

Citation: 2006TCC646
Date: 20061206
Docket: 2006-1345(IT)I

BETWEEN:

BERNARD BROUSSEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre J.

[1] The Appellant is appealing from an assessment in which the Minister of National Revenue, in computing the Appellant's income for the 2004 taxation year, added \$11,886 thereto on account of investment income in accordance with the T5 slip that the Appellant received from the Standard Life insurance company. On April 24, 1984, the Appellant took out a \$135,000 life insurance policy with a 20-year term. The policy matured on April 24, 2004, whereupon the Appellant availed himself of the clause guaranteeing a premium refund. Under this clause, the Appellant was entitled, upon maturity, to a refund of all the annual premiums that he had paid, without interest. Consequently, in the course of the 2004 taxation year, Standard Life paid him \$14,983. In the Appellant's case, the amount of premiums paid (\$16,120.91) was higher than the amount refunded (\$14,983) because he had chosen the monthly payment option, and monthly premiums are higher than annual premiums because the monthly premium option requires additional administration.

[2] In a letter to the Appellant dated November 11, 2005 (produced by the Appellant as Exhibit A-1), Isabelle Bicari, an analyst at Standard Life, explained that the payment under the premium refund guarantee is a disposition of the policy within the meaning of subsection 148(1) and paragraph 56(1)(j) of the

Income Tax Act ("the Act"). She set out the details of the taxable amount as follows:

Amount of disposition (Premium refund)	\$14,983.00
Minus adjusted cost basis	<u>- \$3,097.00</u>
Taxable amount	\$11,886.00

The adjusted cost basis was calculated as follows:

Total premiums paid:	\$16,120.91
Minus the net cost of pure insurance*	<u>- \$13,023.91</u>
Adjusted cost basis	\$3,097.00

* The net cost of pure insurance is determined on December 31 of each year and deducted from the adjusted cost basis in accordance with Income Tax Regulation 308.

[3] The Appellant is contesting this calculation on the basis that the net cost of pure insurance should not be taken into account in the adjusted cost basis.

[4] Paragraph 56(1)(j) and the relevant passages of subsection 148(1) of the Act read as follows:

Subdivision d – Other sources of income

SECTION 56: Amounts to be included in income for year

(1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

...

(j) **Life insurance policy proceeds** – any amount required by subsection 148(1) or 148(1.1) to be included in computing the taxpayer's income for the year;

Life Insurance Policies

SECTION 148: Amounts included in computing policyholder's income

(1) There shall be included in computing the income for a taxation year of a policyholder in respect of the disposition of an interest in a life insurance policy . . .

the amount, if any, by which the proceeds of the disposition of the policyholder's interest in the policy that the policyholder, beneficiary or assignee, as the case

may be, became entitled to receive in the year exceeds the adjusted cost basis to the policyholder of that interest immediately before the disposition.

[5] The term "disposition" is defined, *inter alia*, as follows in subsection 148(9) of the Act:

"disposition", in relation to an interest in a life insurance policy, includes

...

(c) the dissolution of that interest by virtue of the maturity of the policy.

[6] The term "proceeds of the disposition" is defined in subsection 148(9) of the Act as the amount of the proceeds that the policyholder, beneficiary or assignee, as the case may be, is entitled to receive on a disposition of an interest in the policy (here, that amount is \$14,983). The "adjusted cost basis" is also defined in subsection 148(9). The relevant parts read as follows:

"adjusted cost basis" to a policyholder as at a particular time of the policyholder's interest in a life insurance policy means the amount determined by the formula

$$(A + B + C + D + E + F + G + G.1) - (H + I + J + K + L)$$

where

A is the total of all amounts each of which is the cost of an interest in the policy acquired by the policyholder before that time but not including an amount referred to in the description of B or E [this exclusion is not applicable here];

...

L is:

(a) in the case of an interest in a life insurance policy (other than an annuity contract) that was last acquired after December 1, 1982 by the policyholder, the total of all amounts each of which is the net cost of pure insurance, as defined by regulation and determined by the issuer of the policy in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year commencing after May 31, 1985 and before that time;

[7] According to this definition, the adjusted cost basis of the interest that the Appellant acquired under "A" is \$16,120.91 (that is, the total premiums that he paid for 20 years). From this amount one must deduct "L", the net cost of pure

insurance as defined in section 308 of the Income Tax Regulations ("the Regulations"). The relevant part of the Regulations reads:

308. (1) For the purposes of subparagraph 20(1)(e.2)(ii) and paragraph (a) of the description of L in the definition "adjusted cost basis" in subsection 148(9) of the Act, the net cost of pure insurance for a year in respect of a taxpayer's interest in a life insurance policy is the product obtained when the probability, computed on the basis of the rates of mortality under the 1969-75 mortality tables of the Canadian Institute of Actuaries published in Volume XVI of the Proceedings of the Canadian Institute of Actuaries or on the basis described in subsection (1.1), that a person who has the same relevant characteristics as the person whose life is insured will die in the year is multiplied by the amount by which

(a) the benefit on death in respect of the taxpayer's interest at the end of the year

exceeds

(b) the accumulating fund (determined without regard to any policy loan outstanding) in respect of the taxpayer's interest in the policy at the end of the year or the cash surrender value of such interest at the end of the year, depending on the method regularly followed by the life insurer in computing net cost of pure insurance.

[8] According to Maurice Marchand, a consultant who works part-time for Standard Life and was called by the Respondent as a witness, the net cost of pure insurance is an actuarial calculation, and was determined in the case at bar to be \$13,023.91. The Appellant submitted that in determining the adjusted cost basis, one must not deduct the net cost of pure insurance from the total premiums paid because, in his opinion, his policy does not contain the factors that section 308 of the Regulations requires in order for such a calculation to be done (for example, his policy does not provide for an accumulating fund in relation to his interest in the policy).

[9] I cannot make such a finding on the basis of Mr. Marchand's testimony because Mr. Marchand was not asked to answer a question concerning this precise point. Moreover, I see nothing in the insurance policy in question which would suggest that the net cost of life insurance should not be computed upon the refund of the premiums on maturity.

[10] In my opinion, the Appellant has not shown that Standard Life erred in calculating the taxable amount. Thus, I would dismiss the appeal.

Signed at Ottawa, Canada, this 6th day of December 2006.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 3rd day of August 2007.

Brian McCordick, Translator

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COURT FILE NO.: 2006-1345(IT)I

STYLE OF CAUSE: BERNARD BROUSSEAU AND
THE QUEEN

PLACE OF HEARING: Montréal, Quebec

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REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre

DATE OF JUDGMENT: October 5, 2006

REASONS SIGNED: December 6, 2006

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent Nathalie Lessard

COUNSEL OF RECORD:

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Firm:

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