



**25TACD2020**

**BETWEEN/**

**APPELLANT**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to the reversal by the Respondent of an original decision to grant relief from vehicle registration tax ('VRT') and residual value added tax ('VAT') charged in relation to the adaptation of a used motor vehicle in accordance with S.I. No. 353/1994 – *Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994* on the basis that at the time of registration of the vehicle, the vehicle in question was not used for the transport of the disabled person and therefore the relief should not have been granted.
2. Paragraph 10 of Regulation 353/1994 deals with reliefs for disabled passengers or a family member of such a disabled passenger residing with and responsible for the transportation of that disabled passenger and such person has borne VAT, VRT or residual VRT in respect of a vehicle constructed for their use.



3. The matter in dispute between the parties relates to whether the changed circumstances, arising from the death of the disabled person, between the time the relief application was approved and the time the vehicle was acquired and registered in the Appellant's name means that the €4,961 that was remitted by the Respondent to the Appellant must be repaid to the Respondent.
4. This Appeal, by agreement of the parties, is determined without a hearing, in accordance with Section 949U Taxes Consolidation Act 1997.

### **Background**

5. Having received advice from a vehicle mobility engineer, the Appellant ordered and paid a deposit of €10,000 for a **redacted** on 20/04/17. Around the same time the Appellant entered into a contract with a mobility vehicle supplier for the installation of a second hand **redacted** wheelchair system, which would be installed when the vehicle arrived. The vehicle was to be used to transport the Appellant's mother and qualified for relief in accordance with Paragraph 10 of Regulation 353/1994.
6. The Appellant's mother died in June 2017 before the vehicle was received and registered by the Appellant.
7. The Respondent processed the repayment of €4,961 to the Appellant on the basis that the vehicle would meet the conditions set out in Paragraph 10 of Regulation 353/1994.
8. On 10/10/17 the Respondent wrote to the Appellant as follows;

*"Per our records, vehicle registration number **redacted** was registered to you exempt of Vehicle Registration Tax after your late mother's death and, therefore, this vehicle was not used for the transport of the disabled person. Please now forward a bank draft for €4,961 made payable to the Revenue Commissioners by way of refund for the amount of Vehicle Registration Tax for which you received an exemption."*

It is this repayment of €4,961 of VRT which is the subject of this appeal.



9. On 05/12/17, the Appellant wrote to the Revenue Commissioners requesting a review of her case and the circumstances in which she was required to repay the €4,961. The Appellant noted that;

*"Although my mother died, I still got redacted to install the redacted wheelchair system as I had promised my Mother that I would also use the car to help out redacted and redacted had agreed to keep it for me. I didn't even tell redacted that my mother had died as I was still in the denial stage of mourning."*

*"With Hindsight, I now know that I shouldn't have paid the deposit when I did but I was eager to get a resolution to a huge problem...."*

10. On 7 March 2018, Revenue wrote to the Appellant reiterating the fact that the Appellant did not meet the conditions set out in Paragraph 10 of Regulation 353/1994 at the time of registration of the vehicle.
11. The Appellant, appealed Revenue's decision to the Tax Appeals Commission on 13 March 2018.

### **Legislation**

12. As set out in Appendix I below, the relevant legislative provisions are;

- S.I. No. 353/1994 – Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994

The most pertinent sections of the legislation relevant to this appeal are set out below:

Paragraph 2 (1) S.I. 353/1994 provides:

*"disabled passenger" means a severely and permanently disabled person who possesses a certificate of the kind referred to in paragraph (a) or (b) of Regulation 4 and for whom a vehicle has been specially constructed or adapted to the extent prescribed in Paragraph 10 of Regulation 353/1994 (1) (a), to take account of that passenger's disablement;*



*"residual value-added tax" means an amount determined by the Revenue Commissioners as being equivalent to the amount of value-added tax which would be included in the open market selling price of a vehicle if it were sold by an authorised person at the time specified in these Regulations;*

*"residual vehicle registration tax" means an amount determined by the Revenue Commissioners as being equivalent to the amount of vehicle registration tax which would be chargeable if that vehicle were liable for such tax at the time specified in these Regulations;*

.....

