

TAX/COURT REPORT

BY JAMIE GOLOMBEK

Life insurance commissions incur tax

Policies purchased by brokers as investments are deemed taxable.

In a decision sure to rock the insurance advisory world, the Tax Court of Canada has ruled that, notwithstanding the long-standing published administrative position of the Canada Revenue Agency, insurance commissions on the sale of two policies on the advisor's own life were fully taxable.

The case (*Bilodeau v. the Queen*, 2009 TCC 315) involved Jacques Bilodeau, a life insurance broker



GOLOMBEK

with Force Financière Excel who earns his income from life insurance company commissions.

In 2003, Bilodeau personally took out two \$1 million universal life insurance policies, one under which he was the insured person and his wife was the beneficiary and the other under which his wife was the insured person and he the beneficiary.

On his policy, he paid \$38,000

of premiums over the first two years and on his wife's policy, he paid nearly \$20,000.

When Bilodeau filed his 2003 tax returns, he initially included in his income the amount of the commission he received from Transamerica, totalling about \$43,000 for the two life insurance policies. He then deducted that same amount as an expense, calling it an insurance rebate.

This tax position—that com-

missions received upon purchasing personal life insurance policies are considered to be tax-exempt—is widely relied upon in the insurance industry and is based on Interpretation Bulletin IT-470R, originally issued by the CRA on April 8, 1988, and revised in August 1999.

The Bulletin, entitled "Employees' fringe benefits" (but also relevant to taxpayers who are self-employed like Bilodeau), states under the heading, "Discounts on Merchandise and Commissions on Sales," paragraph 27, that "(a) commission received by a sales employee on merchandise acquired for that employee's personal use is not taxable. Similarly,

where a life insurance salesperson acquires a life insurance policy, a commission received by that salesperson on that policy is not taxable provided the salesperson owns that policy and is obligated to make the required premium payments thereon."

The CRA refused to allow Bilodeau to reduce his commission income by the \$43,000 on the grounds that the policies "were not purchased with a view to obtaining personal protection but for investment purposes."

This is based on earlier comments the CRA made at the May 2000 Conference for Advanced Life Underwriting (CALU) in which the CRA issued a number of "clarifications" regarding its position as set out in the IT Bulletin. At CALU, the CRA stated that the phrase "life insurance policy" used in the Bulletin, "was never intended to be used in the same sense as in ... the Act. In fact, it was aimed specifically at life insurance policies acquired for the purpose of obtaining personal protection. Therefore, commissions received by a life insurance salesperson following the acquisition of an annuity contract or a segregated fund policy as an investment are taxable for the salesperson."

Bilodeau argued that even after six years, there was no cash surrender value on the two policies and he "did not take out these two policies for investment purposes, but rather to secure the protection of personal life insurance." He also stated "if he had not been a life insurance broker, he probably would not have purchased this type of insurance ... [He] acknowledged it is the receipt of a commission that he considered non-taxable, as of the first year, which allowed him to absorb the elevated cost of the universal [life] insurance."

The judge concluded that the \$43,000 of commissions received was taxable income that Bilodeau earned from his business. As the judge wrote, "Had he not been a broker, he would not have received that commission ... That the two policies were acquired by him for personal purposes ... does not change the fact that he earned the commission in issue as part of his professional activities as a broker. It is precisely because he was a professional broker that he was entitled to that commission." ^{AER}

JAMIE GOLOMBEK, CA, CPA, CFP,
CLU, TEP, is the managing director,
tax & estate planning with CIBC Private
Wealth Management in Toronto.
Jamie.Golombek@cibc.com