



BETWEEN/

12TACD2023

████████████████████

Appellants

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal involves a claim for exemption pursuant to section 195 of the Taxes Consolidation Act as amended ("TCA 1997") commonly known as '*artists' exemption*'.
2. The Appellant makes ██████████ ██████████ cushions, throws, fabric wall hangings and toys from pre-worn clothing and other recycled materials. Each item is designed and hand made by the Appellant. The items are made from pre-worn baby clothes, children's clothing, sports jerseys, pet clothing and clothing from persons who have passed away. The Appellant creates pictures on the works by embroidery, by cutting and sewing and sometimes by sewing additional keepsakes or personal items onto the fabrics.
3. The Appellant submitted a claim for artists' exemption on the basis that her work was an original and creative work having cultural or artistic merit, for the purposes of section 195 TCA 1997. The Appellant's claim for exemption was refused by the Respondent on 13 April 2022 and the Appellant filed a notice of appeal on 20 April 2022.

Legislation and Guidelines

4. The relevant legislation is contained at section 195 of the Taxes Consolidation Act 1997, a copy of which is attached at **Appendix I**. In considering this appeal, I am obliged, in compliance with section 195(13)(b) TCA 1997 to have regard to the guidelines for the time being in force under s.195(12). The work in question must satisfy the mandatory requirements of those guidelines, a copy of which is attached at **Appendix II**.

Background/Submissions

5. The Appellant stated that each item is designed and created through the use of her imagination, creativity and artistic skill. The Appellant stated that the design itself is a sensitive process and that one must possess artistic capabilities to collate the information about the person's clothing or personal items into a suitable design. The Appellant submitted that because each item is made from pre-worn clothing presented to her by the person commissioning an individual piece, these items cannot be bought in a shop, are entirely original and cannot be reproduced.
6. The Appellant submitted that the purpose of her work is to capture, safeguard and preserve memories and to honour the person whose clothing is used and who is being remembered. She stated that her work can be a form of emotional support to families who are bereaved or grieving.
7. Paragraphs 1-3 of the guidelines provide;

General

1. Section 195(1) provides that a "work" for the purposes of the section must be both an original and creative work in one of the following categories, namely:

(a) a book or other writing,

(b) a play,

(c) a musical composition,

(d) a painting or other like picture,



(e) a sculpture.

2. To secure exemption under section 195, a work must be determined by the Revenue Commissioners to be a work which is both original and creative and a work which has, or is generally recognised as having, either cultural or artistic merit.

3. In making a determination under section 195, the Revenue Commissioners may, as provided for in that section, consult with such person or body of persons as may, in their opinion, be of assistance to them.

8. The Appellant claimed that her work fell within paragraph (d) of paragraph 1 of the guidelines namely; *'a painting or other like picture'* and paragraph (e) *'a sculpture'*.
9. The Respondent disagreed and took the view that the Appellant's work did not fall within paragraphs 1 (d) or (e) of the guidelines.
10. In the alternative, the Respondent submitted that if the Appellant's work *did* fall within paragraph 1, then it was taken out of that category by paragraph 8(v) of the guidelines which excludes certain works from the artists' exemption scheme.
11. Paragraph 8(v) of the guidelines provides;

Notwithstanding anything else in these Guidelines, a work –

(a) shall not be an original and creative work, and

(b) shall not have, or shall not be generally recognised as having, cultural or artistic merit

if, in the opinion of the Revenue Commissioners following, where appropriate, consultation with the Arts Council, it is a work of any of the types or a combination of the types, specified in subparagraphs (i) to (vi) below-

...

...



(v) types or kinds of photographic, drawing, painting or other like works which are primarily of record, or which primarily serve a utilitarian function, or which



are created primarily for advertising, publicity, information, decorative or other similar purposes,...