Paragraph 10 of Regulation 353/1994 provides:

***Reliefs for disabled passengers***

*10. (1) Where a person satisfies the Revenue Commissioners that that person is a severely and permanently disabled passenger or a family member of such a disabled passenger residing with and responsible for the transportation of that disabled passenger and such person 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—*

*( a ) has been specially constructed or adapted for use by that disabled passenger, 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 section 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 disabled passenger, and refitted to the vehicle in question,*



*( b ) has been purchased by the disabled passenger or by the said family member of that disabled passenger for the purpose of transporting that person, and*

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

*the person who has borne or paid the said amounts of tax and residual vehicle registration tax shall be entitled to be repaid same, subject to the limit specified in Regulation II for the purposes of this Regulation:*

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

*(2) Where at the time of registration of a vehicle by a severely and permanently disabled passenger or by a family member of a severely and permanently disabled passenger residing with and responsible for the transportation of that disabled person and the vehicle in question complies with the provisions set out at subparagraphs (a), (b) and (c) of paragraph (1), the Revenue Commissioners shall remit the vehicle registration tax payable, subject to the limit specified in Regulation 11 for the purposes of this Regulation.*

## **Submissions**

13. The Appellant stated the following within her submission:

*"Because of my mother's deteriorating mobility and her great difficulty in transferring from her wheelchair to my car I ordered a redacted on the 20/04/17 and I entered a contract with redacted to install a redacted Wheelchair System into the vehicle. I paid a deposit of €10,000 for the redacted on the 20/04/17 because it was my first order at this garage and I had no reason to believe that Revenue would not honour a commitment made long before my mother's death on redacted. I had entered a contract with the garage and redacted and there was no way that I could have predicted that it was going to take so long for the car to arrive or that my mother would die whilst waiting. Also, I would have lost my deposit with the garage if I cancelled my order. I cannot afford to lose that kind of money. I am being penalised by*



*doing my very utmost to help my elderly mother in her hour of need and that is not right or just."*

14. The Respondent submitted that Paragraphs 10(1) and 10(2) of Regulation 353/1994 were not satisfied at the time of registration of the vehicle. They stated the following within their correspondence with the Appellant:

*"In your case, notwithstanding the fact that you placed a deposit on the vehicle in April 2017, you completed the purchase of and finalised modifications to the vehicle in August 2017, some two months after the death of your mother. Obviously at this point, the requirement that the vehicle be used in transporting the nominated disabled person could no longer be met, meaning that the qualifying criteria for eligibility to VRT relief were not met and VRT is payable. Therefore, your appeal is regrettably refused."*

### **Analysis**

15. Paragraph 10 (2) of Regulation 353/1994 sets out the instances where upon the Respondent "shall remit the vehicle registration tax payable" as follows:

*"(2) Where at the time of registration of a vehicle by a severely and permanently disabled passenger or by a family member of a severely and permanently disabled passenger residing with and responsible for the transportation of that disabled person and the vehicle in question complies with the provisions set out at subparagraphs (a), (b) and (c) of paragraph (1), the Revenue Commissioners shall remit the vehicle registration tax payable, subject to the limit specified in Regulation 11 for the purposes of this Regulation." (Emphasis added)*

16. Paragraph 10 (1) of Regulation 353/1994 sets out the conditions that must be met by the person who has borne or paid the cost of the vehicle, the required characteristics of the vehicle and the requirement in relation to the disabled person.
17. I am satisfied that there is no inherent ambiguity in the statutory wording of Paragraph 10 of Regulation 353/1994. Thus, the interpretative approach to be applied is a literal one taking into account the jurisprudence in respect of the taxation of statutes, based on a long line of authority including *inter alia*; *Revenue Commissioners v Doorley* (1933) IR750, *Inspector of Taxes v Kiernan* (1982) ILRM 13, *Cape Brandy v Inland Revenue Commissioners* (1921) 1 KB 64, *Texaco (Ireland) Ltd v Murphy* (1991) 2 IR 449.



18. 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/decision is incorrect. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that it falls within the relief. See *Revenue Commissioners v Doorley* (1993) 1 IR 750 and *McGarry v Revenue Commissioners* (2009) ITR 131.

19. It seems to me that the Respondent has considered the circumstances of the Appellant carefully. As the Appellant had not fully complied with the terms of Paragraph 10 of Regulation 353/1994 and it has not been submitted that the Respondent is mandated to exempt the Appellant under any other legislative provision then the request by the Respondent for the repayment of the €4,961 is the correct application of the Regulations.

