



**TC02118**

**Appeal number: TC/2010/08319**

*VAT- input tax-charity selling animals for fixed donations-following Gables Farm decision supplies found to be zero-rated- whether charity entitled to recover input relating to such supplies –yes – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**WOOD GREEN ANIMAL SHELTERS**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE DAVID DEMACK  
MRS CAROLINE ALBUQUERQUE**

**Sitting in public at London on 21 April 2012**

**Melanie Hall QC for the Appellant**

**Gloria Orimoloye of counsel, instructed by the General Counsel and Solicitor to  
HM Revenue and Customs, for the Respondents**

## DECISION

1. This appeal by Wood Green Animal Shelters (“WGAS”) concerns a VAT input tax repayment claim of a particular type, known as a Fleming claim, for the period 1 October 1989 to 31 March 1997 in the sum of £176,635.27.

2. The issue under appeal concerns monies received by WGAS from adopters who took animals from WGAS’s premises so that they could be housed (“re-housing income”). From sometime prior to 1997, WGAS classified its re-housing income as non-business for the purposes of the apportionment and partial exemption methods to which it was subject.

3. The appeal was presented for WGAS by Melanie Hall QC, and for HMRC by Gloria Orimoloye of counsel. They provided us with a bundle of copy documents. We were also presented with the oral evidence of four witnesses, three for WGAS, and the fourth, Mrs Jacqueline Shackleton, an officer of HMRC who made the decision to refuse the input tax claim. It is from the whole of that evidence that we make our findings of fact.

4. WGAS is an animal welfare charity which was founded in 1924 with the aim of helping to alleviate the problem of abandoned and injured animals on the streets of London after the First World War. In 1933 the charity’s aims were changed to finding new homes for abandoned and injured animals.

5. The charitable objectives of WGAS include the relief of animals suffering from injury, sickness ill-treatment or neglect and in particular the establishment and maintenance of clinics or hospitals for the reception, treatment and, if necessary, the painless destruction of sick and injured animals; and the provision of accommodation for unwanted or homeless animals until permanent homes can be found for them.

6. WGAS is the representative member of a VAT Group comprising WGAS and its subsidiary company Wood Green Enterprises Limited (“WGEL”) effective from 1 April 2008, prior to which both entities were separately registered.

7. WGEL is responsible for carrying out the group’s trading activities such as restaurant sales, sale of merchandise and the letting of property.

8. The WGAS VAT Group has divers sources of income including membership fees, rental income, payphone receipts fundraising events, legacies and donations, the sale of donated goods. As the sources of income are a mixture of business (both taxable and exempt) and non-business activities it operates a business/non-business apportionment method as well as an income based standard partial exemption method.

9. On 6<sup>th</sup> July 1999 Mr P G Goulding, a customs officer, paid a routine VAT control visit to WGAS. He found it to be treating re-housing income as that from a non-business activity. He questioned that treatment, but only to the extent of expressing in the visit report his being “slightly concerned” about it. He did not

take things further, with the result that WGAS continued to treat such income as non-business receipts.

10. WGAS advertised animals it had for re-housing as available to suitable adopters at a specific price per animal, depending on the type of animal concerned.

5 11. Early in 2000 there was correspondence between HMRC and Messrs Price Bailey, WGAS's accountants, about its treatment of certain monies for VAT purposes. In a letter of 20 April 2000 Price Bailey said this of re-housing income:

10 “... [Staff] are from time to time educated in how to deal with members of the public who enquire how much an animal will cost. Staff are trained not to quote a specific price but at the same time to encourage guardians to make a donation which is commensurate with the type of animal they are adopting.”

15 12. WGAS produced three witnesses to give oral evidence that the final sentence of that quotation was incorrect. They were David Webb, its finance director until he retired, Shelley Wooding, who until promotion held a management position, and Tina Jeffery, who was involved in rehoming animals. All were in post in 1999, and we have no hesitation in accepting the correctness of their evidence. We find that the statement made by Price Bailey was not only incorrect, but was made without any authority from or reference to WGAS. Further, the letter was not copied to WGAS, so that it had no opportunity of correcting it.

20 13. WGAS continued to treat donations from the sale of animals as non-business receipts until 2008.