12. The Respondent submitted that the Appellant's work, if it did constitute '*a painting or other like picture*' or '*a sculpture*' within paragraph 1(d) and (e), was excluded from the exemption by paragraph 8(v) on the basis that the work was created '*primarily fordecorative purposes.*'
13. The Appellant refuted this submission.
14. The Respondent accepted that the Appellant's work was original and creative and that it had cultural or artistic merit.
15. However, the Respondent contended that the Appellants' work did not satisfy the conditions of the exemption and that the Appellant was unable thus to avail of the exemption. The Respondent submitted that it was not possible to interpret section 195 TCA 1997 and the guidelines for the time being in force thereunder, so as to grant the exemption in respect of the Appellant's work.
16. The Respondent submitted that in refusing the exemption, there was no intention to disparage the Appellants' work in any way and that the matter of entitlement to the exemption, being a technical one, required the Appellants to demonstrate compliance with all relevant legal tests.

ANALYSIS

17. The first matter to be determined relates to the category 1(d) test specifically, whether the Appellant's work constitutes '*a painting or other like picture*' within the meaning of the guidelines.
18. The Appellant submitted that her craft of creating quilts, cushions and throws from pre-worn clothing was pictorial in large part and she furnished photographs of several items she had designed and hand made. Some of the quilts depict 




another depicted [REDACTED]
[REDACTED], another represented children's drawings, some items
contained [REDACTED]

19. In addition, she made toys including [REDACTED] from the same pre-worn clothing. She stated that the toys could be displayed on shelves in like manner as pictures displayed on walls. The Appellant stated that all toys were handmade and that the process took three to four hours per stuffed toy. She summarised the process of making a teddy bear as follows; she would cut the jumper, baby grow or other personal fabric item into suitably sized pieces, she would use a fabric stabiliser to remove stretch, then place pattern or picture pieces on the fabric, then make and sew legs and arms together. She would make the head separately, sewing sides and seams and sewing on eyes and mouth, she would then create the belly of the bear by sewing darts to ensure the posture of the bear was upright, following which she would stuff the bear by hand and then sew up the remaining seams. All of the work was done by hand, each piece was entirely original and no two items were the same.
20. In her notice of appeal, the Appellant submitted that her hand made toys fell within paragraph 1(e) of the guidelines which provides that '*a sculpture*' may, assuming other relevant criteria are met, constitute a work for the purpose of artists' exemption.
21. Based on the statutory authorities including the recent Supreme Court authorities of *Bookfinders Ltd. v The Revenue Commissioners* [2020] IESC 60, and *Dunnes Stores v the Revenue Commissioners* [2019] IESC 50, I am satisfied that the approach to be taken in relation to the interpretation of the meaning of the words contained in section 195 TCA 1997 and in the guidelines, is one which affords words their ordinary, basic and natural meaning.
22. In considering the expression '*a sculpture*' at paragraph 1(e) of the guidelines and in affording the expression its ordinary and natural meaning, I am of the view that '*a sculpture*' includes not only a work of art carved from stone, wood, metal or other materials, but also includes the creation of a three dimensional art object which is worked into existence by joining, modelling or assembling other materials or objects.



Based on this meaning, I find that the Appellant's handmade toys fall within paragraph 1(e) of the guidelines.

23. The Appellant stated that in relation to the [REDACTED] some people hang them on walls while others use them as quilts, bedspreads or throws. The Respondent's position was that an item does not become a picture simply because it may be displayed on a wall. The Respondent submitted that the items did not come within '*or other like picture*' in paragraph 1(d) but were largely decorative in nature and thereby excluded by paragraph 8(v) of the guidelines.
24. In the context of the exemption which the Appellant seeks to claim, it is important to note that the works created by the Appellant cannot be reproduced or scaled in terms of production. This is because each work is a specific commission made from fabrics furnished by the person commissioning the work (including clothing, baby clothes, sports jerseys, pet clothing or other personal items). The fabrics supplied belong to and were once worn by the baby, child or person (or in some cases, pets) to whom they belonged. Transforming these fabrics into quilts, cushions or toys, can be done on one occasion only. Each item is unique, acutely personal and entirely original. The pieces cannot be reproduced or scaled because each piece is made from fabric which once belonged to a person and which has history with and connection to that person. The Appellant submitted that she brought her own imagination, ideas and reflections into the process of creating each unique piece and that she relied on her artistic capabilities in designing in a manner which was truthful, sensitive and appropriate.
25. I accept the submission of the Appellant that her work is original and creative and that it has cultural and artistic merit and indeed the Respondent was in agreement that this was the case albeit the Respondent submitted that there was technical non-compliance with the guidelines. I find that the Appellant's unique quilts, cushions and throws come within paragraph 1(d) of the guidelines ('a painting or other like picture') and that the Appellant's once-off hand-made toys come within paragraph 1(e) ('a sculpture') of the guidelines.
26. The second question to be determined is whether the Appellant's work is excluded from the exemption on the basis that it is created primarily for decorative purposes, as contended by the Respondent.



