised that the Appellant only filed his 2016 tax return in 2021 and first contacted them about the matter on 22nd April 2021.
13. The Respondent submitted that as the refund arising was in respect of the tax year 2016 that they could not make the refund to the Appellant as it was outside the four-year period permitted by section 865 (4) TCA 1997.
14. In summation, the Respondent submitted while they had every sympathy for the position the Appellant found himself in as a result of a valid claim not being made within the statutory timeframe and as there was no discretion provided in the relevant legislation, then the Appellant's claim could not succeed.

Material Facts

15. The Commissioner finds the following material facts:-

15.1 The Appellant was due a refund of tax in respect of the tax year 2016 in the sum of €1,500.

15.2 The Appellant did not file his 2016 income tax return until 22nd April 2021.

15.3 The Respondent was first advised of the overpayment of 2016 income tax by the Appellant on 22nd April 2021.

These material facts are not at issue between the parties and the Commissioner accepts them.

Analysis

16. Section 865(2) of the TCA 1997 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.

17. Section 865(1) (b) (i) of the TCA 1997 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.
18. Section 865(1) (b) (ii) of the TCA 1997 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.
19. In relation to a limitation period for a repayment of tax section 865(4) of the TCA 1997 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].
20. A repayment of tax was sought on the basis that an amount of tax paid for 2016 was not due. The entitlement to a repayment of tax arises under section 865(2) of the TCA 1997. Section 865(3) of the TCA 1997 means the repayment of tax sought under section 865(2) of the TCA 1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax in the amount of €1,500 to be due, the Respondent must have received a valid claim.
21. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due, following the delivery of the relevant claim to repayment, only when the inquiry to the Respondent was made by the Appellant on 22nd April 2021.
22. Having established that there is a valid claim, the provisions of section 865(4) of the TCA 1997 must be applied. As the claim for repayment of tax was made outside the four-year period specified in section 865(4) of the TCA 1997, the claim for repayment in the amount of €1,500 for the year 2016 was disallowed.
23. The use of the word ‘shall’ as set out in section 865(4) of the 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.
24. 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 four year period specified in section 865(4) of the TCA 1997.

25. 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.¹

26. 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.”

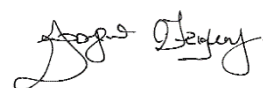
27. The burden of proof has not been discharged to satisfy the Commissioner that the refund is payable by the Respondent pursuant to section 865 of the TCA 1997.

Determination

28. 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.

29. It is understandable that there will be disappointment with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the position. However, the Commissioner has no discretion in these cases due to the application of the four year rule, set out above.

30. This Appeal is determined in accordance with Part 40A TCA 1997. 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 TCA 1997.



Andrew Feighery
Appeal Commissioner
11th October 2022

¹ www.taxappeals.ie