



**30TACD2018**

**BETWEEN/**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to the refusal by the Respondent of a repayment of residual 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*.
2. The Appellant purchased her vehicle in 2007 and arranged for it to be adapted as required. The Appellant lodged a claim for repayment on 1 December 2016 and the Respondent processed the repayment as and from 28 November 2016 (the date of the primary medical certificate grounding the repayment claim).
3. Paragraph 8(3) of regulation 353/1994 provides that a repayment will be granted in relation to the amount of residual vehicle registration tax and residual value added tax appropriate to a vehicle at the time of lodgement of the repayment claim. The matter



in dispute between the parties related to the question of whether the Appellant was entitled to have the claim for repayment backdated to 2007.

### **Background**

4. The vehicle the subject of this appeal is a **[VEHICLE DETAILS REDACTED]** (hereafter 'the vehicle'). The Appellant contacted the Respondent in September 2016 and in November 2016 in relation to submission of a repayment claim in accordance with S.I. 353/1994. On 1 December 2016, the Appellant lodged a claim for repayment (which included the Appellant's primary medical certificate dated 28 November 2016) however the DD1 form was incomplete and the Respondent requested resubmission of this form. The form was resubmitted on 14 December 2016. The Respondent processed the repayment effective from 28 November 2016, the date of the primary medical certificate.
5. By letter dated 12 April 2017 the Respondent declined to backdate the exemption to 2007 on the basis that regulation 353/1994 provided for repayment of residual VAT and VRT from the date of lodgement of the claim and not on a retrospective basis. On 21 September 2017 the Appellant appealed in accordance with section 146 of the Finance Act 2001, as amended.

### **Legislation**

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
- Section 146 Finance Act 2001, as amended

Regulation 2.(1) S.I. 353/1994 provides;

*'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;*



*'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;*

Regulation 4 S.I. 353/1994 provides;

*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.*

Regulation 8.(3) S.I. 353/1994 provides;

*(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 has purchased a vehicle which complies with the provisions set out*



*at subparagraphs (c ) and (d) of paragraph (1), and the vehicle is specifically adapted to take account of that person's disablement, that person 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 9 for the purposes of this Regulation.*

[emphasis added]

### **Submissions**

6. The Appellant submitted that the repayment should be backdated to the date of purchase of the vehicle in 2007.
7. The Appellant stated that she had complied with the conditions of the regulation in 2007. At hearing, the Appellant made clear that she was extremely disappointed that she had not been informed of her entitlement to lodge a claim for repayment in 2007. She also stated that when she contacted the Respondent by phone in 2016 she had been led to understand that the repayment claim would be backdated to 2007. The Appellant submitted that she requested that phone calls with the Respondent be recorded, but that she was later informed that the phone calls had not been recorded. The Appellant contended that as tolls and taxes were partially reimbursed prior to the issue of the primary medical certificate on 28 November 2016, she was entitled to a repayment backed dated to 2007. The Appellant submitted that she was supported by the provisions of the Constitution.
8. The Respondent stated that the repayment available pursuant to the regulation was limited to the amount of residual VAT and residual VRT appropriate to the vehicle '*at the time such person lodges a claim with the Revenue Commissioners*' in accordance with paragraph 8(3)(a) of S.I. 353/1994 and that there was no legislative authority which would allow the Respondent to backdate the repayment to 2007.



## Analysis

9. In order to obtain a repayment in accordance with S.I. 353/1994, the claimant must be a '*disabled driver*' within the meaning of the regulation and the vehicle the subject matter of the repayment claim must have been specially adapted to take account of the driver's disablement. In addition, the driver is required to furnish a primary medical certificate in the form prescribed in the First Schedule of the regulation.
10. The Appellant met all qualifying conditions in respect of repayment. There was no dispute in relation to the Appellant's disablement which was a substantial impairment to one of the Appellant's limbs, in relation to the Appellant's vehicle which had been specially adapted at the time of purchase or, in relation to the supporting documentation grounding the Appellant's claim.
11. The Respondent submitted that the repayment available pursuant to the regulation was limited to the amount of residual VAT and residual VRT appropriate to the vehicle '*at the time such person lodges a claim with the Revenue Commissioners*' in accordance with paragraph 8(3)(a) of S.I. 353/1994. However, the Appellant submitted that the repayment should be backdated to the date of purchase of the vehicle in 2007.
12. The repayment available pursuant to the regulation is limited to the amount of residual VAT and residual VRT appropriate to the vehicle '*at the time such person lodges a claim with the Revenue Commissioners*' in accordance with paragraph 8(3)(a) of S.I. 353/1994. It does not provide for backdated repayment to the year of purchase even if qualifying conditions can be established retrospectively. I am bound by the provisions of the regulation and I have no option but to determine that the Appellant is unable to succeed in her claim for backdated repayment. This is not because the Appellant failed to qualify with the conditions of the regulation but because the regulation limits the repayment amount to residual value-added tax and residual vehicle registration tax appropriate to the vehicle at the time of lodgement of a claim, in circumstances where the Appellant lodged her claim in 2016.

## Conclusion

13. In accordance with the provisions of S.I. No. 353/1994, I determine that the repayment due to the Appellant pursuant to the regulation fell to be calculated in accordance with paragraph 8(3) of the regulation, which limits the repayment amount to *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.’ As a result, I determine that the Appellant is unable to succeed in her claim for repayment backdated to the purchase of the vehicle in 2007.*

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

**COMMISSIONER LORNA GALLAGHER**

**November 2018**

**The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.**



## **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 Regulation 10 (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 drivers.*

8. (1) Where a person satisfies the Revenue Commissioners that that person is a disabled driver and 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) is specially constructed or adapted to take account of that person's disablement,

(b) is purchased by that person,

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

(d) is fitted with an engine whose capacity is not greater than 2,000 cubic centimetres,

that person shall be entitled to be repaid the said amounts of tax and residual vehicle registration tax, subject to the limit specified in Regulation 9 for the purposes of this Regulation:

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

(2) Where at the time of registration of a vehicle in the name of a person who satisfies the Revenue Commissioners that that person is a disabled driver and the vehicle in question complies with the provisions set out at subparagraphs (a), (b) and (d) of paragraph (1), the



Revenue Commissioners shall remit the vehicle registration tax payable, subject to the limit specified in Regulation 9 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 has purchased a vehicle which complies with the provisions set out at subparagraphs (c) and (d) of paragraph (1), and the vehicle is specially adapted to take account of that person's disablement, that person 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, [emphasis added] and

(b) the value-added tax charged in respect of the adaptation of that vehicle, subject to the limit specified in Regulation 9 for the purposes of this Regulation.