27. Paragraph 8(v) of the guidelines excludes works *'which are created primarily for ... decorative or other similar purposes'*.
28. While a quilt, a throw or a wall hanging is by nature decorative, the work the subject of this exemption claim was unique to the commissioning customer in a manner which was acutely personal. The Appellant stated that the items were not decorative in nature as *'You cannot go into a shop and buy this. You cannot go into a shop and buy a quilt or a throw made from your child's baby clothes, from your child's sports jerseys or from clothing of a family member who has passed away.'*
29. I am satisfied that the work in this appeal was not created primarily for decorative purposes but was made primarily to capture, safeguard and preserve memories. The means by which that was achieved was through the Appellant's art, design, imagination and artistic expression.
30. Accordingly, I find that the Appellant's unique quilts, cushions and throws come within paragraph 1(d) of the guidelines ('a painting or other like picture') and that the Appellant's once-off hand-made toys come within paragraph 1(e) ('a sculpture') of the guidelines. In addition, I am satisfied that the Appellant's work is not excluded from the exemption on the basis that these works were created primarily for decorative purposes. It is clear that decorative value is not the reason for creating the work nor the reason for displaying the work. The work is created to capture, safeguard and preserve memories and to honour the person being remembered. A quilt, throw, cushion or toy of this nature is incomparable to a scaled production available for sale in a home furnishings store.

Conclusion

31. The artist exemption legislation and guidelines sets out a series of technical legal tests which must be satisfied by an Appellant in order to avail of the exemption. For the reasons set out above, I determine that the Appellant is entitled to avail of the exemption pursuant to section 195 TCA 1997 on the basis that her work comes within paragraphs 1(d) *'painting or other like picture'* and 1(e) *'a sculpture'* of the guidelines. I do not consider that the Appellant is excluded from the exemption pursuant to the





provisions of paragraph 8(v) on the basis that her work was '*created primarily for.....
, decorative or other similar purposes,...*'

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

A handwritten signature in black ink that reads "Lorna Gallagher".

COMMISSIONER LORNA GALLAGHER

25th day of October 2022



APPENDIX I

Section 195 of the Taxes Consolidation Act 1997 (Exemption of certain earnings of writers, composers and artists)

[(1) In this section—

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;

“EEA state” means a state which is a contracting party to the EEA Agreement;

“work” means an original and creative work which is within one of the following categories:

- (a) a book or other writing;
- (b) a play;
- (c) a musical composition;
- (d) a painting or other like picture;
- (e) a sculpture.]

(2)(a) This section shall apply to an individual –

[(i) who is —

(I) resident in one or more Member States, or in another EEA state, and not resident elsewhere, or

(II) ordinarily resident and domiciled in one or more Member States, or in another EEA state, and not resident elsewhere, and]²

(ii)(I) who is determined by the Revenue Commissioners, after consideration of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, to have written, composed or executed, as the case may be, either solely or jointly



with another individual, a work or works generally recognised as having cultural or artistic merit, or

(II) who has written, composed or executed, as the case may be, either solely or jointly with another individual, a particular work which the Revenue Commissioners, after consideration of the work and of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, determine to be a work having cultural or artistic merit.

