



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

163TACD2025

Between



**Appellant**

and

**The 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 [REDACTED] (“the Appellant”) under sections 865(7) and 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for the repayment of tax for the tax years 2004 – 2018 on the ground that the Appellant’s claim was made outside the statutory timeframe.
2. On 17 February 2025, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties objected or requested a hearing of the appeal. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

## Background

3. On 20 June 2024 and 1 July 2024, the Appellant sought to claim the repayment of tax for the tax years 2004 – 2018.
4. On 2 July 2024, the Respondent informed the Appellant that section 865(4) of the TCA 1997 states that a claim for repayment of tax cannot be allowed if it is made more than four years after the end of the tax year and provided the Appellant with details of the appeal process.
5. On 22 July 2024, the Appellant submitted a Notice of Appeal to the Commission, which stated that the date of decision under appeal was 2 July 2024. On 25 July 2024, the Appellant provided the Commission with a copy of correspondence between the Appellant and the Respondent, which dated from 20 June 2024 to 2 July 2024. On 5 March 2025, the Respondent made a written submission to the Commission. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

## Legislation and Guidelines

6. The legislation relevant to this appeal is as follows:
7. Section 865 of the TCA 1997 provides (among other things):

*“(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.*

...

*(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*

8. In his Notice of Appeal, the Appellant submitted:

*“Following [REDACTED] it became clear to me that I had been taxed as a single person since [REDACTED]. Revenue subsequently allowed me to be joint assessed back to 2019 but could not go further back citing section 865(4) TCA 4 years. [REDACTED] I did not question our tax status over 21 years and just assumed we were paying the correct tax amount. I was unaware that being joint assessed was of advantage. In the light of my discovery and having received overpayment monies of approx. %k (sic) pa from 2019 – 2023, I wish to appeal the 4 year rule on bereavement/compassionate grounds. I have 4 teenage children and will be refunding their 3<sup>rd</sup> level education alone in the next 9 years and the recoupment of overpaid taxes from 2004 – 2018 would greatly assist me”.*

## *Respondent*

9. In its submission, the Respondent submitted (among other things):

*“The Respondent is sympathetic to the Appellant for the matter under appeal but in all instances must act in accordance with the prescribed legislation and therefore cannot issue amended Statements of Liability for the periods under appeal 2004-2018...”*

*In this case, the Respondent has acted at all times in accordance with the prescribed legislation and is satisfied that the Appellant did not make a timely claim to elect for joint assessment for years 2004-2018 to allow for additional refunds in this instance.*

*The Respondent respectfully submits that this appeal must fail as the Appellant has not offered a valid legislative argument as to why they are entitled to claim a refund for years 2004-2018 outside of the established 4-year statutory time period.”*

## **Material Facts**

10. Having read the documentation submitted, the Commissioner makes the following findings of material fact:
- 10.1. On 20 June 2024 and 1 July 2024, the Appellant sought to claim the repayment of tax for the tax years 2004 – 2018.
- 10.2. On 2 July 2024, the Respondent refused the Appellant’s claim on the ground that the Appellant’s claim was made outside the statutory time limit.
- 10.3. On 22 July 2024, the Appellant submitted a Notice of Appeal to the Commission.

## **Analysis**

11. This appeal relates to the Respondent’s refusal of the Appellant’s claim for repayment of tax for the tax years 2004 – 2018. In an appeal before the Commission, the burden of proof rests on the Appellant. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J. stated at paragraph 22 that:

*“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”.*

### Section 865 TCA 1997

12. Section 865(2) of the TCA 1997 provides that a person who has paid tax which is not due, or which, but for an error or mistake in the person's return, would not have been due, is entitled to repayment of that tax. However, 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).
13. In this appeal, the relevant tax years were 2004 – 2018. Therefore, the claim for a repayment of tax must have been made on or before 31 December 2008 - 31 December 2022 respectively. The Appellant has not disputed that he sought to claim the repayment of tax for the tax years 2004 – 2018 in 2024, on 20 June 2024 and 1 July 2024. The Commissioner has found this to be a material fact. It is these dates that establish a valid claim for the purposes of section 865(3) of the TCA 1997. Having regard to these dates, the Commissioner is satisfied that the Appellant's claim for each of the tax years 2004 – 2018 fell outside the four year time limit prescribed in section 865(4) of the TCA 1997.
14. The Commissioner acknowledges the Appellant's submission that he appealed on compassionate grounds and that the repayment of tax would assist in funding the education of his children. However, the use of the word "shall" 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. The legislation does not afford the Commissioner any discretion to disapply the rule.
15. Previous determinations of the 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<sup>1</sup>.
16. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the circumstances outlined on appeal [REDACTED]. The Appellant was entitled to check whether the Respondent's refusal of his claim for the repayment of tax was correct. However as noted above, the legislation does not afford the Commissioner any discretion on this matter.

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<sup>1</sup> [www.taxappeals.ie](http://www.taxappeals.ie)

## Determination

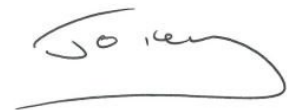
17. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to refuse the Appellant's claim for a repayment of tax for the tax years 2004 – 2018, under section 865(4) of the TCA 1997.
18. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

## Notification

19. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

## Appeal

20. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Jo Kenny  
Appeal Commissioner  
4 April 2025