



07TACD2020

BETWEEN/

[NAME REDACTED]

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to the availability of relief from vehicle registration tax ('VRT') known as '*transfer of residence relief*' in accordance with section 134(1)(a) of the Finance Act 1992, as amended and Statutory Instrument no. 59/1993 (Vehicle Registration Tax (Permanent Reliefs) Regulation 1993). The application for exemption was refused by the Respondent, was appealed on 22 November 2017, and was refused on appeal. The Appellant discharged the sum of €2,309 and appealed to the Tax Appeals Commission on 27 December 2017.

Background

2. The Appellant, owner of the vehicle the subject matter of the claim, submitted that she brought the vehicle permanently into the State when she transferred her '*normal residence*' from Northern Ireland into the State, on 10 May 2017.
3. The Appellant submitted that prior to 10 May 2017, her place of '*normal residence*' was the UK.

4. The matter at issue in this appeal is whether the Appellant succeeded in establishing that her 'normal residence' was in Northern Ireland, prior to transferring the vehicle into the State in May 2017.

Legislation

Section 134(1)(a) of Finance Act 1992, as amended.

- (1) *A vehicle may, subject to any conditions, restrictions or limitations prescribed by the Minister by regulations made by him under section 141 be registered without payment of vehicle registration tax if the vehicle is –*

- a. the personal property of a private individual and is being brought permanently into the State by the individual when he is transferring his normal residence from a place outside the State to a place in the State,*

Statutory Instrument No. 59/1993, Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993

3. (1) *In these Regulations-*

"the Act" means the Finance Act, 1992 (No. 9 of 1992);

"normal residence" means the place where a person usually lives, that is to say, where he lives for at least 185 days in each year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in 2 or more countries shall be regarded as being the place of his personal ties:

Provided that such person returns to the place of his personal ties regularly. This proviso shall not apply where the person is living in a country in order to carry out a task of a duration of less than one year

...

Transfer of Residence



4. (1) Subject to paragraph (5), the relief under section 134 (1) (a) of the Act shall be granted for any vehicle -

(a) which is the personal property of an individual transferring his normal residence to the State and which has been in the possession of and used by him outside the State for a period of at least six months before the date on which he ceases to have his normal residence outside the State

(b) which has been acquired under the general conditions of taxation in force in the domestic market of a country and which is not the subject, on the grounds of exportation or departure from the country, of any exemption from or any refund of value-added tax, excise duty or any other consumption tax, and

(c) in respect of which an application for relief, in such form as may be specified by the Commissioners, is made to the Commissioners not later than the next working day following its arrival in the State or, in case the vehicle requires the making of a customs entry on arrival in the State, not later than the next working day after its release from customs control.

... etc

Submissions and Analysis

5. The Appellant commenced working within the State in 2004. The Appellant purchased the vehicle, the subject matter of the relief claim, in Northern Ireland on 6 November 2014.
6. In 2011, the Appellant married her husband, who resided and worked in Co. Cavan. In 2010, the Appellant and her husband had commenced building a house on a site owned by the Appellant's husband in Co. Cavan. The Appellant stated that the property was complete in 2017, although the house was habitable prior thereto.
7. The Appellant's children were born in the State in 2013 and in 2016, and the address of the Appellant contained on both birth certificates, is an address in Co. Cavan.
8. The Appellant commenced working for [employer redacted] within the State 2014.



9. The Appellant submitted that for several years prior to May 2017, she resided in Derry with her children and parents, in a property owned by her in Derry. Documentation relating to title of the property established that the Appellant was the owner of the property. The Appellant also furnished rates and insurance documentation in her name in relation to the property.
10. The Appellant submitted that she commuted from her property in Derry to her work in Cavan (a distance of 132km) and in Monaghan (a distance of 85km) several times per week, with the exception of her periods of maternity leave and annual leave. The Appellant stated that she sometimes stayed with her husband in Cavan, but that she met the 185-day requirement of '*normal residence*' and submitted that her place of '*normal residence*' in accordance with the terms of the relief, was Northern Ireland. The Appellant stated that her husband stayed with her in Derry on occasion.
11. In terms of postal evidence, the Appellant was unable to adduce post in her name received at the Derry property other than tax and insurance in relation to her motor vehicle. She stated that she used her husband's residence in Co. Cavan as her postal address, on the basis that she intended to live there eventually and that she felt it would save issues arising in the future, changing address. The Appellant received banking, work related and Revenue Commissioners' correspondence at the address in Co. Cavan. The Appellant did not adduce a statement of utilities in respect of the Derry property. The Appellant submitted that the utility bills in respect of the Derry property were paid by her parents.
12. In terms of banking and expenditure evidence, the Appellant's current account showed her address as the Co. Cavan address. The majority of the transactions were in euros although some were sterling. The Appellant provided two retail invoices with Northern Ireland addresses however, these invoices were dated 10 May 2017, the date of the transfer of the vehicle into the State.
13. In terms of other evidence, the Appellant was unable to furnish documentation in relation to a creche, a Montessori or a childminder, in the period prior to 10 May 2017. The Appellant stated that neither child attended creche or Montessori as childcare was provided at home in Derry by the Appellant's parents.



14. The Respondent stated that the Appellant's commute to work of 132km to Cavan and 85km to Monaghan was eminently shorter from her husband's residence in Co. Cavan namely, 59k to Monaghan and 24k to Cavan.
15. The exemption pursuant to section 134(1)(a) of the Finance Act 1992, as amended, provides that a vehicle may be registered without payment of vehicle registration tax if the vehicle is brought permanently into the State by the individual '*when he is transferring his normal residence from a place outside the State to a place in the State;*'
16. The meaning of the term '*normal residence*' as set out at paragraph 3 of S.I. 59/1993 provides: "*normal residence*" means the place where a person usually lives, that is to say, where he lives for at least 185 days in each year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties.
17. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessment to tax, raised by the Respondent is incorrect.
18. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated: '*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.*'
19. The question to be answered in this appeal is whether, prior to 10 May 2017, the Appellant's place of '*normal residence*' was outside the State. I find that the Appellant has not furnished sufficient information and documentation which would allow me to conclude, on the balance of probabilities, that the Appellant's normal place of residence was outside the State prior to 10 May 2017. As a result, I determine that the Appellant has not succeeded in discharging the burden of proof and has not succeeded in showing that she qualifies for transfer of residence relief.



Conclusion

20. I determine that the Appellant has not succeeded in establishing that on 10 May 2017, she transferred her normal residence from a place outside the State to a place within the State, in accordance with the requirements of the '*transfer of residence relief*' pursuant to section 134(1)(a) of the Finance Act 1992, as amended and Statutory Instrument no. 59/1993 (Vehicle Registration Tax (Permanent Reliefs) Regulation 1993).
21. I determine that the Appellant, having failed to satisfy the conditions of the relief, is thereby unable to avail of the relief.
22. The appeal hereby is determined in accordance with section 949AL TCA 1997.

COMMISSIONER LORNA GALLAGHER

October 2019

This case has not been appealed pursuant to sections 949AP and 949AQ TCA 1997.