(b) The Revenue Commissioners shall not make a determination under this subsection unless –

(i) the individual concerned duly makes a claim to the Revenue Commissioners for the determination, being (where the determination is sought under *paragraph (a)(ii)(II)*) a claim made after the publication, production or sale, as the case may be, of the work in relation to which the determination is sought, and

(ii) the individual complies with any request to him or her under *subsection (4)*.

(3)(a) An individual to whom this section applies and who duly makes a claim to the Revenue Commissioners in that behalf shall, [subject to *paragraphs (aa)* and *(b)*], be entitled to have the profits or gains arising to him or her from the publication, production or sale, as the case may be, of a work or works in relation to which the Revenue Commissioners have made a determination under *clause (I)* or *(II)* of *subsection (2)(a)(ii)*, or of a work of the individual in the same category as that work, and which apart from this section would be included in an assessment made on him or her under Case II of Schedule D, disregarded for the purposes of the Income Tax Acts.

[(aa) The amount of the profits or gains for a year of assessment which an individual shall be entitled to have disregarded for the purposes of the Income Tax Acts by virtue of *paragraph (a)* [shall not exceed €50,000 for the year of assessment 2015] and each subsequent year of assessment.]⁵

(b) The exemption authorised by this section shall not apply for any year of assessment before the year of assessment in which the individual concerned makes a claim under *clause (I)* or *(II)* of *subsection (2)(a)(ii)* in respect of which the Revenue Commissioners



make a determination referred to in *clause (I) or (II) of subsection (2)(a)(ii)*, as the case may be.

(c) The relief provided by this section may be given by repayment or otherwise.

(4)(a) Where an individual makes a claim to which *subsection (2)(a)(ii)(I)* relates, the Revenue Commissioners may serve on the individual a notice or notices in writing requesting the individual to furnish to them within such period as may be specified in the notice or notices such information, books, documents or other evidence as may appear to them to be necessary for the purposes of a determination under *subsection (2)(a)(ii)(I)*.

(b) Where an individual makes a claim to which *subsection (2)(a)(ii)(II)* relates, the individual shall –

(i) in the case of a book or other writing or a play or musical composition, if the Revenue Commissioners so request, furnish to them 3 copies, and

(ii) in the case of a painting or other like picture or a sculpture, if the Revenue Commissioners so request, provide, or arrange for the provision of, such facilities as the Revenue Commissioners may consider necessary for the purposes of a determination under *subsection (2)(a)(ii)(II)* (including any requisite permissions or consents of the person who owns or possesses the painting, picture or sculpture).

(5) The Revenue Commissioners may serve on an individual who makes a claim under *subsection (3)* a notice or notices in writing requiring the individual to make available within such time as may be specified in the notice all such books, accounts and documents in the individual's possession or power as may be requested, being books, accounts and documents relating to the publication, production or sale, as the case may be, of the work in respect of the profits or gains of which exemption is claimed.

(6)(a) In this subsection, "*relevant period*" means, as respects a claim in relation to a work or works or a particular work, the period of 6 months commencing on the date on which a claim is first made in respect of that work or those works or the particular work, as the case may be.

(b) Where –

(i) an individual –

(I) has made due claim (in this subsection referred to as a "*claim*") to the Revenue Commissioners for a determination under *clause (I) or (II)* of



subsection (2)(a)(ii) in relation to a work or works or a particular work, as the case may be, that the individual has written, composed or executed, as the case may be, solely or jointly with another individual, and

(II) as respects the claim, has complied with any request made to the individual under *subsection (4) or (5)* in the relevant period,

and

(ii) the Revenue Commissioners fail to make a determination under *clause (I) or (II) of subsection (2)(a)(ii)* in relation to the claim in the relevant period,

the individual may [appeal to the Appeal Commissioners, in accordance with *section 949I*, within the period of 30 days after the end of the relevant period]⁶ on the grounds that –

(A) the work or works is or are generally recognised as having cultural or artistic merit, or

(B) the particular work has cultural or artistic merit,

as the case may be.

