



AC Ref: 05TACD2016

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Background

1. The Appellant is a **LOCATION REDACTED** based company limited by guarantee with charitable status. It operates on a voluntary, non-commercial basis and has as its primary focus the provision of personal assistance to people with disabilities.
2. A significant element of the Appellant's work is the provision of transportation to people with significant mobility issues, such as wheelchair users, who are provided with transport to day centres, work, hospitals, nursing homes and social outings.
3. The Appellant is 97.5% funded by the Department of Social Protection and the Health Service Executive. These funds are used primarily to pay the wages of personal assistants and drivers engaged by the Appellant. The Appellant does not receive any direct funding for the capital costs of the vehicles used to provide its services.

Matter under appeal

4. On the 19th of June 2015, the Appellant applied to the Respondent for the remission or repayment of VAT and Vehicle Registration Tax in relation to a new motor vehicle



purchased by the Appellant for the provision of services to its users. The application was refused by the Respondent on the 24th of June 2015, which decision was then appealed by the Appellant to its local tax office. On the 4th of August 2015, the Appellant was informed that its internal appeal had been refused.

5. This matter comes before the Tax Appeals Commission by way of appeal by the Appellant, pursuant to section 146 of the Finance Act, 2001, against the decision of the Respondent made on the 4th of August 2015.
6. By correspondence dated the 18th of December 2015 (from the Respondent) and the 2nd of February 2016 (from the Appellant), the parties indicated that they had no objection to this appeal being determined without an oral hearing being held. I was satisfied that I could properly determine the issue under appeal without hearing oral evidence from the parties.

Relevant legislation

7. Section 92(1) of the Finance Act, 1989, as amended, provides as follows:-

“Notwithstanding anything to the contrary contained in any enactment, the Minister for Finance may, after consultation with the Minister for Health and the Minister for the Environment, make regulations providing for-

*(a) the repayment or the remission of excise duty and value-added tax
and the remission of road tax in respect of a motor vehicle used by...*

a severely and permanently disabled person-

(i) as a driver, where the disablement is of such a nature that the person concerned could not drive any vehicle unless it is specially constructed or adapted to take account of that disablement, or

(ii) as a passenger, where the vehicle has been specially constructed or adapted to take account of the passenger's disablement.”



8. The relevant regulations made pursuant to the foregoing section are the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994 (S.I. No. 353/1994) (hereinafter “**the 1994 Regulations**”). At the time of the decision under appeal, Regulation 12(1) of same provided as follows:-

“Where a qualifying organisation satisfies the Revenue Commissioners that it has borne or paid value-added tax, vehicle registration tax or residual vehicle registration tax in respect of a vehicle or in respect of the adaptation of a vehicle which, subject to paragraph (2) –

(a) is specially constructed or adapted for the transport of disabled persons, and where the vehicle is so adapted the cost of such adaptation, excluding value-added tax, consists of not less than the amount specified for the purpose in subsection 92 (1) of the Finance Act, 1989:

Provided that in calculating the cost of adaptation of such vehicle, if the Revenue Commissioners so approve, there shall be included –

(i) the cost of conversion of that vehicle, excluding the additional vehicle registration tax incurred in such conversion, and

(ii) the purchase cost excluding value-added tax of any adaptations previously fitted to another vehicle adapted for use by that qualifying organisation, and refitted to the vehicle in question,

(b) is purchased by that organisation,

(c) is registered in the name of that organisation, and

(d) is fitted with an engine whose capacity is not greater than 4,000 cubic centimetres,



that organisation shall be entitled to be repaid the said amounts of tax and residual vehicle registration tax, subject to the limit specified in Regulation 13 for the purposes of this paragraph:

Provided that the Revenue Commissioners shall repay residual vehicle registration tax only where the said organisation has purchased the vehicle in question from an authorised person."

