



Between

██████████  
**86TACD2023**

████████████████████

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by ██████████ (“the Appellant”) pursuant to section 865(7) of the Taxes Consolidation Act 1997 as amended (“the TCA 1997”) against the refusal by the Revenue Commissioners (“the Respondent”) to refund overpayments of income tax for the years 2016 and 2017 in the total amount of €57.43, on the ground that the repayments were sought outside the statutory timeframe.
2. In accordance with the provisions of section 949U of the TCA 1997, this appeal is determined without a hearing.

**Background**

3. On 20 July 2022, the Appellant filed her Form 11 income tax returns for 2016 and 2017. The 2016 return showed an overpayment of €33.60 and the 2017 return showed an overpayment of €23.83.

4. On 21 July 2022, the Respondent notified the Appellant that her claims for repayment were refused as they were not made within four years. On 9 August 2022, the Appellant appealed the refusals to the Commission.
5. On 10 February 2023, the Commission notified the parties that the Commissioner considered the appeal suitable for determination without an oral hearing, pursuant to section 949U of the TCA 1997. They were informed that they could object to the Commissioner proceeding without an oral hearing within 21 days of the notice, and that they could also submit any additional documentation that they wished the Commissioner to consider within 21 days. No response was received from either party. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

### **Legislation**

6. Section 865 of the TCA 1997 provides *inter alia* that

*“(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.*

*[...]*

*(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.”*

## **Submissions**

### *Appellant*

7. The Appellant stated that

*“These two amounts relate to tax overpaid by me to the Revenue Commissioners. I am very unfamiliar with Income Tax matters and find the whole area difficult to deal with. I find the various forms and terminology really hard to understand. As a result I hired a Tax Advisor to look after my affairs, the fee for this was enormous - circa £1,400. The amount of overpaid tax owed to me is very small however this would help go towards the bill for the tax advisor. Thank you.”*

### *Respondent*

8. The Respondent stated that

*“The refund was disapproved, the credit disallowed and a letter issued to the taxpayer outlining the legislative provisions under which the refund was not permitted to issue. This letter issued on 21 July 2022.*

*The letter outlined that a repayment of tax for a chargeable period shall not be allowed unless it is made within 4 years after the end of the chargeable period under the auspices of Section 865 (4) Taxes Consolidation Act (TCA) 1997.”*

## **Material Facts**

9. Having read the documentation submitted by the parties, the Commissioner makes the following finding of material fact:

9.1 The Appellant filed her Form 11 returns for 2016 and 2017 on 20 July 2022.

9.2 The Respondent refused her request for repayment of overpaid income tax on 21 July 2022.

## **Analysis**

10. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J. stated at para. 22: *“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the*

*Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.”*

11. 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. However, section 865(4) states *inter alia* 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)
12. It was not disputed by the Appellant that she filed her Form 11 returns more than four years after the periods to which her claims for repayment related. The Commissioner is satisfied that the requirement under section 865(4) that a claim for repayment of tax be made within a specified timeframe is mandatory and that no discretion is allowed to the Respondent, or to the Commission on appeal, to disapply it. Therefore, the Appellant was obliged to make her claim for repayment in respect of 2016 by 31 December 2020, and in respect of 2017 by 31 December 2021. However, the claims were not made until 20 July 2022.
13. Consequently, the Commissioner is satisfied that the Respondent was correct to refuse the claims for a refund, as section 865 does not allow the Respondent, or the Commission on appeal, to take into account any mitigating circumstances for the failure to comply with the mandated timeframe. The Commissioner appreciates that this is frustrating and disappointing for the Appellant, who was entitled to exercise her right to an appeal to the Commission of the Respondent’s refusal of her claim.

### **Determination**

14. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in refusing the Appellant’s application for a refund of income tax in the amount of €57.43 for 2016 and 2017.
15. The appeal is hereby determined in accordance with sections 949U of the TCA 1997. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Simon Noone  
Appeal Commissioner  
20<sup>th</sup> April 2023