### **Conclusion**

20. In accordance with the provisions of S.I. No. 353/1994, I determine that the repayment due by the Appellant pursuant to the Regulations, in respect of the **redacted**, falls to be made to the Respondent, as the conditions for the relief in accordance with Paragraph 10 of Regulation 353/1994 were not met.

21. I determine that the repayment owing by the Appellant is €4,961.

22. This appeal is determined in accordance with s.949AL TCA 1997.

**PAUL CUMMINS**

**APPEAL COMMISSIONER**

**22 JANUARY 2020**



## **APPENDIX I – Legislation**

### **S.I. No: 353 of 1994**

#### **Disabled drivers and disabled passengers (tax concessions) regulations, 1994**

*1. These Regulations may be cited as the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994, and shall come into operation on the 1st day of December, 1994.*

*2. (1) In these Regulations—*

*"adapted", in relation to a vehicle, does not include adaptations of production line models which are available from the manufacturer or assembler thereof as an optional extra, and "adaptation" shall be construed accordingly;*

*"authorised person" means a person authorised under section 136 of the Finance Act, 1992 (No. 9 of 1992);*

*"Board medical certificate" means a certificate duly completed in the form prescribed in the Second Schedule and issued by the Disabled Drivers Medical Board of Appeal or a certificate duly completed in the form prescribed in the Second Schedule to the Disabled Drivers (Tax Concessions) Regulations, 1989 ( S.I. No. 340 of 1989 ), and so issued under those Regulations;*

*"conversion" has the meaning assigned to it in section 130 of the Finance Act, 1992 ;*

*"disabled driver" means a severely and permanently disabled person who possesses a certificate of the kind referred to in paragraph (a) or (b) of Regulation 4 and whose disablement is of such a nature that the person concerned could not drive a vehicle unless it is specially constructed or adapted to take account of that disablement;*

*"disabled passenger" means a severely and permanently disabled person who possesses a certificate of the kind referred to in paragraph (a) or (b) of Regulation 4 and for whom a vehicle has been specially constructed or adapted to the extent prescribed in Paragraph 10 of Regulation 353/1994 (1) (a), to take account of that passenger's disablement;*

*"disabled person" means a person who is severely and permanently disabled, fulfilling one or more of the medical criteria set out in Regulation 3;*





*"licensing authority" has the meaning assigned to it in section 130 of the Finance Act, 1992 ;*

*"purchased" does not include any form of lease arrangement;*

*"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;*

*"registered" has the meaning assigned to it in section 130 of the Finance Act, 1992 ;*

*"residual value-added tax" means an amount determined by the Revenue Commissioners as being equivalent to the amount of value-added tax which would be included in the open market selling price of a vehicle if it were sold by an authorised person at the time specified in these Regulations;*

*"residual vehicle registration tax" means an amount determined by the Revenue Commissioners as being equivalent to the amount of vehicle registration tax which would be chargeable if that vehicle were liable for such tax at the time specified in these Regulations;*

*"vehicle" has the meaning assigned to it in section 130 of the Finance Act, 1992 .*

*(2) In these Regulations a reference to a Regulation or Schedule is to a Regulation of, or Schedule to, these Regulations and a reference to a paragraph or subparagraph is to a paragraph or subparagraph of the provision in which the reference occurs.*



### ***Medical criteria***

*3. For the purposes of section 92 (2) (a) of the Finance Act, 1989 , the eligibility on medical grounds of disabled persons who are severely and permanently disabled shall be assessed by reference to any one or more of the following medical criteria:*

*( a ) persons who are wholly or almost wholly without the use of both legs;*

*( b ) persons wholly without the use of one of their legs and almost wholly without the use of the other leg such that they are severely restricted as to movement of their lower limbs;*

*( c ) persons without both hands or without both arms;*

*( d ) persons without one or both legs;*

*( e ) persons wholly or almost wholly without the use of both hands or arms and wholly or almost wholly without the use of one leg;*

*( f ) persons having the medical condition of dwarfism and who have serious difficulties of movement of the lower limbs.*

*4. Without prejudice to Regulation 5, a claim for repayment or remission under these Regulations shall be allowed only where the person who makes the claim, or in connection with whom the claim is made, is in possession of either—*

*( a ) a primary medical certificate duly completed in the form prescribed in the First Schedule as evidence of qualifying disablement, signed, dated and endorsed with the official stamp by the appropriate Director of Community Care and Medical Officer of Health, or*

*( b ) a Board medical certificate duly completed in the form prescribed in the Second Schedule as evidence of qualifying disablement, signed and dated by a member of the Disabled Drivers Medical Board of Appeal:*

*Provided that compliance with this Regulation may be waived by the Revenue Commissioners in the case of a claim made by a qualifying organisation.*



*5. Any person who is deemed, by virtue of section 92 (3) (b) of the Finance Act, 1989 , to be a person who possesses a primary medical certificate shall be deemed to have satisfied the Revenue Commissioners and the licensing authority concerned that that person is a disabled driver or a disabled passenger as the case may be.*

.....