- 9.** The relief afforded by Regulation 12(1) is only available to a "qualifying organisation", which was, at the time of the decision under appeal, defined as follows in Regulation 2(1):-

"qualifying organisation" means a philanthropic organisation which is not funded primarily by-

(a) the State,

(b) any board established by statute, or

(c) any public or local authority,

which organisation is chiefly engaged, in a voluntary capacity on a non-commercial basis, in the care and transport of severely and permanently disabled persons and which is recognised as such, for the purposes of these Regulations, by the Revenue Commissioner [sic]"

- 10.** Section 134(3) of the Finance Act, 1992, as amended, provides as follows:-

"The reliefs allowed under the Disabled Drivers and Disabled Passenger (Tax Concessions) Regulations, 1994 (S.I. No. 353 of 1994), shall apply with any necessary modifications to vehicle registration tax."



Analysis and findings

11. It is clear the Appellant will only be entitled to the remission of VAT and Vehicle Registration Tax sought in this appeal if it can establish that it is a “qualifying organisation” within the meaning of Regulation 2(1), quoted *supra*.
12. It is equally clear that the Appellant cannot be said to be a “qualifying organisation” within the meaning of Regulation 2(1) if it is “funded primarily” by the State, by any board established by statute or by any public or local authority.

13. The principles applicable to the interpretation of the 1994 Regulations are well-established.

As Kennedy CJ stated in ***Revenue Commissioners –v- Doorley [1933] 1 I.R. 750:-***

“A taxing Act (including of course any other Act or part of an Act incorporated in it by reference), of its own proper character and purpose, stands alone, and is to be read and construed as it stands upon its own actual language... The duty of the Court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing Act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e. , within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament so far as they can be applied without violating the proper character of taxing Acts to which I have referred.

I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already



said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable."

- 14.** The Appellant has from the outset accepted that some 97.5% of its funding is provided by the Department of Social Protection (which is an emanation of the State) and by the Health Service Executive (which is a board incorporated by statute). While the Appellant makes the point that the majority of the funding received from the Department of Social Protection and the Health Service Executive is used almost exclusively to defray salary costs, and not for the capital cost of acquiring vehicles, the 1994 Regulations do not draw any distinction between funding used to pay for items of income expenditure and funding used to pay for items of capital expenditure.
- 15.** Accordingly, I believe that the proper interpretation of Regulation 2(1) means that I must confine my consideration to the issue of the source of the funding received by the Appellant, and ought not to have regard to the use(s) to which that funding is put.
- 16.** Having regard to the foregoing, I find as a material fact that the Appellant is funded primarily by the State and by a board incorporated by statute. It follows ineluctably that the Appellant was not a "*qualifying organisation*" at the time of the decision under appeal, and accordingly is not entitled to the relief afforded by Regulation 12(1) of the 1994 Regulations.
- 17.** I therefore find that the decision by the Respondent of the 4th of August 2015 to refuse the Appellant's application for the remission or repayment of VAT and Vehicle Registration Tax was correct.



18. I would observe in closing that the definition of “*qualifying organisation*” has, subsequent to the decision under appeal, been amended by the Disabled Drivers and Disabled Passengers (Tax Concessions) (Amendment) Regulations, 2015 (S.I. No. 634/2015), which came into effect on the 21st of December 2015. Regulation 2(1), as amended, now defines a “*qualifying organisation*” as follows:-

“‘qualifying organisation’ means a charitable organisation within the meaning of the Charities Act 2009 (No. 6 of 2009) that is –

*(a) entered in the register of charitable organisations under Part 3 of that Act,
and*

(b) chiefly engaged in the care and transport of severely and permanently disabled persons;”

19. It may be that the Appellant is now a qualifying organisation for the purposes of the amended 1994 Regulations, and might accordingly succeed in a new application for remission or repayment of VAT and Vehicle Registration Tax. However, that question is not before me and so I refrain from expressing any view thereon.

Determination

20. Having carefully considered all of the evidence before me and the submissions made by the parties, I find, for the reasons detailed above, that the decision by the Respondent of the 4th of August 2015 to refuse the Appellant’s application for the remission or repayment of VAT and Vehicle Registration Tax was correct, and I refuse the Appellant’s appeal against that decision.

APPEAL COMMISSIONER

March 2016

