



Between

████████████████████

**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 an overpayment of income tax for 2017 in the amount of €3,202.03, on the ground that the repayment was 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 7 June 2022, the Appellant filed her Form 11 income tax return for 2017. The return showed an overpayment of income tax in the amount of €3,202.03.
4. On 20 July 2022, the Respondent refused the Appellant’s claim for a repayment of tax as it was not made within four years.

5. On 23 December 2022, the Appellant appealed the refusal to the Commission. Section 865(7) of the TCA 1997 provides that an appeal must be made within 30 days of the Respondent's decision. The Appellant explained that her appeal was late because she was caring for her mother who had been diagnosed with lung cancer, and consequently did not notice the deadline for appeal.
6. The Commissioner notes that the Respondent has not objected to the Commission accepting the Appellant's late appeal. In the circumstances, he is satisfied that it is appropriate to consider and determine the substantive appeal, notwithstanding that it was made late.
7. On 23 March 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 the Appellant. The Respondent stated that it had no objection to the matter being determined without a hearing. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

### **Legislation**

8. 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*

9. The Appellant stated that

*“I probably would have let this go but this is a lot of money and that is around how much I am in debt at the moment. If it is not possible to get returned, I would be happy to get it as a tax credit, as I live alone and have a lot to take care for.*

*Before that I have spent numerous hours and days trying to figure out how this works, with Covid, lockdown and offices being closed I didn't have anyone to speak in person and over the phone with operating hours it was very hard to organize and reach someone. I have managed to find accountant in March this year when I had some free time, because I had Covid and that is when I had learned the amount of money that I was supposed to get back and I didn't because I didn't understand how things work here.*

*[...]*

*I have claimed my tax late as I wasn't aware of how these things work. I truly believed I had more time...”*

### *Respondent*

10. The Respondent stated that

*“In her appeal, dated 23rd December 2022, the Appellant states that she has spent numerous hours trying to understand the Irish tax system. Due to the pandemic, she was unable to speak to a representative from Revenue in person and found it difficult to discuss her issues over the phone. The Appellant states she found an accountant in March 2022 and discovered she was due a refund from 2017.*

*The legislation covering this matter is Section 865, subsection 4 of the TCA 1997. A valid claim for the 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.”*

### **Material Facts**

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

11.1 The Appellant filed her Form 11 return for 2017 on 7 June 2022.

11.2 The Respondent refused her request for repayment of overpaid income tax on 20 July 2022.

### **Analysis**

12. 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.”*

13. 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)

14. It was not disputed by the Appellant that she filed her Form 11 return more than four years after the period to which her claim for repayment related. She explained that this was because during the Covid-19 pandemic she was unable to meet with the Respondent directly and found it difficult to discuss the matter by telephone.

15. However, 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 2017 by 31 December 2021. However, the claim was not made until 7 June 2022.

16. 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. In particular, he appreciates the difficult and stressful time she has experienced with the ill health and subsequent death of her mother, and he wishes her well in this regard.

### **Determination**

17. 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 €3,202.03 for 2017.
18. 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