### ***Reliefs for disabled passengers***

*10. (1) Where a person satisfies the Revenue Commissioners that that person is a severely and permanently disabled passenger or a family member of such a disabled passenger residing with and responsible for the transportation of that disabled passenger and such person 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—*

*( a ) has been specially constructed or adapted for use by that disabled passenger, 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 section 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 disabled passenger, and refitted to the vehicle in question,*

*( b ) has been purchased by the disabled passenger or by the said family member of that disabled passenger for the purpose of transporting that person, and*

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



*the person who has borne or paid the said amounts of tax and residual vehicle registration tax shall be entitled to be repaid same, subject to the limit specified in Regulation II for the purposes of this Regulation:*

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

*(2) Where at the time of registration of a vehicle by a severely and permanently disabled passenger or by a family member of a severely and permanently disabled passenger residing with and responsible for the transportation of that disabled person and the vehicle in question complies with the provisions set out at subparagraphs (a), (b) and (c) of paragraph (1), the Revenue Commissioners shall remit the vehicle registration tax payable, subject to the limit specified in Regulation 11 for the purposes of this Regulation.*

*(3) Where, after these Regulations come into force, a person becomes a severely and permanently disabled person who fulfils one of the medical criteria set out in Regulation 3 after that person or a family member of that person residing with and responsible for the transportation of that person has purchased a vehicle which complies with the provision set out at paragraph (1) (c) and the vehicle is adapted to the extent outlined in paragraph (1) (a) for the disabled person's use as a passenger, the person who has purchased the vehicle shall be entitled to be repaid—*

*( a ) the amount of residual value-added tax and residual vehicle registration tax appropriate to the vehicle at the time such person lodges a claim with the Revenue Commissioners, and*

*( b ) the value-added tax charged in respect of the adaptation of that vehicle,*

*subject to the limit specified in Regulation 11 for the purposes of this Regulation.*

*(4) ( a ) Where a person receives a repayment or remission under paragraph (1) or (2) of this Regulation that person shall undertake—*

*(i) to use the vehicle in question for the transportation of the disabled passenger in question, for a period of 2 years from the date of purchase, and to inform the Revenue Commissioners immediately if any circumstances arise during that period where the vehicle is sold or otherwise disposed of by that person, and*



*(ii) to abide by the provisions of Regulation 15.*

*( b ) Where a person receives a repayment or remission under paragraph (3) that person shall undertake—*

*(i) to use the vehicle in question for the transportation of the disabled passenger in question, for a period of 2 years from the date on which the Revenue Commissioners receive the application for repayment, and to inform the Revenue Commissioners immediately if any circumstances arise during that period where the vehicle is sold or otherwise disposed of by that person, and*

*(ii) to abide by the provisions of Regulation 15.*

*( c ) Where the Revenue Commissioners accept a claim under this Regulation in respect of the transport of a disabled passenger, they shall not accept a claim (other than in the circumstances to which Regulation 15 applies) relating to any further vehicle in respect of the transport of the same passenger for a period of 2 years from the date of purchase of the vehicle for which the claim was accepted where such claim was made under the provisions of paragraph (1) or (2), and a period of 2 years from the date of receipt of the application by the Revenue Commissioners, where such application was made under the provisions of paragraph (3).*

*(d) Where the Revenue Commissioners have accepted a claim for repayment of vehicle registration tax in respect of the transport of a disabled person as passenger under the Disabled Drivers (Tax Concessions) Regulations, 1989, they shall not accept a claim relating to any further vehicle in respect of the transport of the same passenger for a period of 2 years from the date of purchase of the vehicle for which the claim was accepted:*

*Provided that the Revenue Commissioners may waive this provision in exceptional circumstances subject to the refund of a portion of the repayment, calculated in accordance with the formula set out in Regulation 15(1).*