[...]

(8)(a) On the hearing of an appeal made under *subsection (6)*, the Appeal Commissioners may –

(i) after consideration of –

(I) any evidence in relation to the matter submitted to them by or on behalf of the individual concerned and by or on behalf of the Revenue Commissioners, and

(II) in relation to a work or works or a particular work, the work or works or the particular work,

and

(ii) after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them,



determine that the individual concerned has written, composed or executed, as the case may be, either solely or jointly with another individual –

(A) a work or works generally recognised as having cultural or artistic merit, or

(B) a particular work which has cultural or artistic merit,

and, where the Appeal Commissioners so determine, the individual shall be entitled to relief under *subsection (3)(a)* as if the determination had been made by the Revenue Commissioners under *clause (I) or (II) of subsection (2)(a)(ii)*, as the case may be.

[...]

[...]

(10) For the purposes of determining the amount of the profits or gains to be disregarded under this section for the purposes of the Income Tax Acts, the Revenue Commissioners may make such apportionment of receipts and expenses as may be necessary.

(11) Notwithstanding any exemption provided by this section, the provisions of the Income Tax Acts regarding the making by the individual of a return of his or her total income shall apply as if the exemption had not been authorised.

(12)(a) An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands shall, with the consent of the Minister for Finance, draw up guidelines for determining for the purposes of this section whether a work within a category specified in *subsection (1)* is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit.

(b) Without prejudice to the generality of *paragraph (a)*, a guideline under that paragraph may –

(i) consist of a specification of types or kinds of works that are not original and creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose, and

(ii) specify criteria by reference to which the questions whether works are original or creative and whether they have, or are generally recognised as having, cultural or artistic merit are to be determined.



(13)(a) Where a claim for a determination under *subsection (2)* is made to the Revenue Commissioners, the Revenue Commissioners shall not determine that the work concerned is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines under *subsection (12)* for the time being in force.

(b) *Paragraph (a)* shall, with any necessary modifications, apply to –

(i) a determination by the Appeal Commissioners under *subsection (8)* on an appeal to them under *subsection (6)* in relation to a claim mentioned in *paragraph (a)*, and

[(ii) a determination by the High Court under *section 949AR*.]

(14) Where a determination has been or is made under *clause (I)* or *(II)* of *subsection (2)(a)(ii)* in relation to a work or works of a person, *subsection (3)(a)* shall not apply to any other work of that person that is in the same category as such work or works and is or was first published, produced or sold on or after the 3rd day of May, 1994, unless that other work is one that complies with the guidelines under *subsection (12)* for the time being in force and would qualify to be determined by the Revenue Commissioners as an original or creative work and as having, or being generally recognised as having, cultural or artistic merit.

(15) On application to the Revenue Commissioners in that behalf by any person, the Revenue Commissioners shall supply the person free of charge with a copy of any guidelines under *subsection (12)* for the time being in force.

[(16) (a) The Revenue Commissioners may publish, or cause to be published, the name of an individual who is the subject of a determination under *subsection (2)*.

(b) Publication under *paragraph (a)* may, as appropriate, include the title or category of the work of an individual.]

APPENDIX II

Guidelines drawn up under Section 195 (12) of the Taxes Consolidation Act 1997 for the Artists Exemption Scheme by An Comhairle Ealaíon and the Minister for Arts, Heritage and the Gaeltacht.

Introduction



These Guidelines have been drawn up under the provisions of section 195 of the Taxes Consolidation Act 1997 for the purposes of determining whether a work within a category specified in subsection (1) is an original and creative work and whether it has, or is generally recognised as having cultural or artistic merit.

General

1. Section 195(1) provides that a “work” for the purposes of the section must be both an original and creative work in one of the following categories, namely:

(a) a book or other writing,

(b) a play,

(c) a musical composition,

(d) a painting or other like picture,

(e) a sculpture.