25 14. On 4 January 2008 the tribunal released the decision in V20519 *Gables Farm Dogs & Cats Home v Commissioners of Revenue and Customs*. It concerned the question whether the sale of cats and dogs by the home was zero-rated for the purposes of VAT. The material provisions are to be found in Item 1 group 15 schedule 18 of the VAT Act 1994 which zero rates

“1. The sale, or letting on hire, by a charity for any goods donated to it for –  
(a) sale”

30 15. The issue in *Gables Farm* was whether the zero-rating provisions applied only to the sale of cats and dogs donated by their owners, as argued by HMRC. The tribunal accepted the Appellant's argument that ownership was not a pre-requisite to donation, concluding that the Appellant's sales of cats and dogs given to it by wardens, police officers and members of the public constituted sales of donated goods which met the requirements of zero-rating in item 1. In the instant case, Mr Dennis Baker, WGAS's chief executive officer, gave evidence which satisfied us that it was  
35 the owner of all the animals it placed with adopters.

16. In view of the *Gables Farm* decision, WGAS reviewed the VAT treatment of its re-housing income which it had historically treated as non-business, taking the view that it was income for zero rated supplies. WGAS submitted an error correction

claim for input tax unrecovered in the period 2005 to 2008. The VAT in issue related to the costs of veterinary treatment, food and care for the animals to be re-homed.

17. Following correspondence and a number of VAT visits, HMRC approved the 2005 to 2008 claim by letter of 30 November 2009.

5 18. WGAS subsequently submitted claims for input tax attributable to supplies made before 1997. They were rejected by HMRC on 13 July 2010, and the rejection was confirmed on review on 27 September 2010

19. WGAS appealed the decision on review on 26 October 2010 giving its reasons for appealing as:

10 “Prior to 1997 when Wood Green Animals Shelters (WGAS) re-homed animals in exchange for a sum of money, it was making taxable supplies in the course of carrying on a business. WGAS therefore incorrectly declared those sums as donations in its pre-1997 VAT returns. The Commissioners are accordingly obliged to meet its claim under *Michael Fleming (t/a Bodycraft) v*  
15 *Commissioners of HM Revenue & Customs.*”

20. Thus the key issue in the case is whether the income from WGAS’s re-homing activities was incorrectly treated as non-business for the period of the *Fleming* claim. That issue turns on the question whether the monies given by the adopters consisted of consideration for the supply of the animal. WGAS’s case in essence is that those  
20 monies were received in return for the animal because there was a direct link between the handing over of the animals and the receipt of the monies. By contrast HMRC argue that the monies are freely and unconditionally given, and thus cannot be classified as consideration for VAT purposes.

21. As we mentioned earlier, HMRC’s decision to refuse WGAS’s Fleming claim  
25 was made by Mrs Jacqueline Shackleton. In her evidence to us she explained that, following release of the *Gables Farm* decision, HMRC issued a Business Brief and provided internal guidance for use by officers dealing with output tax overpayment claims similar to that of *Gables Farm*. She explained the WGAS claim as being unique in that it concerned an application for repayment of input tax, whereas every  
30 other *Gables Farm* claim was made on the basis of an overpayment of output tax.

22. On 13 July 2010 HMRC, in the form of Mrs Shackleton wrote to WGAS rejecting its input tax claim in full on the basis that it received a donation for each animal re-homed, and not a fixed fee, so that the *Gables Farm* decision did not affect WGAS’s liability to tax

35 23. WGAS the requested a review of Mrs Shackleton’s decision. Its representative, Messrs Saffrey Champness, stating that HMRC appeared to be ignoring the fact that WGAS’s earlier treatment of re-homing income was wrong, and were also ignoring the contents of a statement by its Chief Executive Officer of 4 June 2010 that payment of a recommended amount was sought from each adopter.

24. On 27 September 2010 HMRC issued a review decision upholding their refusal of the input tax repayment claim.

25. It was quite plain from the evidence of Mrs Shackleton that she considered she had no alternative but to reject WGAS's input tax repayment claim since the Business Brief issued by HMRC following release of the *Gables Farm* decision contained no reference to input tax claims such as that of WGAS, nor did the internal advice with which she was provided deal with such claims. We have no hesitation in saying that she wholly failed to consider the claim against the background of the tribunal decision in *Gables Farm*. Had she done so, in our judgment, she would have had no alternative but to allow the claim.

26. In those circumstances, we find it unnecessary to deal with the submissions of each of the parties, but for the record would say that we accept those of Mrs Hall in their entirety.

27. For all practical purposes this appeal is on all fours with that of *Gables Farm*. The so-called donations which WGAS receives are not in fact donations at all, but fixed fees for animals. We allow the appeal.

28. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**DAVID DEMACK  
TRIBUNAL JUDGE**

**RELEASE DATE: 1 June 2012**