

TAXADVISOR

Taxing transaction fees

Commissions on personal investments are fully taxable

COURT REPORT

BY JAMIE GOLOMBEK



I'm asked regularly about whether commissions received by an advisor on the sale of life insurance and/or investment products for his or her own personal use are taxable.

A 2003 tax case—*Delisle v The Queen, 2003 ICC 751*—dealt with such an advisor.

Gilbert Delisle, an executive at Sun Life, became self-employed after leaving in July 1998, and could no longer remain a member of the Sun Life pension plan. As a result, in 1999, he transferred the commuted value of his Sun Life pension to a locked-in retirement account. This transaction entitled him to a sales commission of \$9,800, which was reported to him on a Sun Life T4A, among other commissions he earned that year.

On his 1999 tax return, Delisle claimed an offsetting deduction for the \$9,800 as a “fee expense” incurred for the purpose of earning commission income.

Delisle testified that he relied on the Canada Revenue Agency's long-standing administrative policy, as articulated in its Interpretation Bulletin IT-470R “Employees' Fringe Benefits.” Under the heading “Amounts not to be included in income,” paragraph 27 reads: “Where it is the practice of an employer to sell 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 . . . 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.”

But in Delisle's case, the CRA disagreed and maintained the commission was taxable as business income because he was a self-employed broker and not an employee, and thus IT-470R, which deals specifically with employees, simply didn't apply. Furthermore, because Delisle didn't buy a life insurance policy, the example of a life insurance policy wouldn't apply.

To determine whether an ex-

pense is deductible from business income, the judge stated it must be incurred for the purpose of earning business income. Since Delisle's commission was incurred for the

If a life insurance salesperson acquires a life insurance policy, the commission he receives on that policy is not taxable.

purpose of a personal investment in his own RRSP, it didn't qualify as a deductible business expense.

Notwithstanding the fact that the court is “not bound by the contents of interpretation bulletins,” the judge ruled that the IT Bulletin simply did not apply. Not just because it doesn't apply to self-employed workers, but because it is meant to apply only where the advisor acquires a product “for personal protection and not as an investment.”

This reasoning is interesting as

it appears to imply that the product being purchased is the reason behind the taxability of the commission, as opposed to whether or not the individual advisor was an employee or was self-employed.

This is in contrast with the reasoning behind CRA's long-standing administrative position (CRA View 9618085) on the taxability of securities commissions earned by an advisor on his or her own personal trading.

In that technical interpretation, the CRA distinguishes between advisors who purchase life insurance, effectively acquiring the product at a discount equal to the normal

insurance premium less the sales commission, and advisors who buy securities for their own accounts.

An advisor employed with a securities firm doesn't actually acquire his or her employer's product, but rather a “product” in the marketplace (i.e. the exchange). As a result, the CRA stated its position in the IT Bulletin dealing with merchandise discounts would not apply, resulting in the securities commission being fully taxable. **AER**

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