2. To secure exemption under section 195, a work must be determined by the Revenue Commissioners to be a work which is both original and creative and a work which has, or is generally recognised as having, either cultural or artistic merit.

3. In making a determination under section 195, the Revenue Commissioners may, as provided for in that section, consult with such person or body of persons as may, in their opinion, be of assistance to them.

Original and Creative



4. A work shall be regarded as original and creative only if it is a unique work of creative quality brought into existence by the exercise of its creator's imagination.

Cultural Merit

5. A work shall be regarded as having cultural merit only if by reason of its quality of form and/or content it enhances to a significant degree one or more aspects of national or international culture.

Artistic Merit

6. A work shall be regarded as having artistic merit only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category.

Criteria for Non-fiction Work

7. (1) This paragraph specifies criteria, in accordance with subsection (12)(b)(ii) of section 195, by reference to which the questions whether a work, being a nonfiction book or other non-fiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit are to be determined. (2) The criteria are:

(a) that the work, in the opinion of the Revenue Commissioners, following consultation with the Arts Council, is a work in one or more of the following categories:

- (i) arts criticism, (ii) arts history, (iii) arts subject work, being a work the subject matter of which is, or is any combination of, visual arts, theatre, literature, music, dance, opera, film, circus or architecture, (iv) artists' diaries, (v) belles-lettres essays, (vi) literary translation, (vii) literary criticism, (viii) literary history, (ix) literary diaries,



that incorporates the author's unique insight into the subject matter and is regarded as a pioneering work and also makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,

or

(b) that the work, in the opinion of the Revenue Commissioners, is a work in one of the following categories: (i) a biography, (ii) an autobiography,

that incorporates the author's unique insight into the subject matter and is regarded as a pioneering work and also makes a significant contribution to the subject matter by casting new light on the person or by changing the generally accepted understanding of the person,
or

(c) that the work, in the opinion of the Revenue Commissioners following consultation with the Heritage Council,

(i) is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995, and

(ii) incorporates the author's unique insight into the subject matter and is regarded as a pioneering work that makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,

or

(d) that the work, in the opinion of the Revenue Commissioners, relates to archives which are more than 30 years old relating to Ireland or Irish people, is based largely on research from such archives, incorporates the author's unique insight into the subject matter, and is regarded as a pioneering work that makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,

or

(e) any combination of (a), (b), (c) or (d) above.

Types of Works Excluded from the Artists Exemption Scheme.





8. Notwithstanding anything else in these Guidelines, a work- (a) shall not be an original and creative work, and

(b) shall not have, or shall not be generally recognised as having, cultural or artistic merit

if, in the opinion of the Revenue Commissioners following, where appropriate, consultation with the Arts Council, it is a work of any of the types or a combination of the types, specified in subparagraphs (i) to (vi) below –

(i) a book or other writing published primarily for, or which is or will be used primarily by-

(I) students pursuing a course of study, or

(II) persons engaged in any trade, business, profession, vocation or branch of learning as an aid to trade or business related practice, or to professional, vocational or other practise in connection with a trade, business, profession, vocation or branch of learning,

(ii) any work of journalism, published in a newspaper, journal, magazine, or other similar medium or published on the internet or on any other similar medium,

(iii) any writing, visual or musical work, or other like work, created for advertising or publicity purposes,

(iv) any arrangement, adaptation or version of musical composition, or other like work, which is not of such musical significance as to amount to an original composition,

(v) types or kinds of photographic, drawing, painting or other like works which are primarily of record, or which primarily serve a utilitarian function, or which are created primarily for advertising, publicity, information, decorative or other similar purposes,

(vi) types or kinds of works of sculpture which primarily serve a utilitarian function.

The above Guidelines were drawn up by An Comhairle Ealaíon and the Minister of Arts Heritage and the Gaeltacht, with the consent of the Minister for Finance, in accordance with section 195(12) of the Taxes Consolidation Act 1997 and are effective for all determinations made by the Revenue Commissioners on or after 30 November 2013

