

1962
Dec. 5, 6
1964
July 3

BETWEEN:

DONALD J. PLUMB APPELLANT;

AND

THE MINISTER OF NATIONAL }
REVENUE } RESPONDENT.

*Revenue—Income Tax—Income Tax Act, R.S.C. 1952, c. 148, s. 5(1)—
Employee benefits—Insurance premiums paid for taxpayer by em-
ployer—Whether properly included in taxpayer's income—Meaning of
“Group Insurance Plan”.*

This appeal results from the inclusion by the respondent in the appellant's income, for the purpose of computing his income tax, of amounts equal to the premiums paid by the Company of which he was an officer and employee for two policies of ordinary life under a scheme of insurance. The scheme of insurance included group insurance coverage available to officers, employees and licencees, for which the Company was reimbursed for payment of premiums on behalf of the licencees but not for those paid on behalf of its officers and employees. The benefit derived by officers and employees was admittedly not taxable in respect of the group insurance coverage. In addition to such group insurance coverage the scheme of insurance also permitted the senior executives, the appellant and his father, and the junior executives, the

appellant's wife and mother, to obtain ordinary life insurance policies in amounts of \$50,000 and \$10,000 respectively. The appellant became insured under the latter part of the plan and the premiums were paid by the Company. The issue was whether coverage under these two ordinary life policies, as part of an overall scheme arranged between the Company and the insurer was pursuant to a "group insurance plan" within the meaning of s. 5(1)(a) and therefore a non-taxable benefit.

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Held: That the words "group insurance" have an ordinary and popular meaning which involves a contract that provides for the insurance of a number of persons individually, such as a contract between an insurer and an employer providing for the insurance of employees of the employer and the premiums here in question were not paid under such a contract.

2. That the appeal is dismissed.

APPEAL under the *Income Tax Act*.

The appeal was heard by the Honourable Mr. Justice Cattanach at Toronto.

David Ward for appellant.

F. J. Dubrule and *G. W. Ainslie* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

CATTANACH J. now (July 3, 1964) delivered the following judgment:

The appellant appeals against his income tax assessments for the 1956, 1957 and 1958 taxation years. The sole issue is whether premiums (the amounts of which are not in dispute) paid on behalf of the appellant by his employer on two insurance policies on his life were properly included in computing the appellant's income for the taxation years in question in accordance with s. 5 (1) of the *Income Tax Act*, c. 148, R.S.C. 1952, which reads, in part, as follows:

5. (1) Income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year plus

(a) the value of board, lodging and other benefits of any kind whatsoever (except the benefit he derives from his employer's contributions to or under a registered pension fund or plan, group insurance plan, medical services plan or supplementary unemployment benefit plan) received or enjoyed by him in the year in respect of, in the course of or by virtue of the office or the employment; . . .

Clearly payment of the premiums by his employer was a benefit enjoyed by the appellant by virtue of his employment. The question in issue is whether that benefit was derived from "his employer's contributions to or under a . . . group insurance plan".

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The appellant, during the years in question, was an employee and officer of Federal Trucks (Windsor) Limited, a company carrying on the business of wholesale and retail distribution of gasoline and other petroleum products.

The Company operated a number of gasoline service stations, and in addition marketed its product through licensees.

At a meeting of the directors of the Company held on November 21, 1956 at which the licensees were present, it was decided to adopt a proposal of insurance made by London Life Insurance Company (hereinafter referred to as "the insurer") covering the lives of officers and employees of the Company, its licensees and their employees.

Pursuant to that decision, the Company applied to the insurer for and received a policy of insurance described as Group Policy No. G 3390 effective November 30, 1956 by the terms of which senior executives, junior executives and other employees were eligible to receive insurance on their lives for the respective amounts of \$20,000, \$10,000 and \$2,000, and a further policy of insurance also effective November 30, 1956, described as Group Policy GD 3390 whereby senior executives, junior executives and licensees and other employees were eligible for accidental death and dismemberment insurance in the respective amounts of \$5,000, \$5,000 and \$2,000.

Under these policies, the insurer undertook to send to the Company individual certificates, setting forth the insurance protection to which each person was entitled, for delivery to the person whose life was insured and maintained a register showing the names of all employees so insured. Provision was also made for new employees being insured and for employees to continue their coverage on termination of employment by the exercise of a conversion privilege.

The Company paid the monthly premiums under the two foregoing policies. It was not reimbursed by its own employees, approximately nine in number including the appellant, but it was reimbursed in full with respect to premiums paid on behalf of licensees.

There is no dispute that each of the two foregoing policies constitute a group insurance plan within the meaning of those words as they appear in s. 5(1)(a) of the Act.

However, the proposal for insurance also included a scheme for ordinary life policies in the amount of \$50,000 on the lives of senior executives and in the amount of \$10,000 on the lives of junior executives and licensees, the policies having a cash surrender value and not being terminable on cessation of employment. The senior executives were the appellant and his father, and the junior executives were his wife and mother.

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In accordance with the latter part of the proposal, in December, 1956, the appellant, his father, mother and wife, as well as some of the Company's licensees, each personally applied to the insurer for and received a policy described as a Jubilee whole life policy on his or her life. The monthly premiums on these policies were paid by the Company on behalf of the respective insured persons. The Company was not reimbursed in respect of the premiums paid on the policies issued to the Company executives but was reimbursed for the premiums paid on behalf of the licensees.

In 1958 the appellant applied for and obtained a second Jubilee whole life policy pursuant to a similar arrangement under which the Company paid the premiums thereon.

The issue to be resolved is whether the premiums paid by the appellant's employer on these Jubilee whole life policies fall within the words "contributions to or under a . . . group insurance plan" in s. 5 (1)(a). If they do the assessments were erroneous. If they do not the assessments were correctly made.

Accordingly, the disposition of these appeals is dependent upon ascertaining the meaning of the words "group insurance plan" as used in s. 5 (1)(a).

Bergman, J. A., in *Re Lawton*¹ had occasion to pose and answer the question "What is group insurance". He reviewed all available authorities, mostly American, and concluded that the words "group insurance" mean a type of insurance governed by the rules applicable thereto and with a terminology of its own and that the contract of insurance is comprised of a contract between the insurer and an employer whereby the insurer agrees to provide for the insurance of those employees who are eligible thereto and who apply therefor in accordance with a formula contained in a

¹ [1945] 4 D.L.R. 8 at 33.

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master policy which is the contract between the insurer and the employer.

I am of the view that the words "group insurance" have an ordinary and popular meaning which involves a contract that provides for the insurance of a number of persons individually. A typical example is a contract between an insurer and an employer providing for the insurance of employees of the employer.

The premiums here in question were not paid by the employer under such a contract of insurance and the appeals must therefore be dismissed with costs.

Judgment accordingly.