

Docket: 2002-2951(IT)I

BETWEEN:

GILBERT DELISLE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on August 27, 2003 at Chicoutimi, Quebec.

Before: The Honourable Justice François Angers

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Yannick Landry

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1999 taxation year is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 30th day of October 2003.

"François Angers"

Angers J.

Translation certified true
on this 30th day of March 2009.
Bella Lewkowitz, Translator

Citation: 2003TCC751
Date: 20031030
Docket: 2002-2951(IT)I

BETWEEN:

GILBERT DELISLE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Angers J.

[1] This appeal is with regard to the Appellant's 1999 taxation year. The Minister of National Revenue (the Minister) disallowed the \$9,722.40 deduction claimed as a fee expense on the ground that this amount is a commission the Appellant earned from Sun Life of Canada (Sun Life) and is therefore considered income within the meaning of subsection 9(1) of the *Income Tax Act* (the Act).

[2] Mr. Delisle was a Sun Life executive until July 1998. Following that, he became self-employed and, as a result, could no longer benefit from the pension fund he had while he was still with his employer. At the beginning of 1999, the year at issue, the Appellant transferred the pensions fund he received upon leaving Sun Life to a locked-in retirement account; this investment automatically entitled him to a commission of \$9,772.49.

[3] On his income tax return for the year at issue, the Appellant claimed the income from the commission earned from Sun Life as per the T4A he was given, which included the commission at issue. Among the expenses deducted from his commission income, the Appellant included the amount at issue, claiming that it was a fee expense, which the Minister objected to.

[4] The Appellant contends he followed expert advice in the matter, and according to those experts, the amount is not taxable. A [TRANSLATION] “specialist in interpreting technical issues” gave him a copy of the IT-470R interpretation bulletin on employee benefits and, in light of this bulletin, she was of the opinion that the commission at issue was not taxable. I have reproduced paragraph 27 of the interpretation bulletin below; the section underlined is the one the Appellant is basing his appeal on.

PART B — AMOUNTS NOT TO BE INCLUDED IN INCOME

Discounts on Merchandise and Commissions on Sales

27. Where it is the practice of an employer to see merchandise to employees at a discount, the benefits that an employee may derive from exercising such a privilege are not normally regarded as taxable benefits. However, this does not extend to an extraordinary arrangement with a particular employee or a select group of employee nor to an arrangement by which an employee is permitted to purchase merchandise (other than old or soiled merchandise) for less than the employer’s cost. Furthermore, this treatment does not extend to a reciprocal arrangement between two or more employers whereby the employers of one can exercise such a privilege with another by whom the employees are not employed. A commission received by a sales employee on merchandise acquired for the 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.

[5] The Appellant is therefore asking for the same treatment with respect to the commission he earned when transferring his pension fund to the locked-in retirement account.

[6] Counsel for the Respondent maintains that the amount at issue qualifies as business income the Appellant earned as a self-employed broker and that the IT-470R interpretation bulletin is for employees and outlines the taxation or non-taxation of certain benefits. The example of a life insurance policy does not apply because the Appellant did not buy such a policy.

[7] Was the Minister correct in disallowing the Appellant’s deduction? The issue here is whether or not the Appellant was entitled to a tax deduction given that

it was a commission on an investment the Appellant made for his own benefit. For an expense to be considered deductible from business income, it has to be incurred by the taxpayer for the purpose of earning business income. In this situation, the expenditure (the commission) was incurred for the purpose of making a personal investment and does not qualify as a deduction pursuant to paragraph 18(1)(a) of the Act. I find that the Minister was right to disallow the Appellant's deduction at issue.

[8] I would like to come back to the issue of determining if, in this situation, this is really taxable business income or an amount that Appellant was not obligated to include in his income as a result of the IT-470R interpretation bulletin. I would like to emphasize that the Court is not bound by the contents of interpretation bulletins. Moreover, the interpretation bulletin does not apply in this case, not because it does not apply to self-employed workers but because it applies only to a situation where the taxpayer acquires a product for personal protection and not as an investment, which is not what the Appellant did.

[9] The commission was received by the Appellant as a result of his work and therefore constitutes business income pursuant to subsection 9(1) of the Act. It is therefore taxable income.

[10] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 30th day of October 2003.

"François Angers"

Angers J.

Translation certified true
on this 30th day of March 2009.
Bella Lewkowicz, Translator

CITATION: 2003TCC751

COURT FILE NO.: 2002-2951(IT)I

STYLE OF CAUSE: Gilbert Delisle and Her Majesty the Queen

PLACE OF HEARING: Chicoutimi, Quebec

DATE OF HEARING: August 27, 2003

REASONS FOR JUDGMENT BY: The Honourable Justice François Angers

DATE OF JUDGMENT: October 30, 2003

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Yannick Landry

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada